



REPORT TO COUNCIL

Council Meeting: January 23, 2024
500 Matterson Drive, Ucluelet, BC V0R 3A0

FROM: JOSEPH ROTENBERG, MANAGER OF CORPORATE SERVICES

FILE NOS: 0530-01 – 2024 AAP
3900-25 – BYLAW 1334

SUBJECT: INTRODUCTION OF DISTRICT OF UCLUELET PARKLAND DISPOSAL
BYLAW NO. 1334, 2024, AND OPTIONS FOR ELECTOR APPROVAL

REPORT NO: 24-08

ATTACHMENT(S): APPENDIX A – BYLAW NO. 1334, 2024
APPENDIX B – ELECTOR RESPONSE FORM
APPENDIX C – REPORT NO. 24-02

RECOMMENDATION(S):

THAT Council give first, second and third readings to District of Ucluelet Parkland Disposal Bylaw No. 1334, 2024.

THAT Council seek approval of the electors for District of Ucluelet Parkland Disposal Bylaw No. 1334, 2024 through an Alternative Approval Process.

THAT Council establish the elector response form as attached to report 24-08 (Appendix B) for the Alternative Approval Process for District of Ucluelet Parkland Disposal Bylaw No. 1334, 2024.

THAT Council establish that a fair determination of the number of electors is 1,730 for the Alternative Approval Process for District of Ucluelet Parkland Disposal Bylaw No. 1334, 2024.

THAT Council establish that 173 electors is the 10% response threshold for the Alternative Approval Process for District of Ucluelet Parkland Disposal Bylaw No. 1334, 2024.

THAT Council establish the deadline for receiving elector responses for the Alternative Approval Process for District of Ucluelet Parkland Disposal Bylaw No. 1334, 2024, is March 13, 2024 at 4:00 PM.

BACKGROUND:

The Agreement

On January 9, 2024, Council approved a purchase and sale agreement (the “Agreement”) to sell the Food Bank on the Edge a 0.201 hectare portion of Tugwell Field Park (District Lot 284) for \$1.00. The land to be sold is marked as “Park to be Closed Parcel A” on Plan EPP132848 (referred to as the “Land” for the remainder of the report). The Agreement and Plan are attached to Report No. 24-02 (Appendix C).

One condition precedent of the Agreement is that Council adopts a Parkland Disposal Bylaw. This condition cannot be waived as section 27 of the *Community Charter* requires a Bylaw adopted with the approval of the electors to authorize the sale. If this condition is not met, the agreement would be at an end.

The Agreement also incorporates an option for the District to purchase back the Land for \$1.00. The option may be exercised if the Land is not used for food bank purposes for six consecutive months; the Land or buildings on the Lands are not maintained; or 20 years have past from registration of the option. If the District exercises this option, it will acquire a fee simple lot inclusive of any improvements. The acquired lot could be rededicated as park, used by the District in accordance with its zoning, or sold.

The Agreement also incorporates a statutory right of way which permits the District to access the site and store vehicles, equipment, machinery, materials or other moveable property. The statutory right of way and option would be registered on title and therefore ride with the land and apply to future owners.

The Land

The Land that is subject to the Bylaw and Agreement is the section of Tugwell Field Park (District Lot 284), outlined in bold and marked "Park to be Closed Parcel A" on Figure 1 below and on Plan EPP132848 (see Appendix C). The Land is 0.201 hectares and has Forbes Road frontage. It is located in the northwest corner of the Park, immediately beside the property at 354 Forbes Road.

The topography of this section of Park is not suitable for playing field use due to a steep slope on the northern edge of the park and a District access road used by Parks Staff. Access to this road, and materials stored on site would be preserved by the statutory right of way referenced above.



Figure 1

Staff have estimated the value of the Land to be \$363,177.95. The sale would therefore be well below the estimated market value. Notice has been given accordingly.

Hard Sports Facility

In 2021 Council had conceptual discussions regarding the possibility of locating a hard sports facility and other improvements in Tugwell Field Park. The proposed disposition would not preclude an 80ft by 120ft covered hard sports facility from being constructed in the Park at some time in the future. A feasibility study for a hard sports surface facility is planned for 2024.

District of Ucluelet Parkland Disposal Bylaw No. 1334, 2024 (the “Bylaw”)

The Bylaw authorizes the sale of the Land to the Food Bank on the Edge for \$1.00 and the closure of this section of the Tugwell Field Park. It further references the option and right of way discussed above.

According to the Bylaw and Section 27(2)(b) of the *Community Charter*, the proceeds from the sale must be deposited into the District’s park land acquisition reserve fund. Only nominal consideration (\$1.00) is contemplated by the Agreement and Bylaw, as the transaction was intended to be below market value which is permissible as the Food Bank on the Edge is not a business.

The Bylaw also authorizes the Mayor and Chief Administrative Officer to execute all documents required to carry out the disposition to the Food Bank on the Edge.

ANALYSIS OF OPTIONS:

Elector Approval

Since the Land is in a park, Section 27(2) of the *community Charter* requires Council to adopt a bylaw before disposing of the Land to the Food Bank on the Edge. This bylaw must be approved by the electors. Elector approval may be obtained through an:

1. Alternative Approval Process (the “AAP”); or
2. Assent Voting (a referendum).

Option 1: Alternative Approval Process (the “AAP”)

An AAP involves asking the electors if they **oppose** adoption of the Bylaw (which authorizes disposition of the Land to the Food Bank on the Edge), unless elector approval is obtained through assent voting (a referendum). Approval of the electors is achieved, if by the deadline for receiving elector responses the number of elector responses received is less than 10% of the eligible electors for the applicable area. If 10% or more of the eligible electors sign and submit a response form by the deadline, Council can choose to proceed to assent voting, abandon the Bylaw, or put the matter on hold and develop other alternatives to consider.

For each AAP, Council is required to:

1. establish a deadline which aligns with the *Community Charter* requirements;
2. establish the elector response form; and
3. make a fair determination of the total number of electors for the area to which the approval process applies.

Staff are recommending that the deadline for the AAP for the Bylaw be March 13, 2024 at 4:00 PM. This exceeds the 30-day minimum response window required by the *Community Charter*. Staff are further recommending the attached form be established for the AAP. This form is designed to be signed by a single elector rather than the petition style form which can be signed by multiple electors. The single elector form is recommended because it limits privacy concerns associated with using the petition style form and mitigates some complications associated with response forms being submitted by email and mail.

To make a fair determination of the total number of electors, the area to which the AAP for the Bylaw must first be determined. In this case, Staff recommend that the applicable area be the entire District of Ucluelet rather than a smaller area as the Park belongs to the District as a whole, and all resident and non-resident property electors may have an interest in District parkland.

Staff estimate the total number of electors for the District of Ucluelet is 1,730, and therefore the 10% threshold for this AAP is 173 electors. The estimated number of electors was determined as follows:

Registered voters as per Elections BC	1,711
Add estimated number of non-resident property electors	19
Total number of electors	1,730

The number of registered voters was provided by Elections BC. This count is current as of December 20, 2023 and prepared using the provincial voters list extract, generated using municipal boundary lines for the District of Ucluelet. Elections BC's voter count does not include non-resident property electors. The estimated number of non-resident property electors is derived from the register of non-resident property electors maintained by the District for election purposes. This register was reviewed and updated by Staff prior to the publishing of this report.

Option 2: Assent Vote (Referendum)

Assent voting involves asking electors to cast their vote for or against the proposed Bylaw. This involves holding a public vote akin to an election. Approval of the electors is received if a majority of votes (50% plus 1) are in favour of proceeding with the Bylaw.

If elector assent is not granted the Bylaw cannot be adopted. Furthermore, a bylaw for the same purpose may not be submitted to the electors for an assent vote within six months from the last submission except with minister approval.

Comparing an Alternative Approval Process to Assent Voting

Staff recommend conducting an AAP on the Bylaw rather than assent voting for the following reasons:

1. **Less time is required:** An AAP can be conducted in as little as 32 days while assent voting is generally an 80-day process. That said, if elector approval is not received through the AAP, assent voting would be required to proceed with the Bylaw. Assent voting must be conducted not more than 80 days after the deadline for receiving elector response forms for the AAP.
2. **Less staff time and costs are required:** An APP is more cost effective and requires less staff time than assent voting. AAP costs are limited to advertising/public notice costs, and printing elector response forms. Assent voting cost are estimated to be similar to conducting an election, which requires much more staff time. If an AAP and assent voting are conducted, costs would include expenditures from both processes.
3. **AAPs are more accessible and convenient for the electors:** Electors have at least 30 days to participate in an AAP by submitting a response form in opposition to the Bylaw. Forms may be submitted by mail, email or in-person. If electors do not oppose the Bylaw, no action is required. According to the District’s Election Bylaw, assent voting is held in person on two days; general voting day and advanced voting. Mail voting is not currently available.
4. **Council would have options if elector approval is not received through the AAP:** If the Bylaw does not receive elector approval through the AAP, approval could be sought through assent voting.

A	Give three readings to the Bylaw and seek approval of the electors through an AAP	<u>Pros</u>	<ul style="list-style-type: none"> • AAP offers a cost and time effective means of obtaining required elector approval.
		<u>Cons</u>	<ul style="list-style-type: none"> • If elector approval is not obtained through the AAP, Council may elect to seek elector approval through assent voting. As a result, Staff time and District funds would be dedicated to both the AAP and assent voting processes.
		<u>Implications</u>	<ul style="list-style-type: none"> • Cost and staff time implications are expected to be much lower than assent voting.
B	Direct staff to prepare a report on conducting an assent voting on the Bylaw	<u>Pros</u>	<ul style="list-style-type: none"> • Elector approval would be obtained if a majority of the votes counted as valid are in favour of the Bylaw.
		<u>Cons</u>	<ul style="list-style-type: none"> • The Bylaw and therefore the disposition to the Food Bank on the Edge would be delayed.
		<u>Implications</u>	<ul style="list-style-type: none"> • Cost and staff time implications are expected to be much higher than conducting an AAP.
		<u>Suggested Motion</u>	<p>THAT Council direct Staff to bring back a report on seeking approval of the electors for District of Ucluelet Parkland Disposal Bylaw No. 1334, 2024 through assent voting.</p>

C	Request additional information from Staff before moving forward	<u>Pros</u>	<ul style="list-style-type: none"> • Council would be provided with any required additional information before moving forward with the Bylaw or elector approval process.
		<u>Cons</u>	<ul style="list-style-type: none"> • The Bylaw which authorizes the disposition to the Food Bank on the Edge would be delayed.
		<u>Implications</u>	<ul style="list-style-type: none"> • Additional staff time would be required to provide the follow-up report. • Additional Council time would be required to review the report.
		<u>Suggested Motion</u>	<p>THAT Council direct staff to provide information on the following at a future Council meeting:</p> <ul style="list-style-type: none"> • [identify information required]; • [identify information required]; and • [identify information required].

POLICY OR LEGISLATIVE IMPACTS:

Section 27(2) of the *Community Charter* permits Council to dispose of part of Tugwell Field park provided a Bylaw is adopted with the approval of the electors. Division 2 of the *Community Charter* establishes that approval of the electors may be obtained through assent voting or an AAP. Section 86 of the *Community Charter* determines the AAP requirements including the requirements that Council establish the elector response forms, establish the deadline for receiving the forms, and makes a fair determination of the total number of electors for the area which the approval process applies. Part 4 of the *Local Government Act* sets out the rules for assent voting. The *Local Government Act* also sets out voter eligibility requirements that apply to assent voting and AAPs.

NEXT STEPS:

- January 31 – Publish first of two statutory notices for the AAP.
- February 7 – Publish second statutory notice
- March 13 – Deadline for responses
- March 26 – Bring back a report to Council on the AAP result. If elector approval is received, Council would be in a position to adopt Bylaw No. 1334, 2024
- After adoption of the Bylaw, Staff would proceed with the process associated with closing the park, and disposing of the land to the Food Bank of the Edge

Respectfully submitted: **Joseph Rotenberg, Manager of Corporate Services**

DISTRICT OF UCLUELET

Bylaw No. 1334, 2024

A bylaw to authorize disposition of parkland

WHEREAS section of 27(2) of the *Community Charter* authorizes the District of Ucluelet to, by bylaw adopted with the approval of the electors, dispose of a portion of park land and place the proceeds of disposal to the credit of a reserve fund under section 188(2)(b) of the *Community Charter* [parkland acquisition reserve fund];

AND WHEREAS the District of Ucluelet deems it expedient to dispose of that portion of dedicated park land comprising approximately 0.201 hectares titled “Park To Be Closed Parcel A” and outlined in heavy black line on Plan EPP132848 which is attached hereto as Schedule “A” (the “Closed Park”);

NOW THEREFORE the Council of the District of Ucluelet, in open meeting assembled, enacts as follows:

1. This bylaw may be known and cited for all purposes as the “District of Ucluelet Parkland Disposal Bylaw No. 1334, 2024”.
2. The District of Ucluelet (the “District”) is hereby authorized and empowered to dispose the Closed Park to Food Bank on the Edge for consideration of \$1.00 and grants of:
 - (a) an option to re-purchase the Closed Park exercisable by the District if the Closed Park is not used for the operation of a food bank for a consecutive period of six (6) months, the owner fails to maintain the lands and the buildings on the land in a good state of maintenance and repair, or at any time following the 20th anniversary of registration of the option; and
 - (b) a statutory right of way entitling the District to store equipment and goods on the Closed Park.
3. The proceeds from the disposition of the Closed Park be placed to the credit of the District’s park land acquisition fund.
4. The transfer of the Closed Park is free of any dedication to the public for the purpose of a park or public square.
5. The Mayor and Chief Administrative Officer are authorized to execute all documents necessary to carry out the transfer and dedication removal described in this bylaw.

