

LICENCE OF OCCUPATION

THIS AGREEMENT made as of the 1st day of October, 2024 (the “Effective Date”)

BETWEEN:

The Board of Education of School District 23 (Central Okanagan), 1040
Hollywood Road S., Kelowna, British Columbia, V1X 4N2

(the “Owner”)

AND:

CITY OF WEST KELOWNA, 3731 Old Okanagan Hwy, West Kelowna, British
Columbia V4T 0G7

(the “Licensee”)

WHEREAS:

- A. The Owner is the registered owner of the property in the City of West Kelowna, Province of British Columbia, more particularly known and as described as set out in Schedule “A” (the “Property”);
- B. The Licensee wishes to use the portion of the Property, as shown on the sketches attached hereto and marked as Appendix A (the “Trail Area”), as a network of trails for recreational purposes;
- C. The Owner is prepared to allow the Licensee to use the Trail Area that becomes subject to this Agreement pursuant to section 12 of this Agreement subject to and in accordance with this Agreement:

NOW THEREFORE, in consideration of the covenants herein contained, the Owner and the Licensee agree as follows:

GRANT OF LICENCE

1. Subject to section 2, the Owner hereby grants a license of occupation to the Licensee for the Licensee to use, and to allow members of the public to use, the Trail Areas for non-motorized and day-time recreational uses such as biking, snowshoeing, hiking and walking (collectively the “Permitted Use”) for the period from October 1, 2024 to June 30, 2026, unless earlier terminated pursuant to the terms of this Agreement.
2. The Licensee’s right to use the Trail Areas is subject to:
 - (a) Any existing Owner’s infrastructure or other improvements and any future Owner’s infrastructure and other improvements in or on the Trail Areas (the “Owner’s Enhancements”). The Owner will consult with the Licensee when designing, constructing, repairing and maintaining the Owner’s Enhancements in a manner that may otherwise affect the Licensee’s use of the Trail Areas;
 - (b) All rights-of-way, easements, leases, licenses of occupation and other grants made either before or after the Effective Date by the Owner to any other person. The Owner

will use reasonable efforts to ensure that such grants do not obstruct, limit, or otherwise hinder the Licensee's use of the Trail Areas for the Permitted Purpose any more than is reasonably necessary;

- (c) The Owner's right to sell all or any portion of the Trail Areas. The Licensee does not acquire any interest in the Trail Areas under this Agreement. The Owner does not grant to the Licensee either by this Agreement, through prescription or otherwise any interest in the Trail Areas other than the right to use the Trail Areas pursuant to the terms of this Agreement. The parties acknowledge that the granting of the licence does not permanently change the use of the property to the intended term use of the licensee. The parties acknowledge that the Owner may sell the Trail Areas to a third party during the term of this Agreement. The Owner shall give notice of this Agreement to any such purchaser of the Trail Areas and shall assign this Agreement to the purchaser and cause the purchaser to assume the Owner's obligations hereunder. Upon such sale, the Owner shall be relieved from any and all obligations hereunder other than any current default by the Owner;
- (d) The Owner's right to use all or part of the Trail Areas for any purposes, including without limitation, the right of the Owner (including its employees, agents, contractors and licensees) to maintain, service and repair the Owner's Enhancements and to cross and re-cross the Trail Areas for the purpose of accessing other land owned by the Owner. For greater certainty, the Licensee acknowledges that the Owner's operations are paramount to any activities of the Licensee on the Trail Areas, that the Licensee may have to cease or change the Licensee's use of the Trail Areas while and if the Owner undertakes any servicing and repairs of the Owner's Enhancements. The Owner will use reasonable efforts to ensure that such activities do not obstruct, limit, or otherwise hinder the Licensee's use of the Trail Areas for the Permitted Purpose any more than is reasonably necessary, but the Licensee agrees that Owner will not be responsible nor liable for any damages, costs or expenses that the Licensee incurs, including without limitation, greater operating costs, damages for down time and loss of profits, resulting from the servicing and repairs.

