

## Parks and Recreation Advisory Committee Meeting

to be held via Zoom

Wednesday, April 24, 2024

at 9:30 a.m.

1. **Call Committee Meeting to Order**

*We acknowledge that Penticton, where we live and work, is on the traditional lands of the Syilx People in the Okanagan Nation.*

2. **Adoption of Agenda**

3. **Adoption of Minutes**

3.1 Minutes of the March 6, 2024 Special Parks and Recreation Advisory Committee Meeting 1-3

Recommendation:

*THAT the Parks and Recreation Advisory Committee adopt the minutes of the March 6, 2024 meeting as presented.*

4. **New Business**

Raposo 4.1 Travel Penticton Society and Penticton & Wine Country Chamber of Commerce 4-14

License to Use Agreement – Jubilee Pavilion

Re: 185 Lakeshore Drive West, Penticton

Staff Recommendation:

*THAT the Parks and Recreation Advisory Committee recommend that Council direct staff to renew a three (3) year License to Use Agreement with Travel Penticton Society and the Penticton and Wine Country Chamber of Commerce, for the use of the Jubilee Pavilion building located at 185 Lakeshore Drive West.*

Raposo 4.2 License to Use Agreement – Ministry of Environment and Climate Change Strategy 15-29

Re: 1051 Penticton Avenue

Staff Recommendation:

*THAT the Parks and Recreation Advisory Committee recommend that Council approve the five (5) year License to Use Agreement, with a five (5) year renewal clause, with the Ministry of Environment and Climate Change Strategy, for the use of a portion of McNicoll Park located at 1051 Penticton Avenue, for an air quality monitoring station.*

5. **Next Meeting**

The next Parks and Recreation Advisory Committee meeting is scheduled to be held on July 24, 2024 at 9:30 a.m.

6. **Adjournment**

## Special Parks and Recreation Advisory Committee Meeting

held via Zoom

Wednesday, March 6, 2024  
at 9:30 a.m.

**Present:** John Archer, Chair  
Sue Fraser, Vice-Chair  
Cameron Baughen  
Juliana Buitenhuis  
Brenda Clark  
Joanne Grimaldi  
Victoria Jaenig  
Don Mulhall  
Marc Tougas

**Council Liaison:** Isaac Gilbert, Councillor

**Staff:** Kristen Dixon, General Manager of Infrastructure  
Kelsey Johnson, Director of Community Services  
Angela Campbell, Director of Finance and Administration  
Sheri Raposo, Land Administrator  
Todd Whyte, Parks Supervisor  
Anthony Policicchio, Facilities Manager  
Ysabel Contreras, Parks Planning & Capital Projects Coordinator  
Hayley Anderson, Legislative Assistant

1. **Call to Order**

The Chair called the Special Parks and Recreation Advisory Committee to order at 9:32 a.m.

2. **Adoption of Agenda**

**It was MOVED and SECONDED**

THAT the Parks and Recreation Advisory Committee adopt the agenda of March 6, 2024 as presented.

**CARRIED UNANIMOUSLY**

3. **Adoption of Minutes**

**It was MOVED and SECONDED**

THAT the Parks and Recreation Advisory Committee adopt the minutes of November 27, 2023 as presented.

**CARRIED UNANIMOUSLY**

Victoria Jaenig joined the meeting at 9:40 a.m.

4. **New Business**

4.1 Request for Proposal – Skaha Main Concession

**It was MOVED and SECONDED**

THAT the Parks and Recreation Advisory Committee recommend that Council direct staff to issue the Request for Proposal, for the use of 3701 Parkview Street, (Skaha Main Concession) for the purpose of seeking an operator for a food concession for a three (3) to five (5) year term.