READ A FIRST TIME this ** day of ***, 20**.

READ A SECOND TIME this ** day of ***, 20**.

READ A THIRD TIME this ** day of ***, 20**.

An alternative approval process in relation to this Bylaw was provided in accordance with the requirement of section 86 of the *Community Charter* and the elector response certified as not having exceeding 10% of the electors of the District of Ucluelet on the ** day of *, 20**.**

ADOPTED this ** day of ***, 20**.

CERTIFIED CORRECT; "District of Ucluelet *** Bylaw No. ****, 20**".

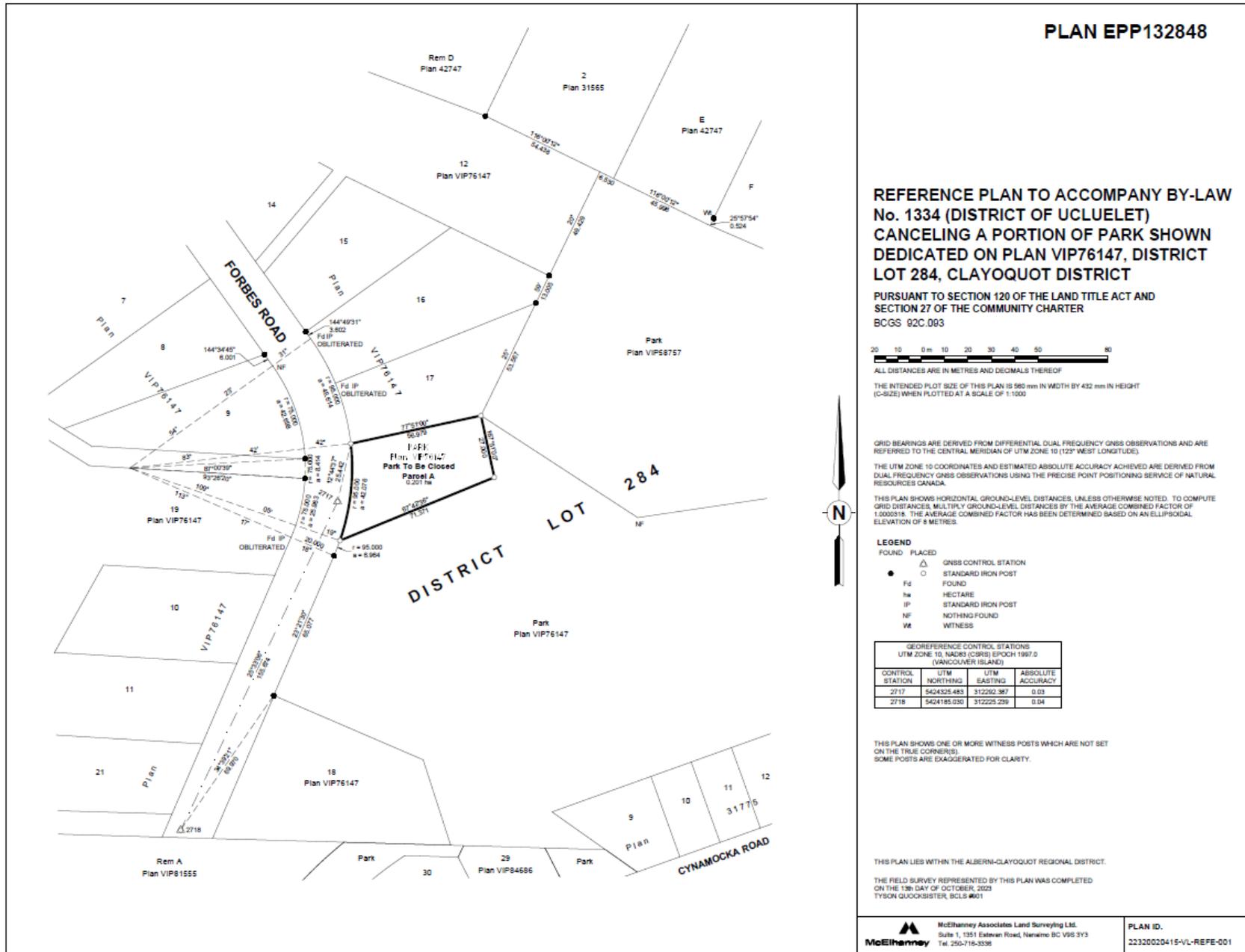
Marilyn McEwen
Mayor

Duane Lawrence
Corporate Officer

THE CORPORATE SEAL of the
District of Ucluelet was hereto
affixed in the presence of:

Duane Lawrence
Corporate Officer

Schedule "A" to District of Ucluelet Parkland Disposal Bylaw No. 1334, 2024



PLAN EPP132848

**REFERENCE PLAN TO ACCOMPANY BY-LAW
No. 1334 (DISTRICT OF UCLUELET)
CANCELING A PORTION OF PARK SHOWN
DEDICATED ON PLAN VIP76147, DISTRICT
LOT 284, CLAYOQUOT DISTRICT**

PURSUANT TO SECTION 120 OF THE LAND TITLE ACT AND
SECTION 27 OF THE COMMUNITY CHARTER
BCGS 92C.093



ALL DISTANCES ARE IN METRES AND DECIMALS THEREOF
THE INTENDED PLOT SIZE OF THIS PLAN IS 560 mm IN WIDTH BY 432 mm IN HEIGHT
(C-SIZE) WHEN PLOTTED AT A SCALE OF 1:1000

GRID BEARINGS ARE DERIVED FROM DIFFERENTIAL DUAL FREQUENCY GNSS OBSERVATIONS AND ARE REFERRED TO THE CENTRAL MERIDIAN OF UTM ZONE 10 (123° WEST LONGITUDE).

THE UTM ZONE 10 COORDINATES AND ESTIMATED ABSOLUTE ACCURACY ACHIEVED ARE DERIVED FROM DUAL FREQUENCY GNSS OBSERVATIONS USING THE PRECISE POINT POSITIONING SERVICE OF NATURAL RESOURCES CANADA.

THIS PLAN SHOWS HORIZONTAL GROUND-LEVEL DISTANCES, UNLESS OTHERWISE NOTED. TO COMPUTE GRID DISTANCES, MULTIPLY GROUND-LEVEL DISTANCES BY THE AVERAGE COMBINED FACTOR OF 1.0000318. THE AVERAGE COMBINED FACTOR HAS BEEN DETERMINED BASED ON AN ELLIPSOIDAL ELEVATION OF 8 METRES.

- LEGEND**
- FOUND PLACED
 - △ GNSS CONTROL STATION
 - STANDARD IRON POST
 - FOUND
 - hd HECTARE
 - IP STANDARD IRON POST
 - NP NOTHING FOUND
 - WE WITNESS

GEOREFERENCE CONTROL STATIONS
UTM ZONE 10, NAD83 (CSRS) EPOCH 1997.0
(VANCOUVER ISLAND)

CONTROL STATION	UTM NORTHING	UTM EASTING	ABSOLUTE ACCURACY
2717	5424325.483	312202.387	0.03
2718	5424185.030	312225.299	0.04

THIS PLAN SHOWS ONE OR MORE WITNESS POSTS WHICH ARE NOT SET ON THE TRUE CORNER(S). SOME POSTS ARE EXAGGERATED FOR CLARITY.

THIS PLAN LIES WITHIN THE ALBERNI-CLAYOQUOT REGIONAL DISTRICT.

THE FIELD SURVEY REPRESENTED BY THIS PLAN WAS COMPLETED ON THE 13th DAY OF OCTOBER, 2023
TYSON QUACKSISTER, BCLSI #01

McElhenny McElhenny Associates Land Surveying Ltd.
Suite 1, 1351 Edgewood Road, Nanaimo BC V9S 3Y3
Tel. 250-716-3338

PLAN ID.
2332002D415-VL-REFE-001



**DISTRICT OF UCLUELET
ELECTOR RESPONSE FORM**

Alternative Approval Process (AAP)
District of Ucluelet Parkland Disposal Bylaw No. 1334, 2024

By completing this elector response form, I am indicating that I **OPPOSE** the adoption of “District of Ucluelet Parkland Disposal Bylaw No. 1334, 2024”, which authorizes the District to close a 0.201 hectare portion of parkland located in the northwest corner of Tugwell Field Park, and dispose of that land (the “closed park”) to the Food Bank on the Edge for \$1.00, unless a vote is held.

As additional consideration for the disposition of the closed park, the District will be granted:

1. an option to re-purchase the closed park exercisable by the District if the closed park is not used for the operation of a food bank for a consecutive period of six (6) months, the owner fails to maintain the lands and the buildings on the land in a good state of maintenance and repair, or at any time following the 20th anniversary of registration of the option; and
2. a statutory right of way entitling the District to store equipment and goods on the closed park.

Full name of elector _____
(e.g. Donald Smith – not D. Smith, please print)

Signature _____
(original signature required)

Address _____

- Choose one: I am a resident elector (see reverse for eligibility requirements)
 I am a non-resident property elector who lives in another community and owns property in the jurisdiction located at:

_____ (Address)
(see reverse for additional eligibility requirements)

The District of Ucluelet Council may proceed with the adoption of District of Ucluelet Parkland Disposal Bylaw No. 1334, 2024 unless 173 electors sign and submit a completed copy of this elector response form to the District of Ucluelet by the deadline.

DEADLINE: March 13, 2024 at 4:00 PM.

Completed signed forms must be submitted by the deadline. Digital signatures will not be accepted. Forms may be submitted by hand delivery, mail or emailed as a PDF document attachment, as follows:

Hand delivery: 200 Main Street, Ucluelet, BC

Mail to the District of Ucluelet: District of Ucluelet
PO Box 999, Ucluelet BC, V0R 3A0
(Postmark will not be accepted as submission date)

PDF submission via email: communityinput@ucluelet.ca
(Ensure forms are legible and transmission was completed)

A person must not sign more than one elector response form in relation to this alternative approval process. The *Community Charter* requires all electors to submit their response on the form established by the District of Ucluelet, or an accurate copy of that form.

Additional information on the subject of this alternative approval process and elector qualifications can be found on the reverse side of this form, at the District Office, and at Ucluelet.ca/AAP.

Privacy Notice: Personal information collected by this form is authorized under the Freedom of Information and Protection of Privacy Act sections 26(a) and 26(c) and will be used only for the purpose of conducting an alternative approval process pursuant to Section 86 of the Community Charter. If you have any questions about the collection and use of this information, please contact Joseph Rotenberg, Manager of Corporate Services by email: jrotenberg@ucluelet.ca or by phone: (250) 726-7744.

District of Ucluelet

200 Main Street, PO BOX 999, Ucluelet, British Columbia V0R 3A0
(250) 726-7744 • info@ucluelet.ca • www.ucluelet.ca

District of Ucluelet Parkland Disposal Bylaw No. 1334, 2024 – Information Sheet

District of Ucluelet Parkland Disposal Bylaw No. 1334, 2024 authorizes the District to close a 0.201 hectare portion of parkland located in Tugwell Field Park and dispose of this closed park to the Food Bank on the Edge for \$1.00. The land to be disposed of is in the northwest corner of the Park fronting Forbes Road and shown in the picture below outlined in bold and marked “Park to be Closed Parcel A”.



As additional consideration for the disposition of the closed park, the District will be granted:

1. an option to re-purchase the closed Park exercisable by the District if the closed park is not used for the operation of a food bank for a consecutive period of six (6) months, the owner fails to maintain the lands and the buildings on the land in a good state of maintenance and repair, or at any time following the 20th anniversary of registration of the option; and
2. a statutory right of way entitling the District to store equipment and goods on the closed park.

A copy of Bylaw No. 1334, 2024 and related reports are available online at Ucluelet.ca/AAP and at the District of Ucluelet Office, open Monday to Friday from 8:30 AM to 4:00 PM, excluding statutory holidays.

