

PARK BOARD – VANCOUVER BOTANICAL
GARDENS ASSOCIATION
JOINT OPERATING AGREEMENT

BETWEEN

THE VANCOUVER BOARD OF PARKS AND
RECREATION

AND

VANCOUVER BOTANICAL GARDENS
ASSOCIATION

Contents

1.0	DEFINITIONS.....	6
2.0	LEGAL RELATIONSHIP.....	10
3.0	TERM.....	10
3.1	Renewal.....	10
3.2	Process At End Of Term	11
4.0	OBLIGATIONS AND ROLES OF THE PARTIES.....	11
4.1	Mutual Obligations	11
4.2	Role And Obligations Of The Park Board.....	12
4.3	Role Of The Park Board Garden Director.....	13
4.4	Role and Obligations of the VBGA	14
4.5	Role of the VBGA Executive Director	15
4.6	VBGA Covenants.....	15
4.7	Governance Default	16
5.0	PLANNING	16
5.1	Strategic Planning.....	16
5.2	Operation Planning	16
5.3	Annual Workplans And Financial Planning.....	17
5.4	Reporting	17
5.5	Standing Committee	18
6.0	DISPUTE RESOLUTION.....	18
6.1	Dispute Resolution.....	18
6.2	Arbitration	20
7.0	RIGHT TO TERMINATE.....	20
7.1	Breach by Park Board And The VBGA's Right To Terminate	20
7.2	Breach By VBGA And Park Board's Right To Terminate.....	21
7.3	Compliance With Vancouver Charter	22
8.0	HUMAN RESOURCES AND INDEMNIFICATION	22
8.1	VBGA – Staffing Authority.....	22
8.2	VBGA – Executive Director Hiring Process	22
8.3	VBGA – Volunteer.....	23
8.4	Large Scale Events.....	23
8.5	Park Board – Staffing Authority.....	23
8.6	Park Board – Garden Director Hiring Process.....	23
8.7	Indemnification.....	24

8.8	Indemnity Procedure.....	25
9.0	CORPORATE AND GOVERNANCE POLICIES.....	25
9.1	Changes To Public Policy	26
10.0	INFORMATION TECHNOLOGY.....	27
10.1	Enterprise Software System And Data Sharing.....	27
10.2	Ownership Of Systems	27
10.3	Use Of Business Systems and Information Technology.....	27
11.0	MANAGEMENT OF DATA AND PRIVACY	28
11.1	Privacy.....	28
11.2	Confidentiality	28
12.0	SECURITY – SURVEILLANCE SYSTEM.....	30
12.1	Closing.....	30
13.0	RISK MANAGEMENT	30
13.2	Emergency	30
13.3	INSURANCE.....	31
14.0	FINANCIALS	31
14.1	Admission Fees	31
14.2	Garden Membership – Financial Formula	31
14.3	FTEs.....	32
14.4	Dedicated Fund	32
14.5	Special Events	33
14.6	Education Programs	33
14.7	Retail And Merchandise.....	33
14.8	Rental And Lease	33
14.9	Parking	33
14.10	Financial Transparency.....	33
14.11	VBGA Funding Schedule	33
14.12	Use Of Revenue	34
15.0	CAPITAL PROJECTS, BUILDINGS, AND FACILITIES	34
15.1	Space Use	34
15.2	VBGA Spaces.....	34
15.3	Temporary Use of VBGA Space by the Park Board	35
15.4	Space Planning.....	35
15.5	Requests for Additional Space.....	35
15.6	Future Space	36

15.7	Maintenance, Renewal And Renovation	36
15.8	Facility Development Plan.....	37
15.9	VBGA Enhancement Outside Agreed Plans.....	37
15.10	Garden Development.....	38
15.11	Furnishings, Fixtures, And Equipment (FF&E)	38
16.0	GARDEN OPERATIONS.....	38
16.1	Garden Signage.....	38
16.2	HORTICULTURE.....	38
17.0	VISITOR EXPERIENCE	39
17.1	Garden Access	39
17.2	Garden Membership	40
18.0	EDUCATION	41
18.1	Educational Programming And Initiatives.....	41
18.2	Outreach And Community Engagement.....	41
18.3	Yosef Wosk Library And Resource Centre	41
19.0	RECONCILIATION INITIATIVES AND PROGRAMMING.....	42
20.0	MARKETING AND COMMUNICATIONS.....	42
20.1	Garden Promotion.....	42
20.2	Garden Newsletter	42
20.3	Website.....	42
20.4	Social Media	43
20.5	Branding And Logo Use	43
20.6	Print Materials.....	44
20.7	Media Relations	44
21.0	PHILANTHROPY	44
21.1	Responsibilities.....	44
21.2	Naming And Recognition	45
22.0	SPONSORSHIP	45
23.0	RESEARCH	45
23.1	Overview.....	45
23.2	Educational Research.....	46
23.3	Botanical, Horticultural, And Environmental Research	46
23.4	Acknowledgment	46
24.0	MISCELLANEOUS.....	46
24.1	No Power To Contract	46
24.2	Extraordinary Liabilities	47

24.3	Administration Of VBGA Affairs.....	47
24.4	Payment Of Debts.....	47
24.5	Assignment and Sub-contracting	47
24.6	Notice	47
24.7	Cessation of Society	48
24.8	Termination Of Prior JOA.....	48
24.9	Governing Law.....	48
24.10	Enurement	48
24.11	Severability	48
24.12	Force Majeure.....	49
24.13	Non-Derogation	49
24.14	Time Of The Essence	49
24.15	Captions And Interpretation	49
24.16	Waiver	49
24.17	Entire Agreement.....	49
24.18	Independent Legal Advice.....	50
24.19	Collective Agreements	50
24.20	City as Public Body	50
	APPENDIX A – ANNUAL OPERATION PLANNING TOPICS	51
	APPENDIX B – CURRENT SPACE USE	53
	APPENDIX C – PARK BOARD SPECIAL EVENTS SCHEDULE	55
	APPENDIX D – LONG-RANGE PLANS AND PROJECTS AFFECTING JOF	56
	APPENDIX E – ACTIVENET ACCESS AND FUNCTIONALITY.....	58
	APPENDIX F – DEDICATED FUND TERMS OF REFERENCE.....	59
	APPENDIX G – STAFF FUNDING TERMS OF REFERENCE	61
	APPENDIX H – FIXTURES AND PROPERTY OWNED BY VBGA ON JOF	62
	APPENDIX I – SCHEDULE OF RESTRICTIONS	63
	APPENDIX J – VANDUSEN AND BLOEDEL STRATEGIC PLAN	66
	APPENDIX K – PARK BOARD AND VBGA INSURANCE REQUIREMENTS	67
	APPENDIX L – VBGA FUNDING SCHEDULE.....	70
	APPENDIX M – MANAGEMENT OF DATA AND PRIVACY	71

PARK BOARD – VANCOUVER BOTANICAL GARDENS ASSOCIATION
JOINT OPERATING AGREEMENT

THIS JOINT OPERATING AGREEMENT (the “**Agreement**”) with effect from the 1st day of January, 2025 (the “**Effective Date**”)

BETWEEN:

The City of Vancouver
as represented by its Board of Parks and Recreation, with offices at
2099 Beach Avenue
Vancouver, BC V6G 1Z4

(the “**Park Board**” or the “**City of Vancouver**” or “**City**”)

AND:

The Vancouver Botanical Gardens Association,
a society incorporated under the *Societies Act*, S.B.C. 2015, c. 18, British Columbia,
5251 Oak Street
Vancouver V6M 4H1

(the “**VBGA**”)

(collectively, the “**Parties**”)

WHEREAS:

- A. Both VanDusen Botanical Garden (“**VanDusen**”) and the Bloedel Conservatory (“**Bloedel**”) (collectively, the “**Gardens**”) are located on the Unceded Territories of the xʷməθkʷəy̓əm (Musqueam), Skwxwú7mesh (Squamish), and səliłwətaʔt (Tsleil-Waututh) Nations. The peoples of these Nations have been and continue to be stewards of these lands and have deep knowledge and connection to the plants and the land that have sustained their people for time immemorial. The Park Board and the VBGA are committed to carrying out the important work of reconciliation with the Host Nations;
- B. VanDusen and Bloedel are treasured locations in the City of Vancouver. As places for exploration, learning, and respite, VanDusen and Bloedel draw people from Vancouver, the Lower Mainland, provincially, nationally, and internationally;
- C. The City of Vancouver is the sole owner of the real property assets which are in the possession and control of the Park Board, including designated parks and other land and the facilities and improvements located on such lands;
- D. The land use at VanDusen and Bloedel will take place in accordance with the Memorandum of Registration, registered February 19, 1971 as per the Land Registry Act and the enclosed Schedule of Restrictions (Appendix I);
- E. The Park Board and the VBGA jointly operate VanDusen and Bloedel. Both organizations share responsibility for the day to day running of the Gardens in a close and long-standing relationship, since the 1970's. Through joint efforts of community volunteers (including

creation of the VBGA) and Park Board staff and Commissioners, VanDusen Botanical Garden opened its door in 1975. In 2013, the VBGA extended its relationship with Park Board by also becoming a joint operating partner of Bloedel;

- F. The Park Board is an elected Board of Commissioners with statutory jurisdiction over Vancouver parks derived from the Vancouver Charter, including the provision of recreational programs and facilities, setting policies and allocating budget resources and the authority to organize, conduct and contract with others for recreational programs. The Park Board's Mission is "to provide, preserve, and advocate for parks and recreation services to benefit all people, communities, and the environment";
- G. The VBGA is a society incorporated under the *Societies Act* and a registered charity pursuant to the *Income Tax Act* (Canada) with an elected Board of Directors and plays an important role in achieving the joint Mission and Vision as defined in the VanDusen and Bloedel Strategic Plan. This role includes delivering on the VBGA's Mission: "to engage people of all ages and walks of life in the importance of biodiversity to our lives, and to foster a lifelong love of plants and gardens by virtue of their participation in our programs and services";
- H. The VanDusen and Bloedel Strategic Plan was formally approved in October 2021 by both the Park Board and by the VBGA Board. The Park Board directed its staff to start the process of updating the joint operating agreement with the VBGA on October 18, 2021;
- I. VanPlay: Vancouver Parks and Recreation Services Master Plan, approved by Park Board Commissioners on October 19, 2020, highlights the role and importance of collaborative partnerships in achieving its goals; and
- J. It is intended that this Agreement replace the previous joint operating agreement between the parties dated October 20th, 1994 and the VanDusen JOA – Bloedel Extension Agreement (Addendums B and C of the Joint Operating Agreement) dated December 4th, 2012. This Agreement reflects the current working relationship of the parties and is entered into because both parties recognize and appreciate the skills and attributes contributed by the other to achieving strategic goals. This working relationship reflects a mutual acknowledgement and respect of the parties' distinct roles and shared objectives.

The scope of this Agreement is limited to the Jointly Operated Facilities and sets out the legal relationship between the Park Board and the VBGA for the operation of said facilities.

1.0 DEFINITIONS

- (a) **"Admission Products"** means products that provide garden access;
- (b) **"Allocation Plan"** means the agreed upon spending of Dedicated Fund monies on visitor enhancement projects for a given year;
- (c) **"Annual Operation Planning Meeting"** means the annual joint meeting planned by the Park Board and Vancouver Botanical Gardens Association to discuss topics listed in Appendix A (Annual Operation Planning Topics);

- (d) **“Annual Workplan”** means the plan put together by each Party to indicate their annual goals and anticipated activities. Annual Workplans should take direction from the Strategic Plan, but format may be agreed upon by both Parties;
- (e) **“Applicable Laws”** means all laws, regulations, and governmental policies of any governmental authority, including Park Board or City by-laws, as they may be amended or replaced from time to time, and which are applicable to each of the parties’ operations in the Jointly Operated Facilities and the roles and responsibilities of each party under this Agreement;
- (f) **“Approved Space(s)”** means space that has been identified for ongoing use by the VBGA;
- (g) **“Assets”** means the Jointly Operated Facilities;
- (h) **“Capital Maintenance”** means planned like-for-like replacement of building systems with the goal of extending the useful service life of a facility and reducing associated operating costs;
- (i) **“Capital Plan”** means the City of Vancouver 4-year Capital Plan. The four-year financial plan for investments in our city's infrastructure and amenities;
- (j) **“Capital Planning Process”** means the City of Vancouver’s process of completing the Capital Plan;
- (k) **“Charity”** means a registered charity as defined in the Income Tax Act (Canada);
- (l) **“Common Spaces”** means the interior areas of buildings (such as hallways and washrooms) used in common by the parties to access and use the various rooms and spaces comprising the Jointly Operated Facilities;
- (m) **“Confidential Information”** has the meaning given to it in Section 11.2;
- (n) **“Corporate Policies”** means the adopted policies and procedures of the City of Vancouver;
- (o) **“Data”** means all data or information that is used or accessible by the VBGA in the course of fulfilling its obligations under this Agreement, other than data or information independently collected by the VBGA directly from individuals or independently generated by the VBGA without the use of the Enterprise Software;
- (p) **“Dedicated Fund”** means the fund set up by both Parties to fund jointly agreed-upon projects focused on visitor experience enhancements in the JOF;
- (q) **“Donation Allocation Plan”** means a plan prepared by the VBGA which outlines planned donation expenditures;
- (r) **“Educational Programming”** means programming taking place at the Jointly Operated Facilities which aims to cultivate knowledge, understanding, and passion for the important role of plants, and gain commitment to promoting biodiversity and supports the Strategic Plan;

- (s) **“Educational Space”** means spaces approved for use by the VBGA for which the intended purpose is Educational Programming and may also be used for other operational and programming needs;
- (t) **“Enterprise Software”** means the recreation and registration management system owned and operated by the City of Vancouver and the Park Board that is used to process, record, and store Data and Personal Information for various registration functions at or through the JOF. The Enterprise Software currently in use is ActiveNet, but it may be replaced or substituted with another system or systems from time to time, at the discretion of the Park Board;
- (u) **“Executive Director”** means the Executive Director of the Vancouver Botanical Gardens Association and their successors or those authorized to act in their place;
- (v) **“Facility Development Plan”** means a plan that lists the priorities for Renewal, Renovation, and upgrade of capital assets within the Jointly Operated Facilities and Common Spaces;
- (w) **“Financial Formula”** means the agreed-upon revenue share for Garden Membership products;
- (x) **“FOIPPA”** means the Freedom of Information and Protection of Privacy Act, R.S.B.C. c. 165, and any regulations enacted thereunder;
- (y) **“FTE”** means Park Board full-time equivalent staff resources;
- (z) **“Fundraising”** means any activity designed to solicit or receive present or future charitable donations or gifts, and includes planned giving, philanthropy, and donor stewardship, but does not include sponsorship;
- (aa) **“Garden Director”** means the Garden Director of the Park Board and their successors or those authorized to act in their place;
- (bb) **“Garden Membership”** means the jointly offered product line which includes garden access, VBGA Membership, and other benefits as determined by both Parties;
- (cc) **“General Manager”** means the General Manager of the Park Board and their successors or those authorized to act in their place;
- (dd) **“Host Nations”** means the xʷməθkʷəy̓əm (Musqueam), Skwxwú7mesh (Squamish), and səlilwətaʔɬ (Tseil-Waututh) Nations;
- (ee) **“Initial Term”** has the meaning given to it in Section 3.0;
- (ff) **“Jointly Operated Facilities”** or **“JOF”** or **“Assets”** means the VanDusen Botanical Garden legally described as Parcel Identifier 007-986-718, Block 903 Plan 13962 District Lot 526 and Bloedel Conservatory, legally described as Parcel Identifier 007-025-980, Block 807 Plan Vap19375 District Lot 526, all Common Spaces, and buildings located therein and does not include surrounding or

adjacent parks or other Park Board facilities. For greater certainty, the JOF includes the Gardens and all Common Spaces;

- (gg) **“Park Board Personnel”** means employees, contractors and volunteers retained or engaged by the City of Vancouver to provide services to or on behalf of the Park Board;
- (hh) **“Park Development Team”** means the Park Development Team at the Vancouver Park Board;
- (ii) **“Park Board Special Events”** means events organized in addition to the day-to-day Garden operations by the Park Board. Recurring Special Events organized in the Gardens are listed in Appendix C (Park Board Special Events Schedule), which may be updated as needed;
- (jj) **“Personal Information,”** as that term is defined in FOIPPA to mean recorded information about an identifiable individual other than contact information or other information that is subject to FOIPPA, PIPA or PIPEDA;
- (kk) **“PIPA”** means the Personal Information Protection Act, S.B.C. 2003, c. 63, and any regulations enacted thereunder;
- (ll) **“PIPEDA”** means the Personal Information Protection and Electronic Documents Act, S.C. 2000, c. 5, and any regulations thereunder;
- (mm) **“Programming”** means the educational and community engagement programs and other services offered to members and the public through registered or unregistered programs taking place at the JOF;
- (nn) **“Public Policy”** means policy, priorities and objectives adopted or determined by the elected Park Board Commissioners that pertain to access, operations and use of the overall recreation system, including the JOF, or which may address statutory or regulatory compliance, risk management, system-wide financial issues, sustainability goals for the recreation system, or which are aimed at ensuring better health or quality of life outcomes for residents of the City of Vancouver;
- (oo) **“Recreational Programming”** means programming taking place at the Jointly Operated Facilities which is focused on lifestyle, fitness, and exercise;
- (pp) **“Renewal”** means demolish and replace. Replacement could be larger or smaller, and in the same or a new location as required to best meet service need;
- (qq) **“Renewal Term”** has the meaning given to it in Section 3.1;
- (rr) **“Renovation”** means altering an existing facility to accommodate a change of service need – may or may not accommodate growth;
- (ss) **“Special Events”** means special events other than Park Board Special Events as defined above;

- (tt) **"Standing Committee"** means the Committee with a makeup as outlined in Section 5.5;
- (uu) **"Strategic Plan"** means the joint VanDusen Bloedel Strategic Plan approved on Oct 18th, 2021;
- (vv) **"Subject to Approval Space"** means space where use must be approved by the Garden Director;
- (ww) **"Technology Services Assets"** means all information technology software, business systems, hardware, data, wireless hardware and software, information technology infrastructure, and telecommunications equipment installed or utilized in the Jointly Operated Facilities with connection to City networks;
- (xx) **"Term"** has the meaning given to it in Section 3.1;
- (yy) **"Transformative Goals"** means the joint goals identified by both Parties in the course of completing the Strategic Plan;
- (zz) **"VBGA Board"** means the Board of Directors of the Vancouver Botanical Gardens Association;
- (aaa) **"VBGA Membership"** means voting membership in the Vancouver Botanical Gardens Association; and
- (bbb) **"VBGA Personnel"** means employees, contractors and volunteers retained or engaged by the VBGA to provide services to or on behalf of the VBGA.

2.0 LEGAL RELATIONSHIP

The Park Board and the VBGA are independent contracting bodies, not legal partners nor joint employers, nor are they in a landlord-tenant relationship. This Agreement is being entered into between the parties to create certainty around the roles and obligations of the parties with respect to their respective operations at the Jointly Operated Facilities and to permit the VBGA's use of and operations at the Jointly Operated Facilities, including for the provision of Programming and services to the public through the Jointly Operated Facilities for the benefit of the residents of, and visitors to, City of Vancouver. Through this Agreement, once fully executed, the Park Board is granting to the VBGA the rights set out herein, including the right to non-exclusive use and occupation of the Jointly Operated Facilities and use of the Common Spaces, on and subject to the terms and conditions set out in this Agreement.

