

**CITY OF COLD LAKE
LICENCE OF OCCUPATION**

THIS AGREEMENT made this _____ day of _____, 20__.

BETWEEN:

CITY OF COLD LAKE
a municipal corporation in the Province of Alberta,
(hereinafter referred to as the "City")

OF THE FIRST PART

- and -

NAME
Address
CITY, POSTAL

(hereinafter referred to as the "Licensee")

OF THE SECOND PART

WHEREAS the City is the registered owner of the lands legally described as Plan _____, Block ____, Lot ____, as shown in Schedule "A" attached (the Municipal Lands);

AND WHEREAS the Licensee is the registered owner of certain lands legally described as Plan _____, Block ____, Lot ____, (the "Licensee's Lands");

AND WHEREAS the Licensee has requested the City grant a licence to permit specified private Improvement(s) on the Municipal Lands as identified on the attached Schedule "A" subject to the terms of this Agreement;

AND WHEREAS the City has passed Bylaw No. _____ in accordance with Section 676(1) of the *Municipal Government Act*, R.S.A. 2000 to allow for alternative uses of Environmental Reserve lands.

AND WHEREAS the City has agreed to grant the Licensee a non-exclusive licence to locate and maintain certain private Improvement(s) as described in the attached Schedule "A" within the Municipal Lands subject to the terms of this agreement:

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the premises, covenants, conditions and terms contained herein, the parties hereto agree as follows:

2. **Consideration and Right to Maintain**

In consideration of the sum of \$ _____ paid to the City by the Licensee at the commencement of this Agreement and subject to the terms and conditions of this Agreement, the City gives to the Licensee a non-exclusive license to locate and maintain the Improvement(s) within the Municipal Lands subject to terms and conditions of this Agreement.

3. **Limited Purpose**

- (a) The License hereby granted shall be limited solely to the Improvement(s) as identified in Schedule "A" and the Licensee shall not erect or permit any other Improvement(s) whatsoever within the Municipal Lands without the prior written approval of the City.
- (b) The Licensee acknowledges that the public shall have the right to access and use the Municipal Lands at all times and the Licensee shall not interfere with or prevent the public from accessing or using the Municipal Lands.
- (c) The Licensee acknowledges that public access also comes with risks of liability that is inherited by the Licensee for such access. The Licensee acknowledges that it understands and accepts such liability voluntarily.

4. **Permits**

Nothing in this Agreement in any way constitutes a development permit or a building permit on the Municipal Lands as shown in Schedule "A" hereto and the Licensee shall not cause or permit any new development whatsoever within the Municipal Lands without receiving a development permit and/or building permit;

Upon entering into this license agreement, regulatory authorities may require inspections to ensure conformance to local, provincial, and federal legislation and/or regulations. All costs associated to obtain and/or ensure compliance and/or permits, inclusive of any such formal inspections, permitting costs, shall be at the sole costs of the Licensee.

5. **Municipality's Rights**

The City shall have the full right to occupy and use the Municipal Lands in any manner whatsoever deemed appropriate by the City; provided, that the City shall not unreasonably interfere with the rights herein conferred upon the Licensee;

6. **Environmental Obligations**

Notwithstanding any other term or condition of this Agreement, the Licensee shall accept the granting of this licence as contemplated herein on the understanding and agreement that there are no agreements, conditions, warranties or representations relating to the Municipal Lands other than as stated in this Agreement and the City does not warrant the quality, condition or sufficiency of the Municipal Lands for any use or purpose and the grant of this licence is taken by the Licensee on a strictly "as is, where is" basis.

Without restricting the generality of the foregoing, the Licensee shall comply with all legislation dealing with any environmental issues related to the Municipal Lands including, but not limited to, the *Environmental Protection and Enhancement Act*, R.S.A. 2000 c. E-12, as amended, and regulations thereunder or any successor legislation. The responsibility of the Licensee with respect to environmental obligations will continue to be enforceable during and after the term of this Agreement.

7. **Utilities and Drainage**

- (a) In the event that the City deems it necessary or appropriate to cause or allow third parties to

construct or install permanent underground or above ground utility lines, pipelines facilities, transmission lines, drainage swales and sidewalks etc. (the "work"), which will cross the Municipal Lands, or to perform such other work upon the Municipal Lands as may be deemed necessary in the sole discretion of the City, the Licensee shall in no way interfere with or hinder the construction, installation, repair or maintenance undertaken by the City or any person to whom the City has granted such permission. The Licensee shall provide further documentation as may be deemed appropriate in the sole discretion of the City for the purposes of expediting or permitting the "work" within the Municipal Lands by the City or the nominee of the City

- (b) In the event the City requests and deem it necessary to perform such work within the Municipal Lands, the Licensee is responsible for the removal of the Improvement(s) within the Municipal Lands, at the request of the City.

