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MEMORANDUM

TO: Paul Thorkelsson
Chief Administrative Officer

DATE: February 12, 2015

FROM: Daniel Pearce
A/General Manager, Transportation and Solid Waste Services

FILE: 8600-01

SUBJECT: Electoral Area 'B' Taxi Saver Service Agreement

PURPOSE

To bring forward the Gabriola Island Taxi Saver Agreement and consider proceeding with the alternative approval process.

BACKGROUND

At the August 28, 2012 Regular Board meeting the Board adopted a motion, "That staff be directed to develop a service area establishment bylaw for the creation of a Taxi Saver Service for Gabriola Island to be submitted to the electors of Electoral Area 'B' for approval."

Staff have developed a Gabriola Island Taxi Saver Agreement between the Regional District of Nanaimo and the Gabriola Recreation Society (*Appendix A*).

The Agreement states that the Gabriola Recreation Society will administer the Taxi Saver Program on Gabriola Island for the residents of Gabriola Island who are persons with disabilities or seniors with low incomes. Schedule 'A' of the agreement establishes that low income seniors will need to be evidenced by documentation indicating enrolment in the MSP Regular Assistance Program, or other income assistance program, and that the person is over the age of 65. Schedule 'A' defines persons with disabilities as evidenced by a doctor's note or other medical record demonstrating restricted mobility.

The Gabriola Island Taxi Saver Program is modeled after the Parks and Recreation Program; it is not part of the BC Transit System and is not eligible to receive funding from BC Transit. For an Electoral Area funded Taxi Saver Program to be established, an establishing bylaw needs to be adopted. Since this would be a new service, elector approval by the electors of the proposed service area would be required. Staff are recommending that this be accomplished by the alternative approval process.

To establish an Electoral Area 'B' funded Taxi Saver Program, up to \$15,000 will need to be included in the 2015 budget. These funds will be used for elector approval and to establish the service.

The term of the Agreement is five (5) years.

ALTERNATIVES

1. That the Board approve the Gabriola Island Taxi Saver Agreement and direct staff to include up to \$15,000 under the Electoral Area 'B' Feasibility Service budget.
2. That the Board direct staff to proceed with the alternative approval process to establish a Taxi Saver service on Gabriola Island.
3. That the Board provide alternative direction to staff.

FINANCIAL IMPLICATIONS

The Agreement establishes a \$1,000 per year payment to the Gabriola Recreation Society for services and covenants performed. Additionally, the Society will have a \$10,000 budget per year for the Taxi Saver Program.

The cost to obtain elector approval by the alternative approval process would be approximately \$1,600 for advertising costs.

STRATEGIC PLAN IMPLICATIONS

The Electoral Area 'B' Taxi Saver Agreement aligns with the Strategic Goal and Action Items to "support increased rail, marine, and air transportation between the region and other areas."

SUMMARY / CONCLUSIONS

At the direction of the Board, staff is bringing forward a Gabriola Island Taxi Saver Service Agreement that would serve low income seniors, in addition to those riders with disabilities in Electoral Area 'B'. The Agreement will be administered by the Gabriola Recreation Society.

For a Gabriola Island funded Taxi Saver service to be established, an establishing bylaw will have to be adopted. Since this would be a new service, elector approval by the electors of the proposed service area would be required. This could be accomplished by using the alternative approval process. To proceed with establishing this new service up to \$15,000 will need to be included in the 2015 budget.

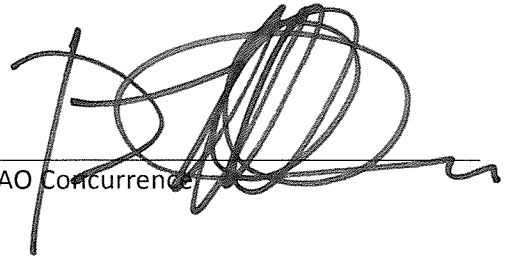
The Gabriola Island Taxi Saver Program is not eligible for BC Transit funding and will be funded by the Electoral Area 'B' Feasibility Service.