3.0 TERM

This Agreement is for a term of ten years, commencing on the Effective Date (the **"Initial Term"**).

3.1 Renewal

- (a) At the end of the initial term, this agreement shall automatically renew for one renewal term of five years (the **"Renewal Term"** or collectively with the initial term, **"Term"**) unless either party gives notice of non-renewal for any reason at least six months prior to the end of the initial term.

- (b) If either party wishes to amend any terms or conditions of this Agreement prior to the start of the Renewal Term, that party must give the other party written notice of such request, including a description of the desired amendments, at least 6 months prior to the expiration of the Initial Term. Any changes to the body of this Agreement must be approved by the Park Board Commissioners, and by the VBGA Board.
- (c) If amendments are not finalized prior to the commencement of the Renewal Term, this Agreement will stay in effect un-amended until such time as the amendments are approved by the Park Board Commissioners and the VBGA Board, or until the end of the Renewal Term, whichever is first.
- (d) Amendments to all Appendices to this Agreement may be made at any time during the Initial or Renewal Term upon mutual written agreement of the Park Board and the VBGA.

3.2 Process At End Of Term

At the end of the Initial and Renewal Term, to a maximum of 15 years, this Agreement will terminate, together with any rights of VBGA to use or occupy the Jointly Operated Facilities. If both parties wish to continue their working relationship beyond the end of the Initial and Renewal Term, then the Park Board and VBGA will, in good faith, meet to review their working relationship and to identify any changes to the roles and responsibilities of the parties or to the operations at the Jointly Operated Facilities. If acceptable to both parties, the parties may elect to enter into a new amended agreement reflecting such changes, which may, if appropriate, be substantially based on the form of this Agreement. In the event of non-renewal of this Agreement or if either party elects it does not wish to continue their working relationship at the end of the term, all outstanding payments between the parties will become immediately due and payable and subject to withholding, and the parties will work cooperatively to transition operations to the Park Board or its designate to ensure minimal disruption to the public.

4.0 OBLIGATIONS AND ROLES OF THE PARTIES

Where this Agreement provides that any authority, reservation, discretion, or other act of supervision on the part of the Park Board or the VBGA, the same shall be exercised, in the case of:

- (a) the Park Board, by its Board of Commissioners or its authorized delegates; and
- (b) the VBGA, its Board of Directors or their authorized delegates.

4.1 Mutual Obligations

In addition to the more specific obligations of the parties set out in this Agreement, the Park Board and the VBGA agree that:

- (a) in all dealings with each other, they will each communicate respectfully and act in a manner that reflects a mutual acknowledgement and respect of the parties' distinct roles and shared objectives;

- (b) they will each perform their legal and contractual obligations honestly and in good faith;
- (c) they will each comply with all Applicable Laws and will, when appropriate, obtain all necessary permits and licenses as may be required by Applicable Laws; and
- (d) they will each follow the Vision, Mission, Values, and the Transformative Goals outlined in the Strategic Plan and operate with the intention to implement the jointly developed Strategic Plan with the interest of betterment of VanDusen and Bloedel.

4.2 Role And Obligations Of The Park Board

- (a) The Park Board is an elected Board of Commissioners with exclusive jurisdiction, possession and control of Vancouver's parks and the authority to organize, conduct and contract with others for programs of all kinds in parks and such other locations as may be approved by the Park Board, pursuant to the provisions of the *Vancouver Charter*, S.B.C. 1953, c. 55 and Schedule of Restrictions and as otherwise authorized by City Council.
- (b) The Park Board and the VBGA agree that the City of Vancouver is the sole owner of the Jointly Operated Facilities including designated parks and other land, structures, fixtures and plant collection situated in the JOF as of the date of this Agreement and including other facilities and improvements located on such lands (except as is set out in Appendix H (Fixtures and Property owned by VBGA on JOF)) that are the subject of this agreement.
- (c) Park Board Personnel, as directed by the elected Park Board and subject to the Park Board having sufficient funds in its annual budget are responsible for providing the following services during the Term:
 - (i) development and implementation of Public Policy;
 - (ii) stewardship of City Park lands and facilities;
 - (iii) stewardship of capital and operating funds allocated by City Council for parks and recreation services;
 - (iv) wherever possible, consulting with VBGA with regard to changes that materially impact VBGA's operations; and
 - (v) delivering programs itself, or contracting with other parties to deliver programs on behalf of the Park Board, provided that, in any case where the desired Programming or services fall within VBGA's responsibilities under this Agreement, the Park Board must provide the VBGA with a right of first refusal to carry out such Programming or services prior to offering the opportunity to deliver such Programming or services itself or by other contracting party.
- (d) In addition to the other responsibilities set out in this Agreement, with respect to operations at the Jointly Operated Facilities the Park Board is more specifically responsible for:

- (i) determining priorities and objectives for implementation of Public Policy at the Jointly Operated Facilities, which includes Public Policy relating to the Gardens in accordance with the provisions of Section 9.1(Changes to Public Policy);
 - (ii) the staffing of Park Board Personnel at the Jointly Operated Facilities, including scheduling of staff and staff vacations, taking into consideration the budget allocated by the Park Board and operational requirements of the Jointly Operated Facilities;
 - (iii) directing Park Board Personnel and volunteers, if any;
 - (iv) developing the Park Board budget (operating and capital) generally, including budgets for the Jointly Operated Facilities, receiving approval from the Park Board for such budgets, and allocating resources as appropriate;
 - (v) operating, maintaining and constructing improvements or repairs to VanDusen and Bloedel in accordance with the Park Board budget;
 - (vi) undertaking any Capital Maintenance, Renewals or Renovations of the Jointly Operated Facilities. All of the aforementioned are undertaken at the sole discretion of the Park Board;
 - (vii) providing and being responsible for all facilities, building systems, supplies, and Technology Services Assets required to operate VanDusen and Bloedel; and
 - (viii) sharing reporting as outlined in Section 5.4 (Reporting).
- (e) The Park Board will work cooperatively with the VBGA to support delivery of VBGA Programming at or through the Jointly Operated Facilities. The Park Board and Garden Director will make reasonable efforts to collaborate with and involve the Executive Director and VBGA in decisions pertaining to the management of City Assets. Final decision-making authority regarding Assets and pertaining to Public Policy implementation will be made by the Garden Director and the Park Board.

4.3 Role Of The Park Board Garden Director

- (a) The Garden Director is the management representative of the Park Board at the Jointly Operated Facilities and the local contact for the VBGA with respect to matters under this Agreement.
- (b) Among other responsibilities as determined by the Park Board from time to time, the role of the Garden Director includes:
 - (i) providing official oversight for the Jointly Operated Facilities;
 - (ii) working in collaboration with the VBGA to enhance the experience at VanDusen and Bloedel;

- (iii) exercising influence to ensure Park Board and public interests are maintained, while balancing the interests of the VBGA;
- (iv) managing and lead the operational goals of the Jointly Operated Facilities by directing the development of plant collections, maintenance standards, internal policies, sustainable practices and horticultural design;
- (v) overseeing and approving business and marketing plans and proposals for all revenue generating opportunities, except those pertaining to areas under the purview of the VBGA as stipulated in this Agreement;
- (vi) managing access to the Gardens;
- (vii) establishing and maintaining relationships, communication, and coordination with other divisions, project teams, and departments in the Park Board, the City (e.g., City of Vancouver's Real Estate and Facilities Management) consultants and contractors, and also with the different levels of government, outside agencies, not-for-profit organizations as appropriate to PB's role; and
- (viii) working collaboratively with VBGA and its Executive Director.

4.4 Role and Obligations of the VBGA

- (a) In addition to the other responsibilities set out in this Agreement, with respect to its operations at or from the Jointly Operated Facilities, the VBGA agrees that it is responsible for providing the following services:
 - (i) developing, delivering, and staffing Educational Programming to support the Transformative Goals agreed to in the Strategic Plan, offered in or from the Jointly Operated Facilities;
 - (ii) developing, delivering, and staffing Educational Programming to support the VBGA's Mission: to engage people of all ages and walks of life in the importance of biodiversity to our lives, and to foster a lifelong love of plants and gardens by virtue of their participation in our programs and services;
 - (iii) leading Educational Programming involving Indigenous perspectives and knowledge, and occasionally collaborating with the Park Board's Decolonization, Arts, and Culture team on joint Programming in this area;
 - (iv) wherever possible, providing input on changes that materially impact VBGA's operations;
 - (v) the staffing and directing of VBGA Personnel at the Jointly Operated Facilities;
 - (vi) leading volunteer engagement as described in Section 8.3 (VBGA Volunteers);

- (vii) community and membership engagement, including providing member services as described in Section 17.1(b) (Member Services);
- (viii) Fundraising to support the Gardens;
- (ix) Working with the Park Board marketing team to raise awareness about the Jointly Operated Facilities, increase general visitation and Garden Memberships in addition to marketing in relation to VBGA's areas of accountability including without limitation Educational Programming, VBGA volunteerism and Fundraising;
- (x) complying with Public Policy as determined by the Park Board for implementation at the Jointly Operated Facilities or in respect of services offered from Jointly Operated Facilities, and cooperating with the Park Board when developing an implementation plan for new Public Policy;
- (xi) providing input to the Park Board on major capital projects and other major initiatives relating to the Jointly Operated Facilities;
- (xii) ensuring that it operates in accordance with standards of governance appropriate to non-profit organizations;
- (xiii) ensuring that financial statements are prepared in accordance with Accounting Standards for Not-for Profits Organizations (ASNPO), and that the Park Board is provided with annual operating budgets and annual audited financial statements as outlined in Section 5.4 (Reporting);
- (xiv) ensuring that it has the information technology capability needed to meet its obligations and responsibilities under this Agreement and to carry out its internal management; and
- (xv) sharing reporting as outlined in Section 5.4 (Reporting).

4.5 Role of the VBGA Executive Director

- (a) Providing day-to-day management of VBGA under the guidance and oversight of the VBGA's Board;
- (b) Directing and oversight of the education, research, volunteer, Garden Membership services, and Fundraising activities of the Jointly Operated Facilities;
- (c) Working collaboratively with Park Board and the Garden Director; and
- (d) Establish and maintain relationships, communication, and coordination with the different levels of government, outside agencies, not-for-profit organizations as appropriate to VBGA's role.

4.6 VBGA Covenants

- (a) The VBGA represents that it is a not-for-profit society in British Columbia and agrees that (i) it shall comply with and maintain good standing under the *Societies*

Act and its regulations, and its own constitution and bylaws; (ii) it shall notify the Park Board of any changes in its bylaws; (iii) that as it pertains to activities carried out under this Agreement, it will adopt and adhere to appropriate good governance policies including that it will operate and handle funds including donated funds in accordance with Applicable Laws and regulations in furtherance of its purposes; and (iv) that it will comply with its policy obligations under Section 9.0 (Corporate and Governance Policies).

4.7 Governance Default

- (a) To ensure that the use of the Jointly Operated Facilities by the VBGA for the purposes set out in this Agreement continues to be carried out in the best interests of the public, the VBGA agrees that if:
 - (i) the purpose of the VBGA is amended so that, at any time, it includes the carrying on of a business for profit or gain;
 - (ii) the VBGA becomes a "member-funded society" pursuant to the *Societies Act* without the prior written approval of the Park Board;
 - (iii) the purposes of the VBGA are amended so that they are no longer for the benefit of the public; or
 - (iv) the VBGA adopts bylaws and governance procedures that are contrary to the terms of this Agreement or do not permit the VBGA to carry out its roles and responsibilities under this Agreement,

then it shall be considered a default of the VBGA under this Agreement and Section 6.0 (Dispute Resolution) of this Agreement shall apply.

5.0 PLANNING

5.1 Strategic Planning

- (a) Park Board approved the Strategic Plan on October 18, 2021, which includes shared Vision, Mission, Values, and Transformative Goals pertaining to the JOF (see Appendix J (VanDusen and Bloedel Strategic Plan)). The Park Board and the VBGA have agreed to work to implement the jointly developed Strategic Plan with the interest of betterment of VanDusen and Bloedel.
- (b) The Strategic Plan is intended to provide guidance over a 10-year period (2021-2031). The Parties agree to a mid-plan period evaluation session and to reviewing and revising the Strategic Plan as needed upon expiry.
- (c) Other long-range plans and projects that will impact the Gardens have been included in Appendix D (Long Range Plans and Projects Affecting JoF) for reference.

5.2 Operation Planning

- (a) The Park Board and the VBGA shall maintain regular communications regarding the operation of the Jointly Operated Facilities, provision of Programming and the roles and responsibilities of each party under this Agreement, including through regular meetings between Park Board Personnel and VBGA Personnel.
- (b) Wherever possible, each organization will consult in advance with the other any decisions or changes made by such organization in its respective area of responsibility/decision-making authority, which may reasonably have a material impact on the operations of the other organization. Where a material impact causes the other party significant concerns, the parties will collaborate in good faith to find a mutually acceptable solution, failing which, the parties will follow the dispute resolution processes set out in Section 6.0 (Dispute Resolution) of this Agreement.
- (c) The Standing Committee (as described in Section 5.5 (Standing Committee)) is responsible for Operation Planning and administering the use of the Dedicated Fund. This Standing Committee will meet a minimum of twice yearly; once for an Annual Operation Planning Meeting and once for an Operations Review Meeting.
- (d) The Annual Operation Planning and Operations Review Meetings will include but are not limited to topics outlined in Appendix A (Annual Operation Planning Topics).
- (e) These sessions will be scheduled at mutually agreeable times. The Park Board will give a minimum of 30 days' notice of a date that is selected for a Standing Committee meeting. If a member of the Standing Committee is not able to attend any meeting of the Standing Committee, they may select a suitable delegate to attend on their behalf. If a suitable delegate is not available, the meeting will be rescheduled, to take place within 10 business days of the original meeting date.

5.3 Annual Workplans And Financial Planning

- (a) In advance of the Annual Operation Planning Meeting, each Party will prepare an Annual Workplan using a mutually agreed-upon format. The Annual Workplan should include annual priorities and measurable key performance indicators tied to the Transformative Goals in the Strategic Plan and cover each party's areas of accountability.
- (b) During the term of the Agreement both parties will develop a process of multi-year financial planning, to be aligned with each party's financial planning cycle and will include a plan for anticipated revenues, including donations.

5.4 Reporting

- (a) The VBGA and the Park Board agree to share reporting on key performance indicators outlined in Annual Workplans and additional reporting as outlined below:
 - (i) VBGA shall annually report the following to the Park Board:
 - (A) Volunteer Program – Annual reporting that will include the total number of volunteers, total volunteer hours, the Educational

Programing supported, and anonymized age-related demographics of the volunteer base.

- (B) Education Program – Annual reporting that may include but is not limited to, an outline of courses, programs, and outreach offered as well as the number of participants, number of bursaries provided, and number of complimentary passes provided.
 - (C) Philanthropy Program – Annual reporting on progress towards Fundraising goals and funds for collections and garden enhancements.
 - (D) Financials – Annual audited financial statements prepared in accordance with generally accepted accounting principles.
 - (E) Insurance – Annual review of VBGA’s liability insurance.
 - (F) AGM – minutes of the annual general meeting of the VBGA for the year.
- (ii) Park Board shall annually provide the following:
- (A) Facility Condition – Annual update on the building condition of the Jointly Operated Facilities.
 - (B) Special Events - Annual reporting that may include but is not limited to, the number of events and number of attendees.
 - (C) Financials – Annual reporting that will include, Park Board operating budget for each of the Jointly Operated Facilities the number of admissions and admissions revenues and annual financial statements for VanDusen Garden and the Bloedel Conservatory by SAP cost centre. The Park Board will share any pertinent changes in account reporting at the same time.
- (iii) VBGA and Park Board shall annually, on a joint basis, report:
- (A) Garden Membership – joint monthly prepared report of information on memberships sold, renewals, and revenues.
 - (B) Dedicated Fund – annual statement of accounts.

5.5 Standing Committee

The Parties agree to the formation of a Standing Committee comprised of the Park Board Director of Business Services, Garden Director, Executive Director, and the VBGA President.

6.0 DISPUTE RESOLUTION

6.1 Dispute Resolution

- (a) Regardless of the dispute in question, the Parties and their representatives will communicate respectfully and attempt to resolve disputes prior to escalation as per the process below:
 - (i) Disputes should first be discussed between the Garden Director and Executive Director to attempt resolution.
 - (ii) If the Garden Director and Executive Director are not able to resolve the dispute 20 business days after first becoming informed of the dispute in writing or in person, then either party may refer the matter to the Standing Committee. For greater clarity, the parties are permitted to agree to a longer time to resolve the dispute at this stage, however, if they are unable to come to agreement on such longer time, then either party may refer the matter to the Standing Committee 20 business days after first learning of the dispute.
 - (iii) If the Standing Committee is not able to resolve the dispute 20 business days after first being informed in writing or in person of the dispute by either the Garden Director or the Executive Director, then a party may refer the matter to the General Manager for decision. A referral to the General Manager must include a written summary of the dispute from each party, including all relevant facts and applicable policies, prior to the dispute being reviewed.
 - (iv) If after 20 business days following receipt of written summaries from both parties, the matter is not resolved, or the VBGA does not agree with the General Manager's decision, the VBGA may escalate as follows:
 - (A) for matters subject to arbitration, the dispute may be resolved by binding arbitration at the election of either of the parties, pursuant to Section 6.2 (Arbitration) . If agreed to by the parties, the parties may also refer any arbitral issues to mediation or another form of dispute resolution before pursuing arbitration; and
 - (B) for matters not subject to arbitration, the dispute may be referred to the Park Board Commissioners (or any decision-making body or individual designated as successor thereto) for further consideration and a final decision. The Park Board Commissioners (or their successors, if applicable) will render a decision within 2 months of the dispute being referred and receipt of the written summaries of the matter.
 - (v) The parties agree that the following matters are not subject to arbitration:
 - (A) matters under the sole jurisdiction of the Park Board, including:
 - (1) policies and standards established by the Park Board or the City, including Public Policy; and
 - (2) allocation of Park Board budgets and resources.

- (B) matters related to compliance with Applicable Laws and Corporate Policies;
 - (C) the ownership of the JOF;
 - (D) Garden development, maintenance, repair, upgrade of the JOF;
 - (E) Garden access, Space use, and operating hours;
 - (F) Pricing of Garden Membership products and admission;
 - (G) VBGA Board decisions; and
 - (H) VBGA issues of internal governance and operations.
- (b) Either party may consult with legal counsel throughout this dispute resolution process and is solely responsible for its own costs in doing so.
 - (c) For greater certainty, the Park Board and the VBGA agree that the implementation of Public Policy initiatives at the Jointly Operated Facilities will be carried out pursuant to Section 9.1 (Changes to Public Policy) of this Agreement, and any disputes regarding implementation matters will be subject to arbitration.