**CARRIED UNANIMOUSLY**

4.2 Request for Proposal – Sudbury Beach Concession

**It was MOVED and SECONDED**

THAT the Parks and Recreation Advisory Committee recommends that Council direct staff to issue the Request for Proposal to seek an operator for the use of the City building located at 3846 Skaha Lake Road (Sudbury Beach Concession), for the purpose of seeking an operator for food concession for a three (3) to five (5) year sub-license to use agreement term.

**CARRIED  
Don Mulhall, Opposed**

4.3 Renewal of Beach Vending Program

**It was MOVED and SECONDED**

THAT the Parks and Recreation Advisory Committee recommend that Council direct staff to renew the Beach Vending Program for an additional three-year License to Use agreement Term.

**CARRIED UNANIMOUSLY**

Victoria Jaenig declared a Conflict of Interest as part of a community group that applied for the grant and left the meeting at 10:47 a.m.

Don Mulhall declared a Conflict of Interest as part of a community group that applied for the grant and left the meeting at 10:47 a.m.

Juliana Buitenhuis left the meeting at 10:52 a.m.

The Chair called a recess at 10:52 a.m.

The Chair reconvened the meeting at 10:54 a.m.

4.4 Phase 1 – Connected Community Capital Program

**It was MOVED and SECONDED**

THAT the Parks and Recreation Advisory Committee recommends that Council shortlist the following groups to Phase 2 of the Connected Community Capital Program:

- Activate Penticton Society
- Penticton & District Community Arts Council
- Penticton Lawn Bowling Club (revised project scope)
- Penticton Pickleball Club
- Penticton Safety Village Society (revised project scope)
- South Okanagan Minor Baseball Association (revised project scope)

**CARRIED UNANIMOUSLY**

Cameron Baughen left the meeting at 11:18 am.

5. **Next Meeting**

The next Parks and Recreation Advisory Committee meeting is scheduled to be held on April 24, 2024 at 9:30 a.m.

6. **Adjournment**

The Parks and Recreation Advisory Committee meeting held on March 6, 2024 adjourned at 11:20 a.m.

Certified Correct:

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Hayley Anderson  
Legislative Assistant

# Committee Report

penticton.ca

**Date:** April 24, 2024 File No: 4320-80  
**To:** Parks and Recreation Advisory Committee  
**From:** Sheri Raposo, Land Administrator  
  
**Subject:** License to Use Agreement – Ministry of Environment and Climate Change Strategy  
McNicoll Park - 1051 Penticton Avenue

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## Staff Recommendation

THAT the Parks and Recreation Advisory Committee recommend that Council approve the five (5) year License to Use Agreement, with a five (5) year renewal clause, with the Ministry of Environment and Climate Change Strategy, for the use of a portion of McNicoll Park located at 1051 Penticton Avenue, for an air quality monitoring station.

## Strategic priority objective

**Vibrant & Connected:** Support community building partnerships with Penticton Indian Band, other local governments, and organizations, as well as inter-governmental partnerships with the Province and Federal Governments.

## Background

Staff have been actively working with the BC Ministry of Environment and Climate Change Strategy over the past several years to secure an air quality station in Penticton. There are a number of criteria that the Ministry considers when selecting a site, and it has been a challenge to find a suitable location.

The site proposed by staff and the Ministry of Environment is located within McNicoll Park between the L'Ecole Entre Lacs and the Penticton Creek Walkway. The site footprint, shown in red on Attachment A, would be approximately 21' x 25' and will house a steel shelter containing monitoring equipment and related equipment. The steel shelter includes a 10-metre tower used for meteorological monitoring. The site would be enclosed by an 8' security fence. All costs associated with the installation and maintenance of the site would be borne by Ministry of Environment.

This specific site was chosen, after an extensive review of locating a suitable site that is in close proximity to where people are, the proper elevation, and far enough away from large pollution generators, such as cars and businesses, while not impeding on any current uses of the land.

The proposed station will provide real-time measurements of fine particulate matter, nitrogen dioxide and ground-level ozone and will allow the reporting of local Air Quality Health Index Values (AQHI) for Penticton and the wider South Okanagan region.