8. **Licensee's Obligations**

The rights granted to the Licensee under this agreement constitute a licence only and shall not under any circumstances constitute a lease or other interest in land. No rights granted hereunder shall create or vest under the Licensee any ownership or property rights in the Municipal Land nor create an interest in land and the Licensee shall not register its interest in this Agreement as such.

The Licensee Shall:

- (a) **Licensee's Sole Expense** - keep, maintain, and repair the Improvement(s) in good order and condition. In the event that the City or any franchise utility deem it necessary to access services within the Municipal Lands, at any time, the Licensee shall be responsible for any and all costs which may incur from work undertaken as a result of the Improvement(s). If the Improvement(s) must be removed, the Licensee shall be responsible for the removal of the Improvement(s) at the Licensee's sole expense within 30 (Thirty) days of written notification or other mutually agreed to time period. If emergency access is required, the City may remove the Improvement(s) at the Licensee's sole expense at any time.
- (b) **No increase, additions or alterations in the Municipal Lands** - ensure that no additional Improvement(s) are installed or erected in, on, over, or under the Municipal Lands without the prior written permission of the City and amendment of this agreement;
- (c) **Discharges** - promptly discharge any and all encumbrances registered against the Municipal Lands, including Builder's Liens which are registered as a result of any action of the Licensee, its agents, officers, employees or independent contractors. In the event the Licensee fails to discharge any such encumbrance within fifteen (15) days of receiving notice from the City , the City may forthwith terminate this Agreement;

9. **Licence Term and Termination**

This agreement shall be in force and effect for a period of three (3) years from the date of signing but may be terminated by the City as follows:

- (a) The City gives to the Licensee the privilege to allow the Improvement(s) to occupy the Municipal Lands until such time as the City determines that the affected area of the Municipal

Lands are required for public use and shall give to the Licensee not less than Thirty (30) days written notice of such termination, which notice shall terminate this Agreement at the expiration of notice period given, or

- (b) If the Licensee defaults in the performance of any covenant, condition or term of this agreement and such default is not remedied within (10) days' notice of such default, this Agreement shall thereupon terminate without further notice.
- (c) This Licence may be renewed for additional terms upon receipt of payment of the Licence Renewal Fee as set forth in Policy 221-AD-22, unless terminated in accordance with Clause 9(a) or (b).

10. **Non Assignability of Agreement**

- (a) The Licensee shall not assign this Agreement without the express written approval of the City, such approval shall not be unreasonably withheld.
- (b) It is understood between the City and the Licensee that any assignment of this Agreement to which the City consents shall not be permitted unless and until:
 - i) The proposed assignee enters into a further agreement with the City whereby such assignee undertakes to assume and perform all of the obligations and responsibilities of the Licensee as set forth in this Agreement; and
 - ii) The proposed assignee has deposited with the City all insurance and security as required by the terms of this Agreement.

11. **Licensee's Obligations on Termination**

Upon termination of this Licence, the Licensee shall remove all Improvement(s) belonging to the Licensee from the Municipal Lands and restore the Municipal Lands to a level and condition equivalent to that which existed prior to the commencement of the Encroachment and to the City Municipal Engineering Standards.

If the Licensee fails or neglects to restore the Municipal Lands or fails to remove any and all property of the Licensee from the Municipal Lands within thirty (30) days of the termination of the Licence, the City shall have the right, but not the obligation, to take such action as is reasonably necessary in the sole discretion of the City to remove all property of the Licensee from the Municipal Lands, and to restore the Municipal Lands to the level and condition equivalent to that which existed prior to the commencement of this Licence.

The City shall not be responsible for any loss or damage, however caused, to any property of the Licensee hereby removed from the Municipal Lands, and the Licensee further agrees to compensate the City, its servants, contractors or agents pursuant to this clause. Any cost incurred by the City pursuant to this clause shall be a charge and encumbrance against the Licensee's Lands and the Licensee hereby charges the Licensee's Lands for such costs.

12. **Failure to Perform**

If the Licensee fails or neglects, within thirty (30) days of the receipt of notice from the City or a

mutually agreed to time period, to comply with the requirements of this Agreement, without notice in the case of an emergency or in the event that the City deems it necessary and in the public interest to terminate this agreement and have the Improvement(s) removed prior to the expiration date of this agreement specified in Clause 9, the City may (but is not required to):

- (a) Perform or cause to be performed the requirements of this Agreement on behalf of and at the Licensee's cost and expense. The Licensee will reimburse the City for all costs, charges, and expenses incurred by the City on behalf of the Licensee within (10) days of receipt by the Licensee of an invoice for them;
- (b) Demolish and remove the Improvement(s) on behalf of and at the Licensee's cost, charges and expenses and terminate the Licensee's rights under this Agreement. The Licensee will reimburse the City for all costs, charges and expenses incurred by the City for undertaking such work within ten (10) days of receipt of an invoice from the City for such costs;
- (c) Pursue any right or remedy which the City may be entitled to under this Agreement, or in law or equity.