Elector Eligibility

In order to sign an elector response form in relation to the alternative approval process (AAP), a person must either be a resident elector or a non-resident property elector.

A **resident elector** is an individual who is entitled to sign an elector response form during an AAP by virtue of living within that jurisdiction. When signing an elector response form, a resident elector must:

- be 18 years of age or older;
- be a Canadian citizen;
- have been a resident of British Columbia for at least six months;
- be a resident of the jurisdiction (i.e. District of Ucluelet);
- live in the area defined for the AAP (i.e. District of Ucluelet); and,
- not be disqualified under the Local Government Act, or any other enactment from voting in a local election or be otherwise disqualified by law.

A **non-resident property elector** is an individual that does not live in the jurisdiction and who is entitled to sign an Elector Response Form during an AAP by virtue of owning property in that jurisdiction. When signing an elector response form, a non-resident property elector must:

- be at least 18 years of age;
- be a Canadian citizen;
- have been a resident of British Columbia for at least six months;
- be a registered owner of property in the jurisdiction (i.e. District of Ucluelet) for at least 30 days;
- own property in the area defined for the AAP (i.e. District of Ucluelet); and,
- not be disqualified under the Local Government Act, or any other enactment from voting in a local election, or be otherwise disqualified by law.

Note: Only one non-resident property elector may sign an Elector Response Form per property, regardless of how many people own the property. That owner must have the written consent from a majority of the other property owner(s) to sign the response form on their behalf. Property owned in whole or in part by a corporation does not qualify under the non-resident property elector provisions.



REPORT TO COUNCIL

Council Meeting: January 9, 2024

500 Matterson Drive, Ucluelet, BC V0R 3A0

FROM: JOSEPH ROTENBERG, MANAGER OF CORPORATE SERVICES

FILE NO: 0890-20 TUGWELL FIELD

SUBJECT: PURCHASE AND SALE AGREEMENT – FOOD BANK ON THE EDGE

REPORT NO: 24- 02

ATTACHMENT(S): APPENDIX A – PURCHASE AND SALE AGREEMENT
APPENDIX B – REFERENCE PLAN EPP132848

RECOMMENDATION(S):

THAT Council approve the Purchase and Sale Agreement with the Food Bank on the Edge, attached to report number 24-02, for the sale of the portion of District Lot 284 outlined in bold on Reference Plan EPP132848; and,

THAT Council authorize the Mayor and Corporate Officer to execute the Purchase and Sale Agreement.

BACKGROUND:

On March 28, 2023, the Food Bank on the Edge (FBOE) reiterated their request that a section of District Lot 284 (Tugwell Field) be dedicated to the development of FBOE’s new facility. FBOE noted that this site is appropriate because it is outside the Tsunami inundation zone.

On May 9th Council directed Staff to develop a lease agreement with FBOE for their new facility and authorized the allocation of \$150,000 to their construction project. Council subsequently directed Staff to develop a Purchase and Sale Agreement (the “Agreement”) for a fee simple lot to be created due to complications associated with leasing these parklands for non-park uses.

Staff have now negotiated the Agreement with FBOE and are seeking Council approval.

The Lands:

The Agreement contemplates selling a 0.201 hectare section of Tugwell Field located in the north west corner of this park (the “Land”). This section of the park is outlined in bold on Reference Plan EPP132848. It has street frontage off Forbes Road and abuts the property at 354 Forbes Road.

Since the Land is in a park, the affected section of the park must be closed prior to the creation of a fee simple lot to be sold to FBOE. In order to close a park, the District must adopt a parkland disposal bylaw which is subject to elector approval.

If the purchase and sale agreement is approved by Council, staff will introduce the parkland disposal bylaw along with options for the elector approval process at a subsequent meeting.

Terms of the Purchase and Sale Agreement:

The Agreement would transfer the Land to the Food Bank on the Edge for one dollar which is below the Land’s market estimated value of \$363,177.95.

A number of condition precedents in favour of the District or for the benefit of both parties are included in the agreement. If these conditions are not met, the agreement would be automatically terminated. Condition precedents in favour of the District include adoption of the referenced parkland disposal bylaw, confirmation of any utility right of way required over the land, and approval by the Subdivision Approving Officer of the subdivision plan. Condition precedents for the benefit of both parties include agreement between the parties on the final form of the Statutory Right of Way to be incorporated within the agreement and signature and deposit of the Subdivision Plan.

An option for the District to buy back the Land for \$1.00 is incorporated into the Agreement. It rides with the Land and applies to future owners.

The option may only be exercised by the District if any of the following occur:

1. The Land is not being used to operate a food bank for six consecutive months;
2. The owner fails to maintain the land or buildings on the land in a good state of maintenance and repair; or
3. 20 years have passed since the option was registered.

The option is exercisable for 80 years or the maximum period allowed by the *Perpetuity Act*, which ever is greater. If the option were exercised, the District would acquire a marketable fee simple lot which could be used by the District in accordance with the site’s zoning, sold, or dedicated as a parkland.

The Agreement also incorporates a Statutory Right of Way (SRW) over the entire lot in favour of the District. This SRW permits the District to enter the property and store vehicles, equipment, materials and other moveable property on the Land. As noted above, the agreement is conditional on the District and FBOE finalizing the SRW terms but the terms must be substantially similar to the SRW incorporated in this agreement. Like the option to purchase, the SRW rides with the Land.

The above references some but not all terms of the Agreement which is attached to this report as Appendix A.

ANALYSIS OF OPTIONS:

A	Approve the Purchase and Sale Agreement	<u>Pros</u>	<ul style="list-style-type: none">• Approves the sale of the Land to the FBOE for their food bank according to the terms of the purchase and sale agreement.• Grants District right to access and store items on the Land.• Grants District option to purchase the property if the lands are not used for operating a food bank for six consecutive months, the land or buildings on the land are not maintained, or 20 years have passed from registration of the option.
		<u>Cons</u>	<ul style="list-style-type: none">• After the lands are transferred to the FBOE, this section of Tugwell Field Park would be closed and public access would be prohibited.

		<u>Implications</u>	<ul style="list-style-type: none"> Staff and Council time will be required to draft and consider the required parkland disposal bylaw. Staff time will be required to conduct the elector approval process required to adopt the parkland disposal bylaw. Some legal costs will be incurred to transfer the Land.
B	Direct Staff to amend the Purchase and Sale Agreement and present it to the FBOE for negotiations	<u>Pros</u>	<ul style="list-style-type: none"> An amended agreement may align better with Council's interests.
		<u>Cons</u>	<ul style="list-style-type: none"> The land transfer may be delayed, which may not meet the FBOE timelines.
		<u>Implications</u>	<ul style="list-style-type: none"> Additional Staff and Solicitor time would be required to renegotiate the agreement.
		<u>Suggested Motion</u>	<p>THAT Council direct Staff to amend the Purchase and Sale Agreement as follows:</p> <ul style="list-style-type: none"> [insert amendment] <p>and present the amended Agreement to the Food Bank on the Edge for negotiation.</p>
C	Do not approve the Agreement	<u>Pros</u>	<ul style="list-style-type: none"> The parkland would not be subject to a sale agreement
		<u>Cons</u>	<ul style="list-style-type: none"> The Food Bank on the Edge would have to find a different site for their new food bank.
		<u>Implications</u>	<ul style="list-style-type: none"> No additional staff or solicitor time would be allocated to the transfer of the Land.
		<u>Suggested Motion</u>	No motion is required.

POLICY OR LEGISLATIVE IMPACTS:

Notice of the proposed land disposition for below market value has been given in accordance with sections 24 and 26 of the *Community Charter*. If the agreement is approved, the parkland disposal bylaw will be presented to Council. Section 27 of the *Community Charter* requires this bylaw to receive elector approval.

NEXT STEPS:

- Mayor and Corporate Officer execute the Agreement
- Introduce the parkland disposal bylaw for Council to consider
- Present options for elector approval to Council for consideration

Respectfully submitted: **Joseph Rotenberg, Manager of Corporate Services**

Appendix A

PURCHASE AND SALE AGREEMENT

THIS AGREEMENT dated for reference November 10, 2023, is

BETWEEN:

DISTRICT OF UCLUELET
200 Main Street
Ucluelet, B.C., V0R 3A0

(the “**District**”)

AND:

FOOD BANK ON THE EDGE (Inc. No. S0043237)
160 Seaplane Base Road
Box 1146
Ucluelet, B.C., V0R 3A0

(the “**Purchaser**”)

WHEREAS:

- A. The District has possession and control of a park dedicated by the deposit of plan VIP76147 and commonly known as Tugwell Park (the “**Park**”);
- B. The District has agreed to transfer the Lands (as defined hereinafter) to the Purchaser for below market value consideration with the intention that the Purchaser will construct and operate a food bank on the Lands (the “**Food Bank**”);
- C. Section 27 of the *Community Charter* of British Columbia authorizes a municipality to dispose of a portion of park land and to deposit the proceeds of disposition in a reserve fund for the purpose of acquiring other park land; and
- D. The District has paid to the Purchaser, and the Purchaser has received from the District, a contribution to the Purchaser in the amount of \$150,000.00 towards costs and expenses incurred by the Purchaser in connection with the construction of the Food Bank on the Lands.

THIS AGREEMENT IS EVIDENCE THAT in consideration of the promises exchanged below and other good and valuable consideration (the receipt and sufficiency of which each party acknowledges), the District and the Purchaser agree with each other as follows:

ARTICLE 1 - DEFINITIONS

1.1 Definitions – In this Agreement, in addition to the words defined in the recitals to it:

- (a) **“Business Day”** means a day other than a Saturday, Sunday, or statutory holiday in B.C.;
- (b) **“Completion Date”** means the date that is 56 days after the fulfillment of all conditions precedent or otherwise mutually agreed to by the parties;
- (c) **“Contaminants”** means:
 - (i) as defined in the *Environmental Management Act*, any biomedical waste, contamination, contaminant, effluent, pollution, recyclable material, refuse, hazardous waste or waste;
 - (ii) matter of any kind which is or may be harmful to human safety or health or to the environment; or
 - (iii) matter of any kind the storage, manufacture, disposal, emission, discharge, treatment, generation, use, transport, release, remediation, mitigation or removal of which is now or is at any time required, prohibited, controlled, regulated or licensed under any Environmental Laws;
- (d) **“District’s Solicitors”** means Young, Anderson, 1616 – 808 Nelson Street, Box 12147, Nelson Square, Vancouver, B.C., V6Z 2H2;
- (e) **“Environmental Law”** means any past, present or future common law or principle, enactment, statute, regulation, order, bylaw or permit, and any requirement, standard or guideline of any federal, provincial or local government authority or agency having jurisdiction, relating to the environment, environmental protection, pollution or public or occupational safety or health;
- (f) **“Governmental Authority”** means any federal, provincial, state, municipal, county, regional or local government or government authority, domestic or foreign, and includes any department, commission, bureau, board, administrative agency or regulatory body of any of the foregoing;
- (g) **“GST”** means any tax levied under Part IX of the *Excise Tax Act* (Canada) as the same may be amended or replaced from time to time, including for certainty, goods and services tax;
- (h) **“Lands”** means that portion of the Park outlined in heavy black on the Subdivision Plan;

- (i) “**LTO**” means the appropriate land title office;
- (j) “**Option to Purchase**” means an option to purchase granted to the District in the form attached as **Schedule “A”** providing that the District may re-purchase the Lands from the Purchaser upon the terms and conditions therein provided;
- (k) “**Parkland Disposal Bylaw**” means a bylaw of the District of Ucluelet, pursuant to section 27 of the *Community Charter*, to dispose of parkland and place the proceeds of disposal to the credit of a reserve under section 188(2)(b) of the *Community Charter*;
- (l) “**Permitted Encumbrances**” means:
 - (i) the exceptions and reservations contained in the original Crown grant and charges and encumbrances that were registered against title to the Lands prior to or concurrently with the Transfer;
 - (ii) the Option to Purchase;
 - (iii) the Statutory Right of Way; and
 - (iv) any utility statutory rights of way, if required;
- (m) “**Purchase Price**” means One Dollar (\$1.00);
- (n) “**Purchaser’s Solicitors**” means CR Lawyers LLP, 1566 Peninsula Road, Ucluelet, B.C., V0R 3A0;
- (o) “**Statutory Right of Way**” means a statutory right of way under section 218 of the *Land Title Act* substantially in the form attached as **Schedule “B”** providing the District with the right to enter upon or use the Lands for storage of park-related equipment and goods;
- (p) “**Subdivision Plan**” means Reference Plan EPP132848 showing the Lands in heavy black, which is to be used to subdivide the Lands from the Park, a copy of which is attached as **Schedule “C”**; and
- (q) “**Transfer**” means a transfer in registerable form transferring the estate in fee simple of the Lands to the Purchaser.