6.2 Arbitration

All disputes subject to arbitration under this Agreement, including disputes concerning the interpretation of this Agreement and accounting and payment disputes, may, at the election of either of the parties, be referred to and finally resolved by binding arbitration. Matters to be resolved by arbitration will be subject to arbitration in accordance with the Arbitration Act, R.S.B.C. 1996, c. 55. Unless the parties otherwise agree in writing, the dispute will be referred to and finally resolved by arbitration administered by the British Columbia International Commercial Arbitration Centre, pursuant to its Rules for the conduct of domestic commercial arbitrations. The place of arbitration shall be Vancouver, BC. The arbitration will be conducted before a single arbitrator and shall be final resolution for the matter being referred. The administrative fees for the arbitration and the arbitrator's fees and expenses (collectively, the "**Arbitration Fees**") will be split equally between the Park Board and the VBGA but the ultimate allocation of Arbitration Fees between the parties will be determined by the arbitrator in apportioning costs between the parties at the conclusion of the arbitration.

7.0 RIGHT TO TERMINATE

7.1 Breach by Park Board And The VBGA's Right To Terminate

- (a) In addition to the VBGA's rights of non-renewal following the Initial Term set out in Section 3.1 (Renewal), the VBGA may terminate this Agreement with at least 60 days prior written notice in the event of a sustained breach of this Agreement by the Park Board.
- (b) If the VBGA considers the Park Board to be in breach of this Agreement at any time, the VBGA must provide a notice to specify the breach in reasonable detail. The Park Board will use reasonable and diligent efforts to resolve any breach of

this Agreement in a timely manner. If the Park Board does not satisfactorily remedy the breach within 60 days, the VBGA may terminate this Agreement at the end of the notice period for termination (if notice of termination was provided) or may refer the matter to dispute resolution for further discussion and attempted resolution. In the event of termination of this Agreement, all outstanding payments between the parties will become immediately due and payable and subject to withholding, and the parties will work cooperatively to transition operations to ensure minimal disruption to the public.

7.2 Breach By VBGA And Park Board's Right To Terminate

- (a) In addition to the Park Board's rights of termination or non-renewal set out in Section 3.1 (Renewal) and 3.2 (Process at End of Term) the Park Board may terminate this Agreement with at least 60 days prior written notice in the event of a sustained, material, un-remedied breach of this Agreement by the VBGA; provided that, the right to terminate will be subject to the following:
 - (i) the termination notice must specify the breach in reasonable detail;
 - (ii) the VBGA will have a cure period of 60 days to remedy the breach, except in the case of emergency, in which case a shorter cure period may be specified. In the event of emergency, the Park Board may take reasonable action to cure the breach on behalf of the VBGA at the expiry of the notice period, or sooner as may be specified in the notice of breach;
 - (iii) the VBGA must make reasonable and diligent efforts to resolve the breach in a manner satisfactory to the Park Board in a timely manner;
 - (iv) if the VBGA does not satisfactorily remedy the breach in the cure period, the notice to terminate will be deemed effective and the Agreement will automatically terminate at the end of the 60 day notice period; provided that, if more than 60 days is required to remedy the breach (using reasonable resources and acting diligently), then the VBGA will not be considered to be in breach after 60 days (except in the case of emergency) if, immediately after receiving the notice of breach, the VBGA commenced the remedy of the breach, immediately notifies the Park Board of the steps it will take to remedy the breach, and has proceeded to diligently and continuously remedy the breach so that the breach is cured as soon as reasonably possible; and
 - (v) if the VBGA fails to continuously and diligently work towards resolving the breach, the Park Board may terminate this Agreement with no further notice required.
- (b) If the VBGA disagrees that the action or event specified in the notice constitutes a material breach of the Agreement, the VBGA may invoke the dispute resolution mechanism. If the alleged breach is of a serious nature, in the reasonable opinion of the Park Board, the Park Board may elect to expedite the dispute resolution mechanism and refer the dispute directly to the General Manager or arbitration, if applicable.

- (c) For the purposes of this Agreement, a “material breach” of the VBGA's obligations shall include failure of the VBGA to comply with Public Policy relevant to the operation of the JOF, breach of Applicable Laws, fraudulent conduct, misappropriation of funds, financial wrongdoing or criminal activity on the part of the VBGA, an unresolved default under Section 4.6 (VBGA Covenants), Section 4.7 (Governance Default) , breach of Section 14.12 (Use Of Revenue) sustained failure of the VBGA to provide financial information required under this Agreement, discrimination or human rights violations on the part of the VBGA, or any conduct by the VBGA which is directed against the public interest.
- (d) In the event of termination of this Agreement, all outstanding payments between the parties will become immediately due and payable and subject to withholding, and the parties will work cooperatively to transition operations to the Park Board or its designate to ensure minimal disruption to the public.

7.3 Compliance With Vancouver Charter

Pursuant to Section 490 of the *Vancouver Charter*, this Agreement may be terminated by the Park Board with not less than 18 months' notice in writing to VBGA if all of the JOF ceases to be a permanent public park pursuant to Section 488(1) of the *Vancouver Charter*.

8.0 HUMAN RESOURCES AND INDEMNIFICATION

8.1 VBGA – Staffing Authority

- (a) The VBGA is and shall continue to be the employer or contracting party, as applicable, of all VBGA Personnel retained by the VBGA to provide services on behalf of the VBGA, including for Educational Programming delivery. The VBGA is and will continue to be responsible for all associated employer and contractor related liabilities and legal obligations regarding VBGA Personnel. The VBGA will retain final authority over matters related to employment or service contracts with VBGA Personnel, including conditions of work, remuneration, evaluation, direction and termination. The VBGA agrees that termination of any VBGA Personnel will be conducted out of sight of the public and other VBGA or Park Board Personnel, except as reasonably required.
- (b) The VBGA acknowledges and agrees that the City of Vancouver and Park Board will not indemnify the VBGA for liabilities or breaches arising in relation to the VBGA's relationships and obligations to VBGA Personnel, including statutory and regulatory liabilities, except to the extent that such liabilities or breaches are due to the negligence or willful misconduct of the City of Vancouver, Park Board or their respective personnel. The VBGA agrees to obtain, maintain and pay for the insurance coverages required under Appendix K (Park Board and VBGA Insurance Requirements) of this Agreement.

8.2 VBGA – Executive Director Hiring Process

The Park Board will have input into the selection of the Executive Director at the Jointly Operated Facilities. Input will include the opportunity to participate in final stage interviews with candidates and to make recommendations for consideration by the VBGA. The Park Board may provide a description of the unique attributes, needs and nature of the Jointly

Operated Facilities to accompany the job description and posting for the Executive Director position. The final hiring decision of the Executive Director will sit solely with Board of the VBGA based on the organizational structure effective at the time of hiring.

8.3 VBGA – Volunteer

- (a) The Park Board and the VBGA agree that volunteers enhance program and mission delivery at VanDusen and Bloedel, and the VBGA will work to ensure that volunteers reflect the diversity of the community. Volunteering is open to all qualified applicants, and volunteers will not be required to be Garden Members.
- (b) The VBGA is responsible for leading full-cycle volunteer engagement for Garden Programming and events, including Park Board Special Events and other garden activities, except those events outlined below in Section 8.4 (Large Scale Events). VBGA agrees that it will provide sufficient screening and training processes for new and existing volunteers to create and maintain a safe work environment. VBGA agrees that its volunteer engagement staff will recruit, train, schedule, communicate with, lead, and oversee volunteers.
- (c) Volunteer support may include but is not limited to education, interpretation, guest and member experience, Fundraising, Special Events, research, seed collection and the development of a seed inventory, administration and program support, curatorial staff support, and other collaborative initiatives undertaken by both parties. Volunteer roles will not infringe on Park Board unionized staff positions and volunteers will not be permitted to access any Enterprise Software including access to process any financial transactions on City supported software.

8.4 Large Scale Events

Park Board will discuss requests for large scale events such as the Festival of Lights or events of similar or greater length with VBGA. If VBGA is not fully able to support the event in question, VBGA will still provide general orientation, input on training, and oversight to volunteers to ensure best practices are adhered to, while the Park Board will recruit, schedule, communicate and manage volunteers for such events.

8.5 Park Board – Staffing Authority

The City will employ and pay for Park Board Personnel required and assigned to operate and maintain the Jointly Operated Facilities. The City is and shall continue to be the employer or contracting party, as applicable, of all Park Board Personnel retained by the City to provide services on behalf of the Park Board, including for Recreational Programming delivery. The City is and will continue to be responsible for all associated employer and contractor related liabilities and legal obligations regarding Park Board Personnel. The Park Board will retain final authority over matters related to employment or service contracts with Park Board Personnel, including conditions of work, remuneration, evaluation, direction and termination. The VBGA may, in its discretion, provide an orientation to new regular full time, regular part time, and temporary full time Park Board Personnel with information on VBGA operations, policies, and roles.

8.6 Park Board – Garden Director Hiring Process

The VBGA will have input into the selection of the Garden Director. Input will include the opportunity to participate in final stage interviews with candidates and to make

recommendations for consideration by the Park Board. The VBGA may provide a description of the unique attributes, needs and nature of the Jointly Operated Facilities to accompany the job description and posting for the Garden Director position. The final hiring decision of the Garden Director will sit solely with management of the Park Board based on this organizational structure, effective at the time of hiring.

8.7 Indemnification

- (a) For the purposes of this Section 8.7(a), “**Claim**” or “**Claims**” means any claims, demands, actions, causes of actions, proceedings, losses, costs, fines, orders, expenses, liabilities, injuries including injuries causing death, damages, losses, expenses, or any other matter of whatsoever nature or kind, that at any time may be brought against the Indemnified Party by a third party;
- (b) Except to the extent caused by the negligence or wilful misconduct of the City, Park Board, or their respective Personnel, the VBGA hereby agrees to indemnify the City and the Park Board and its officials, officers, employees and agents from and against any Claims against the City or Park Board arising out of or resulting from VBGA’s:
 - (i) Breaches relating to employment or service contracts with VBGA Personnel (for example, improper termination or human rights complaints);
 - (ii) Non-compliance with any statutory or regulatory obligations that VBGA has in respect of VBGA Personnel (for example, completing and remitting statutory deductions or completing criminal record checks);
 - (iii) Negligence or criminal behaviour by VBGA Personnel; or
 - (iv) Operations and activities related to the JOF, its provision of Educational Programming, or its breach of its covenants and obligations under this Agreement.
- (c) The Park Board and City acknowledge and agree that the VBGA will not indemnify the Park Board or City for liabilities or breaches arising in relation to the Park Board or City’s relationships and obligations to Park Board Personnel, including statutory and regulatory liabilities, except to the extent that such liabilities or breaches are due to the negligence or willful misconduct of the VBGA or its Personnel.
- (d) Except to the extent caused by the negligence or wilful misconduct of the VBGA, the City as represented by the Park Board hereby agrees to indemnify the VBGA from and against any third party Claims arising out of or resulting from the Park Board or City’s:
 - (i) Breaches relating to employment or service contracts with Park Board Personnel (for example, improper termination or human rights complaints or duties under collective agreements);
 - (ii) Non-compliance with any statutory or regulatory obligations that Park Board has in respect of Park Board Personnel (for example, completing and remitting statutory deductions or completing criminal record checks);

- (iii) Negligence or criminal behaviour by Park Board Personnel; or
- (iv) Operations, events and activities conducted at the JOF, including its provision of Recreational Programming, maintenance and improvement of the JOF, or its breach of its covenants and obligations under this Agreement.

8.8 Indemnity Procedure

- (a) **Notice and Assistance.** If a party becomes aware of or subject to a Claim for which indemnification could be sought under this Agreement (the “**Indemnitee**”), it will give written notice as soon as reasonably possible (and no later than 10 days after the commencement of any legal proceedings) to the indemnifying party (“**Indemnifying Party**”) and provide all information obtainable to the Indemnifying Party. Failure to give notice shall not relieve the Indemnifying Party of its obligations except to the extent that the Indemnifying Party is actually materially prejudiced by such failure to give notice.
- (b) **Counsel.** The Indemnitee will have the right to employ Indemnitee’s separate counsel in any claim at Indemnitee’s own expense.
- (c) **Settlement.** The Indemnitee will not settle any Claim without first obtaining the written consent of the Indemnifying Party, which shall not be unreasonably withheld. The Indemnifying Party will not be liable for any amounts paid in settlement of a claim where their written consent was not first obtained.
- (d) **No Duplication.** The Indemnifying Party will not be liable to make any payment in connection with any claim made against the Indemnitee to the extent the Indemnitee has received payment from an insurer related in relation to the indemnifiable claim.
- (e) **Reimbursement.** The Indemnitee will repay to the Indemnifying Party all amounts advanced hereunder if: (i) it is ultimately determined that the Indemnitee was not entitled to indemnification hereunder; (ii) any amounts are paid in excess of the maximum limitation of liability, to the extent of the overpayment; or (iii) the Indemnitee have otherwise actually received payment under any insurance policy, or otherwise, of the amounts otherwise indemnifiable hereunder, to the extent of the overpayment under such insurance policy, and for clarity this is to avoid double-recovery.
- (f) Notwithstanding any of the foregoing, the rights of subrogation of the Indemnitee, Indemnifying Party, or their respective insurers, in relation to any third party claims that are subject to indemnification herein, will be retained.
- (g) The maximum liability of either party for indemnified Claims shall not exceed \$1,000,000 (ONE MILLION DOLLARS) in the aggregate, regardless of the nature of the cause of action, demand, or action.

9.0 CORPORATE AND GOVERNANCE POLICIES

- (a) For the purposes of carrying out their roles and responsibilities under this Agreement, the Park Board agrees to comply with and, where applicable, implement City Corporate Policies and processes, including for financial, risk management, information security risk management, privacy and security and conflict of interest, as may be amended from time to time. The VBGA will comply with and adhere to City policies applicable to the VBGA's roles and responsibilities under this Agreement and to the public including, without limitation, policies with respect to occupational health and safety, privacy, respectful workplace, risk management and human resources management.
- (b) For the purposes of carrying out their roles and responsibilities under this Agreement, both Parties agree that the VBGA is an independent organization under the *Societies Act* and has the legal obligation and right to comply with laws and regulations related to that act, the PIPA, and other laws applicable to a society, as an employer or otherwise as an independent corporate entity.
- (c) The City and the Park Board are subject to certain laws, and have policies in place, that are applicable to the operation of the JOF, such as procurement policies, and the City and the Park Board are party to a collective agreement for labour and employment matters. The VBGA acknowledges that the Park Board and Park Board Personnel must comply with such laws, policies and agreements, when and where appropriate.

9.1 Changes To Public Policy

- (a) The VBGA acknowledges and agrees that the Park Board is responsible for the development and implementation of Public Policy as it pertains to the JOF and that Public Policy may be updated or amended from time to time to address, among other things, statutory or regulatory changes, risk management, financial constraints or to ensure better health or quality of life outcomes for the residents of the City of Vancouver.
- (b) If during the Term of this Agreement any existing Public Policy is changed, amended, revised or updated, or any new Public Policy initiatives developed or planned for implementation, which Public Policy expressly contradict the terms of this Agreement, or the Strategic Plan, joint Mission and Vision then, prior to implementing any such amendments to Public Policy or any such new Public Policy, the Park Board will clearly explain the context and rationale for the new or amended Public Policy, and provide the VBGA an opportunity to give comments, review any potential impacts to the VBGA and the JOF and plan for implementation of any changes with the VBGA, provided that if the Park Board or City proceeds with implementation of such new Public Policy initiatives, the VBGA agrees to amend the terms of this Agreement, if necessary to align and the Park Board will develop an implementation plan that minimizes disruption or financial impact to the VBGA to the extent reasonably possible and will provide the VBGA reasonable notice of changes except in cases of emergency or where more immediate implementation is required by law or regulation. The Park Board agrees that any new Public Policy initiatives for implementation at the Jointly Operated Facilities will not expressly contradict the terms of this Agreement, unless agreed to by the parties in writing, in advance.

10.0 INFORMATION TECHNOLOGY

10.1 Enterprise Software System And Data Sharing

- (a) The Park Board will have the responsibility to maintain and operate Enterprise Software. This software is used to transact and administer General Admissions and Garden Membership products. The VBGA will continue to have access to Enterprise Software which will be managed by the City. Enterprise Software must provide functionality as outlined in Appendix E (Activenet Access and Functionality) to support the VBGA's Garden Membership, Education, and philanthropy. In the case of any disruptions or disconnections that would affect VBGA access to the Enterprise Software, the Park Board will provide the VBGA reasonable notice of changes except in cases of emergency or where more immediate implementation is required by law or regulation.
- (b) The Enterprise Software may be supplemented by additional software to support third-party ticketing as needed by the Park Board. Should the VBGA want to utilize a Customer Relationship Management (CRM) system that is compatible with the Enterprise Software in use by the Park Board, it must obtain prior approval from the City's Technology Services group, Privacy Office, and the Park Board.

10.2 Ownership Of Systems

- (a) All information technology software, business systems, hardware, wireless hardware and software, information technology infrastructure, and telecommunications equipment installed or utilized in the JOF with connection to City networks (collectively, the "**Technology Services Assets**") and data on those systems that does not fall under the Information Sharing Agreement, will be owned, supplied, managed, maintained and repaired by solely the City, on behalf of the Park Board.
- (b) VBGA is not permitted to and agrees it will not install any VBGA owned software on City or Park Board computers. If VBGA purchases its own computer equipment, VBGA equipment will not be connected to the City networks or peripherals.. VBGA will be responsible for all maintenance, repair and replacement of its own equipment.

10.3 Use Of Business Systems and Information Technology

- (a) The VBGA agrees that its use of the Technology Services Assets, including the Enterprise Software, will be subject to the following conditions:
 - (i) Applicable Laws: Usage of all Technology Services Assets must be in compliance with Applicable Laws including, for greater certainty, the FOIPPA;
 - (ii) Usage of and access to Personal Information stored in Technology Services Assets or otherwise in the control of the Park Board or the City will be in accordance with the Information Sharing Agreement and Schedule M (Management of Data and Privacy);

- (iii) Security: Usage of all Technology Services Assets will be in accordance with City information technology security policies and standards;
- (iv) Records and Information Management: Usage of all Technology Services Assets must be in accordance with City records and information management policies and standards;
- (v) PCI: All Technology Services Assets will be maintained in compliance with the current Payment Card Industry (PCI) standards, as applicable;
- (vi) Access Rights: Network and software access will be granted in accordance with City information technology Identity Management, network access, and applications access policies and standards and in accordance with the Information Sharing Agreement and Schedule M (Management of Data and Privacy); and
- (vii) Hardware: Usage of information technology hardware will be in accordance with City information technology "acceptable use" policy, as all such policies and standards may be amended or replaced from time to time.

11.0 MANAGEMENT OF DATA AND PRIVACY

11.1 Privacy

Both parties shall comply with all of the confidentiality, security and privacy requirements set out in this Agreement including the requirements set out in Appendix M (Management of Data and Privacy) with respect to Personal Information, and any Information Sharing Agreement ("**ISA**") executed between the parties. Where the ISA and this Agreement directly conflict and the parties cannot agree to resolve the conflict, the ISA shall prevail to the extent of the conflict.