TERMINATION

- 3. Without prejudice to any other rights or remedies, the Owner may terminate the license granted under this Agreement:
 - (a) without giving the Licensee any prior notice if the Licensee breaches any of the Licensee's obligations under this Agreement; or
 - (b) at any time in the Owner's absolute discretion by giving the Licensee 30 days written notice of termination.
- 4. Notwithstanding the termination of the license granted under the Agreement, the Licensee shall continue to be liable to the Owner for all payments due and obligations assumed under this Agreement, including without limitation, sections 5 and 10.

LICENSEE OBLIGATIONS

- 5. The Licensee shall:
 - (a) Pay to the Owner:

- (i) \$10.00, payable upon the execution of this Agreement;
 - (ii) \$10.00 per annum, plus any applicable taxes including GST, in advance, payable not later than 30 days after the delivery of the Owner's invoice to the Licensee. The first invoice will be for \$10.50 (the GST payment being \$0.50);
- (b) Not use the Trail Areas nor allow the Trail Areas to be used for any purpose other than the Permitted Use;
- (c) Not assign or transfer this Agreement, including without limitation, the Licensee's rights to the Trail Areas without the prior written consent of the Owner. The Owner, however, may assign this Agreement to a third party, including any purchaser of the Trail Areas;
- (d) Not remove any standing timber from the Trail Areas without the prior written consent of the Owner, except that the Licensee may remove any trees with a 2 inch diameter, or less, at a point 3 feet off the ground without the prior written consent of the Owner. The Licensee may remove hazard trees, as assessed by a Professional Forester, for the sake of maintaining public safety. The Licensee acknowledges that any timber rights in the timber on the Trail Areas belong to Owner;
- (e) Be entitled to construct and install on the Trail Areas such temporary improvements as the Licensee considers necessary or desirable to enable Licensee to use the Trail Areas for the Permitted Use provided that:
 - (i) No improvements shall be constructed or installed on the Trail Areas unless the Licensee has first delivered plans and specifications to the Owner;
 - (ii) Before the Licensee initiates any work for any temporary improvements near the location of any the Owner's Enhancements, the Licensee shall obtain from the Owner information about the location of such Owner's Enhancements to ensure that they are not damaged nor affected during the progress of the work;
 - (iii) All work associated with the temporary improvements shall be done in a good and workmanlike manner by qualified and experienced contractors, professionals or tradespeople or upon the written consent of the Owner by qualified and experienced volunteers, which consent will not be unreasonably withheld;
 - (iv) Any such construction or installation by the Licensee shall be at the Licensee's risk and it shall be the responsibility of the Licensee to verify in advance the condition of the Trail Areas for such works, including without limitation the geotechnical condition of the Trail Areas and their suitability for the intended improvements. Any consent provided by the Owner pursuant to this section 5(e) shall not constitute a representation or warranty by the Owner that the condition of the Trail Areas are suitable for the proposed works;
- (f) Have permission for the continued existence of the temporary improvements constructed prior to the Effective Date of this Agreement;
- (g) Keep at all times and at the Licensee's expense the Trail Areas and any improvements constructed on the Trail Areas (whether or not such improvements

were constructed by the Licensee, but excluding the Owner's Enhancements) in good repair;

- (h) Not, at any time commit or suffer to be committed any waste upon the Trail Areas;
- (i) Ensure that in using the Trail Areas for the Permitted Use, no act whatsoever shall be done or omitted to be done in or upon the Trail Areas, which may result in nuisance, damage or disturbance to the occupiers or owners of any Trail Areas or premises adjoining the Trail Areas or to the holders of any easement, right of way or other encumbrance charging the whole or part of the Trail Areas, including without limitation, the Owner's Enhancements;
- (j) If deemed prudent or necessary by the Owner or the Licensee for the purposes of subsections 5(b) and 5(e) or otherwise,
 - (i) designate the Trail Areas by notices, posted signs, fences or otherwise, as approved by the Owner;
 - (ii) control, regulate and direct the movement, activities and the access and entry of all Licensee invitees, employees, agents, contractors, consultants, licensees or any other persons for whom Licensee is responsible to or on the Trail Areas; and
- (k) Use the Licensee's best endeavors to ensure that no claim of lien shall be filed in respect of any work which may be carried out by it or on the Licensee's behalf on the Trail Areas and, if a claim of lien shall be filed in respect of any such work, the Licensee shall take all necessary steps to have the claim of lien cancelled and discharged from the Trail Areas within 45 days of the date the Licensee has notice of such filing. The Owner, in addition to any other right or remedy, shall have the right, but shall not be obliged, to post a Notice of Interest ("Notice") on the Trail Areas pursuant to Section 3(2) of the *Builders Lien Act* and file the Notice in the Land Title Office or to discharge any claim of lien from the Trail Areas by paying the amount claimed to be due or by procuring a discharge of such liens by deposit of such amount in the appropriate court. In any such event the Licensee shall forthwith pay to and reimburse the Owner for all costs and expenses (including actual legal fees and disbursements expended) incurred by the Owner;
- (l) Comply with any law, statute, by-law, regulation or lawful requirements of any governmental authority or any public utility lawfully acting under statutory authority and all demands and written notices in pursuance thereof whether given to the Licensee or the Owner and in any manner or degree affecting the exercise or fulfillment of any right or obligation arising under or as a result of this Agreement or the use or occupancy of the Trail Areas by the Licensee. If a party receives any such demand or written notices, then that party shall forthwith deliver a copy thereof to the other party;
- (m) Obtain and maintain, during the term of this Agreement:
 - (i) the requisite approvals and certificates to permit the Licensee to use the Trail Areas for the Permitted Use; and,
 - (ii) insurance coverage such as a reasonable and prudent owner/operator of a