ARTICLE 2 - PURCHASE AND SALE

- 2.1 Purchase and Sale** – The Purchaser will purchase from the District, and the District will sell to the Purchaser, the Lands, free and clear of all registered liens, charges and encumbrances, except for the Permitted Encumbrances, for the Purchase Price, on the terms and conditions of this Agreement.

2.2 Payment of Purchase Price – The Purchaser will pay the Purchase Price, adjusted in accordance with this Agreement, to the District on the Completion Date.

2.3 Valuation – The Purchaser and the District agree that the value of the Lands, for the purposes of calculating any property tax and GST that may be payable, is \$363,177.95.

ARTICLE 3- CONDITIONS PRECEDENT

3.1 Purchaser’s Condition Precedent – The transactions contemplated by this Agreement are conditional upon satisfaction of the following condition precedent, which is for the benefit of the Purchaser and may be waived by the Purchaser in its sole discretion:

- (a) on or before April 30, 2024, the Purchaser will be have satisfied itself as to the environmental condition and suitability of the Lands in their absolute discretion.

In consideration of \$10.00 non-refundable paid by the Purchaser to the District and other good and valuable consideration, the receipt and sufficiency of which are acknowledged by the District, the District agrees to remain bound by the terms and conditions of this Agreement while it remains subject to the condition precedent under this section. If the Purchaser does not give the District notice of its satisfaction or waiver of this condition precedent within the time herein provided, this Agreement will be at an end.

3.2 District’s Condition Precedent – The transactions contemplated by this Agreement are conditional upon satisfaction of the following conditions precedent, which is for the benefit of the District and may not be waived:

- (a) on or before April 30, 2024, Council of the District of Ucluelet, in its sole discretion, will have adopted the Parkland Disposal Bylaw;
- (b) on or before January 31, 2024, Council of the District of Ucluelet, in its sole discretion, will have approved of this Agreement;
- (c) on or before January 31, 2024, the District of Ucluelet will have given notice of its intention to dispose of the Lands for less than market value in accordance with sections 24 and 26 of the *Community Charter*;
- (d) on or before April 30, 2024, the District of Ucluelet will have confirmed if any utility statutory right(s) of ways are required over the Lands, and, if any are required, all parties required to sign the associated utility statutory right(s) of way will have signed them; and
- (e) on or before April 30, 2024, the District’s approving officer will have approved the Subdivision Plan.

In consideration of \$10.00 non-refundable paid by the District to the Purchaser and other good and valuable consideration, the receipt and sufficiency of which are acknowledged by the Purchaser, the Purchaser agrees to remain bound by the terms and conditions of this Agreement while it remains subject to the conditions precedent under this section. If the District does not give the Purchaser notice of its satisfaction or waiver of these conditions precedent within the time herein provided, this Agreement will be at an end.

3.3 Mutual Conditions Precedent – The transactions contemplated by this Agreement are conditional upon satisfaction of the following conditions precedent, which are for the benefit of both parties and may not be waived:

- (a) on or before April 30, 2024, the Purchaser and the District will have agreed on the final form of the Statutory Right of Way; and
- (b) on or before April 30, 2024, all parties who are required to sign the application to deposit the Subdivision Plan shall have signed the application to deposit the Subdivision Plan.

The District and the Purchaser agree the conditions precedent in this section are for the benefit of both parties and may not be waived, but may be extended by mutual agreement, in writing. In consideration of \$10.00 non-refundable paid by the District to the Purchaser and by the Purchaser to the District and other good and valuable consideration, the receipt and sufficiency of which are acknowledge by the parties, the parties mutually agree not to revoke their acceptance of this Agreement while it remains subject to the conditions precedent under this section. If the conditions precedent in this section are not fulfilled or waived within the time provided herein, this Agreement will automatically terminate and the parties will have no further obligations to each other under this Agreement or the transaction contemplated herein.

3.4 No Derogation – Nothing contained or implied in this Agreement will impair or affect the District’s rights and powers in the exercise of its functions pursuant to the *Community Charter* (British Columbia) or any other enactment and all such powers and rights may be fully exercised in relation to the Lands as if this Agreement had not been entered into. The Purchaser acknowledges that fulfillment of the conditions precedent set out in this Article 3 may require that the approving officer for the District approve the Subdivision Plan and that such approval is within the sole discretion of the approving officer, exercised in accordance with applicable enactments, and is not in any manner subject to the provisions of this Agreement.

ARTICLE 4- TRANSFER

- 4.1 Title and Possession** – On the Completion Date, the District will convey the estate in fee simple of the Lands to the Purchaser free and clear of all liens, charges, and encumbrances except for the Permitted Encumbrances.
- 4.2 Statutory Right of Way and Option to Purchase** – On the Completion Date, the Purchaser will grant to the District the Statutory Right of Way and Option to Purchase and will cause the Statutory Right of Way and Option to Purchase to be registered against title to the Lands with priority over all financial charges and encumbrances.
- 4.3 Adjustments** – The District and the Purchaser agree that there shall be no adjustments usually the subject of adjustments between a vendor and purchaser in connection with the purchase and sale of land between the parties.
- 4.4 Closing Documents** –
- (a) No later than ten (10) days before the Completion Date, the Purchaser will cause the Purchaser’s Solicitors to deliver to the District’s Solicitors, duly executed by the Purchaser and in a form registrable in the LTO, as applicable:
- (i) the Transfer, to be approved and executed by the District;
 - (ii) the Statutory Right of Way, to be executed by the District;
 - (iii) the Option to Purchase, to be executed by the District;
 - (iv) the District’s statement of adjustments, to be executed by the District;
 - (v) if applicable, a GST certificate indicating the Purchaser’s GST registration number; and
 - (vi) such further deeds, acts, things, certificates and assurances as may be requisite in the reasonable opinion of the Purchaser’s Solicitors for more perfectly and absolutely assigning, transferring, conveying and assuring to and vesting in the Purchaser, title to the Lands free and clear of any tenancy, judgement, lien, claim, charge, encumbrance, or legal notation other than the Permitted Encumbrances as contemplated herein.
- (b) Before the Completion Date, the District will cause the District’s Solicitors to deliver to the Purchaser’s Solicitors the documents in section 4.4(a) above, along with:
- (i) a certified copy of the Parkland Disposition Bylaw; and

- (ii) Form 17 to raise title to the Lands;

each executed on behalf of the District, on undertakings satisfactory to the District's Solicitors and the Purchaser's Solicitors, both acting reasonably.

4.5 Completion –

- (a) On or before the Completion Date, after receipt by the Purchaser's Solicitors of the documents and items referred to in section 4.4(b), the Purchaser will pay to the Purchaser's Solicitors, in trust, the amount payable under section 2.2.
- (b) On the Completion Date, forthwith after the payment of the amount as provided in section 4.5(a) and after receipt from the District's Solicitors of the documents under section 4.4(b), the Purchaser will cause the Purchaser's Solicitors to file in the LTO the following documents in the following order as an "all or nothing" package for registration:
 - (i) the application to deposit the Subdivision Plan;
 - (ii) the declaration attaching the certified copy of the Parkland Disposal Bylaw;
 - (iii) the Subdivision Plan;
 - (iv) Form 17 to raise title to the Lands;
 - (v) the Transfer;
 - (vi) the Statutory Right of Way; and
 - (vii) the Option to Purchase.
- (c) Upon the Purchaser's Solicitors obtaining a post-application for registration search of title to Lands that shows that in the normal course of land title office routine the Purchaser will be the registered owner in fee simple of the Lands subject only to the Permitted Encumbrances, the Statutory Right of Way and the Option to Purchase, the Purchaser shall cause the Purchaser's Solicitors to send to the District's Solicitors by WIRE TRANSFER the amount of the Purchase Price.

The requirements of this section 4.5 are concurrent requirements and this transaction will not be considered to be complete until everything required to be done by this section 4.5 is done.

- 4.6 Risk** – The Lands will be at the District’s risk until 12:01 a.m. on the Completion Date and at the Purchaser’s risk thereafter.

ARTICLE 5 - REPRESENTATIONS, WARRANTIES, COVENANTS AND AGREEMENTS

- 5.1 Purchaser’s Representations, Warranties and Covenants** – The Purchaser hereby represents and warrants to the District that the following are true, and covenants with the District that the following will be true on the Completion Date:

- (a) the Purchaser has the power and capacity to enter into and carry out the transaction provided for in this Agreement;
- (b) neither the Purchaser entering into this Agreement nor the performance of its terms will result in the breach of or constitute a default under any term or provision of any enactment, indenture, mortgage, deed of trust or other agreement to which the Purchaser is bound or subject;
- (c) there is no claim, action, proceeding, or investigation pending, or to the Purchaser's knowledge threatened, against the Purchaser before any court, arbitrator, arbitration panel, administrative tribunal or agency which, if decided adversely to the Purchaser, might materially affect the Purchaser's ability to perform its obligations hereunder;
- (d) the Purchaser has taken all necessary or desirable actions, steps and other proceedings to approve or authorize, validly and effectively, the entering into, and the execution, delivery and performance of this Agreement; and
- (e) the Purchaser is a society that is duly incorporated and validly existing under its jurisdiction of incorporation, is in good standing under the legislation governing it, and has made all filings required under such legislation.

- 5.2 Acknowledgments and Agreements of the Purchaser** – The Purchaser acknowledges and agrees that:

- (a) the District sells and the Purchaser purchases the Lands on an “as is, where is” basis and condition;
- (b) the District has not made any representations, warranties, or agreements as to the condition or quality of the Lands, including as to:
 - (i) the subsurface nature or condition of the Lands (including soil type, hydrology and geotechnical quality or stability);
 - (ii) the environmental condition of the Lands (including regarding Contaminants in, on, under or migrating to or from the Lands) or

regarding the compliance of the Lands, or past or present activities on it, with any Environment Laws; or

- (iii) the suitability of the Lands for any particular use or development;
- (c) it is the sole responsibility of the Purchaser to satisfy itself with respect to the matters referred to in section 5.2(b) including by conducting any reports, tests, investigations, studies, audits and other enquiries that the Purchaser, in its sole discretion, considers prudent;
- (d) the Purchaser has not relied, and will not rely, upon any documentation or information regarding the Lands that may have been provided by or on behalf of the District to the Purchaser prior to the Purchaser's execution of this Agreement or that may be provided following such execution and the Purchaser hereby releases the District from any and all liability associated with its use or reliance upon any documentation or information provided at any time to the Purchaser by the District or any of its elected and appointed officials, employees, contractors, or agents; and
- (e) following the transfer of the Lands to the Purchaser, the Purchaser, and not the District, will be responsible for all costs and expenses normally associated with registered fee simple ownership of land, including, but not limited to, property taxes, utilities, and maintenance associated with the Lands.

5.3 Release and Indemnity – Effective from and after the Completion Date:

- (a) the Purchaser assumes and is solely responsible for, and releases the District (and its elected and appointed officials, employees, contractors, and agents) from and against, any and all actions, causes of action, liabilities, demands, claims, losses, damages, costs (including remediation costs (as defined in the *Environmental Management Act* (British Columbia)), the costs of complying with any Environmental Laws and any consultant and legal fees, costs and disbursements), expenses, fines and penalties whether occurring, incurred, accrued or caused before, on or after the Completion Date, which the Purchaser or any other person has or may have arising out of or in any way related to or in connection with the Lands, including the presence of Contaminants in, on, under or migrating to or from the Lands, and any mandatory or voluntary remediation, mitigation or removal of any Contaminants;
- (b) the Purchaser will indemnify and save harmless the District (and its elected and appointed officials, employees, contractors, and agents) from and against any and all actions, causes of action, liabilities, demands, claims, losses, damages, costs (including remediation costs, as defined in the *Environmental Management Act* (British Columbia), the costs of complying with any

Environmental Laws and any consultant and legal fees, costs and disbursements), expenses, fines and penalties whether occurring, incurred, accrued or caused before, on or after the Completion Date, which the District, or its elected or appointed officials, employees, contractors or agents, may suffer, incur, be subject to or liable for, whether brought against any one or more of them by the Purchaser or any other person, or any Governmental Authority or agency, arising out of or in any way related to or in connection with the Lands, including the presence of Contaminants in, on, under or migrating to or from the Lands, and any mandatory or voluntary remediation, mitigation or removal of any Contaminants;

- (c) without limiting the rest of this section 5.3, for the purpose of allocation of remediation costs pursuant to the *Environmental Management Act* (British Columbia), including and after the Completion Date, the Purchaser will be, as between the District and the Purchaser, solely responsible for the costs of any mandatory or voluntary remediation of the Lands under that Act and this binds the Purchaser with respect to any allocation of remediation costs, as defined by that Act, by any procedure under that Act; and
- (d) the District has not made any representations, warranties, or agreements with the Purchaser as to whether or not any GST is payable by the Purchaser in respect of the sale of the Lands to the Purchaser.