RECOMMENDATION

1. That the Board approve the Gabriola Island Taxi Saver Agreement and direct staff to include up to \$15,000 under the Electoral Area 'B' Feasibility Service budget.
2. That the Board direct staff to proceed with the alternative approval process to establish a Taxi Saver service on Gabriola Island.



Report Writer



CAO Concurrer

Appendix A

THIS AGREEMENT is made the ____ day of _____, 2014.

BETWEEN:

REGIONAL DISTRICT OF NANAIMO
6300 Hammond Bay Road
Nanaimo, BC V9T 6N2

(the "Regional District")

OF THE FIRST PART

AND:

GABRIOLA RECREATION SOCIETY
(Incorporation No. S-44262)
387 Lyngail Place, PO Box 355
Gabriola, BC V0R 1X1

(the "Society")

OF THE SECOND PART

WHEREAS

- A. The Regional District has authority under Bylaw No. ____, being _____ to provide transportation services to Electoral Area B, including to the residents of Gabriola Island, and to provide financial contributions to the Society to perform these services;
- B. Under Section 176(1)(a) of the *Local Government Act* the Regional District may make agreements for the undertaking, provision and operation of its services; and
- C. The Regional District has agreed to engage the Society and the Society has agreed to be engaged by the Regional District in respect of the services described in Schedule "A" to this Agreement (the "Services"), upon the terms and subject to the conditions set out in this Agreement.

NOW THEREFORE, this agreement witnesses that in consideration of premises, the terms and conditions hereinafter contained, and other good and valuable consideration (the receipt and sufficiency of which are acknowledged by the parties), the Regional District and the Society covenant and agree as follows:

1.0 SERVICES

- 1.1 The Society shall provide the Services within Gabriola Island and for the residents of Gabriola Island who are persons with disabilities or seniors with low incomes, in accordance with the terms and conditions set out in this Agreement and as set out in Schedule "A".
- 1.2 The Society shall render the Services to the Regional District under this Agreement with that degree of care, skill and diligence normally provided by societies qualified to perform duties of a similar nature to the Services contemplated by this Agreement at the time and place that such Services are rendered.
- 1.3 The Society shall not undertake any work for the Regional District that is additional to or supplemental to or in substitution of the Services, unless authorized in writing by the Regional District.
- 1.4 In providing the Services, the Society shall abide by:
- (a) all enactments that apply to the provision of the Services, including all applicable bylaws of the Regional District, as amended or replaced from time to time;
 - (b) all policies of the Regional District that govern the manner in which the Services is to be provided, or that specify the level of the Services, as such policies may be amended or replaced from time to time;
 - (c) any standard operational guidelines for the Services that are developed by or for the Society and that are approved from time to time by the Regional District;
 - (e) the requirements of the *Workers Compensation Act* and the Occupational Health and Safety Regulation under that Act; and
 - (f) the directions of any Regional District employee or officer appointed by the Board to supervise and direct the provision of the Services.

2.0 TERM

- 2.1 The Term of this Agreement is five (5) years, commencing on the 1st day of _____, 2014 and terminating on the 31st day of _____, 2019.

3.0 PAYMENT FOR SERVICES

- 3.1 In consideration of the Services to be provided and the covenants to be performed by the Society under this Agreement, subject to this Agreement, the Regional District shall pay to the Society \$1000.00 per year of this Agreement,

payable on September 1st of each year of the Term (the "**Regional District Payment**").

4.0 FINANCIAL MATTERS

- 4.1 On or before June 1st in each year of the Term, and as soon as practicable following the termination or expiry of the Agreement, the Society shall provide the Regional District with one set of review engagement financial statements for revenue and expenditures and balance sheets for the Society in relation to the Services for the preceding fiscal period, January 1st to December 31st, or shorter period, as applicable (the "**Financial Statements**").
- 4.2 In the event that the Financial Statements show that any amount of the Regional District Payment was applied toward anything other than the Services, or remained unused on termination of this Agreement, the Society shall immediately return such amount of the Regional District Payment to the Regional District.