11.2 Confidentiality

- (a) The confidentiality obligations set out in this Section 11.2 (Confidentiality) are in addition to the parties' obligations to comply with FOIPPA, PIPA, and PIPEDA and the other security and privacy obligations set out in this Agreement, including Schedule M (Management of Data and Privacy) and any ISA executed between the parties.
- (b) In the course of or for the purpose of fulfilling their obligations contemplated in this Agreement, both parties will obtain or have access to information, including but not limited to the Data, Personal Information as well as possibly financial and business information that is confidential to the other party (collectively "**Confidential Information**"). Confidential Information includes all information, in whatever form, other than:
 - (i) information which is in, or becomes part of, the public domain, not due to the receiving party's ("**Receiving Party**") breach of this Agreement or actions;
 - (ii) information which was previously in a party's possession and did not originate from the disclosing party ("**Disclosing Party**"); and

- (iii) information which lawfully becomes available to the Receiving Party from a third party not under an obligation of confidence to the Disclosing Party regarding such information.
- (c) Receiving Party will not use or reproduce the Confidential Information other than as reasonably required for the performance of its obligations or the exercise of its rights under this Agreement. Receiving Party will not, without the prior written consent of the Disclosing Party, given on such terms and conditions as it prescribes in its sole discretion, disclose or allow access to the Confidential Information to any person, except to only those of its own employees, volunteers, service providers or agents who have a need to know the Confidential Information solely for the performance of its obligations or the exercise of its rights under this Agreement, and who have been advised of its confidential nature and have agreed to be bound by confidentiality and restricted use provisions. Receiving Party will take all reasonable precautions against the Confidential Information being used by or disclosed to any unauthorized person.
- (d) If Receiving Party is required by any law, legal proceeding, or court or government order, to disclose any Confidential Information, Receiving Party will limit its disclosure of such Confidential Information to the extent and purpose legally required, provided that prior to any disclosure Receiving Party will promptly notify the Disclosing Party in writing of the existence and the terms and conditions of the required disclosure and, at the Disclosing Party's request and expense, co-operate in seeking to obtain a protective order or other assurance that confidential treatment and restricted use will be accorded such Confidential Information.
- (e) Receiving Party acknowledges that a breach by Receiving Party or any of its employees of their respective confidentiality obligations pursuant to this Section 11.2(e) may cause irreparable harm and significant injury to the Disclosing Party that may be difficult to ascertain. Receiving Party agrees that it will be liable for all damages caused to the Disclosing Party by such a breach and further agrees that the Disclosing Party will have the right to seek equitable relief including, without limitation, injunction and specific performance, in the event of any breach or threatened breach of the provisions of this Section 11.2(e) in addition to all other remedies available to the Disclosing Party at law, in equity or otherwise. Receiving Party will pay all reasonable costs and reasonable legal expenses incurred by the Disclosing Party in pursuing one or more remedies as a result of the breach or threatened breach by Receiving Party of this Section 11.2(e).
- (f) Except as otherwise agreed in writing by the Parties, and subject to Applicable Laws, Receiving Party will return all copies of the Confidential Information to the Disclosing Party, in all tangible forms and media, and delete all Confidential Information resident in any databases or systems, upon the earliest of the following dates:
 - (i) expiration or earlier termination of this Agreement; or
 - (ii) written request of the Disclosing Party for return of the Confidential Information.

- (g) Receiving Party will ensure that its employees are aware of their obligations of confidentiality under this Section 11.2(g).
- (h) A Party may disclose the other Party's Confidential information to the extent it is required to do so by any Applicable Laws or by any Competent Authority provided that, where legally permitted, it notifies the Receiving Party before doing so, gives the Receiving Party a reasonable opportunity to take any steps that the Receiving Party considers necessary to protect the confidentiality of that information, and notifies the third person that the information is the Receiving Party's confidential information. The parties' obligations under this Section 11.2(h) are wholly subject to and qualified by, the applicable provisions of FOIPPA and PIPA and, notwithstanding any other provision of this Section 11.2(h), a party may disclose the other party's Confidential Information while protecting confidentiality and privacy to the extent permitted in compliance with FOIPPA or PIPA and the Vancouver Charter, including in the course of reporting to the Vancouver City Council.
- (i) This Section 11.0 will survive the expiration or earlier termination of this Agreement.

12.0 SECURITY – SURVEILLANCE SYSTEM

All existing or future surveillance systems, security systems and security monitoring will be the sole responsibility of the Park Board. The VBGA may not install any surveillance, security or monitoring systems or technology in the Jointly Operated Facilities or Common Spaces without the express written consent of the Garden Director and review and consultation with the City's Privacy Office. The Park Board will consult with the VBGA in advance of any surveillance system, security system, or security monitoring system to be installed in the JOF.

12.1 Closing

The Park Board is responsible for coordinating security staff to close the JOF on a regular operating schedule. If the VBGA chooses to offer Programming outside of regular operating hours, closing protocols to will be determined between the Garden Director and the Executive Director.

13.0 RISK MANAGEMENT

- (a) The Park Board is responsible for adhering to corporate governance policies that deal with risk management and updating Public Policy as needed.
- (b) Except as otherwise provided in this Agreement, the VBGA is responsible for ensuring VBGA's Programming is offered in a safe, inclusive environment and managing VBGA's Programming-related risks and issues. For clarity, the parties are each responsible for minimizing risk to participants arising from Programming to the extent they are responsible for such risk under this Agreement or Applicable Laws.

13.2 Emergency

In emergency situations the Park Board reserves the right to utilize the JOF as needed to support local City-led emergency response. The VBGA will not be compensated for any loss of revenue associated with such use.

13.3 INSURANCE

Throughout the Term of this Agreement, the Park Board and the VBGA shall each maintain in full force the insurance specified in Appendix K (Park Board and VBGA Insurance Requirements).

14.0 FINANCIALS

14.1 Admission Fees

Revenues from non-membership Admission fees are retained by the Park Board.

14.2 Garden Membership – Financial Formula

- (a) The Financial Formula as outlined below will take effect on January 1, 2025. Once in effect, this Financial Formula supersedes all previous revenue-sharing agreements. Neither party guarantees any funds to the other party; revenue-sharing as described by the Financial Formula is dependent on actuals.
- (b) Revenues from Garden Membership sales are to be shared between the Park Board and the VBGA according to the Financial Formula outlined below:

Revenue Thresholds	Revenue Split
First \$500K (\$0 - \$500,000)	90% VBGA, 10% Park Board
Above \$500,000	30% VBGA, 70% Park Board

- (c) Revenue thresholds will be net of authorized deductions, including:
 - (i) 3rd party provider credit, debit card or terminal transaction fees, which are 2.1% as of the Effective Date, and will be reviewed annually by the Park Board and adjusted, if necessary; and
 - (ii) any applicable Enterprise Software subscription fee on transactions that are processed through the Enterprise Software. The subscription fee is currently fixed at 1% with Active Network Ltd.
- (d) Revenue thresholds will be adjusted to account for inflation. Inflation will be based on Consumer Price Index for the previous year.
- (e) The Park Board's share of Garden Membership revenues will contribute towards meeting budgeted needs of the Jointly Operated Facilities. Park Board staff will recommend budget increases as need arises, and in the case of staff recommending a budget change to Park Board Commissioners for decision, VBGA will be consulted through the Standing Committee, in addition to its right to participate in public process with respect to proposed budget change.

14.3 FTEs

- (a) The VBGA will also provide funds to the Park Board to fund two Full-Time Equivalent (“**FTE**”) Park Board staff annually, up to a maximum of \$200,000 per year, for the length of the Agreement. The funding for these positions will be governed by the Staff Funding Terms of Reference included in Appendix G (Staff Funding Terms of Reference).
- (b) Notwithstanding the foregoing, the parties agree that if VBGA gives notice to Park Board that it is in an operating deficit or financial hardship:
 - (i) VBGA will give priority to ensuring that programs and services under this Agreement are delivered;
 - (ii) VBGA may reduce FTE funding in the following fiscal year; and
 - (iii) VBGA will provide information demonstrating the operating deficit and proposed reduction of funding provided during the annual planning process.
- (c) The VBGA further agrees to provide the following in support of its notice of operating deficit or financial hardship:
 - (i) Audited financial statements for the relevant year;
 - (ii) Charity Information Return for the relevant year;
 - (iii) Approved Operating Budget for the relevant year; and
 - (iv) Quarterly financial statements of the Operating Fund for the relevant year.

14.4 Dedicated Fund

- (a) A Dedicated Fund will be established to fund jointly agreed-upon projects focused on visitor experience enhancements in the JOF. Terms of Reference which outline the use and conditions associated with this fund are included in Appendix F (Dedicated Fund Terms of Reference). The Park Board commits to spending their share of the Dedicated Fund on projects at VanDusen and Bloedel.
- (b) The Dedicated Fund will be funded by each party contributing 5% of their Garden Membership revenues annually to the Dedicated Fund (see Section 14.2 (Garden Membership – Financial Formula) for Garden Membership Financial Formula).
- (c) Additional contributions may be added voluntarily as both parties are able. Use of the Dedicated Fund may only be decided upon agreement of the Standing Committee.
- (d) In situations when either party is in a deficit to budget position, they may claim financial hardship and retain their annual contribution to the Dedicated Fund outlined above. In this case, each party will have the right to review related financial information, provided annually by both parties (as outlined in Section 5.4

(Reporting)) to assess claims of financial hardship. When a party does not contribute due to being in a deficit position, the other party may optionally withhold their contribution for the year.

- (e) Each party will hold their portion of the Dedicated Fund, and each party will provide an annual statement of account to the other party.
- (f) An Allocation Plan in accordance with the Terms of Reference for the Dedicated Fund will be jointly created at the Strategic Planning and Annual Planning process as outlined in Appendix A (Annual Operation Planning Topics).

14.5 Special Events

Revenues from Park Board Special Events (see list in Appendix C (Park Board Special Events Schedule)) are retained by the Park Board. Should the parties choose to collaborate on future Special Events beyond the Park Board Special Events listed in Appendix C (Park Board Special Events Schedule), they must agree in writing on revenue and resource allocation.

14.6 Education Programs

All revenue generated by Educational Programming is retained by the VBGA. Should the parties choose to collaborate on future Educational Programming, they must agree in writing on revenue and resource allocation.

14.7 Retail And Merchandise

- (a) Revenues from the gift shops are the property of the Park Board. Discounts to the gift shop are provided by the Park Board.
- (b) Groups governed by the VBGA that sell items through the gift shops will be reimbursed for sold items as per agreed terms in writing.

14.8 Rental And Lease

All revenue associated with rental or lease of the JOF will be administered and retained by the Park Board.

14.9 Parking

Revenues generated from parking at the JOF are held by the Park Board. In the event of any paid parking implementation, a variety of JOF visitor experiences including those of Garden Members will be considered to ensure that multi-visit users are not disproportionately impacted.

14.10 Financial Transparency

The parties will openly disclose Garden Membership revenue and their respective Dedicated Fund balances at Annual Operation Planning and Operations Review Meetings.

14.11 VBGA Funding Schedule

VBGA will provide financial support to the Park Board as outlined in Appendix L (VBGA Funding Schedule).

14.12 Use Of Revenue

All revenue generated through the use of the JOF, Common Spaces or with the assistance of the Park Board or Park Board Personnel that is received by the VBGA will be used by the VBGA to directly benefit the public through Programming and services at or from the JOF in accordance with VBGA's purposes as amended, or enhancements to the JOF, or the acquisition of equipment, minor capital and supplies used for the provision of such Programming and services, or for the payment of expenses incurred in respect of the VBGA's operations pursuant to this Agreement or otherwise in furtherance of the VBGA's purposes as may be amended, unless otherwise agreed to by the Park Board.

15.0 CAPITAL PROJECTS, BUILDINGS, AND FACILITIES

The Park Board will make decisions regarding the use of space in the Jointly Operated Facilities by any party. The Park Board will lead public engagement with regards to development and planning for the JOF. Long-range plans and planning exercises that will affect the JOF are outlined in Appendix D (Long Range Plans and Projects Affecting JOF), the development or amendment of which will be done in consultation with the VBGA as the primary stakeholder.

15.1 Space Use

- (a) The Park Board commits to providing space in the JOF to support the operations of the VBGA. At the discretion of the Garden Director, the Park Board may also provide temporary additional spaces and accommodate ad hoc requests subject to space availability. All VBGA requests will be reasonably considered.
- (b) Use of space in the JOF has been split into "Approved Spaces" and "Subject to Approval Spaces". The Parties have agreed that Appendix B (Current Space Use) will be a living document that reflects current space usage and will be updated as part of Annual Operation Planning to reflect any changes in space use, as approved by the Garden Director.
- (c) Priority for use of spaces will be based on the advancement of the Strategic Plan in the following order: (1) garden access; (2) Educational Programming; and (3) rentals and events. This prioritization is not intended to impact Approved Spaces used for office administration purposes by VBGA as outlined in Appendix B (Current Space Use).
- (d) In the case of an unforeseen event that reduced the total available space in the JOF, the Park Board will use every reasonable effort to accommodate the needs of both parties.

15.2 VBGA Spaces

- (a) Current space use for administration, Programming, volunteer and philanthropic activities by the VBGA is outlined in Appendix B (Current Space Use).
- (b) Request for use of public spaces and areas within the Jointly Operated Facilities will need approval from the Garden Director. During inclement weather conditions,

available halls may temporarily be used by VBGA for Educational Programming at no charge. VBGA Personnel will obtain text or email or otherwise written approval from Park Board Personnel when requesting the use of non-public spaces for Programming.

- (c) In addition to Approved Spaces, the VBGA is entitled to 12 additional days of space usage in the Visitor Centre, Floral Hall and Cedar Room, as identified in Appendix B (Current Space Use) for Programming use, which includes Education, Philanthropy and Volunteer use. Use of these spaces includes access to the Gardens. All Special Events, such as Fundraising events must be approved by the Garden Director.

15.3 Temporary Use of VBGA Space by the Park Board

- (a) From time to time, the Park Board may request use of the space approved for ongoing use by the VBGA within the Jointly Operated Facilities for Park Board for special events or rentals (e.g., Festival of Lights, weddings, or filming) in which case the Park Board will communicate this request to the VBGA during the Annual Operation Planning or during operation review meetings and when scheduled ad-hoc, in a reasonable timeframe.
- (b) Use of these spaces will follow the prioritization outlined in Section 15.1 (Space Use). The Park Board will distribute a \$100 fee to the VBGA for all Commercial Rentals as defined below. All other PB uses (including non-profit rentals) will be at no charge.
- (c) Commercial Rentals are any third-party rentals by organizations that are not registered as not-for profits. Examples would include film shoots, brand activations, weddings, third party for-profit events.

15.4 Space Planning

The Parties agree to undertake a comprehensive space planning process to better understand existing conditions, identify efficiencies and trends in space usage, and plan for the future.

15.5 Requests for Additional Space

- (a) Space use will be reviewed annually as part of the Annual Operation Planning Meeting, taking into account the operational needs of both Parties and the joint strategic goals.
- (b) Additional VBGA Approved Spaces will be proposed to the Garden Director for decision at the Annual Operation Planning Meeting. The Garden Director will make commercially reasonable efforts to accommodate any additional requests where such request does not create an unmitigated risk or cause risk to operating budgets.
- (c) Any requests for additional space that cannot be accommodated will remain the responsibility of the VBGA to find suitable offsite space at their expense.

15.6 Future Space

Any additional spaces constructed will be added to Appendix C (Park Board Special Events Schedule) of the Agreement and space Programming and use will be agreed upon and reflected in Appendix C (Park Board Special Events Schedule).

15.7 Maintenance, Renewal And Renovation

(a) Building Condition Assessments

- (i) Through the City of Vancouver, the Park Board has conducted building condition assessments for the JOF, and these assessment reports are updated periodically and on a scheduled basis. Maintenance, repair, replacement and upgrade plans developed for the JOF, are based on building condition assessments, service delivery needs, priorities for health and safety, state of repair of the buildings and availability of resources.
- (ii) The VBGA acknowledges that the Park Board makes decisions regarding priorities for repair, maintenance and building upgrades on a system-wide basis considering, without limitation, health and safety, state of repair and the availability of resources, and the final decision with respect to all maintenance, repair and upgrade work for the Jointly Operated Facility will rest with the Park Board. At the Annual Operation Planning Meeting, the Park Board will provide an update on overall condition of the JOF.

(b) Responsibility and Communication

- (i) All upgrades, maintenance or repair are the responsibility of and will be carried out by the Park Board, unless the Park Board, in its sole discretion, provides the VBGA with express written approval to carry out work. All upgrades, maintenance or repair will follow established internal citywide processes for upgrades, maintenance or repair. The Park Board and its representative, the Garden Director, will be the point of contact for internal parties such as the City's Real Estate, Environment and Facilities Management group and will maintain communications with said parties.
- (ii) The Park Board recognizes that the VBGA is reliant upon the Jointly Operated Facilities and Common Spaces to provide agreed-upon Programming. As such, the Park Board will provide the VBGA with an opportunity to collaborate on maintenance and capital planning as outlined below. Should the VBGA wish to contribute to capital projects, it will be according to the terms outlined below and in support of the Strategic Plan, and upon completion, the Facility Development Plan and VanDusen Comprehensive Plan.
- (iii) The Park Board will work with VBGA in advance of each Capital Plan cycle to align the Parties understanding of capital needs and understand what financial support VBGA can offer.
- (iv) The VBGA may provide suggestions to the Garden Director, with a copy to the Director of Business Services, for consideration by the Park Board regarding what maintenance, repair, or upgrades may be the most

beneficial to the Jointly Operated Facilities and community. The Park Board will consider any suggestions the VBGA provides to the Garden Director and use reasonable efforts to inform the VBGA when deciding priorities for maintenance, repair or upgrades to the Jointly Operated Facility or Common Spaces.

- (v) The Park Board will share with the VBGA the finalized list of annual priorities and anticipated maintenance, repair and upgrade work to be carried out for the Jointly Operated Facilities at the Annual Operation Planning Meeting.
- (vi) The Park Board will advise the VBGA in a reasonable timeframe of any plans, including building repair or maintenance projects, which may impact the use of or access to the Jointly Operated Facilities. Except in the case of an emergency, the Park Board will provide reasonable advance notice in writing to the VBGA when such a disruption is likely. The Park Board will use reasonable efforts to minimize the adverse effects of any such plans.
- (vii) During major work, when access to the JOF is limited or reduced, the Park Board will use every reasonable effort to assist the VBGA in locating alternative space to accommodate any Programming or events. The Park Board and City will not be required to compensate the VBGA for lost opportunity or revenue as a result of such usage unless agreed to by the parties in advance.

15.8 Facility Development Plan

- (a) The Park Board will lead the development of a long-term Facility Development Plan that informs the facility priorities, including Renewals, Renovations, and upgrades for Jointly Operated Facilities. The Facility Development Plan will be revisited every 4 years in alignment with the City of Vancouver Capital Planning Process and Strategic Outlook.
- (b) The VBGA will have an opportunity to provide input into the Facility Development Plan particularly related to needs for implementation of the Strategic Plan as well as needs for the spaces used by the VBGA; however, the final plan decision will reside solely with the Park Board. Input and review of the Facility Development Plan will be aligned with annual operation planning and when applicable, Capital Plan cycles.

15.9 VBGA Enhancement Outside Agreed Plans

If the VBGA wishes to promote projects, enhancements or improvements to the Jointly Operated Facilities that are not within the scope of the annual repair, maintenance and upgrade plans for the JOF; the Park Board will work with the VBGA to facilitate the optional enhancement projects considering the availability of internal resources to support this work and system-wide priorities. The VBGA acknowledges that the final decision regarding such optional projects or enhancements rests with the Park Board.

15.10 Garden Development

- (a) The VBGA acknowledges that garden design and development projects are the sole responsibility of the Park Board, and such projects will be led by the Park Development Team and a designated Park Board project manager.
- (b) Wherever possible, the Park Board will consult in advance with the VBGA on major changes and enhancements to gardens and collections that materially impact the VBGA's operations, provided, however, that the Park Board retains sole discretion and decision-making authority to implement such changes and enhancements.
- (c) VanDusen Garden Comprehensive Plan
 - (i) The Parties agree on the importance of a Comprehensive Plan to guide development of the VanDusen Botanical Garden. The Park Board agrees to request funding for such a plan in the next Capital Plan cycle (2027-2030).
 - (ii) The Park Board will lead the development of a long-term Comprehensive Plan, including site plans to guide the enhancement and development of gardens and garden features to support implementation of the Strategic Plan. This plan will support the VBGA's ability to fundraise for priority improvements. Park Board will work directly with the VBGA to ensure that their concerns and aspirations are directly reflected in the Comprehensive Plan.
 - (iii) Reasonable effort will be made to align the comprehensive planning process with the development of the Facility Development Plan.

15.11 Furnishings, Fixtures, And Equipment (FF&E)

- (a) The VBGA is the sole owner of its assets including office equipment including computers and other office equipment, chairs, desks, tables, Programming materials and similar items purchased entirely by the VBGA. The VBGA is also the sole owner of books and resources in its library.
- (b) All FF&E not owned by the VBGA is the property of the Park Board, including the land, buildings, structure, fixtures and plant collection situated in the JOF.

16.0 GARDEN OPERATIONS

16.1 Garden Signage

The Park Board will be responsible for creating all directional, labelling and interpretive signage in the Gardens.

16.2 HORTICULTURE

- (a) The Park Board and the VBGA agree that display gardens and curated plant collections are fundamental components of botanical gardens and conservatories. The Park Board will actively inform the VBGA regarding garden and collection

plans, upcoming projects and changes to garden areas and plant beds where VBGA Programming or research may be impacted.

- (b) The VBGA acknowledges that Park Board is solely responsible for garden maintenance, collection management, horticulture maintenance, hardscape maintenance, infrastructure maintenance and repair, and bird care and maintenance.
- (c) Further, the VBGA acknowledges that all horticultural work in gardens must be performed in accordance with several policies and agreements in place, which include but are not limited to; the collective agreement(s), which govern the employer and employee relationships of all unionized employees of the Park Board, employment contracts, City policies, Park Board policies and bylaws, and any other applicable legislation. The Park Board will consider within these confines opportunities for the VBGA's Personnel, volunteers and Garden Members to participate in this work, but the Park Board is not bound to a commitment to the VBGA.

17.0 VISITOR EXPERIENCE

17.1 Garden Access

- (a) Front of House
 - (i) The Park Board is responsible for the sale of Admission Products including drop in, new Garden Memberships, visitor-initiated group and corporate sales, and Park Board Special Events. Both parties will process modifications to existing Garden Memberships. The Park Board is responsible for staffing front of house and managing a Garden Membership phone line and email address.
 - (ii) The Parties agree to prepare a front of house transition plan.
- (b) Member Services
 - (i) VBGA will be responsible for member relations and engagement for Garden Members , including proactive group and corporate sales, renewals initiated by VBGA Personnel, and modifications to existing Garden Memberships. Both parties will, using their respective personnel, process Garden Membership renewals initiated by Garden Members. Once VBGA processes a group sale, VBGA will notify the Park Board to take photos and print new membership cards when groups arrive to the front desk.
- (c) Admission Products and Fees
 - (i) The Park Board is responsible for the creation of Admission Products and pricing, including for group and corporate sales. All Admissions Products and Garden Membership products are to be part of an overall product offering which takes into consideration the following; joint strategic goals, revenue targets, and industry best-practices. The Park Board will consult with VBGA prior to implementing any changes to product pricing.

- (d) Operating Hours
 - (i) Park Board is responsible for determining hours for the JOF.
- (e) Access Equity
 - (i) The Park Board is responsible for applying an equity lens to garden access (e.g. Leisure Access Pass and Agency Pass). All complimentary passes must be approved by the Garden Director.

17.2 Garden Membership

- (a) Description
 - (i) The Park Board and the VBGA agree to a joint Garden Membership that provides mutual benefit to both organizations through the growth of the Garden Membership. The Park Board and VBGA agree to promote the Garden Membership as the primary multi-visit Access Product. Implementation of the joint Garden Membership will be established during Annual Operation Planning Meetings in accordance with Appendix A (Annual Operation Planning Topics).
 - (ii) Park Board agrees that any other multi-visit products created by the Park Board will be part of an overall strategic approach to growing general visitation and Garden Membership. Park Board agrees that it will promote Garden Membership at every opportunity, and any other multi-visit product offered will be created and managed with the intention of converting visitors to annual Garden Members.
 - (iii) The Park Board acknowledges that the VBGA, as a registered society, requires active membership for governance purposes and to ensure active involvement of the community in the VBGA. Upon purchase of a Garden Membership, one also receives VBGA Membership. However, the parties agree that neither Garden Membership nor membership in the VBGA are pre-requisites for the public to access, register for or participate in any Programming provided by the VBGA at or from the Jointly Operated Facilities, except where the Programming in question is specifically intended to be limited to Garden Members.
- (b) Fees and Benefits
 - (i) The Park Board and VBGA are each responsible for deciding upon and contributing their components of the Garden Membership product. The Park Board is responsible for setting the Garden Membership pricing. The Garden Director will consult with the VBGA Executive Director on pricing strategies to achieve a shared strategic approach to growing the Garden Membership base to engage a broader group of people and achieve long-term financial sustainability for both entities. Should the VBGA wish to create Philanthropic Products that include Garden Membership as a benefit, the Park Board will continue to price the Garden Membership portion of this benefit.

- (ii) The parties agree to the following two key benefits being components of the paid Garden Membership through the duration of this Agreement:
 - (A) the Park Board will provide and manage unlimited access to the Gardens ; and
 - (B) the VBGA will provide VBGA Membership, including unique benefits beyond Gardens access.
- (iii) The Park Board will be responsible for developing the Garden Membership package of benefits in collaboration with the VBGA. Benefits packages will be determined annually at the Annual Operation Planning Meeting. Revenues from sales of Garden Memberships will be shared as outlined in Section 14.2 (Garden Membership - Financial Formula).

18.0 EDUCATION

18.1 Educational Programming And Initiatives

- (a) Educational Programming and initiatives include but are not limited to, public and private educational visitor experiences and events and adult, family, youth, outreach, educator, and the Yosef Wosk Library and Resource Centre's programs and services taking place either virtually, off-site or at the Gardens. Educational Programming and initiatives are the responsibility of the VBGA. VBGA Personnel will keep the Park Board informed of significant education program changes.
- (b) Park Board will be responsible for Recreational Programming. VBGA will be consulted when educational content around Recreational Programming is requested or required. Any programs that may overlap or straddle both definitions (Educational and Recreational) will be discussed by the Garden Director and Executive Director for mutual agreement. Some Programming may be offered jointly.

18.2 Outreach And Community Engagement

The VBGA is responsible for educational outreach at external outreach events such as fairs, celebrations, conferences etc., and promoting the Gardens. The Park Board may provide promotional material for the VBGA to highlight or give away at outreach events. The Park Board leads relationship development with garden clubs and Master Gardeners.

18.3 Yosef Wosk Library And Resource Centre

The VBGA is responsible for all programs and services offered through the Yosef Wosk Library and Resource Centre including maintaining and updating the publication collection and Programming such as the speaker series and book club. The VBGA is also responsible for the Roberta Mickelson Gallery located inside the Yosef Wosk Library and Resource Centre. The parties agree that the library shall be open to use by the public at no charge.

19.0 RECONCILIATION INITIATIVES AND PROGRAMMING

- (a) The Parties are committed to the hard work of truth telling; the acknowledgment that First Nations are integral rights holders in the future of public parks and lands; the important process of reconciliation with the xʷməθkʷəy̓əm (Musqueam), Skwxwú7mesh (Squamish), and səliłwətaʔ (Tsleil-Waututh) Nations; and working towards a relationship built on equality and reciprocity.
- (b) As part of adopting the Strategic Plan, both parties agreed to carry out the important work of reconciliation. The Parties will collaborate on a Truth and Reconciliation and decolonization Strategy. The first step of this work will be reaching out to the Host Nations to gauge interest and capacity to provide advice and counsel on such a strategy. This or alternative work will include and be largely driven by the advice and counsel of the Host Nations. The Parties will work collaboratively on relationship-building with the Host Nations.
- (c) As the VBGA holds primary responsibility for Educational Programming at the JOF, they will also be the lead in involving Indigenous perspectives and knowledge in Educational Programming. When appropriate, the VBGA may collaborate with the Park Board's Decolonization, Arts, and Culture team on joint Programming in this area.

20.0 MARKETING AND COMMUNICATIONS

20.1 Garden Promotion

- (a) The Park Board and the VBGA will continue to work together to promote general public visitation, membership engagement and community spirit at the Garden and Conservatory.
- (b) Each party will lead marketing efforts for their areas of accountability. The parties commit to growing general public visitation and Garden Members and agree to collaborate on mutual marketing initiatives.
- (c) Both parties agree to ensure that public communications emphasize that the Gardens are public facilities and access is not limited exclusively to members.
- (d) The parties will jointly draft a Marketing and Communications Protocol for the JOF which will adhere to Park Board policies.

20.2 Garden Newsletter

VBGA will manage/oversee development and publication of its newsletter "Garden Connection" (or any replacement publication), in consultation with the Park Board with joint approval over content, including all email communications to Garden Members.

20.3 Website

- (a) The Park Board and the VBGA agree to assess the viability of migrating to a single integrated external website for the JOF.

- (b) The goal of an integrated website is to provide a single point of information, sales, marketing and engagement. Responsibility for administration, maintenance, and funding the website will be determined with the completion of the feasibility assessment.

20.4 Social Media

- (a) The Park Board and VBGA will collaborate on the shared social media platforms to increase awareness and promote the Gardens and areas of accountability, all in accordance with the Park Board and/or City's social media policies, FOIPPA, and the City's Privacy Policy.
- (b) VBGA may maintain its own social media accounts for public communication, so long as social media content refers only to VBGA areas of responsibility, and must not suggest in any way that such public communications represent the City or Park Board.

20.5 Branding And Logo Use

- (a) The Park Board and VBGA will maintain a cohesive brand, voice, 'look and feel' to joint and individual communications, platforms, and collateral material (the **"Materials"**). The VBGA will only use the Park Board or City of Vancouver name, logo, and symbols and marks (the **"Marks"**) with express prior written consent in every instance. Where the Park Board has consented to use of the Marks, it grants a non-exclusive, non-transferable, royalty-free, licence for the specific instance to reproduce the Marks in the Materials, so long as the Marks are always shown, represented, or used in a dignified manner, which will be determined by the Park Board in their sole discretion. The City owns the intellectual property rights, including but not limited to all copyright and trademark rights, in the Marks used to identify the City and Park Board. Neither the VBGA nor any other party are granted any ownership rights, copyrights, trademark rights, or any other rights whatsoever in or to the Marks. The Park Board expressly reserves the right to revoke the limited license granted and to request that the VBGA cease and desist from any and all uses of the Marks for any reason, including, but not limited to, the Park Board's determination in its sole discretion that use of the Marks violates the terms of this license.
- (b) The Park Board or City of Vancouver will only use the VBGA name, logo, and symbols and marks (the **"VBGA Marks"**) with express prior written consent in every instance. Where the VBGA has consented to use of the VBGA Marks, it grants a nonexclusive, non-transferable, royalty-free, licence for the specific instance to reproduce the VBGA Marks in the Materials, so long as the Marks are always shown, represented, or used in a dignified manner, which will be determined by the VBGA in its sole discretion. The VBGA owns the intellectual property rights, including but not limited to all copyright and trademark rights, in the VBGA Marks. Neither the Park Board, the City of Vancouver nor any other party are granted any ownership rights, copyrights, trademark rights, or any other rights whatsoever in or to the VBGA Marks. The VBGA expressly reserves the right to revoke the limited license granted and to request that the Park Board of the City cease and desist from any and all uses of the VBGA Marks for any reason,

including, but not limited to, the VBGA's determination in its sole discretion that use of the VBGA Marks violates the terms of this license.

20.6 Print Materials

Each party is responsible for the costs of creating and printing promotional material their areas of responsibility. The parties may collaborate on print materials to promote the Gardens.

20.7 Media Relations

The Park Board will be responsible for and initially triage all media requests regarding the JOF. Media requests related to Educational Programming, philanthropy, and VBGA-specific operations will be referred to the VBGA for response.

21.0 PHILANTHROPY

21.1 Responsibilities

- (a) Park Board and the VBGA each agree that all philanthropic efforts are to benefit VanDusen Botanical Garden and Bloedel Conservatory based on plans mutually agreed to by both Parties. All Fundraising and philanthropic initiatives for the Gardens will be the responsibility of VBGA. This may include the creation of philanthropic product offerings to donors which could include VBGA and Park Board benefits (to be negotiated) such as a Garden Membership. The VBGA agrees that if any philanthropic product offered includes a Garden Membership, then the VBGA will purchase such Garden Membership via the Enterprise Software.
- (b) Park Board acknowledges that the VBGA is its exclusive philanthropic partner for the JOF including for cultivating, soliciting, stewarding, and administration of donors, however the VBGA agrees that the Park Board may partner with other non-profits to direct proceeds to them (for example, but not limited to Festival of Lights and Make a Wish Foundation). However, the VBGA agrees that it shall consult with the Park Board for all philanthropic activities involving the JOF, which must be prior approved in writing by the Park Board under terms and conditions acceptable to the Park Board.
- (c) Should the Park Board wish to do any Fundraising activities or are approached by a third-party to fundraise for the Gardens, the Park Board will first provide the VBGA a right-of-first-refusal opportunity to conduct a comparable Fundraising event or activity. If the VBGA has not accepted the right-of-first-refusal opportunity within twenty (20) business days of the Park Board's offer, the Park Board is open to conduct the Fundraising itself or through a third party. This right-of-first-refusal opportunity does not include donations made through existing Park Board donation mechanisms (example the Bench program, online donations through "donate to our favorite park", etc.). The Park Board and VBGA will work collaboratively in these instances to determine the best path forward, with the best interest of the Gardens in mind.
- (d) The VBGA may establish VBGA Board-designated endowments, accept donor-designated endowments, or spend-down funds to support the joint Strategic Plan.

The VBGA will share an annual Donation Allocation Plan with the Park Board at the Annual Operation Planning Meeting.

- (e) The Park Board will reasonably provide relevant information to VBGA regarding major improvements, projects funded through the Dedicated Fund, and maintenance to JOF to be used to supplement Fundraising campaigns and Garden Member communications.

21.2 Naming And Recognition

- (a) All naming and recognition of Park Board assets must align with approved policy and in the absence of such policy will be approved by the General Manager. The VBGA will not offer naming rights to donors except as may be previously approved by, or otherwise subject to the approval of, the Park Board.
- (b) In the case of philanthropic giving of physical assets such as public art or commemorative works initiated by the VBGA, all such additions to the Jointly Operated Facilities will be approved by the Park Board in adherence with the Guidelines for the Donation of Public Art, Monuments and Memorials and the Park Board Commemoration Framework (underway), and in the absence of a commemoration policy, all commemorative works will be approved by the Garden Director or delegate.

22.0 SPONSORSHIP

- (a) All sponsorship opportunities for the Gardens are the responsibility of the Park Board and VBGA will direct all such opportunities to the Park Board. All sponsorship relationships considered by VBGA for their Educational Programming are subject to prior review and approval by the Park Board. The Parties agree to reasonably share information regarding proposed sponsorships.
- (b) All sponsorship opportunities involving Park Board assets must be approved by the Park Board under terms and conditions acceptable to the Park Board. All sponsorship opportunities must align with the City of Vancouver's Sponsorship Policy until a Park Board Sponsorship Policy and the Park Board's Naming Rights Policy are in place.

23.0 RESEARCH

23.1 Overview

- (a) Research facilitated at and related to the Gardens is the shared responsibility of the Park Board and the VBGA, except as otherwise provided in this Agreement. Both parties will inform one another of all research activities at the earliest possible date and jointly track all research programs for approval, denial, and progress.
- (b) Research may include any of the following to promote the joint Strategic Mission, Vision and Transformative Goals of the parties: educational research, horticultural research, climate-based, biodiversity and ecological, sustainability and citizen science-based initiatives.

- (c) No research at the Gardens will be permitted without an assigned coordinator from the Park Board or the VBGA to monitor the project.
- (d) Research may be carried out by VBGA Personnel, Park Board Personnel, volunteers, and outside parties such as college and university researchers, high school students under supervision of educators approved by VBGA or Park Board staff, depending on the type of research project.

23.2 Educational Research

The VBGA is responsible for all educational research (e.g., the Environmental Learning program), citizen science-based initiatives and other research conducted in relation to the VBGA's Educational Programming. Park Board Personnel may conduct educational research in the Garden and will inform VBGA of this research at the earliest possible date.

23.3 Botanical, Horticultural, And Environmental Research

Research that requires the use of the living collections is approved by and conducted under the direction of the Curator of Collections, with the assistance of Park Board Personnel as required. This is to protect the integrity of the living collections and ensure that best practices are followed in the collection of data, germplasm and other materials, while also ensuring the accuracy of data and the identification of plants and germplasm supplied for said research.

23.4 Acknowledgment

The Park Board will require that the Gardens, the Park Board and the VBGA are acknowledged in any presentation or publication resulting from research taking place at or using plants from either site. Both parties also request that researchers send the VBGA and the Park Board copies of any manuscripts, articles or presentations resulting from the research.

24.0 MISCELLANEOUS

24.1 No Power To Contract

- (a) The VBGA and its employees, volunteers, representatives, agents, contractors, and subcontractors may not and shall not purport to:
 - (i) Contract or be capable of contracting on behalf of the Park Board; and
 - (ii) Hold themselves out to be, and shall not be, an employee, agent or representative of the Park Board
- (b) The Park Board and its employees, volunteers, representatives, agents, contractors and subcontractors may not and shall not purport to:
 - (i) Contract or be capable of contracting on behalf of the VBGA; and
 - (ii) Hold themselves out to be, and shall not be, an employee, agent or representative of the VBGA.

24.2 Extraordinary Liabilities

The VBGA shall not bargain, sell, hypothecate, mortgage or otherwise pledge substantially all of its assets nor use private donor pledges as collateral without obtaining the prior written consent of the Park Board

24.3 Administration Of VBGA Affairs

The VBGA agrees that it shall not discriminate on the basis of any protected ground under the BC Human Rights Code in its operations, services and employment practices.

24.4 Payment Of Debts

The VBGA shall always pay any current debts, liabilities and sums of monies whatsoever due and owing in a prompt and timely manner.

