



## License of Occupation

**THIS AGREEMENT** dated for reference the 30 day of March 2016.

**BETWEEN:**

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

(the "City")

OF THE FIRST PART

**AND:**

**University of British Columbia, Okanagan**, (A University *continued under  
the University Act of British Columbia*)

(the "Licensee")

OF THE SECOND PART

**WHEREAS:**

- A. The City is the owner of the property located at 1435 Dilworth Drive in the municipality of Kelowna, legally known as:

Parcel Identifier - 011-552-816

DISTRICT LOT 531 OSOYOOS DIVISION YALE DISTRICT EXCEPT:

(1) PART RED ON PLAN ATTACHED TO DD 1952D

(2) PART LYING TO THE NORTH OF THE RAILWAY SHOWN ON PLAN ATTACHED  
TO DD 1952D

(3) PLANS B1589, 25187, 30395 AND M14878

(the "Property");

- B. The Licensee wishes to plant and maintain a meadow of indigenous plants as well as, from time to time, on an intermittent basis, engage the public and special interest groups in on-site activities to increase awareness and understanding of the plight of pollinator species (the "Works"), which will create an encroachment onto the Property (the "License Area");

- C. The City is prepared to grant the Licensee a License of Occupation pursuant to Section 35(11) of the *Community Charter*, S.B.C. 2003, c.26 over the License Area to enable the Licensee to complete the Works.

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

1. **Grant** - The City grants to the Licensee the non-exclusive right and license to enter onto and use the License Area shown in Schedule 1 which is attached hereto, for the purposes of the Works.
2. **Additional Rights** - For the purposes outlined in Section 1, the Licensee shall have the right to bring onto the License Area all necessary materials, vehicles, machinery, and equipment.
3. **Term** - The duration of this Agreement and License herein granted shall be for a term of one (1) year commencing on the date of execution of this Agreement, unless earlier terminated in accordance with Section 17.
4. **Extension** - The term of this License of Occupation may be renewed for a further one (1) year (the "Renewal Period") upon written Agreement by the City and the Licensee.
5. **State of License Area at Termination** - In the event that this Agreement terminates or expires for any reason, the Licensee will cease all occupation of the License Area and will remove all equipment, chattels, fixtures, buildings and other improvements from the License Area. The Licensee will leave the License Area in a safe, clean and tidy condition and clear of contamination occurring since the date of commencement of this Agreement. In the event that the Licensee fails to remove any equipment or chattels upon termination of this Agreement then the City may do so and recover the expense thereof from the Licensee. All buildings, improvements and fixtures remaining on the License Area become the sole property of the City upon termination of this Agreement, without any compensation whatsoever to the Licensee.
6. **Non-exclusive Use** - The Licensee agrees that:
  - (a) the rights granted under this Agreement do not constitute any interest in the License Area or entitle the Licensee to exclusive possession of the License Area;
  - (b) the Licensee's rights under this Agreement are at all times subject to the rights and interest of the City as owner and possessor of the License Area.
7. **No Waste or Nuisance** - The Licensee will not do or permit anything that may become a nuisance to occupiers or invitees on adjoining lands.
8. **Terms and Conditions** - The Licensee will comply with all the terms, conditions, rules or regulations that the City may from time to time impose in respect of the use and administration of the License Area. The Licensee acknowledges that the fact that the License is granted by the City does not excuse the Licensee from obtaining building permits, development permits, business licenses and other required permissions.

9. **Maintenance** - The Licensee will at its own expense keep the License Area in a safe, clean and tidy condition immediately before, during, and immediately after any use initiated by the Licensee.
10. **Compliance with Laws** - The Licensee will comply with all laws and regulations pertaining to its use and occupation of the License Area.
11. **Inspection by the City** - The City may review and inspect the License Area and the work which the Licensee is undertaking pursuant to this Agreement to determine if the Licensee is in compliance with the terms of this Agreement.
12. **No Transfer** - The rights granted to the Licensee under this Agreement may not be sub-licensed, assigned or otherwise transferred.
13. **Risk** - The Licensee accepts the License Area on an as-is basis and agrees that it will use the License Area at its own risk, and the City will not be liable in respect of any loss of life, personal injury, damage to property, loss of property or other loss or damage suffered by the Licensee, its contractors, subcontractors, agents, invitees, employees or any other person arising out of this Agreement or the use and occupation of the License Area except in the case of negligence or willful act or omission by the City, its employees, agents or invitees.
14. **Indemnity** - The Licensee will indemnify and save harmless the City and its elected and appointed officials, officers, employees, agents and others from and against any claim, action, damage, liability, cost and expense in connection with loss of life, personal injury, loss of property, damage to property or other loss or damage arising from any default of the Licensee under this Agreement or any wrongful act, omission or negligence of the Licensee or its officers, employees, contractors, agents or others for whom the Licensee is responsible excepting always the negligent acts or omissions of the City. This indemnity will survive the expiry or sooner termination of this Agreement.
15. **Release** - The Licensee hereby releases and forever discharges the City, its elected officials, officers, employees, agents and invitees, of and from any claim, causes of action, suit, demand, expense, cost, legal fees and compensation of whatever kind, whether known or unknown, at law or in equity, including without limitation any claim under the Property Law Act (collectively "Claims"), which the Licensee may have, sustain or suffer, as the case may be, now or in the future arising from the Works, other improvements in the License Area, the expiry or termination of this License, the proper exercise by the City of any of its rights under this License the Licensee's use of the License Area, except claims arising from the negligence of the City.
16. **Insurance** - As a minimum, the Licensee shall, without limiting its obligations or liabilities under any other contract with the City, procure and maintain, at its own expense and cost, the following insurance policies:

**16.1 Workers' Compensation Insurance** covering all employees of the Licensee engaged in the Agreement, services and/or occupancy in accordance with the statutory requirements of the province or territory having jurisdiction over such employees.