network of trails for recreational purposes would obtain, having regard to the obligations assumed by the Licensee under this Agreement and the activities conducted by the Licensee, the Licensee's employees, workers, contractors, agents and invitees on the Trail Areas, including the construction and installation of temporary improvements and the use and occupancy of the Trail Areas by the general public;

- (n) Provide to the Owner proof of the Licensee's certification and of the insurance coverage as set out in Schedule "B" upon signing of this Agreement and each anniversary date thereafter or such other time or times as the Owner may request. The Licensee shall provide evidence of the insurance coverage in the form of certificates of insurance and if requested by the Owner supplemented by copies of insurance policies which shall be certified and complete with all endorsements;
 - (o) Use all reasonable efforts to minimize the adverse environmental impact of the improvements and the Permitted Use on the Trail Areas; and
 - (p) By no later than 180 days after the expiry or the sooner termination of this Agreement, have removed, at the Licensee's expense, all improvements constructed prior to and after the Effective Date and, if requested by the Owner at its sole discretion, shall restore the Trail Areas to their original state unless the Owner has elected to keep any of the improvements by written notice to Licensee prior to the expiry or the sooner termination of this Agreement, in which case the Owner may re-enter and take possession of those specified improvements.
 - (q) Erect signage at the licensee's expense, acknowledging the ownership of the Property, and that the Owner has granted temporary use of the property to the licensee.
6. If any party hereto is comprised of more than one person, all covenants and obligation of those persons shall be joint and several.

RIGHTS OF THE OWNER

7. The Owner or its duly authorized employees, agents or contractors may:
- (a) enter upon the Trail Areas for the purpose of examining the condition and state of repair of the Trail Areas and the improvements, and if at any time as a result of its inspection, the Owner gives to the Licensee notice of defect or want of repair, the Licensee shall cause the same to be repaired immediately at the expense of the Licensee. The Owner may only give such notice if the requested repairs are reasonably necessary and not of purely cosmetic nature; and
 - (b) without prejudice to the Owner's other rights and remedies, re-enter the Trail Areas and repair or maintain the same at the expense of the Licensee if the Licensee shall at any time default in the performance or observance of any of the covenants in this Agreement for or relating to the repair or maintenance of the Trail Areas or the Licensee's improvements, and in the Owner's opinion such default affects the safe or lawful use or operation of the Trail Areas or the improvements or the Owner's use of the Owner Enhancements or neighbouring lands or trails.

INDEPENDENT CONTRACTOR

8. The Licensee enters into this Agreement as an independent contractor and in no sense is the Licensee or any of the Licensee's employees, invitees or agents to be considered an agent of or under the control of the Owner. No inspection undertaken by the Owner, granting of a consent by the Owner, delivery of plans, specifications or other information to the Owner, nor the Licensee's compliance with any orders or directions given by the Owner shall relieve the Licensee from complying with, or derogate from the Licensee's obligations to comply with the Licensee's obligations under this Agreement. Without limiting the foregoing, the Owner is under no obligation to inspect, repair or maintain the Trail Areas or any improvements approved under section 7, or to insure any improvements made or installed by or on behalf of the Licensee.