The AQHI is a tool that is designed to help citizens to make decisions to protect their health by limiting exposure and adjusting activity levels during periods with increased levels of air pollution. In recent years, wildfire smoke has been a major contributor to air pollution in communities throughout the Province. This tool can be used by the City's emergency operation center, as well as the City's regular operations as it relates to the health and safety of staff working outside.

### **Property Description**

McNicoll Park is located in the northeastern section of the City. It is approximately 9.5 acres of sporting fields including a baseball field and running track. The northern portion of the park includes a section of the Penticton Creek Walkway.

### **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

In accordance with section 4.12.1 of Zoning Bylaw 2023-08, utility services are allowable in all zones. The air quality monitoring station is considered a utility service and a Permitted Use in the P2 zone.

### **Park Land Protection and Use Policy**

As the land, where the proposed air quality monitoring station is to be located, is on parkland, the Park Land Protection and Use Policy requires new agreements or renewal of agreements within our parkland follow the following procedure:

- Step 1: Application to renew submitted to City staff
- Step 2: Proposal brought forward to Open Council meeting
- Step 3: Circulation of application to City departments and Parks & Recreation Advisory Committee
- Step 4: City staff conduct License Review to confirm conditions of license met and license in good standing
- Step 5: City staff review finding with Parks & Recreation Advisory Committee
- Step 6: Parks & Recreation Advisory Committee review application and feedback from staff
- Step 7: Parks & Recreation Advisory Committee would then make a recommendation to Council to approve or deny the renewal

On April 16, 2024, staff brought forward the request to Council to refer the five (5) year License to Use Agreement with a five (5) year renewal, to the Parks & Recreation Advisory Committee for their review and recommendation with the following outcome:

8.2 License to Use Agreement – Ministry of Environment and Climate Change Strategy

Re: 1051 Penticton Avenue

103/2024      **It was MOVED and SECONDED**

THAT Council refer the five (5) year License to Use Agreement, with a five (5) year renewal clause, with the Ministry of Environment and Climate Change Strategy, for the use of a portion of McNicoll Park located at 1051 Penticton Avenue, for an air quality monitoring station, to the Parks & Recreation Advisory Committee for their review and recommendation.

**CARRIED UNANIMOUSLY**

After receiving the Committee’s recommendation to Council, staff will bring this matter back to Council at their next available Council meeting.

**License to Use Summary**

The proposed term of the License to Use Agreement (LTU) will be for a five (5) year term with a five (5) year renewal term. The cost of installation, operation, safety, security and maintenance of the unit and the Licensed area will be the responsibility of the Ministry of Environment. Staff have requested that the unit be wrapped, to blend into the surroundings, as well as provide information at the site regarding what the unit is and how to connect people to the air quality data.

**Analysis**

As outlined in the Ministry of Environments proposal, Attachment B, Penticton is one of the only communities of comparable size without a dedicated long-term air quality monitoring station and a locally generated AQHI value. Demand for local, accurate, real-time air quality in Penticton and the South Okanagan is evident from the large number of public and media inquiries received during wildfire events in recent years, including from the City’s own Emergency Operations Centre and Health and Safety staff.

Given that this proposal provides the Ministry of Environment the opportunity to provide our staff, residents and visitors with local, accurate and real-time air quality values, staff are supportive of entering into the LTU.

**Alternate recommendations**

THAT the Parks and Recreation Advisory Committee recommend that Council deny the five (5) year License to Use Agreement, with a five (5) year renewal clause, with the Ministry of Environment and Climate Change Strategy, for the use of a portion of McNicoll Park located at 1051 Penticton Avenue, for an air quality monitoring station.

**Attachments**

Attachment A – Proposed Site Location

Attachment B – Air Quality Monitoring Proposal

Respectfully submitted,

Sheri Raposo

Land Administrator



The air quality monitoring station will be located within the red highlighted area.



