

**Parks and Recreation Advisory  
Committee Meeting  
to be held via Zoom  
Monday, June 1, 2020  
at 3:00 p.m.**

1. **Call Regular Committee Meeting to Order**
2. **Application of Rules of Procedure**

Staff Recommendation:

THAT the Parks and Recreation Advisory Committee temporarily suspend the voting at meeting procedures (Council Procedure Bylaw No. 2018-35 25(1)(b)) and when ready to vote and the question is called those in favor will say "in favour" and those opposed will say "opposed" for the duration of the British Columbia provincial state of emergency in response to the COVID-19 pandemic.

3. **Adoption of Agenda**
4. **Adoption of Minutes**

- 4.1 Minutes of the February 3, 2020 Parks and Recreation Advisory Committee Meeting **3-5**

Staff Recommendation:

THAT the Parks and Recreation Advisory Committee adopt the minutes of the February 3, 2020 meeting as presented.

5. **Business Arising from Prior Meetings**
6. **New Business**

- 6.1 Travel Penticton Society and Penticton and Wine Country Chamber of Commerce License to Use Agreement for the Jubilee Pavilion  
Re: 185 Lakeshore Drive **6-20**

Staff Recommendation:

THAT the Parks and Recreation Advisory Committee recommend that Council approve an 18-month License to Use agreement, for the Jubilee Pavilion building located at 185 Lakeshore Drive to Travel Penticton and the Penticton and Wine Country Chamber of Commerce, at a license rate of \$7,200.00 per year plus annual CPI adjustments.

- 6.2 Coyote Cruises Limited Partnership – License to Use Agreement  
Re: 215 Riverside Drive

21-39

Staff Recommendation:

THAT the Parks and Recreation Advisory Committee recommend that Council approve the 5-year License to Use renewal agreement commencing on June 17th, 2020 with Coyote Cruises Limited Partnership for the use of City land and building located at 215 Riverside Drive for the purpose of the operation of a food, rental concession and transportation service at a license rate of \$4,389.00 per year plus GST and annual CPI adjustments.

- 6.3 City of Penticton COVID-19 Update – Bregje Kozak, Director of Recreation and Facilities **Verbal**

7. **Council Outcome**

8. **Next Meeting**

40

9. **Adjournment**

## Parks and Recreation Advisory Committee Meeting

Held at City of Penticton, Council Chambers  
171 Main Street, Penticton, B.C.

Monday, February 3, 2020  
at 3:00 p.m.

**Present:**

Gary Dean  
Isaac Gilbert, Chair  
James Palanio, Vice Chair  
John Archer  
Julia Barber  
Lee Davidson  
Peter Osborne  
Robert (Sandy) Ross  
Tyson Bull

**Council Liaison:**

Jake Kimberley

**Staff:**

Ben Johnson, Manager of Special Projects  
Bregje Kozak, Director of Recreation and Facilities  
Donny van Dyk, Chief Administrative Officer (*Left the meeting at 3:05 p.m.*)  
JoAnne Kleb, Engagement Strategist (*Left meeting at 4:28 p.m.*)  
Paula McKinnon, Legislative Assistant

**Regrets:**

Laura Harp  
Michaela Wooldridge  
Drew Barnes

1. **Call to Order**

The Parks and Recreation Advisory Committee was called to order by the Chair at 3:02 p.m.

2. **Introduction of Late Items**

3. **Adoption of Agenda**

**It was MOVED and SECONDED**

THAT the Parks and Recreation Advisory Committee adopt the agenda for the meeting held on February 3, 2020 as presented.

**CARRIED UNANIMOUSLY**

4. **Adoption of Minutes**

**It was MOVED and SECONDED**

THAT the Parks and Recreation Advisory Committee adopt the minutes of the November 12, 2019 meeting as presented.

**CARRIED UNANIMOUSLY**

5. **Business Arising from Prior Meetings**

6. **New Business**

6.1 Parks and Recreation Advisory Committee Term Extension – Bregje Kozak

The Director of Recreation and Facilities informed the Committee that the Parks and Recreation Advisory Committee term has been extended to December 31, 2020; however, Staff proposed another extension of term into 2022 to align with other Council Committees.

**It was MOVED and SECONDED**

THAT the Parks and Recreation Advisory Committee accepts the proposed extension of term into 2022.

**CARRIED UNANIMOUSLY**

James Palanio entered the meeting at 3:05 p.m.

6.2 Skaha Lake Park East Plan Phase 1 Engagement Update - JoAnne Kleb, Engagement Strategist

The Engagement Strategist provided a high level overview of the trends received during recent community engagement.

**It was MOVED and SECONDED**

THAT the Parks and Recreation Advisory Committee receive the presentation titled "Skaha Lake Park East Plan Phase 1 Engagement Update" into the public record.

**CARRIED UNANIMOUSLY**

6.3 Skaha Lake Park East Plan Update – Ben Johnson

The Manager of Special Projects provided the Committee with an interactive presentation seeking direction on engaging the broader community on key decisions regarding key features such as the marina and docks, boat trailer parking area, boat house and a potential off-leash dog park area.

Discussions ensued regarding the provided analysis of options for the marina and docks, functionality of the boat trailer parking area and the potential to create more greenspace, potential growth of the boat house and whether there is a need to include an off-leash dog park as well as potential locations.

**It was MOVED and SECONDED**

THAT the Parks and Recreation Advisory Committee receive the presentation titled "Skaha Lake Park East Plan Update" into the public record.

**CARRIED UNANIMOUSLY**

7. **Council Outcome**

8. **Next Meeting**

The Legislative Assistant introduced to the Committee the proposed 2020 meeting schedule.

**It was MOVED and SECONDED**

THAT the Parks and Recreation Advisory Committee meetings be held on February 3, March 2, April 6, May 4, June 1, July 6, August 4 and 31, October 5, November 2 and December 7 at City Hall at 3:00 p.m.

**CARRIED UNANIMOUSLY**

9. **Adjournment**

**It was MOVED and SECONDED**

THAT the Parks and Recreation Advisory Committee adjourn the meeting held on Monday, February 3, 2020 at 4:42 p.m.

**CARRIED UNANIMOUSLY**

Certified Correct:

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Paula McKinnon  
Legislative Assistant



# Committee Report

penticton.ca

**Date:** June 1, 2020 File No: 4320-80  
**To:** Parks and Recreation Advisory Committee  
**From:** Sheri Raposo, Land Administrator  
  
**Subject:** Travel Penticton Society and Penticton and Wine Country Chamber of Commerce  
License to Use Agreement for the Jubilee Pavilion - 185 Lakeshore Drive, Penticton, BC

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## Staff Recommendation

THAT the Parks and Recreation Advisory Committee recommend that Council approve an 18 month License to Use agreement, for the Jubilee Pavilion building located at 185 Lakeshore Drive to Travel Penticton and the Penticton and Wine Country Chamber of Commerce, at a license rate of \$7,200.00 per year plus annual CPI adjustments.

## Background

Travel Penticton currently leases space at 120-888 Westminster Ave. W. and operates the Visitor Information Centre from that location.