CONTROL

9. The Licensee shall, during the term of this license, be the party in control of the Trail Areas, including without limitation the condition of the Trail Areas for safe use for the Permitted Use hereunder, the activities conducted on the Trail Areas and the persons allowed by the Licensee to enter on them. The Licensee shall be responsible to implement, maintain and supervise a prudent safety program in connection with the Permitted Use of the Trail Areas. The Licensee confirms and agrees that the Owner shall not be liable for any personal injury, including death, or property damage arising from the use of the Trail Areas by the Licensee or those for whom it is responsible at law.

INDEMNITY

10. The Licensee shall indemnify and save harmless the Owner, its directors, officers, employees and agents from all losses, damages, actions, suits, claims, demands, costs, expenses, fees (including actual legal costs and disbursements expended) and liabilities of any nature whatsoever by whomsoever brought, made or suffered for which the Owner is or may become liable, incur or suffer by reason of any injury to person (including death) or loss or damage to property or economic loss arising directly or indirectly based upon, arising out of or connected with the use of the Trail Areas by the Licensee or by its employees, contractors, workers, licensees, invitees, or agents or for any action taken or things done or maintained in connection with this Agreement, the intent being that the Owner shall be at no expense, or loss, to which it would not have been put but for this Agreement. The foregoing obligations of the Licensee under this section 10 survive the termination of this Agreement.

NOTICE

11. Wherever any notice is required to be given to either party under the terms of this Agreement, the notice shall be in writing and shall be deemed to be sufficiently given if forward by registered mail addressed as follows:

If to the Owner: The Board of Education of School District 23 (Central Okanagan)
 1040 Hollywood Road S.
 Kelowna, BC
 V1X 4N2

If to the Licensee: City of West Kelowna
3731 Old Okanagan Hwy
West Kelowna, BC
V4T 0G7

ADDING FURTHER TRAILS TO THE NETWORK

- 12. The parties hereby acknowledge that if in the future, the parties agree that an Additional Trail Area is to be subject to this Agreement:
 - (a) the parties shall execute an addendum to this Agreement in the form of the addendum attached as Appendix B, ensuring that an appropriate sketch or plan is attached to that addendum;
 - (b) the executed addendum forms a part of this Agreement; and
 - (c) once the addendum to this Agreement is executed by the parties, the definition of "Trail areas" under this Agreement shall forthwith include the Additional Trail Area described in that addendum, as shown on the sketch or plan attached to it, to this Agreement.

ENTIRE AGREEMENT

- 13. This Agreement is the complete and exclusive agreement between the parties in respect of the Licensee's use of the Trail Areas. It supersedes all other correspondence and agreements whether oral or written and any prescriptive rights the Licensee may have or may acquire by operation of law.

The parties intending to be legally bound have caused this Agreement to be executed on the Effective Date first above written.

CITY OF WEST KELOWNA

**Board of Education of School District 23
(Central Okanagan)**

Authorized Signatory

Authorized Signatory

Authorized Signatory

Authorized Signatory

Date

Date

Schedule "A"

The Property

PID: 023-652-900

Legal Description: Lot 27, Plan KAP58401, DL 3485



Schedule "B"

Insurance Requirements

1. The Licensee shall provide, maintain and pay for the insurance coverage described below:
 - (a) Comprehensive General Liability Insurance – having a limit of not less than \$10 million per occurrence, and insuring against claims for personal injury, including death, and for property damage arising out of the operations of Licensee under this Agreement, and including:
 - (i) liability for premises and operations;
 - (ii) owners and contractors protective;
 - (iii) blanket written and oral contractual liability;
 - (iv) extended bodily injury and property damage definitions;
 - (v) unlicensed mobile equipment;
 - (vi) operation and use of machinery attached to licensed vehicles;
 - (vii) non-owned automobile liability insurance; and
 - (viii) contingent employers' liability
 - (b) Professional Errors and Omissions Insurance – for any Improvements, if the work undertaken for those Improvements includes professional services, having limit of not less than 2 million inclusive any one occurrence.
 - (c) Automobile Liability Insurance – having limit of not less than \$5 million inclusive for any one occurrence, and insuring against claims for personal injury, including death, and for property damage arising out of the use of owned, leased and non-owned vehicles under this Agreement.