5.4 Site Profile – The Purchaser hereby waives delivery by the District of a site profile under the *Environmental Management Act* (British Columbia).

5.5 District’s Representations, Warranties and Covenants –

- (a) The District hereby represents and warrants to the Purchaser that, to the best of the District’s knowledge, the following are true, and covenants with the Purchaser that from the date of this Agreement that the following will be true on the Completion Date:
 - (i) on the Completion Date, the District will not have any indebtedness to any person, business, company, or Governmental Authority which by operation of law or otherwise then constitutes a lien, charge, or encumbrance on the Lands or which could affect the right of the Purchaser to own, occupy, and obtain revenue from the Lands and/or the Food Bank, except for the Permitted Encumbrances;
 - (ii) there is no claim or litigation pending or, to the actual knowledge of the District (without any investigation), threatened with respect to the Lands, and/or the occupancy or use thereof which could affect the right of the Purchaser to own, occupy, and obtain revenue therefrom and/or

the ability of the District to perform its obligations under this Agreement;

ARTICLE 6 - MISCELLANEOUS

- 6.1 Fees and Taxes** – The Purchaser will pay, as and when due and payable:
- (a) any property transfer tax payable under the *Property Transfer Tax Act* (British Columbia) in connection with the sale of the Lands to the Purchaser;
 - (b) LTO registration fees in connection with the registration of the Transfer, Statutory Right of Way, Option to Purchase, and mortgage (if applicable);
 - (c) its own legal fees and disbursements, with the District being responsible for its own legal fees and disbursements;
 - (d) any GST payable under the *Excise Tax Act* (Canada) in respect of the sale of the Lands to the Purchaser and any other amount payable by the Purchaser under this Agreement, with the Purchaser and the District agreeing that the Purchase Price does not include GST; and
 - (e) fees incurred by the District or the District’s Solicitors associated with the transfer of funds from the Purchaser or their solicitors to the District or their Solicitors by wire transfer.
- 6.2 GST** – The Purchaser represents that the Purchaser is not registered under the *Excise Tax Act* (Canada) for the purposes of the GST, and the Purchaser shall, on the Completion Date, pay to the District the GST payable in respect of the purchase of the Lands. The Purchaser shall indemnify and save harmless the District from and against any and all claims, demands, actions, or causes of action and all losses, costs, liabilities, and expenses that may be suffered or incurred by the District in respect of any GST payable in respect of the sale of the Lands.
- 6.3 Preparation of Conveyancing Documents** – The Purchaser will, at its expense, prepare all necessary conveyancing documentation, including the Transfer.
- 6.4 Access** – The Purchaser, its agents and employees have a licence to enter upon the Lands from time to time prior to the Completion Date, at the Purchaser’s sole risk and expense, for the purpose of making inspections, surveys, tests and studies of the Lands. The Purchaser agrees to:
- (a) release and indemnify, and hold harmless, the District from and against any and all actions, causes of actions, liability, demands, losses, costs, and expenses (including legal fees and disbursements) which the District or any third party may suffer, incur, be subject to or liable for, arising out of or in any

way related to or in connection with the exercise by the Purchaser of its rights under this section 6.4; and

- (b) with respect to carrying out the described purpose, leave the Lands in the same condition as that in which the Purchaser found the Lands, including by removing any equipment, refuse or other matter brought onto the Lands by the Purchaser or its agents or contractors.

6.5 Further Assurances – The parties will execute and deliver all such further documents, deeds and instruments, and do and perform such other acts, as may be reasonably necessary to give full effect to the intent and meaning of this Agreement.

6.6 Notice – Any notice, direction, demand, approval, certificate or waiver (any of which constitutes a “Notice” under this section) which may be or is required to be given under this Agreement will be in writing and be delivered or sent by email transmission as follows:

- (a) To the Purchaser:

Food Bank on the Edge
160 Seaplane Base Road
Box 1146
Ucluelet, British Columbia, V0R 3A0

Email Address: foodbankedge@gmail.com
Attention: Food Bank on the Edge Society

And

Email Address: cmartinashbee@gmail.com
Attention: Cris Martin

With a copy to the Purchaser’s Solicitors:

CR Lawyers LLP
1566 Peninsula Road
Ucluelet, British Columbia, V0R 3A0

Email Address: cstewart@crlawyers.ca
Attention: Craig Stewart

- (b) To the District:

District of Ucluelet
200 Main Street

Ucluelet, British Columbia, V0R 3A0

Email Address: jrotenberg@ucluelet.ca
Attention: Joseph Rotenberg

With a copy to the District's Solicitors:

Young, Anderson
1616 – 808 Nelson Street
Vancouver, British Columbia, V6Z 2H2

Email Address: grochenkov@younganderson.ca
Attention: Serge Grochenkov

or to such other address or email address of which notice has been given as provided in this section. Any Notice that is delivered is to be considered given on the day it is delivered and any Notice sent by email is to be considered delivered on the day it is sent, except that if, in either case, that day is not a Business Day, the Notice is considered to be given on the next Business Day.

6.7 No Effect on Powers – For clarity, this Agreement does not, and nothing herein will:

- (a) affect or limit the discretion, rights, duties or powers of the District or the approving officer for the District under the common law or any statute, bylaw or other enactment nor does this Agreement create or give rise to, nor do the parties intend this Agreement to create, any implied obligations concerning such discretionary rights, duties or powers;
- (b) affect or limit the common law or any statute, bylaw or other enactment applying to the Purchaser or the Lands; or
- (c) relieve the Purchaser from complying with any common law or any statute, regulation, bylaw or other enactment.

6.8 Time of Essence – Time is of essence in this Agreement and the conveyance and transfer for which it provides.

6.9 Interpretation – In this Agreement:

- (a) all dollar amounts referred to in this Agreement are Canadian dollars;
- (b) reference to the singular includes a reference to the plural, and vice versa, unless the context requires otherwise;

- (c) article and section headings have been inserted for ease of reference only and are not to be used in interpreting this Agreement;
- (d) the term “enactment” has the meaning given to it under the *Interpretation Act* (British Columbia) on the reference date of this Agreement;
- (e) reference to any enactment is a reference to that enactment as consolidated, revised, amended, re-enacted or replaced from time to time, unless otherwise expressly provided;
- (f) reference to a particular numbered section or article, or to a particular lettered Schedule, is a reference to the correspondingly numbered or lettered article, section or Schedule of this Agreement and any Schedules to this Agreement form part of this Agreement; and
- (g) where the word “including” is followed by a list, the contents of the list are not intended to circumscribe the generality of the expression preceding the word “including”.

6.10 Tender – Any tender of documents or money may be made upon the parties at their respective addresses set out in this Agreement or upon their respective solicitors.

6.11 Entire Agreement – This Agreement is the entire agreement between the parties regarding its subject and it terminates and supersedes all other representations, warranties, promises and agreements regarding its subject except as otherwise contemplated herein.

6.12 Assignment – The District and the Purchaser agree that the Purchaser shall not assign this Agreement to any person without the prior written consent of the District, which consent may be withheld in the District’s sole discretion.

6.13 Schedules – The following are Schedules to this Agreement and form an integral part of this Agreement:

- Schedule A – Option to Purchase
- Schedule B – Statutory Right of Way
- Schedule C – Subdivision Plan

6.14 Modification – This Agreement may not be modified except by an instrument in writing signed by the parties, except that the Completion Date may be changed by their agreement through their respective solicitors upon instructions to their solicitors as evidenced promptly thereafter in writing by their solicitors.

6.15 Governing Law – This Agreement will be governed by and construed in accordance with the laws of British Columbia and the federal laws of Canada as applicable.

6.16 Non-Merger – None of the provisions of this Agreement will merge in the transfer of the Lands or any other documents delivered on the Completion Date and the provisions of this Agreement will survive the completion of the purchase and sale transaction under this Agreement.

This area is intentionally left blank.

6.17 Counterparts – This Agreement may be executed in multiple counterparts, each of which is deemed to be an original and all of which together constitute one and the

same agreement.

As evidence of their agreement to be bound by the above terms and conditions, the parties have executed this Agreement below on the dates set out below.

DISTRICT OF UCLUELET

by its authorized signatory(ies):

Signature: _____

Name: _____

Position: _____

Date: _____

Signature: _____

Name: _____

Position: _____

Date: _____

FOOD BANK ON THE EDGE (Inc. No. S0043237)

by its authorized signatory(ies):

Signature: _____

Name: _____

Date: _____

Signature: _____

Name: _____

Date: _____

SCHEDULE "A"

[Option to Purchase begins on subsequent page.]

TERMS OF INSTRUMENT – PART 2

OPTION TO PURCHASE

THIS AGREEMENT dated for reference November 10, 2023, is

BETWEEN:

DISTRICT OF UCLUELET

200 Main Street
Ucluelet, B.C., V0R 3A0

(the “**District**”)

AND:

FOOD BANK ON THE EDGE (Inc. No. S0043237)

160 Seaplane Base Road
Box 1146
Ucluelet, B.C., V0R 3A0

(the “**Owner**”)

WHEREAS:

- A. The Owner is the registered owner in fee simple of the lands, and all improvements thereto, legally described in Item 2 of Part 1 of the *Land Title Act* Form C attached to and forming part of this Agreement (the “**Lands**”); and
- B. Pursuant to a Purchase and Sale Agreement between the Owner and the District dated for reference November 10, 2023, the District agreed to sell the Lands to the Owner on the condition that the Owner grant to the District an option to re-purchase the Lands on the terms set out in this Agreement.

THIS AGREEMENT IS EVIDENCE that in consideration of the promises exchanged below and other good and valuable consideration (the receipt and sufficiency of which the Owner acknowledges), the Owner and the District covenant and agree with each other as follows:

ARTICLE 1 – DEFINITIONS

1.1 Definitions – In this Agreement, in addition to the words defined in the recitals:

- (a) “**Building**” means the building or buildings on the Lands, if any;

- (b) **“Business Day”** means a day other than a Saturday, Sunday, or statutory holiday in B.C.;
- (c) **“District’s Solicitors”** means Young, Anderson;
- (d) **“Completion Date”** means the date set out in section 4.3;
- (e) **“Contaminants”** means:
 - (i) as defined in the *Environmental Management Act* (British Columbia), any biomedical waste, contamination, contaminant, effluent, pollution, recyclable material, refuse, hazardous waste or waste;
 - (ii) matter of any kind which is or may be harmful to human safety or health or to the environment; or
 - (iii) matter of any kind the storage, manufacture, disposal, emission, discharge, treatment, generation, use, transport, release, remediation, mitigation or removal of which is now or is at any time required, prohibited, controlled, regulated or licensed under any Environmental Laws;
- (f) **“Environmental Law”** means any past, present or future common law or principle, enactment, statute, regulation, order, bylaw or permit, and any requirement, standard or guideline of any federal, provincial or local government authority or agency having jurisdiction, relating to the environment, environmental protection, pollution or public or occupational safety or health;
- (g) **“food bank”** means a non-profit organization that operates with the exclusive intent of feeding the hungry;
- (h) **“Governmental Charges”** includes all taxes, customs, duties, rates, levies, assessments, re-assessments and other charges, together with all penalties, interests and fines with respect thereto, payable to any federal, provincial, local or other government or governmental agency, authority, board, bureau or commission, domestic or foreign;
- (i) **“GST”** means any tax levied under Part IX of the *Excise Tax Act* (Canada) as the same may be amended or replaced from time to time, including for certainty, goods and services tax;
- (j) **“GST Certificate”** means the certificate referred to in section 5.4;

- (k) **“Lands”** means the lands in the District of Ucluelet, British Columbia legally described in item 2 of the *Land Title Act* Form C to which this Agreement is attached;
- (l) **“LTO”** means the appropriate land title office;
- (m) **“Option”** means the option to purchase the Lands and the Building granted by the Owner to the District under section 2.1;
- (n) **“Option Price”** means the option price in the amount of One Dollar (\$1.00);
- (o) **“Owner”** includes the successors in title of the Owner;
- (p) **“Owner’s Solicitors”** means CR Lawyers LLP;
- (q) **“Permitted Encumbrances”** means the exceptions and reservations contained in the original Crown grant and charges and encumbrances that were registered against title to the Lands prior to or concurrently with the registration of this Agreement;
- (r) **“Purchase Price”** means One Dollar (\$1.00); and
- (s) **“Transfer”** means a transfer in registrable form transferring the estate in fee simple of the Lands to the District.

ARTICLE 2 – GRANT OF OPTION

- 2.1 Grant of Option** – In consideration of the payment of the Option Price by the District to the Owner, the Owner hereby grants to the District the sole, exclusive, and irrevocable option to purchase the Lands, including the Building and all improvements whether installed or placed by the Owner or otherwise, free and clear of all liens, charges, and encumbrances, except for the Permitted Encumbrances. The District will pay the Option Price to the Owner upon full and final registration of this Agreement in the LTO. For clarity, the Owner agrees that the Owner will receive no additional compensation for any Building or improvements that the Owner may have installed or placed on the Lands, even if such installation was performed at the Owner’s expense.

ARTICLE 3 – EXERCISE OF OPTION

- 3.1 Exercise of Option** – Subject to section 3.2, the District may exercise the Option at any time following the date of registration of this Agreement in the LTO (the “**Registration Date**”) by delivering notice of the exercise of the Option to the Owner.
- 3.2 Restriction on Exercise of Option** – Notwithstanding section 3.1, the District may not exercise the Option:
- (a) unless the Lands are not being used for the purposes of operating a food bank for a consecutive period of six (6) months;
 - (b) unless the Owner fails to maintain the Lands and the Building, including any improvements, in a good state of maintenance and repair as determined by the District in its sole discretion acting reasonably; or
 - (c) until 12:01 a.m. on the 20th anniversary of the Registration Date.
- 3.3 Non-Exercise of Option** – If the Option is not exercised within 80 years following the Registration Date or the maximum perpetuity period allowed for the Option by the *Perpetuity Act* (British Columbia), whichever is later, the Option and this Agreement will be null and void and no longer binding on the Owner, and the District will, on request by the Owner, execute a release of this Agreement so as to discharge this Agreement from title to the Lands, which release shall be prepared and registered by and at the expense of the Owner.

ARTICLE 4 – COMPLETION

- 4.1 Binding Agreement** – If the District exercises the Option, this Agreement will become a binding contract for the purchase and sale of the Lands and the Building on the terms and conditions of this Agreement and the Owner covenants and agrees to transfer and convey the estate in fee simple of the Lands and the Building to the District in accordance with the terms and conditions of this Agreement.
- 4.2 Purchase and Sale** – If the District exercises the Option, the District will purchase from the Owner, and the Owner will sell to the District, the Lands, including all the improvements thereon and the Building, for the Purchase Price on the Completion Date.
- 4.3 Completion Date** – If the District exercise the Option under Article 3, the Completion Date will be the date that is twenty-eight (28) days after the date on which the District exercises the Option, except if that date is not a Business Day then the Completion Date will be the next Business Day.
- 4.4 Title and Possession** – On the Completion Date, the Owner will:

- (a) transfer and convey the Building and the estate in fee simple of the Lands to the District free and clear of all liens, claims, charges, encumbrances, and legal notations, except for the Permitted Encumbrances; and
- (b) give vacant possession of the Building and the Lands to the District, subject only to the Permitted Encumbrances.

4.5 Adjustments – All adjustments to the Purchase Price in respect of the Lands, both incoming and outgoing, usually the subject of adjustments between a vendor and a purchaser in connection with the purchase and sale of land, including adjustments of property taxes, utilities, and rents, must be made up to and including the Completion Date.

4.6 Risk – The Lands will be at the Owner’s risk until 12:01 a.m. on the Completion Date and at the District’s risk thereafter.

ARTICLE 5 – CLOSING PROCEDURE

5.1 Closing Documents – No later than five (5) days before the Completion Date, the District must cause the District’s Solicitors to deliver to the Owner’s solicitors, duly executed by the District and in registerable form where applicable:

- (a) the Transfer, to be approved and executed by the Owner;
- (b) a statutory declaration of the Owner certifying that the Owner is not a “non-resident” within the meaning under the *Income Tax Act* (Canada), to be executed by the Owner;
- (c) the Owner’s statement of adjustments, to be executed by the Owner;
- (d) the GST Certificate; and
- (e) such further deeds, acts, things, certificates, and assurances as may be required in the reasonable opinion of the District’s solicitors, for more perfectly and absolutely assigning transferring, conveying and assuring to the District fee simple title to the Lands free and clear of all liens, charges, and encumbrances, other than the Permitted Encumbrances.

Before the Completion Date, the Owner’s Solicitors will return to the District’s Solicitors all of the documents delivered to the Owner pursuant to this section, each duly executed by the Owner as provided for in this section.

5.2 Completion – On the Completion Date, the District will cause the District’s Solicitors to apply to the LTO to register the Transfer and upon the District’s Solicitors being satisfied after such application that there are no transfers, liens, charges, or encumbrances, other

than the Transfer and the Permitted Encumbrances, registered or pending registration against title to the Lands, the District will cause the District's Solicitors to deliver a solicitor's trust cheque in the amount of the Purchase Price adjusted as provided for herein payable to the Owner's Solicitors, in trust.

The parties agree that all the requirements of this section are concurrent requirements and that the transaction of purchase and sale contemplated under this Agreement will not be considered to be complete until everything required to be done by this section is done.

5.3 Fees and Taxes – The District shall pay, as and when due and payable:

- (a) any property transfer tax payable under the *Property Transfer Tax Act* (British Columbia) in respect of the Transfer;
- (b) LTO registration fees in connection with the registration of the Transfer; and
- (c) its own legal fees and disbursements, with the Owner being responsible for its own legal fees and disbursements.

5.4 GST Certificate – The District will give the Owner a certificate, in the form attached as Appendix A, confirming that the District is registered for GST purposes under the *Excise Tax Act* (Canada) and confirming that the District will remit directly all GST payable in respect of the transfer and conveyance of the Lands to the District.

5.5 Preparation of Documents and Clearing Title – The District will, at its expense, prepare all necessary conveyancing documentation, including the Transfer. The Owner will, at its expense, clear title to the Lands, subject only to the Permitted Encumbrances.

5.6 Access – The District, and its contractors, agents, advisors and employees, have a licence, exercisable on forty-eight (48) hours' prior written notice to the Owner, to enter on the Lands from time to time prior to the Completion Date, at the District's sole risk and expense, for the purpose of making such inspections, surveys, tests, studies and investigations on the Lands as the District may reasonably require and in so doing the District will indemnify and hold harmless the Owner of all costs, charges, expenses, liens, losses or demands suffered as a result of the District's exercise of its rights under this section 5.6.

ARTICLE 6 – OWNER'S COVENANTS, REPRESENTATIONS, AND WARRANTIES

6.1 Owner's Representations and Warranties – The Owner represents and warrants to the District that, to the best of the Owner's knowledge, the following are true and covenants with the District that the following will be true on the Completion Date:

- (a) the Owner has the legal capacity, power and authority to perform all of the Owner's obligations under this Agreement;
- (b) the Owner has good and marketable legal and beneficial title to the Lands, free and clear of all liens, claims, charges, encumbrances and legal notations, statutory or otherwise, except for the Permitted Encumbrances;
- (c) the Owner is not a non-resident of Canada for the purposes of the *Income Tax Act* (Canada);
- (d) the Owner has taken all necessary or desirable actions, steps and other proceedings to approve or authorize, validly and effectively, the entering into, and the execution, delivery and performance of this Agreement and the sale and transfer of the Lands by the Owner to the District;
- (e) except as otherwise disclosed to the District, there is no action, suit, claim, litigation or proceeding pending or to the Owner's knowledge threatened against the Owner or in respect of the Lands or the use or occupancy of the Lands before any court, arbitrator, arbitration panel or administrative tribunal or agency that, if decided adversely to the Owner, might materially affect the Owner's ability to perform any of the Owner's obligations under this Agreement and no state of facts exist that could constitute the basis of any such action, suit, claim, litigation or proceeding;
- (f) neither the Owner entering into this Agreement nor the performance by the Owner of the terms hereof will result in the breach of or constitute a default under any term or provision of any instrument, mortgage, deed of trust, lease, document or agreement to which the Owner is bound or subject;
- (g) there is no present or future obligation to construct or provide, or to pay any amount to any person in connection with, off-site services, utilities or similar services in connection with the Building or the Lands;
- (h) the Owner has complied with all Environmental Laws in its use of the Lands and, during the period that the Owner has owned the Lands, the Owner has not caused or permitted any Contaminants to be introduced other than in accordance with applicable laws;
- (i) there is no liability, contingent or otherwise, for Governmental Charges in respect of the Lands;
- (j) the Owner is duly incorporated, validly existing and in good standing under the laws of the jurisdiction of its incorporation and has made all necessary filings required by such laws;

- (k) there are no debts due or owing for any work, labour, service or materials provided to or performed on the Lands under which a lien or charge has arisen or could arise under the *Builders Lien Act* (British Columbia).

6.2 Owner's Covenants – The Owner covenants and agrees that it will, from and after the Registration Date to the Completion Date:

- (a) take all reasonable care to protect and safeguard the Lands and operate and otherwise deal with the Lands as a careful and prudent owner would do and in such a manner that the Owner's representations and warranties under this Agreement remain true and correct;
- (b) not use or permit to be used all or any part of the Lands for the sale, storage, manufacture, handling, disposal, use or any other dealing with any Contaminants, including the placement on the Lands of any fill containing any Contaminants;
- (c) strictly comply, and cause any person for whom it is in law responsible to comply, with all Environmental Laws regarding the use and occupancy of the Lands; and
- (d) maintain in full force and effect insurance coverage in respect of the Lands against such risk and to such limits as are in accordance with prudent business practice and suitable to the Lands.

6.3 Owner's Indemnity – The Owner agrees to indemnify and save harmless the District and its elected officials, officers, employees, agents, and others from all losses, actions, demands, claims, expenses and harm of any kind which the District or its elected officials, officers, employees, agents or others may directly or indirectly suffer in relation to environmental contamination of or from the Lands caused or occurring before the Completion Date, and this indemnity will survive the transfer of the Lands to the District.

6.4 No Encumbrances – The Owner shall not grant or register or permit any new encumbrances of any kind on the Lands which affect or may affect the Lands unless the Owner has obtained the prior written consent of the District to such encumbrance, with such consent being in the sole discretion of the District.

ARTICLE 7 – GENERAL

7.1 Currency and Payment Obligations – All dollar amounts referred to in this Agreement are Canadian dollars.

7.2 Time – Time is of essence of this Agreement and the conveyance and transfer for which it provides.

- 7.3 Tender** – Any tender of documents or money may be made upon the parties at their respective addresses set out in this Agreement or upon their respective solicitors.
- 7.4 Joint and Several Liability** – If at any time more than one person (as defined in the *Interpretation Act* (British Columbia)) owns the Lands, each of those persons will be jointly and severally liable for all of the obligations of the Owner under this Agreement.
- 7.5 Equitable Remedies** – The Owner acknowledges that a breach of its obligation to convey and transfer the Lands to the District subject only to the Permitted Encumbrances will result in loss to the District and that the District may not be adequately compensated for such loss by monetary award. Accordingly, in the event of any such breach, in addition to all of the remedies available to the District, at law or in equity, the Owner agrees that the District will be entitled as a matter of right to apply to a court of competent jurisdiction for such relief by way of specific performance or other equitable remedies, as may be appropriate to ensure compliance with the provisions of this Agreement.
- 7.6 Notice** – Any notice, direction, demand, approval, certificate or waiver (any of which constitutes a “Notice” under this section) which may be or is required to be given under this Agreement will be in writing and be delivered as follows:

(a) To the Owner:

Food Bank on the Edge
160 Seaplane Base Road
Box 1146
Ucluelet, British Columbia, V0R 3A0

With a copy to the Owner’s Solicitors:

CR Lawyers LLP
1566 Peninsula Road
Ucluelet, British Columbia, V0R 3A0

(b) To the District:

District of Ucluelet
200 Main Street
Ucluelet, British Columbia, V0R 3A0

Attention: Municipal Clerk

With a copy to the District’s Solicitors:

Young, Anderson
1616 – 808 Nelson Street

Vancouver, British Columbia, V6Z 2H2

or to such other address or email address of which notice has been given as provided in this section. Any Notice that is delivered is to be considered given on the day it is delivered and any Notice sent by email is to be considered delivered on the day it is sent, except that if, in either case, that day is not a Business Day, the Notice is considered to be given on the next Business Day.