In 2018 Travel Penticton entered into a License to Use agreement for a Beach Vending site beside the Peach Concession. This location was extremely busy and provided much needed hands on information to tourists at a very central and easily accessible location. Due to the success of this location, Travel Penticton had previously requested the use of the Jubilee Pavilion as a permanent second location to be able to offer more visitor information services and products, if the location ever became vacant.

The Penticton Wine Country Chamber of Commerce had an office location at 102 Ellis Street. They have recently sold that location, and are currently looking for a new office location. The Chamber of Commerce approached the City inquiring about vacant office space.

With the recent pandemic situation that we are currently faced with, Travel Penticton Society and the Penticton and Wine Country Chamber of Commerce are looking to work together to provide a collaborative location to assist the business community on recovering from the pandemic.

## Property Description

The Jubilee Pavilion was constructed in the 1980's. The building has approximately 770 sq. ft. of office space and a washroom. This building has had many users over its lifetime that include functioning as a satellite office for the RCMP for summer patrols and as an event office location for the Peach Classic Triathlon, Peach Festival,

Ironman Canada and Challenge Penticton. It's most recent users have been the RCMP and Community Policing.

### Existing Use

The current use of this property is P2 – Parks and Recreation. Permitted uses in this zone are:

- accessory use, building or structure
- carnival
- community garden
- government service
- indoor amusement, entertainment and recreation
- outdoor market
- public parking lot

### Park Land Protection and Use Policy References

The Park Land Protection and Use Policy references the following sections regarding a License to Use for a portion of public park land that is a permitted use in a Park Zone:

#### 3.3. Protect public ownership

- 3.3.1. The City of Penticton may issue a License to Use for a portion of public park land to support a Permitted Use in a Park Zone. These licenses are typically for a short term or seasonal in nature, up to a maximum of three (3) years, and shall be approved in accordance with the zoning procedure for Permitted Uses outlined in this policy.

#### 5.1. Permitted Uses

- 5.1.1. Permitted Uses within any Park Zone and no other uses than those provided for in the list of permitted uses in the Zoning Bylaw shall be allowed on City park land.
- 5.1.1.1. Permitted Uses in a Park Zone may occur in accordance with the subdivision and development regulations of the Park Zone.
- 5.1.1.2. City staff will report to the Parks & Recreation Advisory Committee on any new licenses for permitted uses in a Park Zone.

### **Financial Implication**

Market appraisal completed on March 2, 2020 was \$14,630.00, per year. City staff are of the opinion that due to the financial crisis that local businesses are in, that there is a need and a benefit for the two groups to collaboratively work together, with the City providing a suitable and affordable location.

**Alternate recommendations**

That the City not provide an 18 month License to Use for the vacant building located at 185 Lakeshore Drive, to Travel Penticton Society and Penticton Wine Country Chamber of Commerce.

**Attachments**

Attachment A- 3 Year License to Use Agreement

Respectfully submitted,

Sheri Raposo, Land Administrator

Chief Financial Officer
<i>LWB</i>





## LICENSE TO USE AGREEMENT

Nature of Agreement:	License to Use	File No.: 4320-80
Particulars:	Use of building located at 185 Lakeshore Drive West, Penticton for purpose of operating a visitor information centre and Chamber of Commerce.	

THIS AGREEMENT dated for reference the \_\_\_\_\_ day of \_\_\_\_\_, 2020.

BETWEEN:

**THE CORPORATION OF THE CITY OF PENTICTON**

a duly incorporated City Municipality under the laws of the Province of British Columbia, located at 171 Main Street, Penticton, BC V2A 5A9

(the “**City**”)

OF THE FIRST PART

AND:

**TRAVEL PENTICTON SOCIETY**

A Society incorporated under the Laws of the Province of British Columbia, having a registered and records office at 120-888 Westminster Ave W, Penticton, BC, V2A 8S2

OF THE SECOND PART

AND

**PENTICTON & WINE COUNTRY CHAMBER OF COMMERCE**

A Society incorporated under the Laws of the Province of British Columbia, having a registered and records office at 102 Ellis St, Penticton, BC, V2A 4L5

OF THE THIRD PART

(collectively, the “**Licensee**”)

**WHEREAS**, the City has agreed to grant a license to the Licensee to have access and use of the building described in Schedule A attached hereto (hereinafter referred to as the “**Licensed Area**”);

**NOW THEREFORE**, in consideration of the fee to be paid by, and the covenants of the Licensee, the parties agree as follows:

**1. Grant of License**

The City, on the terms set forth herein grants a license to the Licensee to have access and use of the Licensed Area for the purposes described in the Management Plan attached hereto as Schedule B (herein called the “**Management Plan**”) on an “as is” basis and the City makes no representations or warranties as to the suitability of the Licensed Area for the intended use.

**2. Duration**

2.1 This agreement and the rights granted shall be for a term of **EIGHTEEN (18)** months commencing on **June 17, 2020** (the “**Commencement Date**”) through to **December 31, 2021**, unless cancelled in accordance with the terms of this agreement.

2.2 This agreement includes a provision for renewal for an additional **THREE (3)** year negotiable term upon mutual agreement by the City and the Licensee of the terms and conditions.

**3. License Fee**

3.1 The Licensee shall pay to the City a one-time documentation fee of **\$250.00 plus GST**.

3.2 On the Commencement Date and monthly thereafter, the Licensee shall pay to the City, the amount of **SIX HUNDRED ---XX/100 (\$600.00) plus GST** (the “**License Fee**”).

**4. Utilities**

The City will be responsible for the cost of electricity and ensure the transfer of the utility account into their name for the term of this agreement.

**5. Covenants of the Licensee**

The Licensee covenants and agrees with the City:

- a) to pay the License Fee due at the address of the City or at such other place as the City may specify from time to time;
- b) to observe, abide by and comply with all applicable laws, bylaws, orders, directions, ordinances and regulations of any competent governmental

authority in any way affecting the Licensed Area and improvements situate thereon, or their use and occupation, and to ensure that parties permitted to utilize the Licensed Area by the Licensee comply with the terms of this agreement and will not jeopardize the Licensee's compliance with the terms and conditions of this agreement;