# Proposal for Long-Term Air Quality Monitoring in Penticton

## Overview

The B.C. Ministry of Environment and Climate Change Strategy (ENV) is seeking approval to install a long-term air quality monitoring station on city land in Penticton.

The proposed station would provide real-time measurements of fine particulate matter (PM<sub>2.5</sub>), nitrogen dioxide (NO<sub>2</sub>) and ground-level ozone (O<sub>3</sub>) and would allow the reporting of local Air Quality Health Index (AQHI) values for Penticton and the wider South Okanagan region. The AQHI is a tool that is designed to help citizens to make decisions to protect their health by limiting exposure and adjusting activity levels during periods with increased levels of air pollution. In recent years, wildfire smoke has been a major contributor to air pollution in communities throughout the province.

ENV seeks the support of Penticton City Council to establish a long-term air quality monitoring station on city land adjacent to École Entre-Lacs and the Penticton Creek Pathway.

## Rationale

Penticton is one of the only communities of comparable size in B.C. without a dedicated long-term air quality monitoring station and a locally generated AQHI value. ENV currently operates a temporary PM<sub>2.5</sub> monitoring instrument at the provincial office on Industrial Avenue. Demand for local, accurate, real-time air quality in Penticton and the South Okanagan is evident from the large number of public and media inquiries received during wildfire events in the past few years.

ENV has capital and operational funding set aside for the establishment of the station and requires a local partner that is willing to host the necessary equipment on a suitable site. Site selection requires consideration and balancing of relevant technical and logistical factors. Siting requirements include the need for an open area with sufficient distance from objects that can affect the flow of air such as buildings and trees. Given the topography and urban density of Penticton, there are a limited number of suitable locations. The identified site on city land adjacent to École Entre-Lacs has a favourable balance of these factors and we hope that the City of Penticton will be willing to enter into a partnership to provide air quality data to your residents.

## Specifications

The proposed monitoring station approximate location is shown in orange in the map below:

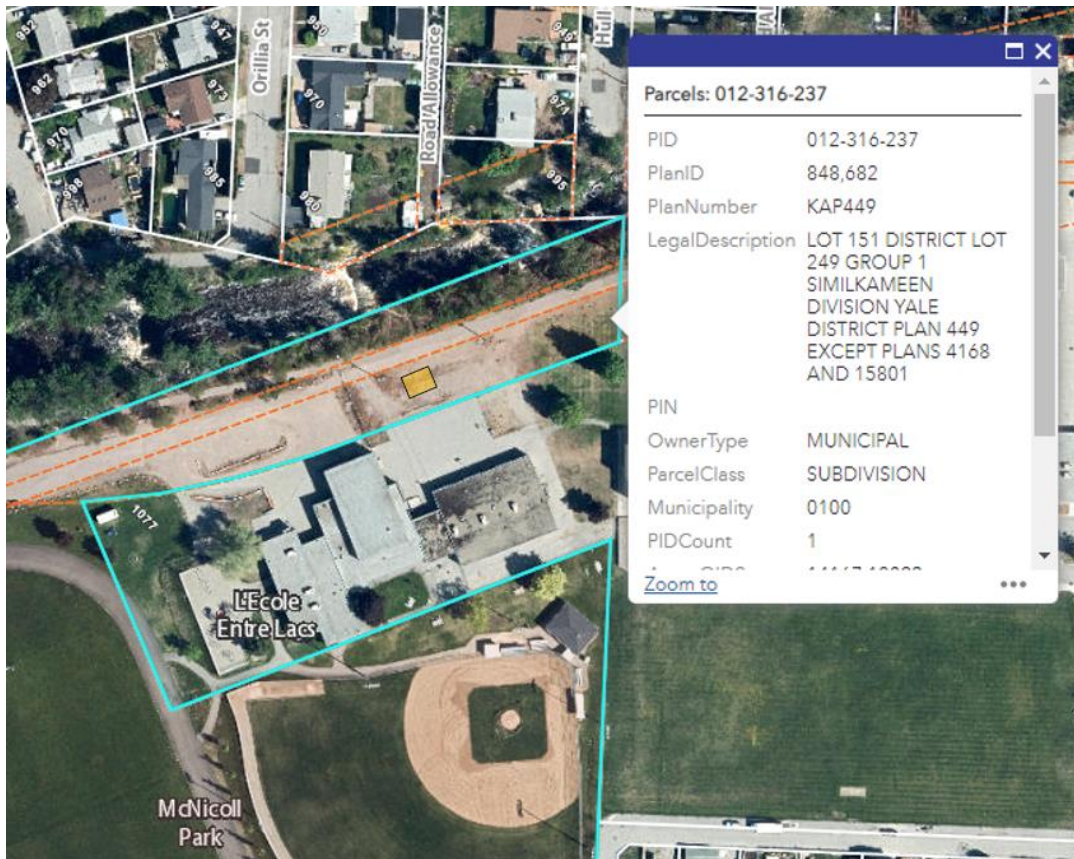


Figure 1 GIS Screenshot of Proposed Air Quality Monitoring Location Adjacent to École Entre-Lacs in Pentiction

The site footprint would be approximately 21' x 25' , fully within Parcel ID 012-316-237.

The installation would consist of the following equipment:

- 9' x 13' x 9' off-white steel shelter fitted with an exterior ladder and steel roof railings
- 10 metre self-supporting tower used for meteorological monitoring
- HVAC (heating, ventilating and air conditioning) unit
- 8' security fencing encompassing the shelter (1 ¼" chainlink) with maximum 6' clearance from each side of the shelter
- Interlocking road crush foundation with geo-fabric and retaining border to the fence
- In ground electric shielded cable or other appropriate connection, and grounding plates

The interior of the shelter will house continuous air quality monitoring equipment, a data logger, cellular modem, router, conduit and wire, as well as equipment and supplies necessary for the maintenance of the station.

Pictures of the proposed site, the shelter designated for this project and the proposed site as well as pictures of similar installations in other communities are shown on the next three pages.

*Photo 1 Ground view of proposed site of air quality monitoring station adjacent to École Entre-Lacs*



*Photo 2 Air quality monitoring shelter designated for Penticton*



*Photo 3 Kelowna KLO Road air quality monitoring station, with security fence*



*Photo 4 Smithers Muheim Memorial School air quality monitoring station, with security fence*



*Photo 5 Quesnel Johnston Avenue air quality monitoring station, without security fence*



## Additional Details

ENV's regional air quality technician is based in Kamloops and would be visiting the station on a regular basis (at least monthly) to perform maintenance on equipment. ENV's Air Audit Team would also be visiting the station twice per year to conduct independent audits. Site access will generally be during regular business hours, unless there are urgent maintenance issues requiring intervention.

Data collected at the site will be uploaded hourly to the provincial database and available publicly through the [gov.bc.ca/airquality](http://gov.bc.ca/airquality) portal. The data will support AQHI reporting for the South Okanagan, issuing of Air Quality Advisories and Smoky Skies Bulletins, as well as analysis and interpretation of long-term trends in air pollution.

Since the proposed location is within a park, ENV would be supportive of measures to make the site more attractive and/or informative to the general public, such as signage or a wrap.

ENV air quality monitoring and stewardship staff will support outreach efforts in the community such as educating the public about the station, providing tours when appropriate and working with city staff to help interpret the data collected.

## Proposed Next Steps

With the City of Penticton's support, the proposed next steps for this project will be:

### City of Penticton

- Obtaining approvals from Council and the Parks and Recreation Committee. The land parcel is zoned P2 Parks and Recreation.