5.0 REPORT TO REGIONAL DISTRICT

- 5.1 On September 1st of each year of the Term, and as soon as practicable upon expiry or termination of this Agreement, the Society shall provide to the Regional District a report of the Services provided during the preceding year of the Term (the "**Report**"), which Report shall include:
- (a) a current list of Eligible Residents (as defined in Schedule "A");
 - (b) a list of all taxi rides and any other form of transportation service provided pursuant to this Agreement for the previous year, including the amount of the fare and name of the Eligible Resident passenger; and
 - (c) any other information that the Regional District requires to be included in the Report from time to time.

6.0 COVENANTS OF THE SOCIETY

- 6.1 The Society covenants agrees that it will, during the term of this Agreement:
- (a) maintain its corporate existence, carry on and conduct its affairs in a proper and businesslike manner and keep or cause to be kept properly books of account in accordance with generally accepted accounting principles applied consistently;
 - (b) maintain, at all times, separate and accurate books, records and accounts for the Services, including all receipts and invoices supporting any expenditures in accordance with generally accepted accounting principles applied consistently;

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- (c) perform all its obligations under this Agreement at its own cost;
- (d) ensure that the Regional District Payment is spent solely on the Services;
- (e) keep the Regional District Payment and all expenditures relating to the Services separate in the Society's books of accounts;
- (f) permit the Regional District and its auditors at any time and from time to time to have access to and inspect the Society's books of accounts, documents, cheques, vouchers and other records that relate to the provision of the Services, and to make copies thereof;
- (g) permit the Regional District at any time and from time to time to have access to and inspect all facilities, equipment, goods and chattels that are used in connection with the provision of the Services;
- (h) abide by its constitution, bylaws and other requirements of the *Society Act* and hold annual meetings and file annual reports and other documents to be filed with the Registrar of Companies;
- (i) not borrow any funds in relation to the Services without the prior written approval of the Regional District;
- (j) maintain proper records relating to the provision of the Services, in accordance with this Agreement and all applicable policies of the Regional District from time to time; and the Society acknowledges that in the course of providing Services it may be required to receive and record "personal information" (as defined in the *Freedom of Information and Protection of Privacy Act*) of individuals who receive the benefit of the Services, and the Society agrees that it shall maintain all records relating to the provision of Services to the Regional District, including but not limited to personal information, in accordance with the requirements of the *Freedom of Information and Protection of Privacy Act*, and that the Society shall not disclose any information relating to the provision of the Services under this Agreement to any person except with the authorization of the Regional District; and
- (k) not adopt a resolution to dissolve the Society unless it has first given written notice to the Regional District 30 days prior to the meeting at which such resolution is to be considered, and in any event not to adopt a resolution to dissolve the Society that is effective prior to the end of the term of this Agreement, or if applicable, prior to the date of early termination under section 10.1 or 11.1 of this Agreement.

7.0 INSURANCE

- 7.1 The Society shall, throughout the Term of this Agreement, obtain and maintain a policy or policies of liability insurance, with a deductible and in a form acceptable to the Regional District, and in the amount of not less than TWO MILLION DOLLARS (\$2,000,000.00) per occurrence, protecting the Society and the Regional District against:
- (a) any claim for personal injury, bodily injury (including death) or property damage sustained by any person, arising or resulting from the Society's provision of the Service;
 - (b) liability arising from an act, error, omission or breach of duty on the part of the Society, and its officers, directors, members, employees and volunteers, in the provision of the Service.
- 7.2 The Society shall, throughout the Term of this Agreement, obtain and maintain in force for all motor vehicles used in the provision of the Service, whether owned or leased by the Society or the Regional District, automotive liability insurance in accordance with the *Insurance (Motor Vehicle) Act* of British Columbia, and in the amount of not less than TWO MILLION DOLLARS (\$2,000,000.00) per accident.
- 7.3 The Society shall insure and keep insured against all risks of loss or damage any and all other chattels and equipment owned by the Regional District or the Society and maintained and utilized by the Society to provide the Services under this Agreement, including without limitation all motor vehicles used in the provision of the Service, and whether owned by the Regional District or the Society, to the full replacement value thereof, such policy or policies to be on terms and with such deductible as is acceptable to the Regional District.
- 7.4 Every policy of insurance must name the Regional District as an additional insured and contain a waiver of subrogation in favour of the Regional District and contain a clause stating that the policy is not to be cancelled or materially altered without at least 30 days written notice to the Regional District.
- 7.5 The Society shall provide the Regional District for each year of the Term with a certificate signed by an authorized signatory of each insurer confirming that the coverage required under section 7.0 has been provided, and upon request shall provide a copy of the said policy or policies.
- 7.6 The Society shall be responsible for the cost of providing all insurance required under this Agreement.