- c) not to commit or suffer any willful or voluntary waste, spoil or destruction on the Licensed Area or do or suffer to be done thereon anything that may be or become a nuisance or annoyance to owners or occupiers of the property or the adjoining properties;
- d) to indemnify, save harmless, release and forever discharge the City, their elected and appointed officials and employees from and against all manners of actions, causes of actions, claims, debts, suits, damages demands and promises, at law or in equity, whether known or unknown, including without limitation for injury to persons or property including death, or any person directly or indirectly arising or resulting from, or attributable to, any act, omission, negligence or default of the Licensee in connection with or in a consequence of this agreement, save and except to the extent caused by any act, omission, negligence or default of the City, its elected and appointed officials and employees;
- e) to keep the Licensed Area in a safe, clean, tidy and sanitary condition satisfactory to the City and to make clean, tidy and sanitary any portion of the Licensed Area or any improvement that the City may direct by notice in writing to the Licensee;
- f) to use and occupy the Licensed Area in accordance with the provisions of this license including those provisions and requirements set forth in the Management Plan;
- g) to permit the City, or its authorized representative, to enter upon the Licensed Area at any time, with 72 hours of notice to the Licensee, to test, inspect or perform such other work as the City may deem necessary or desirable;
- h) that on the expiration or at the earlier cancellation of this agreement unless renewed:
  - i. to peaceably quit and deliver possession of the Licensed Area to the City;
  - ii. to remove all fixtures, structures, machinery, apparatus and all other things placed on the Licensed Area by the Licensee, leaving the Licensed Area in a clean and clear condition within **ONE HUNDRED AND EIGHTY (180)** days of the termination of this agreement and leave the Licensed Area in good repair, restoring the Licensed Area to a condition similar to that at the Commencement Date. One hundred and eighty (180) days after the expiration or cancellation of

this license, any improvements or fixtures that remain on the Licensed Area shall be absolutely forfeited and become the property of the City and the City, at their sole discretion, may remove any or all of the improvements or fixtures that were requested to be removed, but left by the Licensee, from the Licensed Area and the Licensee shall, on demand, compensate the City for all costs incurred by the City respecting their removal and disposal.

- i) to the extent necessary, this covenant shall survive the expiration or cancellation of this agreement;
- j) to effect and keep in force during the term, insurance against claims for personal injury, death, property damage or third party or public liability claims arising from any accident or occurrence on the Licensed Area to an amount not less than **FIVE MILLION (\$5,000,000.00) DOLLARS**, and to name the City as an additional insured on the policy with the inclusion of the following clauses:

**“Cross Liability”** clause:

“The insurance afforded by the insurance policy shall apply in the same manner to all insureds, as though separate policies were issued to each insured in the event an action is brought against any of the additional insured by or on behalf of any other named insured.”

**“Cancellation”** clause:

“It is understood and agreed that the coverage provided by this policy will not be changed or amended in any way or cancelled (prior to thirty (30) days after written notice of such change or cancellation shall have been given or sent by registered mail to additional insured).”

and deliver to the City written confirmation of the required insurance coverage upon execution of this agreement.

- k) the Licensee will provide the City with a new Certificate of Liability Insurance annually upon renewal;
- l) notwithstanding subsection k) of Section 5, the City may from time to time notify the Licensee that the amount of insurance posted by the Licensee pursuant to that subsection be changed and the Licensee shall, within sixty (60) days or receiving such notice, cause the amount of insurance posted, pursuant to subsection k) of Section 5 to be changed to the amount specified in the notice and deliver to the City written confirmation of the change.
- m) not to place any improvements on the Licensed Area other than those described elsewhere in this agreement, without prior written consent of the City;

- n) not cause or permit any unusual or objectionable noises, or lights, to emanate from the Licensed Area;
- o) not cause or permit any unusual or objectionable odours which may be noxious or offensive or which could constitute a public or private nuisance;
- p) not cause or permit any waste or damage;
- q) to observe and comply with any rules or regulations the City may make from time to time pertaining to the operation, reputation, safety, care or cleanliness of the Licensed Area and any use thereof as provided herein;
- r) that if, as a consequence of any release of a Hazardous Substance resulting from the Licensees use of the Licensed Area in or on the Licensed Area by the Licensee or its servants, agents, or contractors or any person for whom the Licensee is in law responsible, any actions are required to be taken in order to comply with any Government Requirement applicable to the use, presence or removal of such Hazardous Substance on or from the Licensed Area (including any Governmental Requirement relating to testing for or identification of Hazardous Substances) and if the Licensee has received notice in writing of such Governmental Requirement from the relevant authority (whether the requirement is made of the City or Licensee), then the Licensee shall at its expense take such action as required by the Governmental Requirement (or alternatively such other action as may be acceptable to the relevant authority after discussing with the Licensee). For the purposes of this paragraph:

**Governmental Requirement(s)** means all requirements made or imposed pursuant to law by federal, provincial, municipal or other governments including requirements of the Environmental Laws.

**Hazardous Substances** means any substances that are defined as or regulated as being waste, contaminants, pollutants, fungicides, insecticides, herbicides, dangerous substances, industrial waste, special waste, toxic substances, hazardous waste, hazardous material, or hazardous substance whether or not defined as such or pursuant to any law, regulation or order

**Environmental Laws** means all applicable federal, provincial, municipal or local laws, statutes or ordinances, as they may be amended from time to time after the Commencement Date of the license relating to the environment, occupational safety and the transportation or regulations of Hazardous Substances.

- s) that if, the Licensee fails to take any action required to be taken pursuant to any consequence of any release of a Hazardous Substance the City may

(but not be obligated to) take such action after giving thirty (30) days written notice to the Licensee of its intention to do so, unless within such thirty (30) day period that Licensee has taken the required action or has commenced in and is continuing diligently to carry out such action, and the City shall for that purpose, be permitted to enter the Licensed Area with the appropriate equipment. The Licensee covenants to reimburse the City for all reasonable costs incurred by the City in taking such required action pursuant to the release of any Hazardous Substance within thirty (30) days after receiving from the City an invoice and reasonable supporting details relating to such costs.

## 6. **Non-Exclusivity**

- 6.1 The Licensee acknowledges and agrees that this license herein shall not entitle the Licensee to exclusive possession of the Licensed Area.
- 6.2 The Licensee covenants and agrees not to interfere with the activities of any other person to enter on and use the Licensed Area under any prior or subsequent license granted by the City.
- 6.3 The parties hereto acknowledge that the license granted to the Licensee herein is a license only and shall not, under any circumstances, constitute a partnership, lease or joint venture between the parties.

## 7. **Assignment**

The Licensee shall not assign this license without the prior written consent of the City.

## 8. **Cancellation**

- 8.1 In the event that:
  - a) the City requires the Licensed Area for its own use or in its sole discretion, considers that it is in the public interest to cancel the rights herein granted, in whole or in part;
  - b) the Licensee ceases to use the Licensed Area for the purposes permitted herein; or
  - c) the City, in its sole discretion, considers that it is no longer necessary for the Licensee to use the Licensed Area for the purposes permitted herein;

the City may on **ONE HUNDRED AND EIGHTY (180)** days written notice to the Licensee, cancel this agreement and the rights herein granted, in whole or in part and the Licensee agrees that the City shall not be responsible for payment of any costs, compensation, reimbursement or any monies whatsoever as a result of a notice pursuant to paragraph 8.1 a), b) or c) except repayment of the prorated portion of any prepaid License Fee if notice is pursuant to paragraph 8.1 a) or c).

- 8.2 If the Licensee is in default in the observance of any covenant, agreements, provisions or conditions contained herein and such failure continues for a period of thirty (30) days after the giving of written notice by the City to the Licensee of the nature of the failure the City may cancel this agreement without prejudice to any rights to which the City has accrued under this agreement before the said cancellation.
- 8.3 Thirty (30) days after expiration or cancellation of this agreement, any improvements or fixtures that remain unremoved from the Licensed Area, shall be absolutely forfeited and become the property of the City and the City may remove them from the Licensed Area and the Licensee shall, on demand, compensate the City for all costs incurred by the City respecting their removal.