24.5 Assignment and Sub-contracting

- (a) The VBGA shall not assign, or sub-contract its obligations under this Agreement, except with written consent of the Park Board, which consent the Park Board may arbitrarily withhold. If such consent is given, no subcontract shall relieve the VBGA from any of its obligations under this Agreement or impose any obligation or liability upon the Park Board to any Park Board subcontractor. Prior to entering into a contract with any sub-contractor, the VBGA shall ensure that the sub-contractor:
 - (i) has adequate insurance and Workers' Compensation coverage in place in connection with the doing of the work and/or supply of the materials contemplated by the sub-contract;
 - (ii) has a current and valid City of Vancouver business licence; and
 - (iii) has given its written commitment to, at its own cost and expense, carry out and comply with all laws, by-laws and lawful orders concerning the VBGA or its activities and the sub-contractor or its activities.

24.6 Notice

- (a) Any notice required or permitted to be given to either party to be effective must be in writing and delivered: if mailed by registered mail to the address below; or if emailed to the email address below and will be deemed to be received on the day sent, unless sent after normal business hours, in which case it will be deemed received on the next following business day.
- (b) Either party may from time to time give notice to the other party of a substitute address or email address, which from the date such notice is given will supersede for purposes of this Section 24.6(b) any previous address or email address specified for the party giving the notice:
 - (i) To the Park Board:
2099 Beach Avenue,
Vancouver, BC, V6G 1Z4

with a copy to:

Garden Director
5251 Oak Street
Vancouver, BC, V6M 4H1

Email: PBGMO@vancouver.ca

(ii) To the VBGA:

Vancouver Botanical Gardens Association
Attn: Executive Director
5251 Oak Street
Vancouver, BC, V6M 4H1

Email: sshapiro@vandusen.org

24.7 Cessation of Society

If the VBGA: voluntarily winds up its affairs or disbands; becomes bankrupt; is subject to legal proceedings commenced to wind up its affairs; for no justifiable reason fails to hold a general meeting for a period of eighteen (18) months; after reasonable notice fails to maintain good standing under the *Societies Act*; or fails to comply with its obligation to disclose financial statements to the Park Board, then the Park Board may terminate this Agreement.

24.8 Termination Of Prior JOA

The VBGA and the Park Board hereby acknowledge and agree that this Agreement replaces the previous joint operating agreement between the parties dated October 20th, 1994 and the VanDusen JOA – Bloedel Extension Agreement (Addendums B and C of the Joint Operating Agreement) dated December 4th, 2012. The previous joint operating agreement is hereby terminated with effect on the Effective Date, and shall be of no force and effect from and after the Effective Date.

24.9 Governing Law

This Agreement, regardless of where executed or performed, will be governed by and construed in accordance with the laws of the Province of British Columbia and the laws of Canada applicable therein.

24.10 Enurement

This Agreement shall enure to the benefit of and be binding upon the Park Board and the VBGA and their respective successors and permitted assigns.

24.11 Severability

All the obligations and covenants contained in this Agreement are severable, so that if any one or more of the obligations or covenants are held by or declared by a court of competent jurisdiction to be void or unenforceable, the balance of the obligations and covenants shall remain and be binding.

24.12 Force Majeure

Neither party shall be liable for any cessation of or interference with the performance of this Agreement by that party if and to the extent that such failure to perform is caused by or arises from any event or circumstance beyond the control of that party including but without limiting the generality of the foregoing, strikes, lockouts, fire, lightning, explosion, earthquake, epidemic, pandemic, quarantine restrictions, riots or civil commotions.

24.13 Non-Derogation

Nothing contained or implied in this Agreement shall fetter in any way the discretion of Council, or will derogate from the obligations of the VBGA under any other agreement with the City or the Park Board or, prejudice or affect the City or Park Board's rights, powers, duties or obligations in the exercise of its functions pursuant to the *Vancouver Charter* as amended from time to time and the rights, powers, duties and obligations of the City and Park Board under all public and private statutes, by-laws, orders and regulations, which may be as fully and effectively exercised in relation to the Jointly Operated Facilities as if this Agreement had not been executed and delivered by the VBGA and the Park Board.

24.14 Time Of The Essence

Time shall be of the essence of this Agreement.

24.15 Captions And Interpretation

The captions and headings throughout this Agreement are for convenience and reference only and the words and phrases contained therein shall in no way be held or deemed to define, limit, describe, explain, modify, amplify or add to the interpretation, construction or meaning of any provision of or the scope or intent of this Agreement nor in any way affect this Agreement. Words importing the singular will include the plural and vice versa, and words importing gender will include the masculine, feminine and neutral genders.

24.16 Waiver

The parties acknowledge and agree that no failure by either party to exercise and no delay in exercising any right or powers of enforcement under this Agreement by either party shall operate as a waiver thereof. The remedies herein provided shall be cumulative and not exclusive of any other remedies provided by law or equity.

24.17 Entire Agreement

This Agreement and, for greater certainty, each of the Appendices constitute the entire agreement and understanding between the parties hereto with respect to the subject matter hereof, and supersedes all previous communications, representations and agreements, whether oral or written, with respect to the subject matter hereof. All amendments to this Agreement must be made in writing and signed by both parties. For greater certainty, the parties agree that the Appendices to this Agreement may be adjusted by the parties at any time, upon mutual agreement, as practices or operations of the parties may change over time. The parties further acknowledge and agree that the Indemnity Agreement between the City of Vancouver, the Board of Parks and Recreation, and the VBGA dated March 11, 1992, as amended, is hereby terminated and is of no further force of effect.

24.18 Independent Legal Advice

Each of the parties acknowledge that they have been advised to obtain and have been afforded sufficient opportunity to obtain independent legal advice prior to entering into this Agreement.

24.19 Collective Agreements

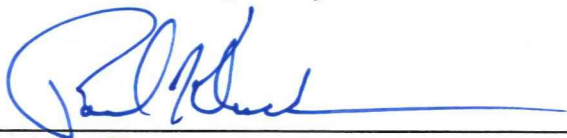
The VBGA acknowledges and agrees that nothing in this Agreement supersedes any duties and responsibilities of the Park Board or the City under any and all collective agreements with trade unions certified to represent employees of the Park Board/City.


24.20 City as Public Body

The parties to this Agreement each acknowledge that the City is subject to the provisions of the FOIPPA, as the same may be amended or superseded from time to time and that as a public body under FOIPPA, the City may be requested to disclose Confidential Information provided to it by the VBGA including budgets and records of revenue and expenses. The VBGA agrees that any such disclosure by the City, will not constitute a breach of the City's obligations hereunder.

IN WITNESS WHEREOF this Agreement has been executed as of the day and year first above written by and on behalf of the Parties:


VANCOUVER BOTANICAL GARDENS ASSOCIATION
by its authorized signatory:

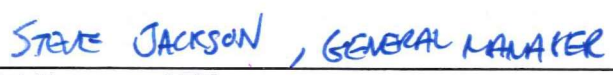


Signature


Print Name and Title

CITY OF VANCOUVER as represented by its Board of Parks and Recreation
by its authorized signatory:



Signature


Print Name and Title

APPENDIX A – ANNUAL OPERATION PLANNING TOPICS

A. Annual Operation Planning Session Topics:

1. sharing update on the prior year's Annual Workplans and progress towards achieving Transformative Goals laid out in Strategic Plan;
2. reviewing reporting deliverables as outlined in Section 5.4 (Reporting);
3. sharing the annual priorities of each of the two organizations in the form of Annual Workplans (as outlined in Section 5.3 – including the establishment of quantifiable metrics where applicable in order to better assess progress (Volunteers, Garden Membership, Education, Philanthropy));
4. collaborating on determining priorities and targets with regards to general public visitation and Garden Membership;
5. presentation of each Party's multi-year financial plans, once process developed (noted in Section 5.3);
6. reviewing Garden Membership benefits and any Philanthropic Products that include Garden Membership as a benefit;
7. share respective annual budgets;
8. preparing an Allocation Plan for Dedicated Fund;
9. Annual review of the Dedicated Fund TOR;
10. reviewing the VBGA's Donation Allocation Plan;
11. updates on all research being facilitated in the Gardens;
12. providing updates on Public Policy that affect the Gardens and JOF;
13. discussing JOF maintenance needs and capital priorities (aligned with planning process and annual reviews of a Comprehensive Plan and Facility Development Plan led by Park Board;
14. sharing the list of annual priorities and anticipated maintenance, repair and upgrade work to be carried out;
15. reviewing space utilization and discussing any requests for additional space by the VBGA;
16. reviewing annual plan for events, Educational Programming, Recreational Programming, and activations; and
17. addressing any other topics that are of interest to the VBGA or the Park Board.

B. Operation Review Meeting Topics:

1. sharing interim reporting on each Party's Annual Workplan, including but not limited to information on admissions, rentals, events, education, membership, volunteers, Fundraising, and research;
2. reviewing annual plan for events and Educational Programming and activations; and
3. addressing any other topics that are of interest to the VBGA or the Park Board.

APPENDIX B – CURRENT SPACE USE

As referenced in Section 15.1, VBGA's space usage in the Gardens is as follows.

(a) VanDusen

Location	Space	Use Type	Comments
Administration Building – upper level	3 workstations, 2 offices	Approved	Administrative- Includes storage space for files and equipment
Administration Building – lower level	9 workstations, 1 office	Approved	Administrative - Includes storage space for files and equipment
Visitor Centre	Discovery Room	Approved	Member Services, Public Education and Philanthropic Activities
Visitor Centre	Volunteer Lounge	Approved	Volunteers During Festival of Lights event, this space will be utilized by the PB from 3pm-11pm each evening.
Visitor Centre	Volunteer Courtyard	Subject to Approval	Education
Visitor Centre	Education Classroom	Approved	Education During Festival of Lights event, this space will be utilized by the PB from 3pm-11pm each evening.
Visitor Centre	Classroom Courtyard	Subject to Approval	Education
Visitor Centre	Outdoor Programming Space	Subject to Approval	
Administration Building – upper level	Board Room	Subject to Approval	Subject to availability
Visitor Centre	Yosef Wosk Library and Resource Centre	Approved	Education

Visitor Centre, Floral Hall and Cedar Room	Other meeting rooms	Subject to Approval	Based on availability and requiring appropriate notice of 12 uses per year including up to 5 in the Visitor Centre halls. Any additional requests are subject to approval and availability. Use of space by VBGA will be for Programming services such as Volunteers, Education and Philanthropy.
Garden	Courtyards	Subject to Approval	Educational Space while camps are in session
Garden	Lathhouse	Subject to Approval	Educational Space while camps in session
Garden	Tented Areas within Garden	Subject to Approval	Educational Space while camps in session
Garden	Back of Service Yard	Subject to Approval	Plant Sale

(b) Bloedel Conservatory

Location	Space	Use Type	Comments	
	Locker	Approved		
	Closet	Approved		

APPENDIX C – PARK BOARD SPECIAL EVENTS SCHEDULE

- Spring (Mar/Apr)
- Summer concert series (June/July/August)
- Fall activation (Sept/Oct)
- Festival of lights (Nov/Dec)

APPENDIX D – LONG-RANGE PLANS AND PROJECTS AFFECTING JOF

Some of the work identified below may be completed concurrently and form sections or appendices of other plans. Timing and scope for all plans/projects below will be subject to Board direction and to approved Capital Plan funding.

Plan/Project	Outcome
VanDusen Garden Comprehensive Plan	Long-term plan for the VanDusen Botanical Garden. Plan will include site plans to guide the enhancement and development of gardens and garden features to support implementation of the Strategic Plan.
Bloedel Conservatory Site Plan	Long-term plan for Bloedel Conservatory. Plan will include site plans to guide the enhancement and development of gardens and garden features to support implementation of the Strategic Plan.
Bloedel Needs Assessment and Feasibility Study	A report that will determine the needs and feasibility of expanding the Bloedel Conservatory to include a Visitors Centre.
Queen Elizabeth Park Master Plan	A long-term plan for the broader Queen Elizabeth Park which will identify how the park is working today, what the current and future demands are (locally and city-wide), and how the park can adapt to better respond to evolving needs.
Facility Development Plan	A long-term plan for VanDusen and Bloedel that provides buildings strategic direction and informs facility priorities, including Renewals, Renovations, and upgrades for Jointly Operated Facilities. This plan will also include recommendations on building extensions to address space constraints. Facilities identified in the VanDusen Garden Comprehensive Plan will be addressed in detail in the Facility Development Plan.
Multi-modal access Plan for VanDusen and Bloedel	A transportation plan that will address planning for multi-modal access to the JOF. The Park Board's Parking Strategy will also inform this plan.
Retail Strategy	A strategy document that will consider current retail offerings at the JOF, market assessment, and provide guidance on merchandise, displays, staffing, advertising, and pricing to ensure financial sustainability and growth of JOF gift shops.

Educational and Interpretive Strategy	A strategy document that will consider current approach to educational and interpretive practices, best practices across the botanical garden sector, and determine recommendations and needed investment to support an enriching and engaging visitor experience.
Comprehensive Communications and Marketing Plan	A plan to support the growth of visitation and Garden Membership and brand recognition for the Gardens. Will include recommendations and needed investment to achieve growth targets.
Access Plan	A plan that will complete an accessibility audit of the JOF and identify opportunities to reduce physical and social barriers to public use of the JOF.
Comprehensive Space Plan	A plan for the use of administrative space at the VanDusen Garden that considers existing conditions, identifies efficiencies and trends in space usage, and provides a roadmap for the future.
Truth and Reconciliation Strategy	A strategy to guide the truth, reconciliation, and decolonization work the Parties have committed to as part of adopting the Strategic Plan.

APPENDIX E – ACTIVENET ACCESS AND FUNCTIONALITY

The VBGA has the following type of access to Enterprise Software (Activenet). Membership sales and services will be governed according to the Agreement

- create and update customer accounts
- renew lapsed memberships, modify existing memberships and VBGA-initiated group and corporate
- run reports
- edit/reset cash summary sheets to balance daily/weekly monies

APPENDIX F – DEDICATED FUND TERMS OF REFERENCE

A. Context and Purpose

- i. The Vancouver Botanical Gardens Association (VBGA) and the Vancouver Board of Parks and Recreation (Park Board) are partners in operating the VanDusen Botanical Garden and the Bloedel Conservatory. This relationship is governed by a Joint Operating Agreement (JOA).
- ii. Through the JOA, a reserve fund (the “**Dedicated Fund**”) is established. The Standing Committee is formed as outlined in Section 5.5 of the JOA and is responsible for putting together an Allocation Plan for funds held in the Dedicated Fund.

B. TOR Purpose

This TOR covers the Standing Committee's mandate in the areas of:

- i. Establishing process for identification, prioritization, and approval of visitor experience enhancement projects in the JOF
- ii. Establishing and revising annual and long-term funding targets;
- iii. Reporting on the use of the Dedicated Fund

C. Funding Mechanism

A percentage of each Party's annual Garden Membership revenues is to be accumulated and restricted for uses to be determined by the Standing Committee (the “**Contribution**”). Each Party will hold their Contribution and projects will be funded at a 50/50 ratio by both Parties, unless otherwise agreed to.

- i. VBGA will hold their Contributions as an externally restricted amount within the Garden Collections Fund.
- ii. The Park Board will hold their Contributions within the Dedicated Fund. Each Party's annual Contribution is to equal at least 5% of their annual Garden Membership Revenues.

The Parties may choose to contribute additional funds at any time. If one party contributes additional funds, the other party is not required to match the additional contribution.

D. Project Criteria

The Dedicated Fund is intended to facilitate joint investment in strategically beneficial visitor experience enhancement projects at the JOF.

E. Targets And Reporting

The Standing Committee may agree on funding targets for the Dedicated Fund. Reporting on respective Dedicated Fund balances will take place as outlined in Section 5.4 of the JOA, and project updates can be requested by VBGA as outlined in Section 21.0 of the JOA.

F. Authority

The Standing Committee membership is as outlined in Section 5.5 of the JOA. The Committee will function according to Section 5.1 of the JOA.

Standing Committee objectives include preparing an Allocation Plan for the Dedicated Fund through which they will select projects to fund on an annual basis.

G. Committee Operations

The Standing Committee is responsible for annual review of these terms of reference. Any changes to these TOR must be approved by both the Park Board Commissioners and the Board of the VBGA.

H. Definitions

- i. **“Contribution”** means each Party’s annual input into the fund.
- ii. **“Garden Membership Revenue”** means the total annual Garden Membership sales earned and allocated to each party based on the Financial Formula outlined in the JOA.

Date Approved - January 1 2025

Date of Last Review -

APPENDIX G – STAFF FUNDING TERMS OF REFERENCE

- VBGA will provide up to \$200,000 in staff funding to the Park Board to fund new additional staff equivalent to two FTE for the length of the Agreement.
- These positions are to be considered as "new" positions and not the funding of current or existing positions.
- These positions are considered "enhancements" to the Gardens.
- The positions that are funded are to be mutually approved by the Garden Director and the Executive Director of VBGA, based on need as driven by goals identified in Strategic Plan.
- VBGA may choose to fundraise for a portion or all of these positions.
- In addition to meeting goals identified in the Strategic Plan, the identified positions must contribute to enhancing horticultural, botanical excellence and maintenance and curatorial functions of the Gardens.
- If the funding allocated to the Park Board (up to \$200,000 per year) is not used in a given fiscal year during the duration of this Agreement, then up to unused amount will be available for use by the Park Board in the following fiscal year.
- The number of FTE may change based on need and can be adjusted on an annual basis.
- Park Board will invoice VBGA for the agreed upon amount towards the end of each fiscal year, and VBGA will transfer these funds, so long as all conditions as described are met.

APPENDIX H – FIXTURES AND PROPERTY OWNED BY VBGA ON JOF

The Parties agree to complete an inventory of fixtures, furnishings, equipment or other assets owned by VBGA and amend this Appendix if required.

Sculpture.

1. A bronze and patinated life size sculpture of a man cuddling a woman, both sitting on a bench, titled Departure by **George Lundeen**, editioned 2/12, dated 1984-1985, approximate size 44 x 77 inches.
2. A carved Carrera marble sculpture of a modernist form titled Male Form by **David Marshall**, approximately 96 x 18 x 18 inches.
3. A carved Carrera marble sculpture of a modernist form titled Female Form by **David Marshall**, approximately 96 x 18 x 18 inches.
4. A carved Carrera marble sculpture of a modernist form titled Whale Form by **David Marshall**, approximately 96 x 18 x 18 inches.
5. Two carved cedar sculptures of what appear to be modernist forms representing a male and female, titled Confidence by **Michael Dennis**, approximate sizes of each, 96 x 36 x 28 inches and 84 x 30 x 18 inches.
6. A sculpture comprised of large stone slabs in a circular form held up and surrounded by decomposing wood with a cedar tree growing in the centre, titled Transformation Plant by **Chris Booth**, approximately 108 x 108 x 108 inches.

APPENDIX I – SCHEDULE OF RESTRICTIONS

Status: Registered Doc #: 522862M RCVD: 1971-02-01 RQST: 2019-12-17 11.38.48

~~522862M~~ 522862-M

THIS AGREEMENT made the 15th day of Jan 1971

FORM 61 LAND REGISTRY ACT
(SECTION 50)
MEMORANDUM OF REGISTRATION
REGISTERED
FEB 19 1971
on application received at the time
written or stamped on the application,
J. M. D. TOOTHILL, Registrar
VANCOUVER LAND REGISTRATION DISTRICT

BETWEEN:

CITY OF VANCOUVER, 453 West 12th Avenue,
Vancouver, British Columbia,
(hereinafter called the "City")

OF THE FIRST PART

AND:

HER MAJESTY THE QUEEN in right of the
Province of British Columbia, represented
and acting by her Minister of Finance
(hereinafter called the "Province")

OF THE SECOND PART

WITNESSETH THAT WHEREAS:

A. The City is the beneficial owner of those lands
and premises lying and being in the City of Vancouver in the
Province of British Columbia, more particularly known and
described as:

(Plan of Subdivision of) Block 899, Lots 1 to 6 of
Block 900 (Plan 11764), and closed roads dedicated
by Plan 11764 and Block 902 (Plan), and Portion
of District Lot 526 (Point Grey Reservoir) as shown
coloured red on Reference Plan 1306, All in District
Lot 526, Group 1, New Westminster District, prepared
by W.G. Robinson, B.C.L.S. and attested to on 11th
January, 1971, a print of which plan is attached
hereto and marked "Schedule "A" " 13762

comprising 55.236 acres more or less (hereinafter called the
"Botanical Display Garden site");

B. The City and the Province intend that the use of the
Botanical Display Garden site shall henceforth be limited as
herein provided;

NOW, THEREFORE, and pursuant to the Section 24A of the
Land Registry Act (Chapter 208 R.S.B.C. 1960, as amended) the
City hereby covenants and agrees with the Province that the
Botanical Display Garden site and the several parts thereof
shall be used only in accordance with the particulars set out

PLAN REFERRED TO HEREIN
PRESERVED AND HELD UNDER
DOCUMENT NUMBER
522862 M

Status: Registered Doc #: 522862M RCVD: 1971-02-01 RQST: 2019-12-17 11.

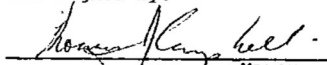
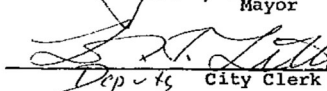
- 2 -

in the Schedule of Restrictions attached hereto.

IN WITNESS WHEREOF the parties hereto have duly
executed these presents the day and year first above written.

SIGNED, SEALED and DELIVERED on
behalf of Her Majesty the Queen
in the right of the Province of
British Columbia by her Minister
of Finance

SEALED with the Common Seal
of the CITY OF VANCOUVER
and signed by:


Mayor

City Clerk

SCHEDULE OF RESTRICTIONS

1. The Botanical Display Garden site shall be used only as a botanical display garden and for no other purpose except such uses as are accessory thereto and no building shall be erected or suffered or permitted to remain thereon which is not accessory to such botanical display garden and used for the purposes thereof.
2. The Botanical Display Garden site shall not be used for residential accommodation or for any profession, trade or business or any sport or entertainment or otherwise than as or accessory to a botanical display garden.
3. No garage, cage, outbuilding or other structure shall be erected nor shall vehicles be parked in such a location that the perpendicular distance between any point on the West boundary of the Botanical Display Garden site and any such garage, cage, outbuilding or other structure or such vehicle is equal to or less than 150 feet.

Status: Registered Doc #: 522862M RCVD: 1971-02-01 RQST: 2019-12-17 11.38.48

LL 30-MUH-62

522862

ACKNOWLEDGMENT OF OFFICER OF CORPORATION

I HEREBY CERTIFY that, on the 15th day of January, 1971, at
 Vancouver, in the Province of British Columbia,
 Douglas Little ~~(whose identity has been proved by the evidence on-~~
~~oath of~~) who is personally known to me,
 appeared before me and acknowledged to me that he is the Deputy City Clerk of
 the City of Vancouver, and that he is the person
 who subscribed his name to the annexed Instrument as Deputy City Clerk of the said
 City of Vancouver and affixed the seal of the
 City of Vancouver
 to the said Instrument, that he was first duly authorized to subscribe his name as aforesaid, and affix the said seal to
 the said Instrument, and that such corporation is legally entitled to hold and dispose of land in the Province of
 British Columbia.

IN TESTIMONY whereof I have hereunto set my Hand and Seal of Office,
 at Vancouver in the Province of
 British Columbia, this 15th day of January
 in the year of our Lord one thousand nine hundred and seventy-one.

Israed Donagan

 A Notary Public in and for the Province of British Columbia.
 A Commissioner for taking affidavits for British Columbia.

NOTE--Where the person making the acknowledgment is personally known to the officer taking the same, strike out the words in brackets.

APPENDIX J – VANDUSEN AND BLOEDEL STRATEGIC PLAN

APPENDIX K – PARK BOARD AND VBGA INSURANCE REQUIREMENTS

A. Park Board's Insurance

The Park Board, through the City, at its own expense and cost, will obtain and continuously carry during the Term of this Agreement All Risk insurance on the buildings and attached improvements installed by or on behalf of Park Board up to full replacement cost.

B. VBGA Insurance

The VBGA will, without limiting any of its obligations or liabilities under this Agreement, obtain and continuously carry during the Term of this Agreement at its own expense and cost, insurance coverage with minimum limits of not less than those specified, as follows:

1. Commercial General Liability Insurance with limits of not less than Five Million Dollars (\$5,000,000) per occurrence and the policy will:
 - (i) indemnify and protect the VBGA, its employees, agents and contractors against all claims for loss, damage, injury or death to any person or persons and for damage to the Gardens or to any public or private property occurring within or about the Gardens or arising by virtue of the VBGA's occupation or possession of the Gardens;
 - (ii) add the City and Park Board, their officials, officers, employees and agents as additional insureds;
 - (iii) contain a cross liability clause insuring the VBGA, the Park Board and their respective officers, employees and agents in the same manner and to the same extent as if separate policies had been issued to each and apply with respect to any action brought against one party by the other or by any officer, employee or agent of one party and any breach of a condition of the policy by any party or by any officer, employee or agent of one party will not affect the protection given by the policy to any other party or to any officer, employee or agent of any party;
 - (iv) include blanket contractual liability covering liability arising directly or indirectly out of the performance of this Agreement;
 - (v) include All Risk Tenants Legal Liability insurance for an amount not less than Five Million Dollars (\$5,000,000), such coverage to include the activities and operations conducted by the VBGA and third parties for which VBGA is responsible in or around the Gardens; and
 - (vi) provide for a deductibility not greater than Five Thousand Dollars (\$5,000).
2. All Risk (Broad Form) insurance on property of every description and kind owned by the VBGA or for which the VBGA is legally liable or installed by the VBGA (and which is located in or around the Gardens), including without limitation furniture, fittings, installations, alterations, additions, partitions, fixtures, trade fixtures, tools and equipment within or around the Gardens in an amount not less than the full replacement cost thereof. Such insurance shall carry a loss payable clause stating that the proceeds of any claim

against the insurer shall be payable to the Park Board and the VBGA as their interests shall appear.

3. Business interruption insurance providing all risk coverage for loss of profits with a period of indemnity of not less than twelve (12) months.
4. Accidental Death and Dismemberment Insurance with limits of not less than \$50,000 providing benefits for loss of life or dismemberment as a result of an injury sustained by volunteers in an accident while performing their duties under the direction of the VBGA.
5. Directors' and Officers' liability insurance with limits of not less than Five Million Dollars (\$5,000,000) per claim.
6. Employment Practices Liability insurance with limits on not less than Five Million Dollars (\$5,000,000) per claim.
7. Technology error and omissions and cyber liability insurance with policy limits of not less than \$25,000 per claim protecting VBGA and VBGA Personnel against claims such as network data security and privacy liability.

If the requirements for insurance coverage change during the Term, the City or the Park Board will provide reasonable notice to the VBGA of the amended insurance coverage requirements and the VBGA shall ensure its coverage meets the amended requirements as applicable.

C. General Requirements of Insurance

The following will apply to all insurance policies:

1. The policies will be with insurers duly authorized to carry on business in the Province of British Columbia, in a form and in amounts satisfactory and acceptable to the Park Board and will provide the Park Board with Thirty (30) days' prior written notice of cancellation or material change resulting in reduction of coverage. Such written notice will be given by registered mail to General Manager of the Park Board at the mailing address specified in the Agreement. Notice must identify the name of the VBGA and the locations or addresses of the Gardens;
2. Each party shall be solely responsible for payment of deductibles for any claims covered by the insurance policy or policies carried by such party;
3. Neither the providing of insurance by the VBGA in accordance with the requirements hereof, nor the insolvency, bankruptcy or the failure of any insurance company to pay any claim accruing will be held to relieve the VBGA from any other provisions of this agreement with respect to liability of the VBGA or otherwise;
4. The VBGA insurance coverages will be primary and any insurance or self-insurance maintained by or on behalf of the City or the Park Board, their officials, officers, employees or agents will excess of this insurance and will not contribute with it; and
5. Subject to the provisions of this Appendix, the VBGA will provide at its own cost any additional insurance which is required by law or which the VBGA deems necessary.

D. Evidence of Insurance

Prior to the commencement of the Agreement, the VBGA will provide evidence of each policy of insurance required to be taken out by the VBGA in a certificate of Insurance form acceptable to the Park Board. Each certificate of insurance must identify the agreement, number, policy holder and contract subject-matter. Similar evidence of renewals, extensions or replacement of said policies must be made available to the General Manager of Park Board at any time upon request. If at any time, the VBGA fails to adduce satisfactory proof of such coverage being in full force and effect, the City may, but is not obligated to or liable for the manner in which it does so; secure such insurance and the VBGA will pay the cost of all incurred expenses as additional cost.

APPENDIX L – VBGA FUNDING SCHEDULE

In addition to the revenue share outlined in the Financial Formula (Section 14.2), and the VBGA's commitment to funding Park Board FTEs (Section 14.3), the Parties agree to continuing historical financial support from VBGA to the Park Board in the following amounts, to support the following activities.

- Revenue from the Alma VanDusen Fund received by the VBGA will be put towards the maintenance of the Alma VanDusen Botanical Garden.
- An annual amount for labelling and interpretation as requested by the Garden Director and as approved by a VBGA Board allocation, on an as needed basis.
- VBGA will continue to support horticultural purchases and plant acquisitions as requested by the Curator of Collections and as VBGA funds allow.

APPENDIX M to the JOA Management of Data and Privacy

1.0 Privacy

- (a) Each Party will collect, use, disclose and store Personal Information and Data only in accordance with the Joint Operating Agreement (the "**Agreement**"), and the Information Sharing Agreement (the "**ISA**") and this Appendix M (this "**Appendix**") and will not directly or indirectly copy, transmit, share, reproduce, summarize, quote, or make available, sell, or disclose any of the Data or Personal Information to any third party except as authorized therein or as required by law.
- (a) The Parties will enter into an ISA governing the terms for the exchange of Personal Information between the Parties. Any obligations in the ISA will be in addition to, and not detract from any obligations in this Appendix. In the event of a conflict between the ISA and this Appendix, the terms of the ISA will prevail.
- (b) In accordance with their respective privacy policies, at or prior to the time of collection of Personal Information about an individual, a Party will obtain the consent of that individual to collect, use or disclose the Personal Information. A Party will only collect Personal Information from an individual if a reasonable person would consider the collection of Personal Information appropriate in the circumstances. At or prior to the time of collection, the Party will inform any person from whom it collects Personal Information the purpose for collecting it, the legal authority for collecting it, and the contact information of the respective Parties' privacy officer.
- (c) The Parties will cooperate to ensure that privacy statements and notices provided to individuals clearly identify the purposes for which Personal Information will be collected, used and disclosed.
- (d) The Parties will develop, implement, and adhere to policies, practices, and security measures for storing and protecting any Personal Information that they receive, collect, or use under the Agreement or the Information Sharing Agreement
- (e) Each party, respectively, is in control of the Data and any Personal Information that is held in their own respective systems. The City retains control over the collection, use, disclosure, access, retention, security, destruction, and integrity of all Personal Information held in its Enterprise Software or on behalf of the City. The VBGA retains control over the collection, use, disclosure, access, retention, security, destruction, and integrity of Data and Personal Information held in its systems or on behalf of the VBGA.
- (f) The Parties will exercise reasonable care in safeguarding the Personal Information, and Data against loss, theft, destruction, or inadvertent disclosure including by limiting disclosure of and access to the Personal Information and Data to those of its employees, contractors, or agents who have a need to know it for the purposes of the Agreement and the ISA. Each Party is responsible for any breach of this Schedule by its own employees, contractors, agents, including any breach by their own Authorized Staff.
- (g) Neither Party will dismiss, suspend, demote, discipline, harass, otherwise disadvantage, or deny a benefit to any of its employees, volunteers or associates who it believes will, or who has, acting in good faith and on the basis of reasonable belief:
 - (i) disclose to British Columbia's Information and Privacy Commissioner that a Party has contravened or is about to contravene applicable Privacy Laws;

- (ii) done or stated an intention of doing anything that is required to be done in order to avoid having any person contravene applicable Privacy Laws, or;
 - (iii) have refused to do or stated an intention to refuse to do anything that is in contravention of Applicable Privacy Laws.
- (h) If a Party receives an information request for Personal Information under an Applicable Law from a governmental authority, the receiving Party will, if required by an Applicable Law, cooperate with the governmental authority. If the governmental authority inquires about or requests Personal Information from a Party, that Party will, to the extent that it is legally permitted to do so, promptly notify the other Party in writing and include the other Party in the receiving Party's preparation of its responses to the governmental authority's inquiries or requests.
- (i) Each Party will promptly and fully comply with any investigation, review, order, or ruling of British Columbia's Office of the Information and Privacy Commissioner, or their successor, in connection with any Personal Information. The Parties will immediately and fully cooperate with any investigation or review of a complaint by the other Party that the Data or any Personal Information has been collected, used, handled, disclosed, stored, manipulated, retained, or destroyed contrary to the terms of the Agreement, the Information Sharing Agreement, or Applicable Law.
- (j) Neither Party is permitted to withhold any Data, or any Personal Information, from the other to enforce payment under the Agreement or their rights in a dispute under the Agreement.

2.0 DATA SECURITY

- (a) The Parties will only permit access to the Data and any Personal Information to those employees, agents and contractors who need to access it in order to carry out their obligations or exercise their rights under the Agreement and the ISA (the "**Authorized Employees**") and will maintain a current list of the Authorized Employees throughout the Term and promptly provide a copy of the current list of the Authorized Employees to the other Party after receiving a request.
- (b) Each Party will appoint a senior employee to be responsible for their compliance with the privacy provisions of this Appendix and the ISA (the "**Compliance Employee**") and ensure that there is a Compliance Employee in place throughout the Term, that the Compliance Employee ensures that each Authorized Employee is aware of the privacy provisions of this Appendix and the ISA and will notify the other Party if the Compliance Employee changes.
- (c) To safeguard the Data and Personal Information from risks such as unauthorized collection, use, disclosure, or disposal, to ensure that the Parties meet their obligations under this Agreement and the ISA, and to ensure that only Authorized Employees collect, and use Data and disclose Personal Information under the Agreement and the ISA, the Parties will, throughout the Term, develop, implement and maintain appropriate physical, organizational, and technological security measures that are consistent with current industry best practices, including, at a minimum:
 - (i) restricting access to paper records containing Data and Personal Information;

- (ii) restricting access to Data and Personal Information stored on computers and electronic devices and media, including by using unique user IDs and passwords that are linked to identifiable Authorized Employees;
- (iii) storing Data and Personal Information in a form that allows only Authorized Employees to access it, including by appropriately encrypting or hashing the Data and Personal Information using current industry standards of reasonableness;
- (iv) requiring authorization before a person is granted access to computers containing the Data and Personal Information, and requiring entry passwords and public key encryption or smart card technology before a person is granted access to computers containing the Data and Personal Information where practicable;
- (v) using physically secure areas for the storage of records containing Data and Personal Information and restricting access to those areas to Authorized Employees;
- (vi) maintaining and implementing formal procedures for terminated or departed employees who have access to the Data and Personal Information, with controls in place to ensure revocation or retrieval of identity badges, keys, passwords, and access rights
- (vii) taking reasonable security measures to prevent people who are not Authorized Employees from seeing or having access to Data and Personal Information displayed on computer screens or on hard copies;
- (viii) implementing automated and manual controls that are sufficient to prevent people who are not Authorized Employees from accessing, copying, transmitting, or printing any Data and Personal Information;
- (ix) implementing automated and manual controls that are sufficient to prevent a loss of Data and Personal Information from a party's systems;
- (x) implementing control procedures to ensure that the Data and Personal Information being stored is accurate and complete; and
- (xi) developing, implementing and maintaining physical and electronic security requirements for the data centre and servers at which and the computer systems on which the Data and any Personal Information is stored, including:
 - i. single point of entry;
 - ii. access only for Authorized Employees;
 - iii. log-in validation;
 - iv. new accounts created only after being verified by the relevant party;
 - v. encryption and authentication for external or WiFi access to the servers upon which the Data is stored;
 - vi. servers running behind a secure firewall;

- vii. a change control process where changes are reviewed and approved by multiple persons prior to implementation;
- viii. remote access protected through multi factor authentication;
- ix. encrypted transmission of data over network whether wired or wireless;
- x. cyber-security and privacy training for Authorized Employees that meets current industry best practices;
- xi. controls for the issue, change, cancellation, and audit-processing of user identifiers and authentication mechanisms; and
- xii. authentication codes or passwords that:
 - a. are generated, controlled, and distributed so as to maintain the confidentiality and availability of the authentication code or password;
 - b. are known only to the authorized user of the account;
 - c. are pseudo-random in nature or vetted through a verification technique designed to counter triviality and repetition;
 - d. are no fewer than twelve characters in length and no fewer than fourteen characters in length for privileged user accounts;
 - e. meet a minimum standard of complexity, including a combination of upper and lower characters, numbers, and special characters;
 - f. are stored using current industry standards, including appropriate hashing and salting;
 - g. are excluded from unprotected automatic log-on processes; and
 - h. are changed at frequent intervals at least semi-annually.

- (d) The Parties will take steps to store and back up the Data and any Personal Information on servers and other equipment that is physically located in Canada or that the Party owns or controls, including for physical copies of such Data and Personal Information. A Party will promptly notify the other Party in writing if the location of their primary or back-up servers is not in Canada. Neither Party will allow any individual to access the Enterprise Software from outside of Canada, unless it's done so in accordance with the FOIPPA.
- (e) Notwithstanding any other provision of this Appendix or any agreement between the Parties, in order to protect the integrity of the Enterprise Software, if the City of Vancouver or Park Board detects or reasonably suspects suspicious security risk activity or other security issues that may be attributed to VBGA staff which may cause harm to the Enterprise Software, the City of Vancouver, or the Park Board, the City of Vancouver may immediately temporarily suspend VBGA access to the Enterprise Software to the extent necessary to contain the security risk. During any such suspension, the City of Vancouver will: (1) use commercially reasonable efforts to resolve and mitigate the risk; (2) resume VBGA's access to the Enterprise Software as soon as possible; and (3) ensure that a

suspension will only be in effect no longer than the period required to eliminate the security risk.