8.0 INDEMNITY

- 8.1 The Society agrees to save harmless, release and indemnify the Regional District and its elected and appointed officers, employees and agents from and against all fines, suits, claims, liabilities, damages, costs, expenses, demands

and actions of any kind or nature whatsoever (collectively, "liability") for which the Regional District or its officers and employees may become liable, suffer or incur by reason of or related to or arising from this Agreement or the Service provided under this Agreement, including, without limiting the generality of the foregoing:

- (a) any breach, violation, default or non-performance by the Society of any provision of this Agreement;
- (b) any wrongful act, omission or negligence of the Society or its members, directors, officers, employees, agents, volunteers, contractors, subcontractors or others for whom it is responsible; and
- (c) any death, bodily injury, property damage, property loss, economic loss or other loss or harm suffered by any person, including the Society, on or in relation to the provision of the Service

except to the extent that such liability arises from the negligence of or breach of this Agreement by the Regional District.

9.0 AUDIT

- 9.1 At any time the Regional District may give the Society written notice that it desires its appointed representative to examine and audit the books of account of the Society in respect of the Services.

10.0 TERMINATION

- 10.1 Either party may terminate this Agreement at any time by giving written notice of termination to the other party, and the Agreement shall terminate on the ___th day following receipt of such notice by the other party, provided however that, in any event, the Agreement shall terminate not later than the 31st day of _____, 2019[end of Term].

11.0 EARLY TERMINATION

- 11.1 Notwithstanding any other provision of this Agreement, the Regional District may terminate this Agreement upon giving 30 days notice of its intention to so terminate:
 - (a) should the Society fail to file its Annual Report or otherwise no longer be in good standing with the Registrar of Companies under the *Societies Act*;
 - (b) should the Society default in any term or condition of this Agreement or fail to perform any covenant required to be performed by the Society under this Agreement;
 - (c) should the Regional District or any successor to the Regional District provide alternate transportation services within the Service Area; or

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- (d) should the Society, in the sole opinion of the Regional District, fail to provide the Services in accordance with the requirements of this Agreement.

12.0 GENERAL PROVISIONS

12.1 Notice

- (a) All notices required or permitted to be given under this Agreement shall be in writing and may be delivered by hand, sent by facsimile transmission or forwarded by first-class prepaid registered mail to the following addresses or such other address as may from time to time be notified in writing by the parties:

To the Regional District:
Attention: Corporate Administrator

6300 Hammond Bay Road
Nanaimo, BC V9T 6N2

Fax:

To the Society:
Attention:

387 Lyngail Place, PO Box 355
Gabriola, BC V0R 1X1

Fax:

- (b) Any notice delivered or sent by hand or by facsimile transmission shall be deemed to be given and received at the time of sending. Any notice mailed shall be deemed to have been given and received on the expiration of 3 days after it is posted, provided that if there shall be between the time of mailing and the actual receipt of the notice a mail strike, slow down or other labour dispute which might affect the delivery of such notice by the mails, then such notice shall only be effective once delivered.

12.2 Authority

The Society represents and warrants to the Regional District that it has the authority to enter into this Agreement and carry out its transactions and all necessary resolutions and procedural formalities have been completed and the persons executing this Agreement on its behalf are duly authorized to do so.