- 7.7 Survival of Representations and Warranties** – All representations, warranties, covenants, and agreements made by the parties will survive the Completion Date and the transfer of the Lands to the District.
- 7.8 Entire Agreement** – This Agreement is the entire Agreement between the parties regarding its subject and it terminates and supersedes all representations, warranties, promises and agreements regarding its subject except as otherwise contemplated herein.
- 7.9 Benefit** – This Agreement enures to the benefit of and is binding upon the parties and their respective heirs, executors, administrators, successors and assigns.
- 7.10 Runs with the Lands** – Every obligation and covenant of the Owner in this Agreement constitutes both a contractual obligation and an option to purchase in respect of the Lands and this Agreement burdens the Lands and runs with it and binds the successors in title to the Lands until discharged by an instrument in writing duly executed by the District and filed at the appropriate Land Title Office. This Agreement burdens and charges all of the Lands and any parcel into which the Lands are subdivided by any means and any parcel into which the Lands are consolidated (including by removal of interior parcel boundaries) and shall be extended, at the Owner's cost, to burden and charge any land consolidated with the Lands.
- 7.11 Further Assurances** – Each of the parties hereto shall, with reasonable diligence, do all such things and provide all such reasonable assurances and assistance as may be required to consummate the transactions contemplated hereby and each such party shall provide such further documents or instruments required by any other party as may reasonably be necessary or desirable to give effect to the terms and purpose of this Agreement and carry out its provisions, before or after the Completion Date.
- 7.12 No Public Law Duty** – Whenever in this Agreement the District is required or entitled by the terms hereof to exercise any discretion in the granting of consent or approval, or is entitled to make any determination, take any action or exercise any contractual right or remedy, the District may do so in accordance with the contractual provisions of this Agreement and no public law duty, whether arising from the principles of procedural fairness or the rules of natural justice or otherwise, shall have any application.
- 7.13 Governing Law** – This Agreement will be governed by and construed in accordance with the laws of British Columbia and the federal laws of Canada as applicable.

7.14 No Effect on Powers – For clarity, this Agreement does not, and nothing herein will:

- (a) affect or limit the discretion, rights, duties or powers of the District or the approving officer for the District under the common law or any statute, bylaw or other enactment nor does this Agreement create or give rise to, nor do the parties intend this Agreement to create, any implied obligations concerning such discretionary rights, duties or powers;
- (b) affect or limit the common law or any statute, bylaw or other enactment applying to the Lands; or
- (c) relieve the Owner from complying with any common law or any statute, regulation, bylaw or other enactment.

7.15 Interpretation – In this Agreement:

- (a) all dollar amounts referred to in this Agreement are Canadian dollars;
- (b) reference to the singular includes a reference to the plural, and vice versa, unless the context requires otherwise;
- (c) article and section headings have been inserted for ease of reference only and are not to be used in interpreting this Agreement;
- (d) the term “enactment” has the meaning given to it under the Interpretation Act (British Columbia) on the reference date of this Agreement;
- (e) reference to any enactment is a reference to that enactment as consolidated, revised, amended, re-enacted or replaced from time to time, unless otherwise expressly provided;
- (f) reference to a particular numbered section or article, or to a particular lettered Schedule, is a reference to the correspondingly numbered or lettered article, section or Schedule of this Agreement and any Schedules to this Agreement form part of this Agreement; and
- (g) where the word “including” is followed by a list, the contents of the list are not intended to circumscribe the generality of the expression preceding the word “including”.

7.16 Modification – This Agreement may not be modified except by an instrument in writing signed by the parties, except that the Completion Date may be changed by their agreement through their respective solicitors upon instructions to their solicitors as evidenced promptly thereafter in writing by their solicitors.

- 7.17 Priority** – The Owner agrees to do everything necessary, at the Owner’s expense, to ensure that this Agreement is registered against title to the Lands with priority over all financial charges, liens, and encumbrances registered, or the registration of which is pending, at the time of application for registration of this Agreement.
- 7.18 Waiver** – No supplement, modification, waiver or termination of this Agreement shall be binding unless executed in writing by the party to be bound thereby. No waiver of any of the provisions of this Agreement shall be deemed to or shall constitute a waiver of any other provisions (whether or not similar) nor shall such waiver constitute a continuing waiver unless otherwise expressly provided.
- 7.19 Appendices** – The Appendices to this Agreement form an integral part of this Agreement.
- 7.20 Severability** – If any part of this Agreement is held to be invalid, illegal or unenforceable by a court having the jurisdiction to do so, that part is to be considered to have been severed from the rest of this Agreement and the rest of this Agreement remains in force unaffected by that holding or by the severance of that part.
- 7.21 Counterparts** – This Agreement may be executed in multiple counterparts, each of which is to be deemed to be an original and all of which together constitute one and the same Agreement.

As evidence of their agreement to be bound by the terms of this Agreement, the parties hereto have executed the *Land Title Act* Form C which is attached to and forms part of this Agreement.

APPENDIX A

GST DECLARATION

To: FOOD BANK ON THE EDGE, INC. NO. S0043237 (the “Owner”)

Re: An agreement between the Owner and the District of Ucluelet (the “Purchaser”) being an Option to Purchase dated for reference November 10, 2023 (the “Agreement”) in respect of the sale and purchase of the Lands, as defined in the Agreement (the “Property”)

The Purchaser hereby agrees with the Owner that:

1. The Purchaser is registered under Subdivision d of Division V of Part IX of the *Excise Tax Act* (Canada) (“**ETA**”) for the collection and remittance of goods and services tax (“**GST**”) and its registration number is 106985633 RT0001.
2. The Purchaser will remit directly to the Receiver General of Canada any GST payable, and file the prescribed Form 60 pursuant to subsection 228(4) of the ETA, in connection with the sale and conveyance of the Property.
3. The Purchaser hereby indemnifies and saves harmless the Owner from any GST, penalty, interest or other amounts which may be payable by or assessed against the Owner under the *ETA* as a result of, or in connection with, the Owner’s failure to collect and remit any GST applicable on the sale, and conveyance of the Property to the Purchaser.

Declaration continues on next page.

4. The Property transferred pursuant to the Agreement:
- (a) is being purchased by the Purchaser as principal for its own account and is not being purchased by the Purchaser as an agent, trustee, or otherwise on behalf of or for another person; and
 - (b) does not constitute a supply of a residential complex made to an individual for the purposes of section 221(2) of the ETA.

Dated this _____ day of _____, 20____.

DISTRICT OF UCLUELET

by its authorized signatory(ies):

Signature: _____

Name: _____

Position: _____

Signature: _____

Name: _____

Position: _____

SCHEDULE "B"

[Statutory Right of Way begins on subsequent page.]

TERMS OF INSTRUMENT – PART 2

STATUTORY RIGHT OF WAY

THIS AGREEMENT dated for reference November 10, 2023, is

BETWEEN:

DISTRICT OF UCLUELET

200 Main Street
Ucluelet, B.C., V0R 3A0

(the “**District**”)

AND:

FOOD BANK ON THE EDGE (Inc. No. S0043237)

160 Seaplane Base Road
Box 1146
Ucluelet, B.C., V0R 3A0

(the “**Owner**”)

RECITALS:

- A. The Owner is the registered owner in fee simple of the lands, and all improvements thereto, legally described in Item 2 of Part 1 of the *Land Title Act* Form C attached to and forming part of this Agreement (the “**Lands**”);
- B. Pursuant to a Purchase and Sale Agreement between the Owner and the District dated for reference November 10, 2023, the District agreed to sell the Lands to the Owner on the condition that the Owner grant to the District a statutory right of way in respect of the Lands on the terms set out in this Agreement;
- C. Section 218 of the *Land Title Act*, R.S.B.C. 1996, c. 250, enables the Owner to grant in favour of the District an easement without a dominant tenement to be known as a statutory right of way;
- D. The District requires and the Owner has agreed to permit the District to access the Right of Way Area, as hereinafter defined, to bring onto, store, and remove vehicles and materials, and to grant for that purpose the Statutory Right of Way hereinafter mentioned; and

- E. This statutory right of way is necessary for the operation and maintenance of the District's undertaking.

THIS AGREEMENT is evidence that, pursuant to s. 218 of the *Land Title Act* and for the consideration described in this Agreement, the Owner grants to and covenants with the District as follows:

Statutory Right of Way

1. Pursuant to section 218 of the *Land Title Act*, the Owner hereby grants, conveys, and confirms to the District, in perpetuity, the full, free, and uninterrupted right, licence, liberty, easement, and right of way (the "**Statutory Right of Way**") for the District, its officers, employees, contractors, volunteers, and agents, in common with the Owner, at all times hereafter from time to time at their will and pleasure to enter, go, be on, pass, and repass, with or without vehicles, personal property, and equipment, upon, over, under, and across the Lands (the "**Right of Way Area**") to:
 - (a) have unobstructed access to and from the Right of Way Area, with or without vehicles, at any and all times;
 - (b) trim or cut down any tree or other growth on the Right of Way Area that, in the opinion of the District, constitutes or may constitute a danger, impairment, or obstruction to those persons from the District using the Right of Way Area; and
 - (c) bring on, store upon, and remove from the Right of Way Area all vehicles, equipment, machinery, materials, or other moveable property of any description that the District desires in its sole discretion.

2. The Owner hereby covenants and agrees with the District:
 - (a) not to deposit or place garbage, debris, or other material on the Right of Way Area;
 - (b) not to place, install, or construct any building, structure, mobile or manufactured home, or other improvement (including any paving walls or fences) on the Right of Way Area other than structures or improvements approved in any applicable permit or otherwise approved by the District in writing;
 - (c) not to permit any building, construction, structure, or other improvement to overhang the Right of Way Area, without the District's written approval;
 - (d) not to plant or install any trees in any portion of the Right of Way Area without the written consent of the District;
 - (e) not to do or permit to be done any act or thing that, in the opinion of the District, might interfere with, injure, impair the operating efficiency of, or obstruct access

to or the use of, the Right of Way Area or the rights granted under this Agreement except as permitted in this Agreement;

- (f) not to diminish or increase the soil cover over the Right of Way Area without the written consent of the District;
 - (g) not to carry on blasting on the Right of Way Area without the District's approval;
 - (h) not to prevent reasonable access by the District to the Right of Way Area;
 - (i) to permit the District to bring on to the Right of Way Area all material and equipment, including motor vehicles, it requires or desires for the use of the Right of Way Area pursuant to this Agreement; and
 - (j) that the District is entitled to peaceably hold and enjoy the rights, liberties, and statutory right of way hereby granted without hindrance, molestation, or interruption by the Owner or any person, firm, or corporation claiming by, through, under, or in trust for the Owner.
3. No right herein granted to or reserved by the District requires the District to clean, repair, or maintain the Right of Way Area, except as expressly provided herein.
4. The Owner hereby covenants and agrees with the District:
- (a) at the District's request and expense, to do or cause to be done all acts necessary to grant priority to this Statutory Right of Way over all financial charges which are registered, or pending registration, against title to the Lands, in the Land Title Office, save and except those as have been approved in writing by the District or have been granted in favour of the District; and
 - (b) at the District's request and expense, to do or execute or cause to be done or executed all such further and other lawful acts, deeds, things, conveyances, and assurances whatsoever for better assuring to the District the rights, liberties, and Statutory Right of Way hereby granted.

General

5. Every obligation and covenant of the Owner in this Agreement constitutes both a contractual obligation and a statutory right of way granted under section 218 of the *Land Title Act* in respect of the Lands and this Agreement burdens the Lands and runs with it and binds the successors in title to the Lands until discharged by an instrument in writing duly executed by the District and filed at the appropriate Land Title Office. This Agreement burdens and charges all of the Lands and any parcel into which the Lands are subdivided by any means and any parcel into which the Lands are consolidated (including by removal

of interior parcel boundaries) and shall be extended, at the Owner's cost, to burden and charge any land consolidated with the Lands.

6. No waiver of default by either party is effective unless expressed in writing by the party waiving default, and no condoning, overlooking, or excusing by either party of a previous default of the other is to be taken to operate as a waiver of any subsequent default or continuing default, or to in any way defeat or affect the rights and remedies of the non-defaulting party.
7. This Agreement does not:
 - (a) affect or limit the discretion, rights, duties, or powers of the District under the common law or any statute, bylaw, or other enactment;
 - (b) affect or limit the common law or any statute, bylaw, or other enactment applying to the Lands; or
 - (c) relieve the Owner from complying with the common law or any statute, bylaw, or other enactment.
8. Any notice to be given pursuant to this Agreement must be in writing and may be delivered personally or sent by prepaid mail. The addresses of the District for the purpose of notice is the address hereinbefore set out, and the address of the Owner is the address on record for the owner of the Lands at the Land Title Office. If notice is delivered personally, it may be left at the relevant address in the same manner as ordinary mail is left by Canada Post and is to be deemed given when delivered. If notice is mailed, it is to be deemed given 5 days after mailing by deposit at a Canada Post mailing point or office. In the case of any strike or other event causing disruption of ordinary Canada Post operations, a party giving notice must do so by personal delivery as provided in this section. Any party may at any time give notice in writing to the other of any change of address and from and after the receipt of notice the address therein specified is to be deemed to be the address of such party for the giving of notice.
9. If any section, subsection, sentence, clause, or phrase in this Agreement is for any reason held to be invalid by the decision of a court of competent jurisdiction, the invalid portion is to be severed and the decision that it is invalid does not affect the validity of the remainder of this Agreement.
10. No amendment of this Agreement is valid or binding unless in writing and executed by the parties.
11. This Agreement shall be governed and construed in accordance with the laws of British Columbia.