3.0 COMPLIANCE

- (a) A Party will cause irreparable harm to the other Party if sections 11 and 12.1 of the Agreement, this Appendix, or the ISA is breached. The non-breaching Party will be entitled to an injunction, specific performance, or any other equitable relief that it determines is appropriate in its sole discretion. The rights and remedies specified in this section are in addition to, and not in substitution of, any rights or remedies that the other party may have under the Agreement, or otherwise in law or in equity.
- (b) A Party must promptly notify the other in writing if at any time during the Term it fails to comply with the privacy provisions of the Agreement, this Appendix or the ISA, or becomes aware of an unauthorized disclosure. Included in the notice, the Party will inform the other of all of the steps that it proposes to take to address and prevent recurrence of its failure to comply.

4.0 Indemnity

Each Party will defend, indemnify and save and hold harmless the other Party and their respective directors, officers, employees, agents, personnel, service providers, representatives and related persons from and against any and all losses, damages, liabilities, obligations, penalties, interest, claims, demands, actions, suits and proceedings arising from, connected with or relating to any breach of this Appendix M or the ISA by or on behalf of them or any person for whom they are responsible under the Agreement or at law. The provisions of the Agreement that purport to limit, exclude or otherwise qualify a Party's liabilities or obligations do not apply to their liability for breach of this Appendix or the ISA.

End of Appendix M.

INFORMATION SHARING AGREEMENT

dated the **18th** day of December, 2024

BETWEEN:

The Vancouver Botanical Gardens Association, a society incorporated under the *Societies Act*, SBC 2015 c 18, British Columbia, 5251 Oak Street
Vancouver V6M 4H1

(the "**VBGA**")

AND:

The City of Vancouver as represented by the Board of Parks and Recreation, with offices
at 2099 Beach Avenue Vancouver, BC V6G 1Z4

(the "**Park Board**" or the "**City of Vancouver**")

(each a "**Party**", and collectively, the "**Parties**")

WHEREAS:

- (A) The Park Board is an elected Board of Commissioners with statutory jurisdiction over Vancouver parks derived from the Vancouver Charter, including the provision of recreational programs and facilities, setting policies and allocating budget resources and the authority to organize, conduct and contract with others for recreational programs. The Park Board's Mission is "to provide, preserve, and advocate for parks and recreation services to benefit all people, communities, and the environment";
- (B) The VBGA is a society incorporated under the *Societies Act* and a registered charity pursuant to the *Income Tax Act* (Canada) with an elected Board of Directors. The VBGA's Mission is "to engage people of all ages and walks of life in the importance of biodiversity to our lives, and to foster a lifelong love of plants and gardens by virtue of their participation in our programs and services";
- (C) The Park Board and the VBGA jointly operate VanDusen Botanical Garden and Bloedel Conservatory (the "**Gardens**" or "**Jointly Operated Facilities**" or "**JOF**") and share responsibility for the day to day running of the Gardens;
- (D) The VanDusen and Bloedel Strategic Plan (the "**Strategic Plan**"), developed by the Parties through a process rooted in consensus and collaboration, was formally approved in October 2021 by both the Park Board and by the VBGA Board. The Strategic Plan outlines their shared values, vision, mission, and goals to provide transformative experiences to every visitor by connecting them to plants, nature and each other.
- (E) To recognize and appreciate the skills and contributions by the other to achieving their strategic goals, the Parties have entered into a joint operating agreement (the "**JOA**") dated May 29, 2024 which sets out their legal relationship, roles, obligations, and dictates the management of the Jointly Operated Facilities;
- (F) In the course of their joint operations, the Parties will each, from time to time, collect personal information from individuals who purchase or are given a Garden Membership ("**Member Information**");

- (G) the Member information collected by the Park Board will be used to create a VBGA Membership for each individual purchasing a Garden Membership; and
- (H) The Parties wish to enter into this Information Sharing Agreement (the "**ISA**") to document their agreement with respect to use, storage, collection, processing, and disclosure of such Member Information, the use of Enterprise Software (as hereinafter defined) and their obligations and responsibilities to each other with regards to Member Information.

NOW THEREFORE in consideration of the mutual covenants contained herein, the Parties agree as follows:

1. Definitions.

- 1.1 Any capitalised term not defined within this ISA shall have the same definition as provided for in the JOA:
 - (a) "**Enterprise Software**" means the system owned and operated by the City of Vancouver that will be used by the parties to store and manage Member Information;
 - (b) "**City Purposes**" means the purposes described in section 4.2 herein;
 - (c) "**Community Facility**" includes a community centre, fitness centre, swimming pool, ice rink, golf course, pitch and putt, driving range, field, court, diamond, skate park, marina, restaurants, parks, playgrounds, beaches and gardens other than the Gardens, arts and cultural facilities, and attractions that are operated by the City of Vancouver alone or jointly with a Community Centre Association or other entity, and for clarity includes all such facilities listed on the Parks, Recreation and Culture page of the City of Vancouver website;
 - (d) "**FIPPA**" or "**FOIPPA**" means the *Freedom of Information and Protection of Privacy Act*, R.S.B.C. 1996, c. 165;
 - (e) "**Member Information**" means the Personal Information about Members described in Appendix "A" of this ISA;
 - (f) "**Member**" means an individual who has registered for a Garden Membership at any time;
 - (g) "**Personal Information**" means information about an identifiable individual that is collected, used or disclosed by either Party for the Purposes;
 - (h) "**PIPA**" means the *Personal Information Protection Act*, S.B.C. 2003, c. 63;
 - (i) "**Purposes**" means to advance the Parties' respective missions and their shared mission and goals as articulated in the Strategic Plan, and to enable the Parties to exercise their rights and fulfill their legal obligations as set out in the JOA and in this ISA, and for clarity, includes the City Purposes and the VBGA Purposes;
 - (j) "**Staff**" means employees, volunteers, agents and contractors of either Party as defined below;
 - (k) "**VBGA Membership**" means the membership in the VBGA conferred on Members upon purchasing a Garden Membership;
 - (l) "**VBGA Purposes**" means the purposes described in section 5.6(c).

2. Object of this ISA

- 2.1 The objective of this ISA is to document the terms and conditions for the collection, use, disclosure and sharing of Member Information in compliance with the *PIPA* and the *FIPPA*, as may be amended from time to time.

3. Purposes for the Collection, Use and Disclosure of Member Information

- 3.1 The City of Vancouver agrees to collect, use and disclose the Member Information only for the purposes described in, and in accordance with the terms and conditions of, this ISA.
- 3.2 The VBGA agrees to collect, use and disclose the Member Information only for the purposes described in, and in accordance with the terms and conditions of, this ISA.

4. Member Information and Enterprise Software

- 4.1 For the Purposes and the Parties' mutual and independent benefit, the Parties agree:
- (i) to jointly offer to the public the opportunity to receive the benefits of the Garden Membership by becoming a Member;
 - (ii) that Member Information collected and used for the purposes of the Garden Membership will be initially collected into and managed in Enterprise Software unless otherwise permitted by this ISA;
 - (iii) that the Park Board will share Member Information with the VBGA; and
 - (iv) that Member Information may only be used and disclosed by Authorized Staff of a Party, only for the Purposes and in accordance with this ISA.
- 4.2 ActiveNet is the City's current enterprise software system ("**Enterprise Software**") operated as the registration and reservation system by the City of Vancouver. Since 2015 the City of Vancouver has used Enterprise Software to enable individuals to register to access programs and activities offered by the City of Vancouver through City Facilities and facilitate the secure management of the individual's information and payments for the purpose of such registrations as described in s. 5.6(b)(i) herein, to support the business of recreation, comply with payment card industry standards, deliver an enhanced customer experience, enable effective reporting, and facilitate the sharing of personal information as necessary for these purposes with Community Centre Associations and other entities including the VBGA, and as otherwise described in section 5.6 herein (the "**City Purposes**").
- 4.3 The City of Vancouver agrees to grant VBGA's authorized Staff access rights to the Enterprise Software to enable the collection, use, processing and disclosure of Member Information by VBGA as necessary for the Purposes. Such access rights will be on a "least privilege" basis and VBGA will cooperate with the City of Vancouver to ensure that Staff receive training as necessary and in conformance with City of Vancouver policies.
- 4.4 Both Parties will ensure that all Authorized Staff complete Enterprise Software training through City of Vancouver Technology Services Learning Courses, or equivalent course for VBGA Authorized Staff, before any access is granted to Enterprise Software. Authorized Staff of either Party who process financial transactions must obtain training at the time of hire and annually for City of Vancouver PCI and Cash Handling standards.
- 4.5 VBGA agrees, subject to this ISA, that when accessing Enterprise Software, it will, and will cause its Staff to comply with City of Vancouver policies applicable to its access to and use of the

Enterprise Software. The Park Board has provided a copy of such policies that are current on the Effective Date, and will provide the VBGA with reasonable notice prior to making any changes to such policies.

4.6 The Parties acknowledge and agree that:

- (a) Registration for a Garden Membership requires the individual to have an account on the Enterprise Software, and as such, Members will expect that they and the City will be able to access and use Enterprise Software and their Member Information for the City Purposes and the City of Vancouver has the right and obligation to fulfill such expectations; and
- (b) One of the core elements of the Garden Membership is membership in the VBGA and accordingly, upon becoming a Member, an individual will expect that their Member Information is collected, used and disclosed for the VBGA Purposes as hereinafter defined, and the VBGA has the right and obligation to fulfill such expectations. For clarity, the parties agree that one of the purposes for the collection of Personal Information is to become a VBGA member and an individual who is a Garden Member cannot opt-out of VBGA membership and still remain a Garden Member.

4.7 The Parties agree that each maintains control over Garden Member Information that is in its physical custody. For greater clarity, the Park Board does not retain control over Garden Member Information shared by the Park Board with VBGA for the VBGA Purposes. The VBGA is solely accountable for its handling of Garden Member Information in its custody in accordance with its data and privacy management obligations under the JOA.

5. Purposes for the Collection, Use and Disclosure of Personal Information

- 5.1 Personal Information shared under this ISA will be collected, used and disclosed by the Parties in a manner consistent with the provisions of the *FIPPA*, and the *PIPA* as applicable to each Party.
- 5.2 In accordance with the JOA, Member Information may be collected into the Enterprise Software by either a VBGA or City of Vancouver staff member when a Garden Membership is issued or renewed.
- 5.3 For individuals who have never had a Garden Membership, and subject to section 5.5 herein, an employee of the City of Vancouver will collect the individual's Member Information including their financial information (credit card) into the Enterprise Software system.
- 5.4 For individuals who are modifying or renewing their Garden Membership, and subject to section 5.5 herein, the VBGA may collect the individual's Member Information into the Enterprise Software system.
- 5.5 Member Information may also be collected in Enterprise Software when an individual accesses the Enterprise Software through hyperlinks from either the VBGA website or the City of Vancouver website, and completes the online registration.
- 5.6 The Parties agree that, with the consent of the individual the Member Information is about, or as otherwise permitted or required by law, they may each, from time to time, collect, use, share, disclose, or maintain a copy of, Member Information within or outside the Enterprise Software for
 - (a) the purposes of the JOA including
 - (i) all actions necessary for the Garden Membership as described in s. 17.2 and elsewhere in the JOA, including registrations and renewals, sending promotional

e-mail blasts, monthly updates and newsletters about Garden Membership offerings and programs, fundraising to support the Gardens, sending thank-you emails and birthday greetings, enabling Garden Members to take advantage of priority registration for camps and outreach; and

- (ii) any additional new Garden Membership purposes and activities as may be agreed by the parties from time to time;
- (b) In the case of the Park Board, for the City Purposes including:
- (i) to enable individuals to register for other programs and services offered by the City of Vancouver at a Community Facility, book a room or other part of a Community Facility, volunteer for activities at a Community Facility, or participate in events, purchase passes, obtain subsidies or other support from the City of Vancouver;
 - (ii) facilitating such registrations, bookings, volunteering, participating and purchasing, communicating with such individuals, including communications for events and garden promotions, and sharing with non-parties and administering their Enterprise Software account for these purposes; and
 - (iii) exercising the City of Vancouver's legal rights or comply with the City of Vancouver's legal obligations including its duties under *FIPPA*; and
 - (iv) Other purposes permitted under the City of Vancouver's Privacy Policy.
- (c) In the case of the VBGA, for the following purposes:
- (i) Initiating, building and maintaining relationships with VBGA members, donors and volunteers,
 - (ii) delivering educational programming, volunteer services, running the library and resource centre at VanDusen, operating the website (vandusengarden.org) and select VBGA social media channels;
 - (iii) communicating with VBGA Members, responding to queries regarding society matters; advising of the VBGA's annual meetings, such electronic communications being sent in compliance with CASL ;
 - (iv) as otherwise stated in the VBGA Privacy Policy; and
 - (v) to exercise VBGA's legal rights or comply with VBGA's legal obligations including, without limitation, its duties under *PIPA*, the *Societies Act* and the *Income Tax Act*.

(collectively, the "VBGA Purposes")

6. Member Information

- 6.1 Member Information that will be collected, created, used and disclosed by the Parties is more particularly described in Appendix A, which may be updated from time to time in writing and by consent of the Parties.

Legal Authorities for the collection, use and disclosure of personal information

6.2 The VBGA is subject to and must comply with the *PIPA*, and is authorized to collect Member Information under section 10 and section 11 and 12 of *PIPA*, to use Member Information under section 14 and 15 of *PIPA* and disclose Member Information under Part 6 of *PIPA*.

6.3 The City of Vancouver is subject to and must comply with the *FIPPA* and is authorized to collect Member Information under sections 26(c), 26(e) and 27(1) of *FIPPA* and to disclose Member Information under section 33(1), 33(2)(d), and 33(2)(c) of *FIPPA*. The City of Vancouver is authorized to use Member Information under Section 32(a) and 32(b) of *FIPPA*.

7. Accuracy

7.1 The Parties will make every reasonable effort to ensure the Member Information in their custody is accurate, complete and up-to-date as necessary for the purposes for which it is to be collected, used or disclosed.

7.2 Should either Party receive a request to correct the Member Information of an individual, the Party, after verifying the individual's authority to make such a request and confirming the information to be corrected, will promptly correct the Member Information in the Enterprise Software

8. Data Sharing and Access

8.1 The Parties agree that to provide services to Members, the VBGA shall use its direct access to Enterprise Software to directly obtain new and updated Member Information as described in Appendix A to this Agreement and in accordance with the security protocols described in section 10 herein.

9. Storage and Destruction

9.1 Each Party will:

- (a) retain the Member Information only as long as necessary to fulfill the Purposes;
- (b) when it is no longer necessary to retain Member Information for the Purposes, ensure that it securely destroys any such information in that Party's custody, or ensures that the Member Information is irreversibly anonymized so that it cannot be reconstructed in any way; and
- (b) comply with this ISA and applicable City of Vancouver policies when accessing any information in or through the Enterprise Software.

10. Security

10.1 Each Party will use administrative technical, and physical safeguards to protect the Member Information in its custody and control, and enable the secure sharing of Member Information more particularly,

- (a) Each Party will provide secure storage, and will maintain the security and confidentiality of the Member Information in its custody and control by making reasonable security arrangements against such risks as unauthorized access, collection, use, disclosure, or disposal, and

- (b) VBGA will comply with City of Vancouver policies when accessing the Enterprise Software to use or collect Member Information, and shall develop and implement policies, practices and security measures to protect the security and confidentiality of the Member Information in its custody and control against such risks as unauthorized access, collection, use, disclosure, or disposal.
- 10.2 Each Party will implement this Agreement in conformity with its own privacy policies and statutory obligations.
- 10.3 Each Party will advise the other Party immediately of any circumstances, incidents or events which to its knowledge have jeopardized or may in future jeopardize:
 - (a) the privacy or Personal Information of Members; or
 - (b) the security of any computer system in its custody that is used to access the Member Information on Enterprise Software.
- 10.4 Each Party will limit the disclosure of and access to the Member Information to those of its Staff who have a need to know it for the Purposes.
- 10.5 Each Party will ensure that Staff with access to the Member Information execute a confidentiality undertaking, in a format and content that they agree is satisfactory to each of them.
- 11. Compliance Monitoring and Investigations**
- 11.1 Each party will record and monitor access to the Member Information in its custody, in order to establish a chain of responsibility.
- 11.2 Each Party will investigate all reported cases of:
 - (a) unauthorized access to or modification of the Member Information in its custody;
 - (b) unauthorized use of the Member Information in its custody;
 - (c) unauthorized disclosure of the Member Information in its custody; and
 - (d) breaches of privacy or security with respect to the Member Information in its custody or with respect to any computer system in its custody that is used to access the Member Information.
- 11.3 Each Party will report to the other the results of any such investigation and the steps taken to address any remaining issues or concerns about the security of the Member Information or computer systems, or the privacy of individuals to whom the Member Information relates.
- 11.4 In the event of a confirmed unauthorized access to or disclosure of Member Information, the parties will cooperate in accordance with Appendix M of the JOA to notify the other party. The parties further agree to assess whether and to what extent it is necessary to report the matter to a regulator or notify an individual, however, each party retains the absolute right to independently decide whether they are legally obliged to report or notify, as the case may be.

12. Notice

12.1 For any notice required under this ISA, the parties shall promptly contact

City of Vancouver

Agreement Administrator: Garden Director
Park Board

Email: PBGMO@vancouver.ca

Vancouver Botanical Gardens Association

Agreement Administrator: Director of Finance

Ph: 604 257 8673

Fax: 604 263 1777

Email: accounting@vandusen.org

13. Term of Agreement

13.1 This Agreement will be in force concurrently with the JOA.

14. General

14.1 This ISA may not be assigned by either Party without the consent of the other Party. This ISA may be modified by agreement in writing.

14.2 Sections 9.1 and 10 survive termination of this ISA and the JOA.

14.3 This Agreement may be executed in counterparts. Each signed copy will be treated as an original and together the counterparts will comprise a single legal instrument. If any Section or any portion of any Section of this Agreement is determined to be unenforceable or invalid for any reason whatsoever, that enforceability or invalidity will not affect the enforceability or validity of the remaining portions of the Agreement, and such unenforceable or invalid Section or portion thereof will be severed from the remainder of this Agreement.

Agreed to on behalf of the VBGA:

AM Copping
(Authorized representative)

December 13, 2024.
Date

Agreed to on behalf of the City of Vancouver as represented by the Board of Parks and Recreation:

(Authorized representative)

Date

Agreed to on behalf of the VBGA:

(Authorized representative)

Date

Agreed to on behalf of the City of Vancouver as represented by the Board of Parks and Recreation:

A handwritten signature in black ink, consisting of a stylized 'S' followed by a horizontal line.

(Authorized representative)

December 20, 2024

Date

APPENDIX A: Member Personal Information

1. Information collected from the City's Enterprise Software by VBGA:

- (a) Address
- (b) Email
- (c) Home and Cell Phone Numbers
- (d) Name
- (e) Date of Birth
- (f) Gender
- (g) Status e.g., - retired, student, adult, senior, youth
- (h) Photograph
- (i) Family Member(s)
- (j) Type of membership (adult, child, premium, etc.)
- (k) Expiry date and Auto-renewal choice
- (l) Unique barcode pass number

2. Information not collected from the City's Enterprise Software by VBGA:

- a. Information about Park Board classes, programs, events and camps that Members may have registered for;
- b. Member Credit card information;