## 9. **General**

- 9.1 The terms and provisions of this agreement shall extend to, be binding upon and enure to the benefit of the parties, hereto and their successors and permitted assigns.
- 9.2 This agreement and all the terms and conditions of it may be inspected by the public at such times and at such places as the City may determine.
- 9.3 Time is of the essence in this agreement.
- 9.4 The records of the City shall be conclusive evidence of the contents of any schedule referred to in this agreement.
- 9.5 In this agreement, unless the context otherwise requires, the singular includes the plural and the masculine includes the feminine gender and a corporation.
- 9.6 Where in this agreement there is a reference to Bylaws, that reference shall include a reference to any subsequent enactment of like effect, and unless the context otherwise requires all Bylaws referred to herein are enactments of the City of Penticton.
- 9.7 Any waiver or acquiescence by the City of or in any breach by the Licensee of any covenant or condition shall not be deemed to be a waiver of the covenant or condition of any subsequent or other breach of any covenant or condition of this agreement.
- 9.8 If the Licensee continues to exercise the license granted after the expiration of the term of it without objection by the City and without any written agreement providing otherwise, the Licensee shall be deemed to be a Licensee from month to month, and subject to the provisions of this agreement insofar as applicable, but it shall be lawful for the City to cancel and determine the license granted by delivering to the Licensee notice to that effect, and upon delivery of such notice the license shall cease without prejudice to any rights of the City under this agreement accrued before the cancellation.

## 10. Notice

Any notice required to be given by either party shall be deemed to have been well and sufficiently given if mailed, emailed or delivered:

### To the **City**:

City of Penticton  
171 Main Street  
Penticton, BC V2A 5A9  
Attn: Corporate Officer  
Email: corpadmin@penticton.ca

### To the **Licensee**:

Travel Penticton Society  
120-888 Westminster Ave W.  
Penticton, BC V2A 8S2  
Email: ask@visitpenticton.com

Penticton & Wine Country Chamber of Commerce  
102 Ellis St  
Penticton, BC, V2A 4L5  
Email: director@penticton.org

or such other address as the Licensee may from time to time direct in writing, and any such notice by the City to the Licensee shall be deemed to have been received, if mailed, five (5) days after the time of mailing, or if emailed, seventy-two (72) hours after the time of email and if hand delivered upon the date of delivery. If normal mail, email service is interrupted by strike, slow down, force majeure or other cause, a notice sent by the impaired means of communication will not be deemed to have been received until actually received, and the City may utilize any such services which have not been so interrupted.

## 11. Payment of City's Expenses

If at any time an action is brought or the City is otherwise required to employ the services of a bailiff, an agent, or its solicitors because of a breach by an act or omission of any covenant herein contained on the part of the Licensee, the Licensee shall pay to the City all expenses incurred by the City in the enforcement of its rights and remedies hereunder (including the City's administrative costs and legal fees on a solicitor and his own client basis in connection therewith) together with interest thereon at the rate equivalent to the prime rate of Valley First Credit Union plus three percent (3%) per annum calculated monthly not in advance from the date due until paid. For the purposes of this paragraph the prime rate shall mean the annual percentage rate of interest established from time to time by Valley First Credit Union, Main Branch, Penticton, British Columbia as the base rate that will be used to determine rates of interest charged by it for Canadian Dollar loans to customers in Canada and designated by Valley First Credit Union as the prime rate.



IN WITNESS WHEREOF the parties hereto have hereunto executed this agreement on the following page as of the date and year first above written.

**THE CORPORATION OF THE CITY OF PENTICTON**  
by its authorized signatories:

\_\_\_\_\_  
John Vassilaki, Mayor

\_\_\_\_\_  
Angie Collison, Corporate Officer

**TRAVEL PENTICTON SOCIETY**  
by its authorized signatory(ies):

\_\_\_\_\_  
Per:

\_\_\_\_\_  
Per:

**PENTICTON & WINE COUNTRY CHAMBER OF COMMERCE**  
by its authorized signatory(ies):

\_\_\_\_\_  
Per:

\_\_\_\_\_  
Per:

**SCHEDULE A**  
**LICENSED AREA**

The Licensed Area shown outlined in red below and legally described as:

185 Lakeshore Drive W., Penticton BC

PID: 012-101-257

Lot 42 District Lot 4 Group 7

Similkameen Divison Yale District Plan 756



**SCHEDULE B**  
**MANAGEMENT PLAN**

**1. Annual Requirements**

The Licensee must annually ensure they have:

- Work Safe BC;
- City of Penticton Business License;
- Evidence of Insurance as indicated in this agreement.

**2. Parking**

The City will designate four (4) “Visitor Centre/Chamber” parking spaces in front of the Licensed Area shown outlined in red on Schedule A.

**3. Vandalism**

- 3.1 All incidents of vandalism shall be repaired within 48 hours of occurrence.
- 3.2 The Licensee is responsible for removal of graffiti from the Licensed Area.

**4. Miscellaneous**

- 4.1 Notwithstanding the above, the Licensee shall carry out all maintenance necessary to maintain the facility in a safe and first class condition.
- 4.2 The Licensee shall not utilize an area larger than the Licensed Area.
- 4.3 The Licensee shall not place signs outside of the Licensed Area without the consent of the City.
- 4.4 The Licensee shall not place any permanent structures in the Licensed Area without the consent of the City.
- 4.5 The Licensee shall be responsible for the cost of telephones, internet and wireless internet connections.
- 4.6 The Licensee shall be responsible for any leasehold improvements carried out to the Licensed Area. Any leasehold improvements will require written consent of the City.
- 4.7 The City shall be responsible for the cost of the security system for the Licensed Area.

5. **Safety/Protection**

5.1 The Licensee shall ensure proper procedures are followed for:

- Fire Safety/Evacuation
- W.H.M.I.S.
- Accident/Incident Reporting
- Safety Program (WCB)

5.2 The Licensee shall ensure that all staff receives proper instruction on the use and operation of any fire safety equipment.

5.3 The Licensee shall ensure all fire extinguishers are kept up to date.

5.4 All accidents or incidents shall be reported to the City within 48 hours of occurrence, wherein a representative of the City will investigate the occurrence.

6. **Special Provisions**

This agreement does not grant authority for any future or existing permanent placements and is not to be construed as authorization or permission for those placements to remain in place outside of the terms of this agreement.



# Committee Report

penticton.ca

**Date:** June 1, 2020 **File No:** 4320-80

**To:** Parks and Recreation Advisory Committee

**From:** Sheri Raposo, Land Administrator

**Subject:** Coyote Cruises Limited Partnership – License to Use Agreement  
215 Riverside Drive, Penticton, BC

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## Staff Recommendation

THAT the Parks and Recreation Advisory Committee recommend that Council approve the 5-year License to Use renewal agreement commencing on June 17<sup>th</sup>, 2020 with Coyote Cruises Limited Partnership for the use of City land and building located at 215 Riverside Drive for the purpose of the operation of a food, rental concession and transportation service at a license rate of \$4,389.00 per year plus GST and annual CPI adjustments.

## Background

Coyote Cruises is the current operator of the concession, and currently has a 5 year License to Use Agreement. They provide an inflatable float rental, food concession and transportation service that allows many residents and tourists to easily participate in one of Penticton's more popular summer pastimes, floating the river channel between Okanagan Lake and Skaha Lake. The City has a long history of having an operator at this location (see attachment B) for history.

The License, which expired on September 30, 2019, contains a 3 year option to renew, however Coyote Cruise approached the City in spring of 2019 seeking a 20 year exclusive Lease.

Following the Park Land Protection and Use Policy process, after receiving the request for a longer term lease, the request was brought to an open Council meeting, introduced to the Parks and Recreation Advisory committee, and undertaken through a public engagement process. (See attachment C for detailed steps and timelines).

Overall the feedback from the public engagement process regarding a 20 year Lease resulted in 63% of participants supporting moving the lease request forward with 25% of participants wanting more information or changes made and 9% of participants did not support the lease under any circumstances. Over the past six months Coyote Cruise and City staff have negotiated an agreement which is now ready for final approval and execution.

## Property Description

The building and property is located at 215 Riverside Drive and is at the north end of the city, a few hundred meters south of Okanagan Lake and fronts on the Okanagan river channel as shown outlined in red on Schedule A in the attached proposed License to Use Agreement.

The building is comprised of two seasonal structures connected by an open roof walkway. The first structure includes a 250 sq.ft. concession area with 2 public washrooms. The second structure is a 1,032 sq.ft. warehouse-style storage building with two overhead doors.

## Existing Use

The current use of this property is P2 – Parks and Recreation. Permitted uses in this zone are:

- accessory use, building or structure
- carnival
- community garden
- government service
- indoor amusement, entertainment and recreation
- outdoor market
- public parking lot

## Park Land Protection and Use Policy References

The Park Land Protection and Use Policy references the following sections regarding a License to Use for a portion of public park land that is a permitted use in a Park Zone:

### 3.3. Protect public ownership

- 3.3.1. The City of Penticton may issue a License to Use for a portion of public park land to support a Permitted Use in a Park Zone. These licenses are typically for a short term or seasonal in nature, up to a maximum of three (3) years, and shall be approved in accordance with the zoning procedure for Permitted Uses outlined in this policy.

### 5.1. Permitted Uses

- 5.1.1. Permitted Uses within any Park Zone and no other uses than those provided for in the list of permitted uses in the Zoning Bylaw shall be allowed on City park land.

## **Analysis**

After many discussions with the operators of Coyote Cruise, the City suggested that it would be more desirable by the public and the Parks and Recreation Committee, to have a shorter term agreement. Staff suggested a 5 year License to Use, rather than the 3 year policy stipulation, as it was evident that the operators of Coyote Cruise had already invested, and were prepared to continue to invest significant money and time into the building and property.

**Alternate recommendations**

That the City provide a 3 year License to Use to Coyote Cruise for the use of City land and building located at 215 Riverside Drive for the purpose of the operation of a food, rental concession and transportation service.

OR

That the City does not provide a License to Use to Coyote Cruise for the use of City land and building located at 215 Riverside Drive for the purpose of the operation of a food, rental concession and transportation service.

**Attachments**


Attachment A - Draft License to Use Agreement

Attachment B - Previously Granted License to Use Agreements

Attachment C – Procedural Steps Taken

Respectfully submitted,

Sheri Raposo, Land Administrator

Chief Financial Officer




### LICENSE TO USE AGREEMENT

Nature of Agreement:	License to Use	File No.: 4320-80
Particulars:	Use of City Land and Building located at 215 Riverside Drive, Penticton, BC for purpose of the operation of food and rental concession and transportation service.	

THIS AGREEMENT dated the \_\_\_\_ day of \_\_\_\_\_, 2020.

BETWEEN:

**THE CORPORATION OF THE CITY OF PENTICTON**

a duly incorporated City Municipality under the laws of the Province of British Columbia, located at 171 Main Street, Penticton, BC V2A 5A9

(the “City”)

OF THE FIRST PART

AND:

**COYOTE CRUISES LIMITED PARTNERSHIP**

by its General Partner, Coyote Cruises GP Inc., having its registered and records office at 270 Highway 33 West Kelowna, BC V1X 1X7

(the “Licensee”)

OF THE SECOND PART

WHEREAS the City has agreed to grant a license to the Licensee to have access and use of the building and lands described in Schedule A attached hereto (herein referred to as the “Licensed Area”);

NOW THEREFORE in consideration of the License Fee to be paid by, and the covenants of the Licensee, the parties agree as follows:

**1. Grant of License**

The City, on the terms set forth herein grants a license to the Licensee to have access and use of the Licensed Area for the purposes described in the Management Plan attached hereto as Schedule B (herein called the “Management Plan”) on an “as is” basis and the City makes no representations or warranties as the suitability of the Licensed Area for the intended use.



## 2. Duration

- 2.1 This Agreement and the rights granted shall be for a term of **FIVE (5)** years commencing on **June 17, 2020** (herein called the “**Commencement Date**”) through to the **June 16, 2025**, unless cancelled in accordance with the terms of this agreement.
- 2.2 Subject to paragraph 2.3, this agreement includes a provision for renewal for an additional negotiable three (3) year term upon mutual agreement by the City and the Licensee of the terms and conditions.
- 2.3 In a year prior to the expiry of this agreement the City reserves the right to offer tenure over the Licensed Area through an open and competitive process. The Licensee may participate in the competitive process.

## 3. License Fee

- 3.1 On the Commencement Date and annually thereafter, the Licensee shall pay to the City, the amount of **FOUR THOUSAND SIX HUNDRED EIGHT AND FORTY FIVE CENTS (\$4,608.45) DOLLARS** calculated as follows:

Annual Fee:	\$4,389.00
GST (5%):	<u>219.45</u>
<b>Total:</b>	<b>\$4,608.45</b>

- 3.2 On each and every anniversary of the Commencement Date thereafter during the term of this Agreement, the License Fee shall be adjusted by an amount equivalent to the change in the Consumer Price Index for Province of British Columbia for the preceding year.

## 4. Utilities

The Licensee will be responsible for the cost of electricity and ensure the transfer of the utility account into their name for the term of this Agreement.