12. This Agreement shall enure to the benefit of the parties and their respective successors and assigns, as the case may be.
13. In this Agreement:
- (a) reference to the singular includes a reference to the plural, and vice versa, unless the context requires otherwise;
 - (b) reference to a particular numbered section is a reference to the correspondingly numbered section of this Agreement;
 - (c) if a word or expression is defined in this Agreement, other parts of speech and grammatical forms of the same word or expression have corresponding meanings;
 - (d) reference to any enactment includes any regulations, orders, or directives made under the authority of that enactment;
 - (e) reference to any enactment is a reference to that enactment as consolidated, revised, amended, re-enacted, or replaced, unless otherwise expressly provided;
 - (f) the provisions of s. 25 of the *Interpretation Act* with respect to the calculation of time apply;
 - (g) time is of the essence;
 - (h) all provisions are to be interpreted as always speaking;
 - (i) reference to a “party” is a reference to a party to this Agreement and to their respective successors, assigns, trustees, administrators, and receivers;
 - (j) reference to a “day” or “year” is a reference to a calendar day or calendar year, as the case may be, unless otherwise expressly provided; and
 - (k) where the word “including” is followed by a list, the contents of the list are not intended to circumscribe the generality of the expression preceding the word “including”.
14. This Agreement may be executed in multiple counterparts, each of which is to be deemed to be an original and all of which together constitute one and the same Agreement, and this Agreement may be executed by the parties and transmitted by fax or scanned and emailed and, if so executed and transmitted, this Agreement will be for all purposes as effective as if the parties had executed and delivered an original Agreement.

IN WITNESS WHEREOF the parties have executed this Agreement on Part 1 of the Form C to which this Agreement is attached and that forms part of this Agreement.

END OF DOCUMENT

SCHEDULE "C"

[Subdivision Plan begins on subsequent page.]

**REFERENCE PLAN TO ACCOMPANY BY-LAW
No. 1334 (DISTRICT OF UCLUELET)
CANCELING A PORTION OF PARK SHOWN
DEDICATED ON PLAN VIP76147, DISTRICT
LOT 284, CLAYOQUOT DISTRICT**

**PURSUANT TO SECTION 120 OF THE LAND TITLE ACT AND
SECTION 27 OF THE COMMUNITY CHARTER
BCGS 92C.093**



ALL DISTANCES ARE IN METRES AND DECIMALS THEREOF

THE INTENDED PLOT SIZE OF THIS PLAN IS 560 mm IN WIDTH BY 432 mm IN HEIGHT (C-SIZE) WHEN PLOTTED AT A SCALE OF 1:1000

GRID BEARINGS ARE DERIVED FROM DIFFERENTIAL DUAL FREQUENCY GNSS OBSERVATIONS AND ARE REFERRED TO THE CENTRAL MERIDIAN OF UTM ZONE 10 (123° WEST LONGITUDE).

THE UTM ZONE 10 COORDINATES AND ESTIMATED ABSOLUTE ACCURACY ACHIEVED ARE DERIVED FROM DUAL FREQUENCY GNSS OBSERVATIONS USING THE PRECISE POINT POSITIONING SERVICE OF NATURAL RESOURCES CANADA.

THIS PLAN SHOWS HORIZONTAL GROUND-LEVEL DISTANCES, UNLESS OTHERWISE NOTED. TO COMPUTE GRID DISTANCES, MULTIPLY GROUND-LEVEL DISTANCES BY THE AVERAGE COMBINED FACTOR OF 1.0000318. THE AVERAGE COMBINED FACTOR HAS BEEN DETERMINED BASED ON AN ELLIPSOIDAL ELEVATION OF 8 METRES.

LEGEND

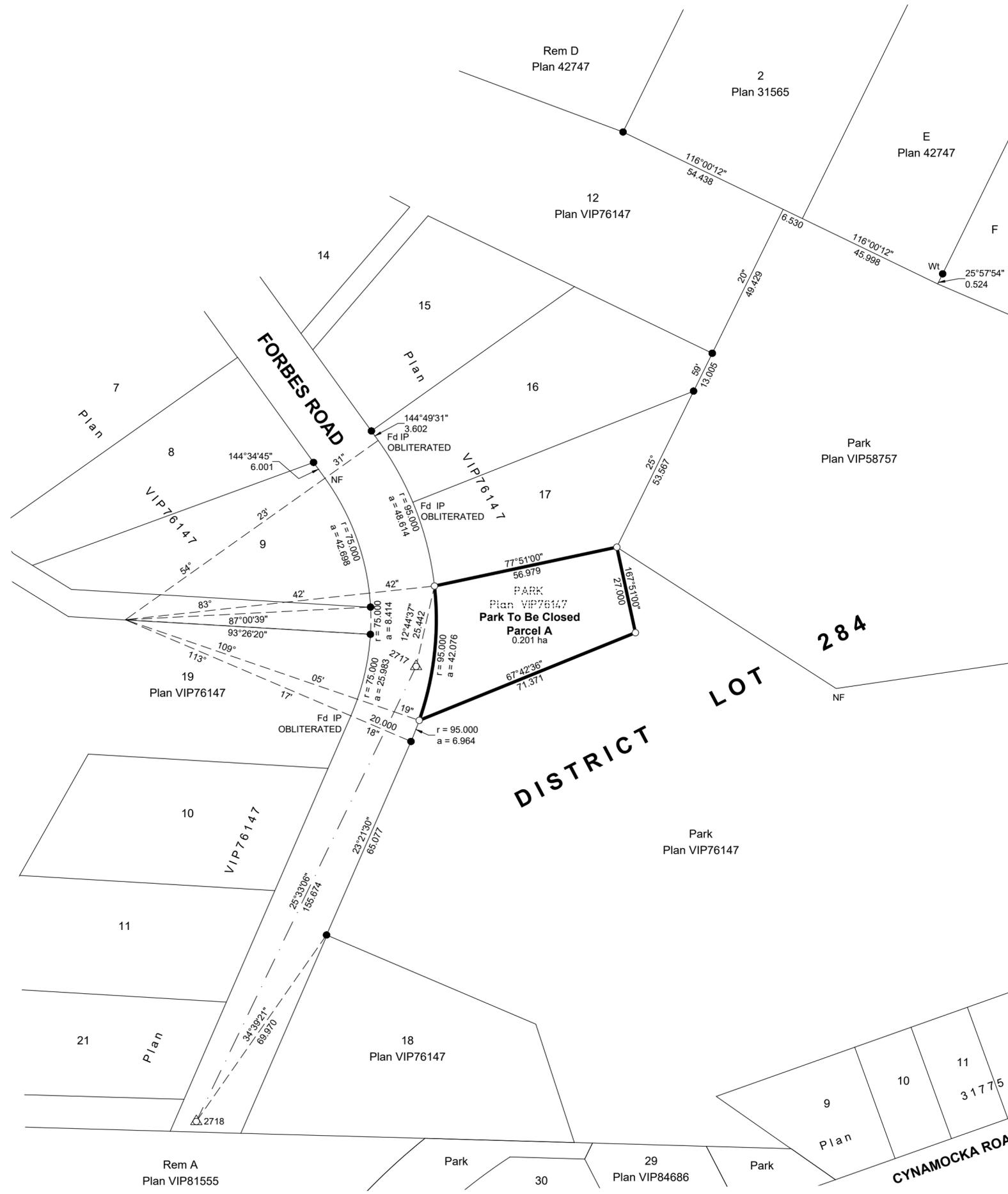
- FOUND PLACED
- △ GNSS CONTROL STATION
- STANDARD IRON POST
- Fd FOUND
- ha HECTARE
- IP STANDARD IRON POST
- NF NOTHING FOUND
- Wt WITNESS

GEOREFERENCE CONTROL STATIONS UTM ZONE 10, NAD83 (CSRS) EPOCH 1997.0 (VANCOUVER ISLAND)			
CONTROL STATION	UTM NORTHING	UTM EASTING	ABSOLUTE ACCURACY
2717	5424325.483	312292.387	0.03
2718	5424185.030	312225.239	0.04

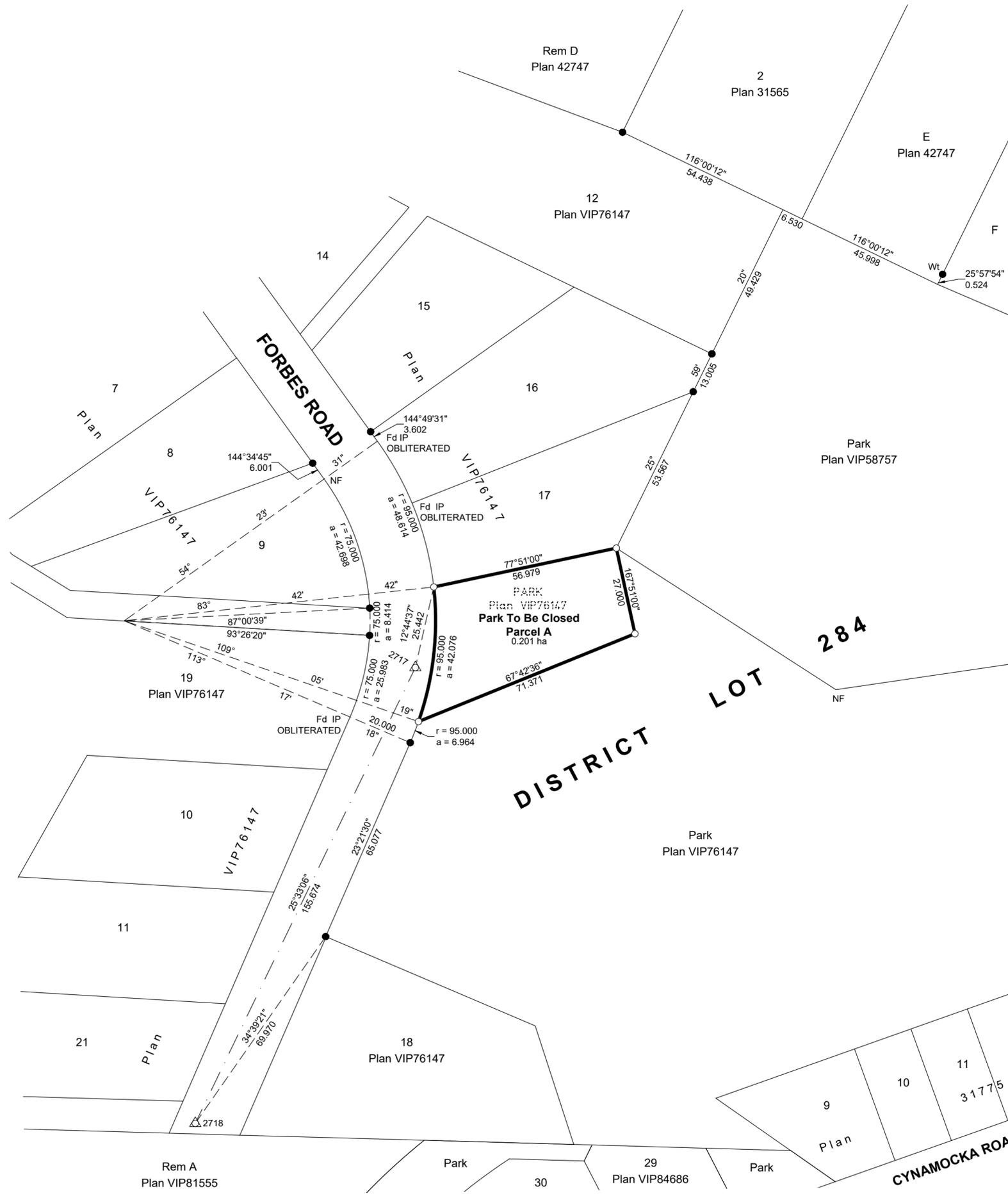
THIS PLAN SHOWS ONE OR MORE WITNESS POSTS WHICH ARE NOT SET ON THE TRUE CORNER(S). SOME POSTS ARE EXAGGERATED FOR CLARITY.

THIS PLAN LIES WITHIN THE ALBERNI-CLAYOQUOT REGIONAL DISTRICT.

THE FIELD SURVEY REPRESENTED BY THIS PLAN WAS COMPLETED ON THE 13th DAY OF OCTOBER, 2023
TYSON QUOCKSISTER, BCLS #901



PLAN EPP132848



REFERENCE PLAN TO ACCOMPANY BY-LAW No. 1334 (DISTRICT OF UCLUELET) CANCELING A PORTION OF PARK SHOWN DEDICATED ON PLAN VIP76147, DISTRICT LOT 284, CLAYOQUOT DISTRICT

PURSUANT TO SECTION 120 OF THE LAND TITLE ACT AND SECTION 27 OF THE COMMUNITY CHARTER
BCGS 92C.093



ALL DISTANCES ARE IN METRES AND DECIMALS THEREOF

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LEGEND

- FOUND PLACED
- ○ GNSS CONTROL STATION
- ○ STANDARD IRON POST
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