13. **Compliance with Law**

This license does not exempt and/or supersede other regulatory approvals that may be required by local, provincial, and federal regulatory authorities. The Licensee shall at all times and in all respects abide by all laws, bylaws, legislative and regulatory requirements of any governmental or other competent authority relating to the use and occupation of the Municipal Lands by the Improvement(s).

14. **Notice of Accidents**

The Licensee shall provide the City with prompt written notice of any accident, damage or injury occurring on the Municipal Lands however caused.

15. **Insurance**

The Licensee shall carry comprehensive liability insurance with insurable limits of no less than TWO MILLION (\$2,000,000.00) DOLLARS for each occurrence and the Licensee shall provide proof of such insurance to the satisfaction of the City on an annual basis.

The Licensee shall also waive its rights of subrogation against the City. The City reserves the right from time to time to require the Licensee to increase its comprehensive liability insurance coverage where such coverage would be considered necessary by a prudent owner of similar Improvements in the Province of Alberta.

16. **Indemnity**

Save and except for the negligent act or willful misconduct of the City, the Licensee shall indemnify the City and save it harmless from and against all claims, actions, damages, liabilities and expenses in connection with losses of life, personal injury, damage to property, or any other damage, loss or injury which are based upon, or arise out of or are in any way connected with the Improvement(s) or the Municipal Lands and the exercise of the rights and privileges contained in this Agreement, including but not limited to the following:

- (a) loss or damage suffered or incurred by the Licensee or those for whom the Licensee is in law responsible;
- (b) loss or damage suffered or incurred by the City or those for whom the City is in law responsible (including without limitation any additional costs and expenses incurred by the City in carrying out work on the Municipal Lands by reason of the Encroachment);
- (c) damage or expense sustained by the Licensee and related to the removal of the Improvement(s);
- (d) any claim for loss or damage made, brought or prosecuted by anyone else.

17. **Licensee's Risk**

All property of the Licensee which may hereafter be located on, under, or over or adjacent to the Municipal Lands shall be at the sole risk of the Licensee and the City shall not be liable for any loss or damage thereto howsoever caused and the Licensee hereby releases the City from all actions, claims, demands, suits or proceedings whatsoever in respect of any such loss or damage, except and to the extent such loss or damage is caused by the negligence of the City or its servants or agents.

18. **Compensation for Damages**

The Licensee shall compensate the City for all damage to the property of the City arising out of the activities of the Licensee on or adjacent to the Improvement(s), whether or not such activities are in pursuance of the rights herein granted to the Licensee.

19. **Owner's Obligations After Termination**

Any obligation of the Licensee to protect the City shall survive the termination of this Agreement.

20. **Successors**

The Agreement shall be binding upon and enure to the benefit of the City and its successors, licensees and permitted assigns, and the Licensee and its successors and assigns.

21. **Renewal**

This Licence Agreement shall automatically renew for a further term of three (3) years from the date of expiry of the initial term, or the date of expiry of any subsequent term until terminated in accordance with clause 9 on the same terms and conditions.

22. **Notice**

All notices under this Agreement shall be in writing and sent by registered or certified mail as follows:

TO City at:

CITY OF COLD LAKE
5513 48th Ave.
Cold Lake, Alberta T9M 1A1

Attention: Manager of Land-Use Planning, Development and Regulatory Services

TO the Licensee at:

Name
Address
City, Postal

Attention:

At such time the property is conveyed, City must receive notice by way of a copy of Certificate of Title registered in the new owner's name, delivered or faxed, within fourteen (14) days of registration of same, or this agreement will be considered null and void.

25. **Whole Agreement**

The Licensee acknowledges and agrees that the rights herein conferred to the Licensee are only such rights as are specified herein and that the City has made no representations, warranties, promises or agreements, either expressed or implied, beyond those contained herein.

26. **Severability**

Should part of this Agreement be or become illegal or unenforceable, it will be considered severable from this Agreement and the remainder of this Agreement will remain in effect as though the illegal or unenforceable parts had not been included.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the day and year first above written:

CITY OF COLD LAKE (Seal)

MAYOR

**Kevin Nagoya,
CHIEF ADMINISTRATIVE OFFICER**

**XXXXXX.
LICENSEE (Seal)**

Schedule 'A'