## 5. Covenants of the Licensee

The Licensee covenants and agrees with the City:

- a) to pay the License Fee due at the address of the City or at such other place as the City may specify from time to time;
- b) to pay and discharge when due all applicable property taxes, levies, charges and assessments which relate to the Licensed Area or any improvements thereon (“**Property Taxes**”);
- c) not to restrict the public from having access to the washrooms located on the property;

- d) not to restrict the public from having access to the Okanagan River Channel;
- e) to observe, abide by and comply with all applicable laws, bylaws, orders, directions, ordinances and regulations of any competent governmental authority in any way affecting the Licensed Area and improvements situate thereon, or their use and occupation;
- f) not to make any major structural alteration, renovations, additions, improvements or major repairs without the written permission of the City. Any alterations, renovations, additions or improvements so approved, shall be at the sole expense of the Licensee; unless previously agreed in writing to be funded from the City. Building permits will be required for any alterations/additions made throughout the term of the agreement;
- g) not to commit or suffer any willful or voluntary waste, spoil or destruction on the Licensed Area or do or suffer to be done thereon anything that may be or become a nuisance or annoyance to owners or occupiers of the property or the adjoining land;
- h) to indemnify, save harmless, release and forever discharge the City, their elected and appointed officials and employees from and against all manners of actions, causes of actions, claims, debts, suits, damages demands and promises, at law or in equity, whether known or unknown, including without limitation for injury to persons or property including death, or any person directly or indirectly arising or resulting from, or attributable to, any act, omission, negligence or default of the Licensee in connection with or in a consequence of this agreement, save and except to the extent caused by any act, omission, negligence or default of the City, its elected and appointed officials and employees;
- i) to keep the Licensed Area in a safe, clean, tidy and sanitary condition satisfactory to the City and to make clean, tidy and sanitary any portion of the Licensed Area or any improvement that the City may direct by notice in writing to the Licensee;
- j) to permit the City, or its authorized representative, to enter upon the Licensed Area at any time to inspect the Licensed Area and improvements;
- k) to use and occupy the Licensed Area in accordance with the provisions of this License including those set forth in the Management Plan;
- l) that on the expiration or at the earlier cancellation of this License unless renewed:
  - i. to peaceably quit and deliver possession of the Licensed Area to the City;

- ii. to remove all machinery, equipment, apparatus and all other chattels owned by the Licensee from the Licensed Area; and
  - iii. leave the Licensed Area in good clean condition and repair or restore the Licensed Area and surrounding land to a similar condition as it was at the beginning of the License if so directed by the City.
- m) to the extent necessary, this covenant shall survive the expiration or cancellation of the License;
- n) to effect and keep in force during the term, insurance against claims for personal injury, death, property damage or third party or public liability claims arising from any accident or occurrence on the Licensed Area to an amount not less than **FIVE MILLION (\$5,000,000.00) DOLLARS**, and to name the City as an additional insured on the policy with the inclusion of the following clauses:

**“Cross Liability” clause:**

“The insurance afforded by the insurance policy shall apply in the same manner to all insureds, as though separate policies were issued to each insured in the event an action is brought against any of the named insured by or on behalf of any other additional insured.”

**“Cancellation” clause:**

“It is understood and agreed that the coverage provided by this policy will not be changed or amended in any way or cancelled (prior to thirty (30) days after written notice of such change or cancellation shall have been given or sent by registered mail to all additional insured).”

and deliver to the City written confirmation of the required insurance coverage upon execution of this Agreement;

- o) the Licensee will provide the City with a new Certificate of Liability Insurance annually upon renewal;
- p) notwithstanding subsection (n) of Section 5, the City may from time to time notify the Licensee that the amount of insurance posted by the Licensee pursuant to that subsection be changed and the Licensee shall, within Sixty (60) days or receiving such notice, cause the amount of insurance posted, pursuant to subsection (n) of Section 5 to be changed to the amount specified in the notice and deliver to the City written confirmation of the change;
- q) not to place any improvements on the Licensed Area other than those described elsewhere in this agreement, without prior written consent of the City;

- r) not cause or permit any unusual or objectionable noises, or lights, to emanate from the Licensed Area;
- s) not cause or permit any unusual or objectionable odors which may be noxious or offensive or which could constitute a public or private nuisance;
- t) not cause or permit any waste or damage;
- u) to observe and comply with any rules or regulations the City may make from time to time pertaining to the operation, reputation, safety, care or cleanliness of the Licensed Area and any use thereof as provided herein;
- v) that if, as a consequence of any release of a Hazardous Substance resulting from the Licensees use of the Licensed Area in or on the Licensed Area by the Licensee or its servants, agents, or contractors or any person for whom the Licensee is in law responsible, any actions are required to be taken in order to comply with any Government Requirement applicable to the use, presence or removal of such Hazardous Substance on or from the Licensed Area (including any Governmental Requirement relating to testing for or identification of Hazardous Substances) and if the Licensee has received notice in writing of such Governmental Requirement from the relevant authority (whether the requirement is made of the City or Licensee), then the Licensee shall at its expense take such action as required by the Governmental Requirement (or alternatively such other action as may be acceptable to the relevant authority after discussing with the Licensee). For the purposes of this paragraph:

**Governmental Requirement(s)** means all requirements made or imposed pursuant to law by federal, provincial, municipal or other governments including requirements of the Environmental Laws.

**Hazardous Substances** means any substances that are defined as or regulated as being waste, contaminants, pollutants, fungicides, insecticides, herbicides, dangerous substances, industrial waste, special waste, toxic substances, hazardous waste, hazardous material, or hazardous substance whether or not defined as such or pursuant to any law, regulation or order

**Environmental Laws** means all applicable federal, provincial, municipal or local laws, statutes or ordinances, as they may be amended from time to time after the Commencement Date of the License relating to the environment, occupational safety and the transportation or regulations of Hazardous Substances.

- w) that if, the Licensee fails to take any action required to be taken pursuant to any consequence of any release of a Hazardous Substance the City may (but not be obligated to) take such action after giving thirty (30) days written notice to the Licensee of its intention to do so, unless within such

thirty (30) day period that Licensee has taken the required action or has commenced in and is continuing diligently to carry out such action, and the City shall for that purpose, be permitted to enter the Licensed Area with the appropriate equipment. The Licensee covenants to reimburse the City for all reasonable costs incurred by the City in taking such required action pursuant to the release of any Hazardous Substance within thirty (30) days after receiving from the City an invoice and reasonable supporting details relating to such costs.

## **5. Repairs, Maintenance and Alterations**

### **5.1 The Landlord's Responsibilities**

The City will be responsible for:

- a) the repairs and maintenance of the building envelope (excluding exterior paint, graffiti and/or vandalism see below 5.2 b) and h));
- b) roof;
- c) current existing electrical system;
- d) exterior lighting;
- e) garbage and curb side recycling;
- f) turf maintenance;
- g) fall grounds clean up;
- h) irrigation;
- i) pre-season start up and post-season shut down of the washrooms and the buildings; and
- j) the Landlord will provide a portable washroom for the months of July and August. The Landlord will pay for such costs for the rental and cleaning of the portable washroom unit for the months of July and August of every year during the term of this agreement.

### **5.2 Licensee Responsibilities**

The Licensee, at its own expense, will be responsible for:

- a) all kitchen equipment and appliances;
- b) interior and exterior painting;
- c) building washrooms – make available to the public during business operating hours. This includes unlocking and locking the washrooms, daily maintenance and upkeep, all plumbing related issues, including fixing any fixtures that may become vandalized and/or plugged toilets or sinks, cleaning and ensuring washrooms are fully stocked;
- d) day to day upkeep, safety and security of the buildings including the building washrooms throughout the year;
- e) pest/rodent control;
- f) removal of graffiti; and
- g) if at any time during the term of this agreement the electrical system is required to be updated do to an increase in extra equipment/appliances, this upgrade cost will be borne by the Licensee.

## 6. **Non-Exclusivity**

- 6.1 The Licensee acknowledges and agrees that the License herein shall not entitle the Licensee to exclusive possession of the Licensed Area. The Licensee shall not restrict or deny access to the Okanagan River Channel at any time.
- 6.2 The Licensee covenants and agrees not to interfere with the activities of any other person to enter on and use the Licensed Area under any prior or subsequent License granted by the City.
- 6.3 The Licensee acknowledges and agrees that the City may relocate the Licensee at the discretion of the City to other areas of Penticton, British Columbia.
- 6.4 The parties hereto acknowledge that the license granted to the Licensee herein is a License only and shall not, under any circumstances, constitute a partnership, lease or joint venture between the parties.

## 7. **Assignment**

The Licensee shall not assign this agreement without the prior written consent of the City.

## 8. **Cancellation**

- 8.1 In the event that:
  - a) The City requires the Licensed Area for its own use or in its sole discretion, considers that it is in the public interest to cancel the rights herein granted, in whole or in part;
  - b) The Licensee ceases to use the Licensed Area for the purposes permitted herein; or
  - c) The City, in its sole discretion, considers that it is no longer necessary for the Licensee to use the Licensed Area for the purposes permitted herein.
- 8.2 The City may on ONE HUNDRED AND EIGHTY (180) days written notice to the Licensee, cancel this License and the rights herein granted, in whole or in part and the Licensee agrees that the City shall not be responsible for payment of any costs, compensation, reimbursement or any monies whatsoever as a result of a notice pursuant to paragraph 8.1 a), b) or c) except repayment of the prorated portion of any prepaid License Fee if notice is pursuant to paragraph 8.1 a) or c).

- 8.3 The City will not exercise paragraph 8.1:
- a) for the first three (3) years of the term of this License to Use agreement;
  - b) during the operating season (May to September); and
  - c) without prior consultation with the Licensee.
- 8.4 If the Licensee is in default in the observance of any covenant, agreements, provisions or conditions contained herein and such failure continues for a period of thirty (30) days after the giving of written notice by the City to the Licensee of the nature of the failure the City may cancel this License without prejudice to any rights to which the City has accrued under this License before the said cancellation.
- 8.5 Thirty (30) days after expiration or cancellation of this License, any improvements or fixtures that remain unremoved from the Licensed Area shall be absolutely forfeited and become the property of the City and the City may remove them from the Licensed Area and the Licensee shall, on demand, compensate the City for all costs incurred by the City respecting their removal.
9. **General**
- 9.1 The terms and provisions of this agreement shall extend to, be binding upon and enure to the benefit of the parties, hereto and their successors and permitted assigns.
- 9.2 This agreement and all the terms and conditions of it may be inspected by the public at such times and at such places as the City may determine.
- 9.3 Time is of the essence in this agreement.
- 9.4 The records of the City shall be conclusive evidence of the contents of any schedule referred to in this agreement.
- 9.5 In this agreement, unless the context otherwise requires, the singular includes the plural and the masculine includes the feminine gender and a corporation.
- 9.6 Where in this agreement there is a reference to Bylaws, that reference shall include a reference to any subsequent enactment of like effect, and unless the context otherwise requires all Bylaws referred to herein are enactments of the City of Penticton.
- 9.7 Any waiver or acquiescence by the City of or in any breach by the Licensee of any covenant or condition shall not be deemed to be a waiver of the covenant or condition of any subsequent or other breach of any covenant or condition of this agreement.
- 9.8 If the Licensee continues to exercise the license granted after the expiration of the term of it without objection by the City and without any written agreement

providing otherwise, the Licensee shall be deemed to be a Licensee from month to month, and subject to the provisions of this agreement insofar as applicable, but it shall be lawful for the City to cancel and determine the License granted by delivering to the Licensee notice to that effect, and upon delivery of such notice the License shall cease without prejudice to any rights of the City under this License accrued before the cancellation.

- 9.9 Any notice required to be given by either party shall be deemed to have been well and sufficiently given if mailed or emailed or delivered:

To the City:

The City of Penticton  
171 Main Street  
Penticton, BC V2A 5A9  
Attn: Corporate Officer  
Email: corpadmin@penticton.ca

To the Licensee:

Coyote Cruises Limited Partnership  
c/o 200 Westhills Drive  
RR2 Site 65 Comp 35  
Penticton, BC V2A 6J7  
Email: \_\_\_\_\_

or such other address as the Licensee may from time to time direct in writing, and any such notice by the City to the Licensee shall be deemed to have been received, if mailed, five (5) days after the time of mailing, or if emailed, seventy-two (72) hours after the time of email and if hand delivered upon the date of delivery. If normal mail, email service is interrupted by strike, slow down, force majeure or other cause, a notice sent by the impaired means of communication will not be deemed to have been received until actually received, and the City may utilize any such services which have not been so interrupted.

## 10. **Payment of City's Expenses**

If at any time an action is brought or the City is otherwise required to employ the services of a bailiff, an agent, or its solicitors because of a breach by an act or omission of any covenant herein contained on the part of the Licensee, the Licensee shall pay to the City all expenses incurred by the City in the enforcement of its rights and remedies hereunder (including the City's administrative costs and legal fees on a solicitor and his own client basis in connection therewith) together with interest thereon at the rate equivalent to the prime rate of Valley First Credit Union plus three percent (3%) per annum calculated monthly not in advance from the date due until paid. For the purposes of this paragraph the prime rate shall mean the annual percentage rate of interest established from time to time by Valley First Credit Union, Main Branch, Penticton, British Columbia as the base rate that will be used to determine rates of



interest charged by it for Canadian Dollar loans to customers in Canada and designated by Valley First Credit Union as the prime rate.

IN WITNESS WHEREOF the parties hereto have hereunto executed this agreement on the following page as of the date and year first above written.

**THE CORPORATION OF THE CITY OF PENTICTON**

by its authorized signatories:

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John Vassilaki, Mayor

---

Angie Collison, Corporate Officer

**COYOTE CRUISES LIMITED PARTNERSHIP**

by its General Partner, Coyote Cruises GP Inc.,

by its authorized signatory:

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Jonathan Baynes

**SCHEDULE A**  
**LICENSED AREA**

The Licensed Area shown outlined in red below and legally described as:

215 Riverside Drive  
689m<sup>2</sup> of Lots 42 to 46, Plan 1248 and Lot 1, Plan 15294



**SCHEDULE B**  
**MANAGEMENT PLAN**

**General Commercial/Industrial**

**1. Purpose**

The Licensee shall use the Licensed Area only for the purpose of operating a “Rental Concession”, “Associated retail food, souvenir and related sundry items” and “Transportation Service” to and from the Licensed Area for the use and benefit of the public.

The Licensee will be open and operational for the “Purpose” between the Victoria Day long weekend and the September Labour Day long weekend in each year.

**2. Annual Requirements**

The Licensee must annually ensure they have:

- a) Work Safe BC;
- b) City of Penticton Business License;
- c) Evidence of Insurance as indicated in this License Agreement;
- d) Interior Health approval (if applicable); and
- e) Applicable transport Canada requirements.

**3. Fire/Safety**

The Licensee shall develop post and follow procedures of a Fire Safety/Evacuation plan with copies forwarded to the City and Penticton Fire Department.

All staff shall receive proper instruction in the use and operation of fire safety equipment, and emergency procedures.

**4. Vandalism**

All incidents of vandalism shall be repaired within 48 hours of occurrence. The Licensee is responsible for removal of Graffiti from the Licensed Area.

**5. Miscellaneous**

The Licensee shall:

- a) maintain the rental concession building and public washroom facilities in accordance with procedures required by the City;
- b) confine the storage and rentals of floatation devices and repair and maintenance to same, to that portion of the Licensed area upon which the rental concession building is situated;
- c) comply with all rules and regulations issued by City Council or the appropriate committee thereof, and to supervise and police the premises;

- d) take such action as the Licensee sees fit in the case of emergencies, and to notify the City thereof immediately;
- e) provide sufficient employees to operate the Rental Concession and the Transportation Service;
- f) not to block or impede access or park any vehicles in the Provincial Right of Way area;
- g) not to block or impede access to the public loading parking zones located on Riverside Drive;
- h) any regulated work must be completed by a qualified professional;
- i) not to utilize an area larger than the Licensed Area;
- j) not to place signs outside of your area without the consent of the City;
- k) not to place any permanent structures on the licensed area without the consent of the City;
- l) not plant, prune or remove any trees, without prior written consent from the City Parks Department; and
- m) all licensing requirements will be the sole responsibility of the Licensee.

## 6. **Unforeseen Circumstances/ Interruptions**

During the term of this agreement, there may be unforeseen circumstances, which may cause lost revenue; the City of Penticton will not compensate the Licensee for any lost revenue, during any unforeseen circumstances or interruptions.

### **Definitions:**

**"Rental Concession"** means the rental of floatation devices and related safety equipment for use on the Okanagan River Channel between Okanagan and Skaha Lakes, provided that authority to use such equipment on the River Channel has been granted in writing by each and every person or agency having jurisdiction over the licensed area and the river channel, and includes the storage and use of only such equipment necessary to inflate or repair floatation devices, as well as and including the sale of soft drinks, confectionary items and souvenirs and any other retail item that may be specifically approved in writing by the City.

**"Transportation Service"** means the transportation by bus or other vehicle Licenced by the Motor Carrier Commission if necessary, of those people that have floated down the Okanagan River Channel to Skaha Lake and wishing to return to the Licensed Area.

## Attachment B – Previously granted License to Use Agreements

### License to Use Agreements

City Council has authorized the following non-exclusive - License to Use (LTU) agreements on this property:

- 1983-1986 Kirk Cartwright – 3 year term
- 1988-1993 Penticton & District Jaycees – 5 year term  
- Sub-licensed the building to Coyote Cruises Ltd. – (George Cartwright) 5 year term
- 1995-1997 Coyote Cruises Ltd. (Kirk Cartwright) – 2 year term
- 1997-1998 Coyote Cruises Ltd. (Kirk Cartwright) – 1 year term
- 1998-2000 Coyote Cruises Ltd. (Kirk Cartwright) – 2 year term
- 2004 Coyote Cruises Ltd. (George & Thelma Cartwright) – 3 month term
- 2010-2014 Coyote Cruises Limited Partnership – 5 year term
- 2014-2019 Coyote Cruises Limited Partnership – 5 year term

## Attachment C – Procedural Steps taken

### **Step 1:**

Coyote Cruise initiated a conversation with City staff, advising of their wish and their vision, with respect to seeking a long-term Lease agreement and operating exclusivity through their request of a 20 year lease Agreement with the City.

### **Step 2:**

**May 7, 2019**, Coyote Cruise brought forward to an open Council meeting a request to lease 215 Riverside Drive, for a 20 year term in order to secure financing to fund a number of improvements planned for the operation.

### **Step 3:**

**April 11, 2019**, Coyote Cruise brought forward to the Parks and Recreation Advisory Committee a request to lease 215 Riverside Drive, for a 20 year term in order to secure financing to fund a number of improvements planned for the operation.

#### 1. **Delegations:**

##### 1.1 Coyote Cruises

Mike Campol, Diana Stirling and Derek George presented to the Committee their vision for Coyote Cruises. The current building requires upgrades to form a relationship with the Penticton Indian Band and they are looking for a long-term lease. Coyote Cruises currently operates under a 5 year License to Use and are requesting a 20 year lease, which includes more parcels of land and part of a public park. They discussed their timeline and the next steps, which includes community engagement.

#### **It was MOVED and SECONDED**

THAT the Parks and Recreation Advisory Committee recommend that Coyote Cruises move to Community Engagement.

**CARRIED UNANIMOUSLY**

**May 13 to 31st, 2019**, staff and Coyote Cruise operators, engaged the public through various outlets.

### **Step 4:**

Staff have met with Coyote Cruise operators on numerous occasions to define the terms of the Lease Agreement, and had numerous discussions on the policy process.

**Step 5:**

**June 11, 2019**

Coyote Cruises Engagement Process Update

The Director of Development Services presented to the Committee an overview of the engagement process that took place for Coyote Cruises between May 13 to 31 through various outlets including feedback forms, emails, newspaper ads, social media posts, open house conversations and Shape Your City visits. The Committee was informed that 63% of the participants supported the concept, 25% of the participants wanted to see more information or changes on the concept before supporting it and 9% of the participants did not support the concept under any circumstances.

Brief discussions ensued regarding who is engaged in the preservation of the salmon and other fish in the channel, concerns regarding the development of the business plan and how it will affect the channel from start to finish and concerns regarding congestion of the KVR and Trans Canada trails as they're located on the same green space and whether this proposal can be used as potential leverage for an easement at the south end of the airport to allow people through more easily.

**It was MOVED and SECONDED**

THAT the Parks and Recreation Advisory Committee support the engagement process completed;

AND THAT City Staff are directed to begin drafting an agreement;

AND THAT staff bring back a draft agreement to the Committee for review before moving forward.

**CARRIED UNANIMOUSLY**

**Step 6:**

Staff and the operators of Coyote Cruise, over the course of the last year, have continued to meet on numerous occasions to define the terms of the Agreement. It was determined by staff and Coyote Cruise, that a 5 year License to Use would be more desirable by the Parks and Recreation Committee and by the public.



## 2020 Parks and Recreation Advisory Committee Meeting Dates

Meeting commences at 3:00 p.m.

Council Chambers, City Hall, 171 Main Street (Second Level)

Month	Date
January	-
February	3
March	2
April	6
May	4
June	1
July	6
August	4 & 31
September	-
October	5
November	2
December	7