### ENV

- Preparing a draft Land Use Agreement for signature by both parties. A draft 10-year agreement using our standard language is attached to this proposal.
- Consulting with the City of Penticton Utilities Department to determine the process and requirements for establishing electrical service to the station.
- Preparing a Request for Proposals for contractors to complete the installation work.

### Contact:

Chris Doughty, Head, Air Quality Monitoring Unit  
B.C. Ministry of Environment and Climate Change Strategy  
chris.doughty@gov.bc.ca  
(236) 468-2290

# Committee Report

penticton.ca

**Date:** April 24, 2024 **File No:** 4320-80  
**To:** Parks and Recreation Advisory Committee  
**From:** Sheri Raposo, Land Administrator  
  
**Subject:** License to Use Agreement - Travel Penticton Society and Penticton and Wine Country Chamber of Commerce Jubilee Pavilion - 185 Lakeshore Drive, Penticton, BC

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## Staff Recommendation

THAT the Parks and Recreation Advisory Committee recommend that Council direct staff to renew a three (3) year License to Use Agreement with Travel Penticton Society and the Penticton and Wine Country Chamber of Commerce, for the use of the Jubilee Pavilion building located at 185 Lakeshore Drive West.

## Strategic priority objective

**Vision:** A vibrant, resilient, and healthy waterfront city focused on safety, livability, and vibrancy.

**Vibrant & Connected:** Support community building partnerships with Penticton Indian Band, other local governments, and organizations, as well as inter-governmental partnerships with the Province and Federal Governments.

## Property Description

The Jubilee Pavilion was constructed in the 1980's. The building has approximately 770 sq. ft. of office space.

## Background

Over the past 20-plus years, the Jubilee Pavilion has had many users over its lifetime that include functioning as an event office location for the Peach Classic Triathlon, Peach Festival, IRONMAN Canada and Challenge Penticton and a satellite office for the RCMP for summer patrols and Community Policing.

In 2020, Community Policing, the existing user no longer required the use of the building. Travel Penticton and the Chamber of Commerce approached the City and requested use of the building for office space and an additional visitor information location for tourists. Council and the Parks & the Recreation Advisory Committee approved the request for an 18-month License to Use Agreement.

In 2021, Council and the Parks & Recreation Advisory Committee, approved to renew the License to Use Agreement with Travel Penticton and Chamber of Commerce for another two (2) year term.



## Park Land Protection and Use Policy

As the land, where the building is located, is on parkland, the Park Land Protection and Use Policy requires new and renewal of all agreements within our parkland follow the proper step procedure and receive a committee recommendation:

- Step 1: Application to renew submitted to City staff
- Step 2: Proposal brought forward to Open Council meeting
- Step 3: Circulation of application to City departments and Parks & Recreation Advisory Committee
- Step 4: City staff conduct License Review to confirm conditions of license met and license in good standing
- Step 5: City staff review finding with Parks & Recreation Advisory Committee
- Step 6: Parks & Recreation Advisory Committee review application and feedback from staff
- Step 7: Parks & Recreation Advisory Committee would then make a recommendation to Council to approve or deny the renewal

On April 16, 2024, staff brought forward the request to Council to refer the three (3) year renewal of the License to Use Agreement to the Parks & Recreation Advisory Committee for their review and recommendation with the following outcome:

8.1 Travel Penticton Society and Penticton & Wine Country Chamber of Commerce

License to Use Agreement – Jubilee Pavilion

Re: 185 Lakeshore Drive West, Penticton

102/2024      **It was MOVED and SECONDED**

THAT Council refer the three (3) year License to Use Agreement renewal with Travel Penticton Society and Penticton & Wine Country Chamber of Commerce for the use of the Jubilee Pavilion building located at 185 Lakeshore Drive West, at an annual rate of \$7,401.60 (\$616.80 per month) plus annual CPI, to the Parks & Recreation Advisory Committee for their review and recommendation.

**CARRIED UNANIMOUSLY**

## License to Use Summary

The proposed term of the LTU Agreement will be for a three (3) year term. Travel Penticton Society and the Penticton & Wine Country Chamber of Commerce are requesting the same terms as the previous LTU Agreement.

They will continue to be responsible for the day-to-day upkeep of the building and utilities. The City will continue to be responsible for the major building systems, and the surrounding grounds.

After receiving the Committee's recommendation to Council, staff will bring this matter back to Council at the next available Council meeting for approval or denial of the three (3) year License to Use Agreement.

**Alternate Recommendations:**

1. THAT the Parks and Recreation Advisory Committee recommend that Council approve a five (5) year License to Use Agreement, for the Jubilee Pavilion building located at 185 Lakeshore Drive West to Travel Penticton Society and the Penticton and Wine Country Chamber of Commerce.
2. THAT the Parks and Recreation Advisory Committee recommend that Council does not approve a three (3) year License to Use Agreement, for the Jubilee Pavilion building located at 185 Lakeshore Drive West to Travel Penticton Society and the Penticton and Wine Country Chamber of Commerce.

**Attachments**

Attachment A- Three (3) Year License to Use Agreement

Respectfully submitted,

Sheri Raposo, Land Administrator

## 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 \_\_\_\_\_, 2024.

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 185 Lakeshore Drive West, Penticton, BC, V2A 1B7

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 (“**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 (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

This agreement and the rights granted shall be for a term of **THREE (3)** years commencing on \_\_\_\_\_, **2024** (the “**Commencement Date**”) through to \_\_\_\_\_, \_\_\_\_\_, unless cancelled in accordance with the terms of this agreement.

## 3. License Fee

- 3.1 On the Commencement Date and monthly thereafter, the Licensee shall pay to the City, the amount of **SIX HUNDRED SIXTEEN - 80/100 DOLLARS (\$616.80) plus GST** (the “**License Fee**”).
- 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 the Province of British Columbia for the preceding year.

## 4. Utilities

The City will be responsible for the cost of electricity during 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; and

- iii. to the extent necessary, this covenant shall survive the expiration or cancellation of this agreement;
- i) 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.

- j) the Licensee will provide the City with a new Certificate of Liability Insurance annually upon renewal;
- k) notwithstanding subsection i) 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 i) of Section 5 to be changed to the amount specified in the notice and deliver to the City written confirmation of the change.
- l) not to place any improvements on the Licensed Area other than those described elsewhere in this agreement, without prior written consent of the City;
- m) not cause or permit any unusual or objectionable noises, or lights, to emanate from the Licensed Area;
- n) not cause or permit any unusual or objectionable odours which may be noxious or offensive or which could constitute a public or private nuisance;
- o) not cause or permit any waste or damage;

- p) 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;
- q) 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.

- r) 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 License is not assignable.

## 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**:

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  
185 Lakeshore Drive West  
Penticton, BC, V2A 1B7  
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:

\_\_\_\_\_  
Angela Campbell, Director, Finance and Administration

\_\_\_\_\_  
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:



## **SCHEDULE B MANAGEMENT PLAN**

The Licensee shall have the use of the Licensed Area shown outlined in red on Schedule A for the purpose of operating a Visitor Information Centre and Chamber of Commerce.

### **1. 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 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 costs of all telecommunications equipment and services including wired & wireless internet.
- 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 major building systems for the Licensed Area.

## 5. **Safety/Protection**

- 5.1 The Licensee shall ensure proper procedures are followed for:
- a) Fire Safety/Evacuation
  - b) W.H.M.I.S.
  - c) Accident/Incident Reporting
  - d) 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 Any and all accidents or damages involving an employee or volunteer of the Licensee that occurs within the Licensed Area MUST be immediately reported to the City's Occupational Health & Safety Representative, Daniel York at 250-490-2553 or [daniel.york@penticton.ca](mailto:daniel.york@penticton.ca).
- 5.5 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.