2. The policies for the insurance described above shall be endorsed as follows:

ADDITIONAL INSURED: The Comprehensive General Liability Coverage policy shall define "additional insureds" as "the Owner", and its directors, officers, employees, and agents" but only with respect to the operations of, and use of the Trail areas by the Licensee under this Agreement.

WAIVER OF SUBROGATION: The Comprehensive General Liability Coverage policy and the Professional Errors and Omissions Insurance policy shall each include and endorsement under which the insurer waives any right of subrogation it may have against the Owner and its directors, officers, employees an agents.

NOTICE OF CANCELLATION OR MODIFICATION: The Comprehensive General Liability Coverage policy and the Professional Errors and Omissions Insurance policy each shall include and endorsement in substantially the following form:

"Unless the Owner has expressly waived this provision in writing, the coverage

provided by this policy will not be materially cancelled, changed or amended in any way, until 30 days after written notice of that cancellation, change or amendment has been given to the Manager, Corporate Risk & Insurance, the Owner.

PRIMARY COVERAGE: The Comprehensive General Liability Insurance shall expressly state that it provides primary coverage.

CROSS-LIABILITY: With respect to the Comprehensive General Liability Insurance, any form of third-party liability coverage shall include a provision in substantially the following form:

“The insurance afforded by this policy shall apply to any action brought against any of the named insureds by any other insured in the same manner as though separate policies were issued to each.”

3. Failure to comply or the full compliance with the requirements for insurance coverage of the kinds and with the limits stated in this schedule shall in no way act to relieve Licensee from the Licensee’s obligations under this Agreement including without limitation, the obligations of indemnification under section 10.

APPENDIX A

TRAIL AREA

That portion of land highlighted in Blue, and located on Lot 27, Plan KAP58401, DL 3485.



Appendix B

LICENCE OF OCCUPATION - ADDENDUM

THIS AGREEMENT dated for reference _____,

BETWEEN:

The Board of Education of School District 23 (Central Okanagan) ("The Owner")
1040 Hollywood Road S.
Kelowna, British Columbia
V1X 4N2

AND:

CITY OF WEST KELOWNA (the "Licensee")
3731 Old Okanagan Hwy
West Kelowna, BC
V4T 0G7

BACKGROUND:

- A. Pursuant to a Licensee of Occupation (the "License") dated for reference, October 1, 2022 between the Licensee and the Owner. The Owner agreed to allow the Licensee to use a portion of certain property owned by the Owner for the Licensee's trail network.
- B. As contemplated by sections 12 of the License, the parties wish to add further trails ("Additional Trails") to the trail network and to amend the License to include the Additional Trails, on all the terms and conditions set out in this addendum.
- C. The Additional Trails are located on property (the "Additional Property") owned by the Owner which is located in the City of West Kelowna, BC, and is more particularly known and described as set out in section 1(a) of this addendum.
- D. The Additional Trails are shown on the sketches (the "Additional Sketches") attached to this addendum and marked as Appendix A.

THIS AGREEMENT WITNESSES that in consideration of the payment of \$10.00 from watch party to the other and other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged), the parties agree as follows:

1. AMENDMENTS

The License is amended as follows:

- (a) By adding the following legal description(s) of the Additional Property to Schedule "A" of the License:

Parcel Identifier: Lot 27, Plan KAP58401, DL 3485

With the effect that the Additional Property is included in the definition of "Property" contained in recital A of the License.

(b) By adding the Additional Sketches to the sketches marked as Appendix A to the License.

2. EFFECT OF ADDENDUM

Except as expressly amended by this addendum and any other addendum entered into by the parties, all terms and conditions of the License remain un-amended and the parties ratify and confirm the License. The License and addendum and any other addendum entered into by the parties shall be read and construed as one document.

3. TIME REMAINS OF ESSENCE

Time remains of the essence of the License and of this addendum.

IN WITNESS WHEREOF the Licensee has executed this addendum this ____ day of _____.

THE LICENSEE

Witness

Print Name

Date

Address

IN WITNESS WHEREOF _____ has executed this addendum this ____ day of _____.

Date