12.3 Relationship

The legal relationship between the Society and the Regional District arising pursuant to this Agreement is that of an independent contractor and purchaser of services. Nothing in this Agreement shall be interpreted so as to render the Regional District the employer or partner of the Society, or anyone working for the Society. The Society is not, and must not claim to be, the agent of the Regional District for any purpose.

12.4 Assignment

This Agreement shall not be assignable by the Society.

12.5 Enurement

This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors.

12.6 Time

Time is to be of the essence of this Agreement.

12.7 Further Assurances

The parties hereto shall execute and do all such further deeds, acts, things and assurances that may be reasonably required to carry out the intent of this Agreement.

12.8 Entire Agreement

This Agreement is the entire agreement among the parties as at the date hereof and neither the Regional District nor the Society has given or made representations, warranties, guarantees, promises, covenants or agreements to the other except those expressed in writing in this Agreement, and no amendment of this Agreement is valid or binding unless in writing and executed by the parties.

12.9 Waiver

The waiver by a party of any failure on the part of the other party to perform in accordance with any of the terms or conditions of this Agreement is not to be construed as a waiver of any future or continuing failure, whether similar or dissimilar.

12.10 Cumulative Remedies

No remedy under this Agreement is to be deemed exclusive but will, where possible, be cumulative with all other remedies at law or in equity.

12.11 Amendment

No amendment, waiver, termination or variation of the terms, conditions, warranties, covenants, agreements and undertakings set out herein will be of any force or effect unless they are in writing and duly executed by all parties to this Agreement.

12.12 Law Applicable

This Agreement is to be construed in accordance with and governed by the laws applicable in the Province of British Columbia.

13.0 INTERPRETATION

13.1 In this Agreement:

- (a) reference to the singular includes a reference to the plural, and vice versa, unless the context requires otherwise.
- (b) articles and section headings have been inserted for ease of reference only and are not to be used in interpreting this Agreement;
- (c) 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;
- (d) 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;
- (e) reference to any enactment includes any regulations, orders or directives made under the authority of that enactment;
- (f) reference to any enactment is a reference to that enactment as consolidated, revised, amended, re-enacted or replaced, unless otherwise expressly provided;
- (g) reference to time or date is to the local time or date in Victoria, British Columbia;
- (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", "month", "quarter" or "year" is a reference to a calendar day, calendar month, calendar quarter or calendar year, as the case may be, unless otherwise expressly provided;

- (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";
- (l) word importing the masculine gender includes the feminine or neuter, and a word importing the singular includes the plural and vice versa; and
- (m) A reference to approval, authorization, consent, designation, waiver or notice means written approval, authorization, consent, designation, waiver or notice.

IN WITNESS WHEREOF the parties hereto have set their hands and seals as of the day and year first above written.

REGIONAL DISTRICT OF NANAIMO)
by its authorized signatories:)
)
)
 "DRAFT")
Chair)
)
 "DRAFT")
Corporate Administrator)

GABRIOLA RECREATION SOCIETY)
by its authorized signatories:)
)
)
 "DRAFT")
Name:)
)
 "DRAFT")
Name:)
)

SCHEDULE A

SERVICES

This Schedule forms part of the Agreement between the Regional District and the Society.

1. SERVICES

- 1.1 The Services described herein shall be available only to residents of Gabriola Island who meet one or more of the following criteria:
- (a) Low income seniors, as evidenced by documentation indicating enrolment in the MSP Regular Premium Assistance program or other income assistance program, which satisfies the Society, acting reasonably, that a person is over the age of 65 and has financial need; and
 - (b) Persons with disabilities, as evidenced by a doctor's note or other medical record that demonstrates restricted mobility.
- (collectively, the "**Eligible Recipients**")
- 1.2 The Society shall be responsible for determining eligibility of residents of Gabriola Island for the Services pursuant to section 1.1 of this Schedule "A", and in making such determinations, shall at all times act reasonably and in good faith.
- 1.3 The Society shall provide the following Services during the Term: