

LICENCE OF OCCUPATION

THIS AGREEMENT dated for reference the ____ day of _____, 2020.

BETWEEN:

CITY OF KELOWNA, a municipal corporation having its office at 1435
Water Street, Kelowna, BC., V1Y 1J4

(the "City")

OF THE FIRST PART

AND:

REGIONAL DISTRICT OF CENTRAL OKANAGAN,
a regional district having offices at
1450 KLO Road
Kelowna, BC V1W 3Z4

(the "Licensee")

OF THE SECOND PART

WHEREAS:

- A. The Licensee is the owner of the properties located in the City of Kelowna, legally known as: Lot A, Plan KAP 63279, Section 10, Township 23, ODYD. It is commonly known as Robert Lake Regional Park with a civic address of 956 Curtis Rd, Kelowna, BC;
- B. The Licensee wishes to construct/maintain a bird viewing platform and parking area adjacent to the Property (the "Works") which will be within City-owned property road right-of-way (known as the "Licence Area"); and
- C. The City is prepared to grant the Licensee a Licence of Occupation pursuant to Section 35(11) of the *Community Charter*, S.B.C. 2003, c.26 for a term of 5 years (the "Term") over the Licence Area to enable the Licensee to complete/maintain the Works.

NOW THEREFORE in consideration of the payment of \$1.00 and other good and valuable consideration, from the Licensee to the City, the receipt and sufficiency is hereby acknowledged, the City and the Licensee covenant and agree as follows:

- 1. **Grant** – The City grants to the Licensee the non-exclusive right and licence to enter onto and use that portion of the Licence Area shown in bold on Schedule A which is attached hereto for the purposes a bird viewing platform and parking area.

2. **Additional Rights** – For the purposes outlined in Section 1, the Licensee shall have the right to bring onto the Licence Area all necessary materials, vehicles, machinery and equipment.
3. **Term** – The duration of this Agreement and Licence herein granted shall be for a term of 5 years (the “Initial Term”) commencing on the ____ day of _____ 2020, unless earlier terminated in accordance with Section 18.
4. **Extension** – The term of this Licence of Occupation may be renewed for a further 5-year period (the “Renewal Term”) at the sole discretion of the City. Compensation to the City by the Licensee for the Renewal Period shall be no less than the Initial Term.
5. **State of Licence Area at Termination** – In the event that this Agreement terminates or expires for any reason, the Licensee will cease all occupation of the Licence Area and will remove all equipment, chattels, fixtures, buildings and other improvements, including the parking area and trailhead infrastructure from the Licence Area. The Licensee will leave the Licence Area in a safe, clean and tidy condition and clear of contamination occurring since the date of commencement of this Agreement. In the event that the Licensee fails to remove any equipment or chattels upon termination of this Agreement then the City may do so and recover the expense thereof from the Licensee. All buildings, improvements and fixtures remaining on the Licence Area become the sole property of the City upon termination of this Agreement, without any compensation whatsoever to the Licensee.
6. **Non-exclusive Use** – The Licensee agrees that:
 - (a) the rights granted under this Agreement do not constitute any interest in the Licence Area or entitle the Licensee to exclusive possession of the Licence Area;
 - (b) the Licensee’s rights under this Agreement are at all times subject to the rights and interest of the City as owner and possessor of the Licence Area.
7. **No Waste or Nuisance** – The Licensee will not do or permit anything that may become a nuisance to occupiers or invitees on adjoining lands.
8. **Terms and Conditions** – The Licensee will comply with all the terms, conditions, rules or regulations that the City may from time to time impose in respect of the use and administration of the Licence Area. The Licensee acknowledges that the fact that the Licence is granted by the City does not excuse the Licensee from obtaining building permits, development permits, business licences and other required permissions.
9. **Maintenance** – The Licensee will at its own expense keep the Licence Area in a safe, clean and tidy condition, and will erect boarding and fencing around the Licence Area prior to any construction.
10. **Compliance with Laws** – The Licensee will comply with all laws and regulations pertaining to its use and occupation of the Licence Area.
11. **Inspection by the City** – The City may review and inspect the Licence Area and the work which the Licensee is undertaking pursuant to this Agreement to determine if the Licensee is in compliance with the terms of this Agreement.
12. **No Transfer** – The rights granted to the Licensee under this Agreement may not be sub-licensed, assigned or otherwise transferred.
13. **Risk** – The Licensee accepts the Licence Area on an as-is basis and agrees that it will use the Licence Area at its own risk, and the City will not be liable in respect of any loss of life, personal injury, damage to

property, loss of property or other loss or damage suffered by the Licensee, its contractors, subcontractors, agents, invitees, employees or any other person arising out of this Agreement or the use and occupation of the Licence Area except in the case of negligence or wilful act or omission by the City, its employees, agents or invitees.

14. **Indemnity** – The Licensee will indemnify and save harmless the City and its elected and appointed officials, officers, employees, agents and others from and against any claim, action, damage, liability, cost and expense in connection with loss of life, personal injury, loss of property, damage to property or other loss or damage arising from this Licence or any occurrence on or around the Licence Area during the term of this Licence, or by use or occupancy of the Licence Area by the Licensee or any default of the Licensee under this Agreement or any wrongful act, omission or negligence of the Licensee or its officers, employees, contractors, agents or others for whom the Licensee is responsible. This indemnity will survive the expiry or sooner termination of this Agreement.
15. **Release** – The Licensee hereby releases and forever discharges the City, its elected officials, officers, employees, agents and invitees, of and from any claim, causes of action, suit, demand, expense, cost, legal fees and compensation of whatever kind, whether known or unknown, at law or in equity, including without limitation any claim under the *Property Law Act* (collectively “Claims”), and which may be caused as a result of natural flooding or Ministry of Environment approved flood mitigation measures, which the Licensee may have, sustain or suffer, as the case may be, now or in the future arising from the Works, other improvements in the Licence Area, the expiry or termination of this Licence, the exercise by the City of any of its rights under this Licence or from or in any way connected with the Licensee’s use of the Licence Area, except claims arising from the exclusive negligence of the City.
16. **Insurance** – During the term of this Agreement, the Licensee will carry public liability insurance, in a form and with an insurer acceptable to the City, insuring the Licensee and the City under this Agreement in an amount not less than \$5,000,000.00 per occurrence as set out in Schedule B, and any other type of insurance that the City may reasonably require. The Licensee will provide the City with proof of insurance at the time of execution of this Agreement and at other times upon request.
17. **Termination** – The City reserves the right to terminate this Agreement if the Licensee breaches any of its obligations under this Agreement and fails to remedy the breach with thirty (30) business days of receiving written notice from the City. The City will not be liable to compensate the Licensee for damages, costs or losses resulting from the exercise of this right of termination or any termination of this Licence.
18. **Early Termination** – The City reserves the right to terminate the Agreement at any time with thirty (30) days written notice to the Licensee, without liability to compensate the Licensee for damages, costs or losses resulting from the exercise of this right of termination.
19. **Emergency Suspension** – The City reserves the right to suspend the Agreement for reasons of flooding or other emergency measures with twenty-four (24) hours written notice to the Licensee, without liability to compensate the Licensee for damages, costs or losses resulting from the exercise of this right of suspension.
20. **Notices** – Any notice given pursuant to this Agreement will be sufficiently given if it is in writing and delivered by hand or mailed by prepaid registered mail or sent by facsimile transmission to the intended party at its address set out on page 1 of this Agreement or to such other address as either party may provide in writing to the other pursuant to the provisions of this paragraph.

All notices to the City must be marked to the attention of the City Clerk.

A notice will be deemed to be received on the day it is delivered, if delivered by hand, on the day of transmission, if sent by facsimile, or 3 days after the date it was mailed or if that day is not a business day,

the next day that is a business day. If mailed, should there be at the time of mailing or between the time of mailing and the deemed receipt of the notice, a mail strike or slowdown, labour or other dispute which might affect the delivery of such notice by the mails, then such notice will only be effective if delivered by hand or sent by facsimile transmission.

21. **No Effect on Laws or Powers** – Nothing contained or implied herein prejudices or affects the City's rights and powers in the exercise of its functions pursuant to the *Local Government Act* or its rights and powers under any enactment to the extent the same are applicable to the Licence Area, all of which may be fully and effectively exercised in relation to the Licence Area as if this Agreement had not been fully executed and delivered.
22. **Severance** – If any portion of this Agreement is held invalid by a Court of competent jurisdiction, the invalid portion shall be severed and the decision that it is invalid must not affect the validity of the remainder of the Agreement.
23. **Further Actions** – Each of the parties hereto shall from time to time hereafter and upon any reasonable request of the other, execute and deliver, make or cause to be made all such further acts, deeds, assurances and things as may be required or necessary to more effectually implement and carry out the true intent and meaning of this Agreement.
24. **Waiver or Non-action** – Waiver by the City of any breach of any term, covenant or condition of this Agreement by the Licensee must not be deemed to be a waiver of any subsequent default by the Licensee. Failure by the City to take any action in respect of any breach of any term, covenant or condition of this Agreement by the Licensee must not be deemed to be a waiver of such term, covenant or condition.
25. **Reference** – Every reference to a party is deemed to include the heirs, executors, administrators, successors, servants, employees, agents, contractors and officers of such party wherever the context so requires or allows.
26. **General** –
 - (a) This Agreement will bind and benefit each party to this Agreement, and its respective corporate successors;
 - (b) The Schedules attached to this Agreement form part of this Agreement;
 - (c) This Agreement constitutes the entire agreement between the parties and may not be amended except by agreement in writing signed by all parties to this Agreement;
 - (d) Time is of the essence of this Agreement;
 - (e) This Agreement must be construed according to the laws of the Province of British Columbia.
 - (f) This License may be subject to approval of City of Kelowna Council.

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

CITY OF KELOWNA by its authorized
Signatory:

Manager, Property Management

Print Name

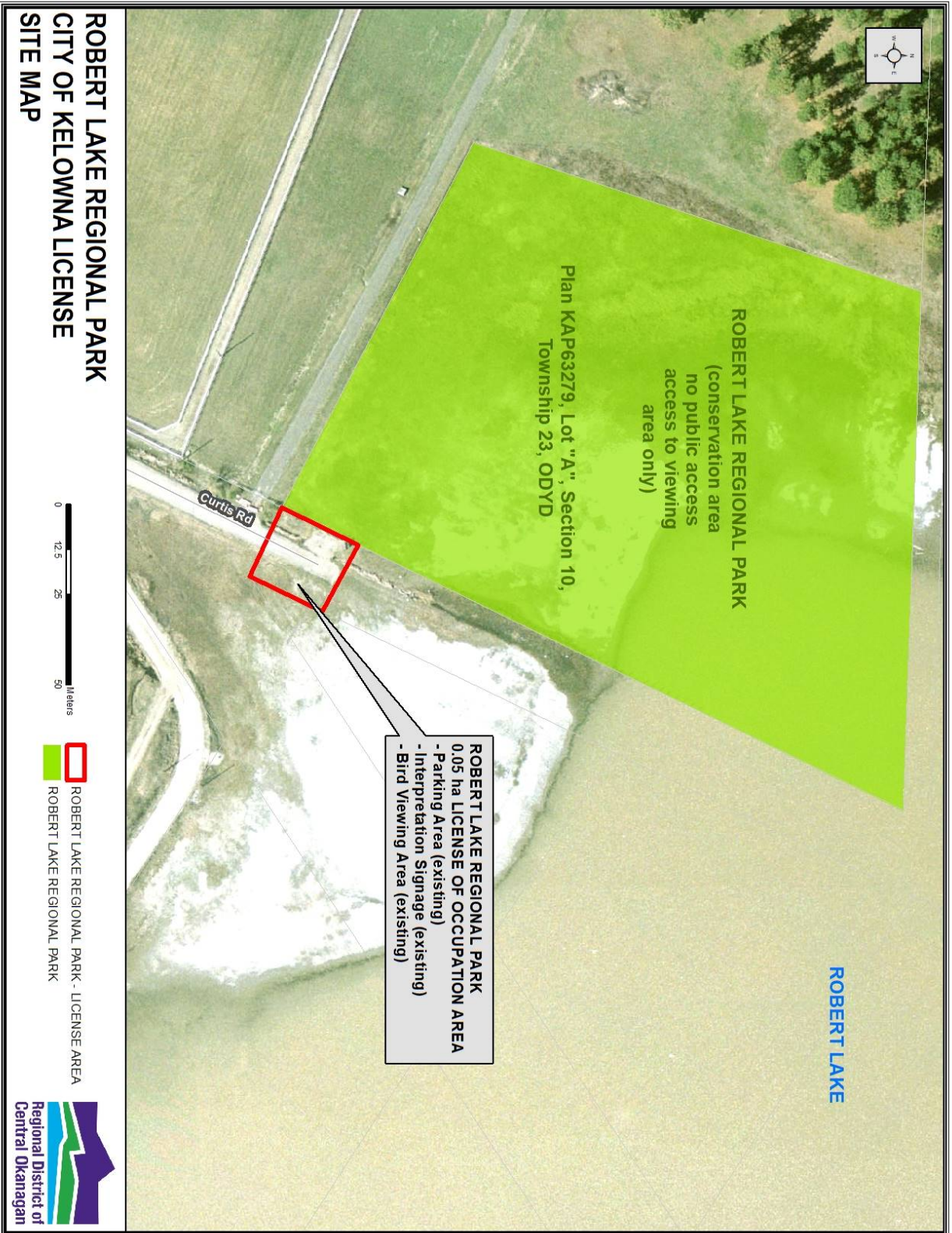
REGIONAL DISTRICT OF CENTRAL OKANAGAN
by its authorized signatory:

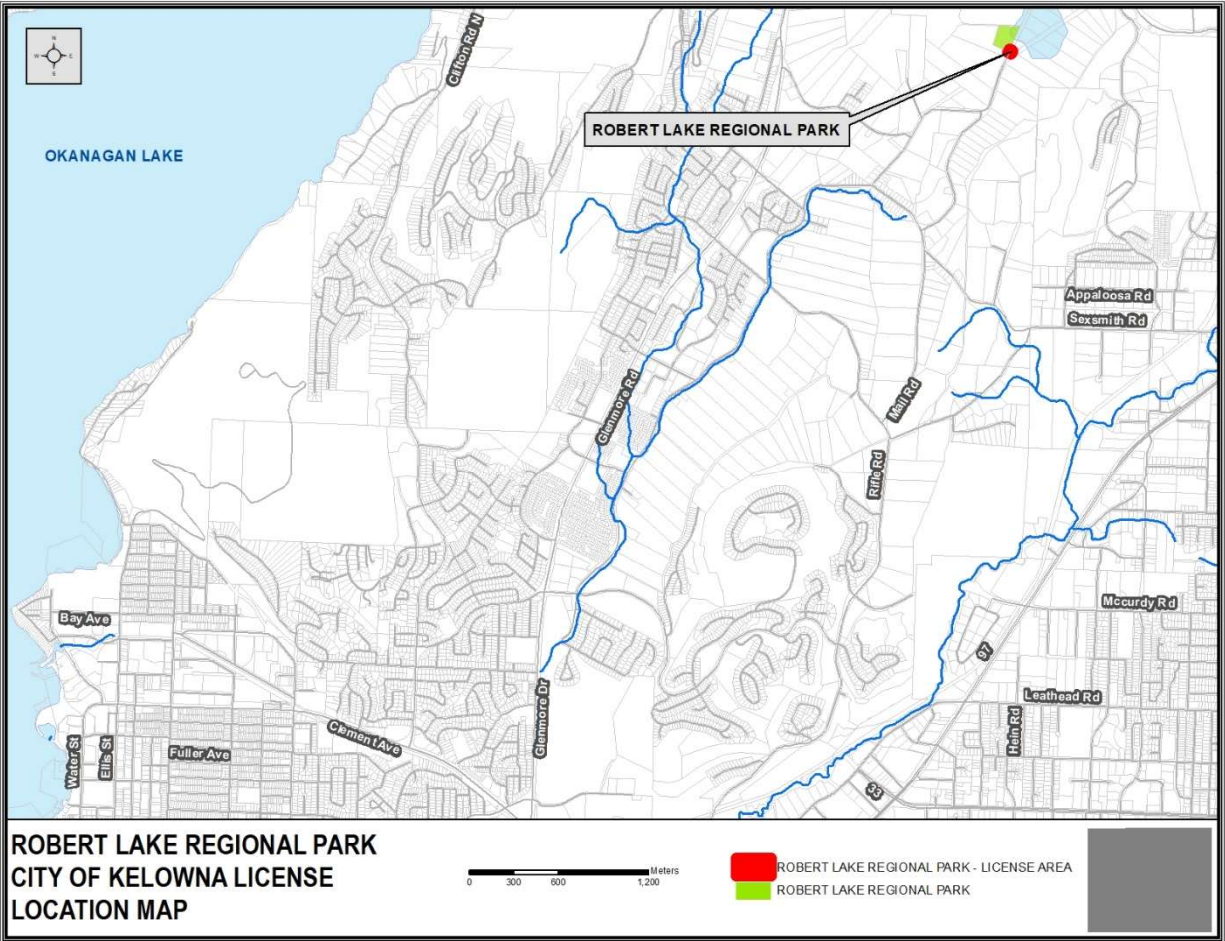
Signature

Print Name

Schedule "A"

LICENSE AREA





Schedule B

INSURANCE REQUIREMENTS



CERTIFICATE OF INSURANCE

City staff to complete prior to circulation

City Dept.: _____
 Dept. Contact: _____
 Project/Contract/Event: _____

Insured

Name: _____
 Address: _____

Broker

Name: _____
 Address: _____

Location and nature of operation and/or contract reference to which this Certificate applies:

Type of Insurance	Company & Policy Number	Policy Dates		Limits of Liability/Amounts
		Effective	Expiry	
Section 1 Comprehensive General Liability including: <ul style="list-style-type: none"> • Products/Completed Operations; • Blanket Contractual; • Contractor's Protective; • Personal Injury; • Contingent Employer's Liability; • Broad Form Property Damage; • Non-Owned Automobile; • Cross Liability Clause. 				Bodily Injury and Property Damage \$ <u>5,000,000</u> Inclusive \$ _____ Aggregate \$ _____ Deductible
Section 2 Automobile Liability				Bodily Injury and Property Damage \$ <u>5,000,000</u> Inclusive

It is understood and agreed that the policy/policies noted above shall contain amendments to reflect the following:

1. Any Deductible or Reimbursement Clause contained in the policy shall not apply to the City of Kelowna and shall be the sole responsibility of the Insured named above.
2. The City of Kelowna is named as an Additional Insured.
3. 30 days prior written notice of material change and/or cancellation will be given to the City of Kelowna.

 Print Name

 Title

 Company (Insurer or Broker)

 Signature of Authorized Signatory

 Date