## **16.2 Comprehensive General Liability Insurance**

- (i) providing for an inclusive limit of not less than \$5,000,000.00 for each occurrence or accident;
- (ii) providing for all sums which the Licensee shall become legally obligated to pay for compensatory damages because of bodily injury (including death at any time resulting there from) sustained by any person or persons or because of damage to or destruction of property caused by an occurrence or accident arising out of or related to this Agreement, services and/or occupancy or any operations carried on in connection with this Agreement;
- (iii) including coverage for Products/Completed Operations, Blanket Contractual, Contractor's Protective, Personal Injury, Contingent Employer's Liability, Broad Form Property Damage, and Non-Owned Automobile Liability;
- (iv) including a Cross Liability clause providing that the inclusion of more than one Insured shall not in any way affect the rights of any other Insured hereunder, in respect to any claim, demand, suit or judgement made against any other Insured.

## **16.3 Automobile Liability Insurance**

The Licensee shall provide insurance covering all motor vehicles, owned, operated and used or to be used by the Licensee directly or indirectly in the performance of this Agreement, services and/or occupancy. The Limit of Liability shall not be less than \$2,000,000 inclusive, for loss or damage including personal injuries and death resulting from any one accident or occurrence.

## **16.4 The City Named as Additional Insured**

The policies required by section 16.2 above shall provide that the City is named as an Additional Insured thereunder and that said policies are primary without any right of contribution from any insurance otherwise maintained by the City.

## **16.5. Licensee's Sub-contractors**

The Licensee shall require each of its sub-contractors to provide comparable insurance to that set forth under Section 16.

## **16.6. Certificates of Insurance**

The Licensee has submitted a Certificates of Insurance which fulfills the City's requirements and is attached as Schedule 2.

## **16.7 Additional Insurance**

The Licensee may take out such additional insurance, as it may consider necessary and desirable. All such additional insurance shall be at no expense to the City. The applicant shall ensure that all of its sub-contractors are informed of and comply with the City's requirements.

#### **16.8 Non-payment of Losses**

The failure or refusal to pay losses by any insurance company providing insurance on behalf of the Licensee or any sub-contractor shall not be held to waive or release the Licensee or sub-contractor from any of the provisions of the Insurance Requirements or this Agreement, with respect to the liability of the Licensee otherwise.

17. **Termination - No Default** - The City reserves the right to terminate this Agreement for whatever reason with thirty (30) days written notice to the Licensee.
18. **Termination - Default** if the Licensee breaches any of its obligations under this Agreement and fails to remedy the breach within thirty (30) business days of receiving written notice from the City. The City will not be liable to compensate the Licensee for damages, costs or losses resulting from the exercise of this right of termination or any termination of this License.
19. **Notices** - Any notice given pursuant to this Agreement will be sufficiently given if it is in writing and delivered by hand or mailed by prepaid registered mail or sent by facsimile transmission to the intended party at its address set out on page 1 of this Agreement or to such other address as either party may provide in writing to the other pursuant to the provisions of this paragraph. All notices to the City must be marked to the attention of the City Clerk.

A notice will be deemed to be received on the day it is delivered, if delivered by hand, on the day of transmission, if sent by facsimile, or three (3) days after the date it was mailed or if that day is not a business day, the next day that is a business day. If mailed, should there be at the time of mailing or between the time of mailing and the deemed receipt of the notice, a mail strike or slowdown, labour or other dispute which might affect the delivery of such notice by the mails, then such notice will only be effective if delivered by hand or sent by facsimile transmission.

20. **No Effect on Laws or Powers** - Nothing contained or implied herein prejudices or affects the City's rights and powers in the exercise of its functions pursuant to the *Local Government Act* or its rights and powers under any enactment to the extent the same are applicable to the License Area, all of which may be fully and effectively exercised in relation to the License Area as if this Agreement had not been fully executed and delivered.
21. **Severance** - If any portion of this Agreement is held invalid by a Court of competent jurisdiction, the invalid portion shall be severed and the decision that it is invalid must not affect the validity of the remainder of the Agreement.
22. **Further Actions** - Each of the parties hereto shall from time to time hereafter and upon any reasonable request of the other, execute and deliver, make or cause to be made all such further acts, deeds, assurances and things as may be required or necessary to more effectually implement and carry out the true intent and meaning of this Agreement.
23. **Waiver or Non-action** - Waiver by the City of any breach of any term, covenant or condition of this Agreement by the Licensee must not be deemed to be a waiver of any subsequent default by the Licensee. Failure by the City to take any action in respect

of any breach of any term, covenant or condition of this Agreement by the Licensee must not be deemed to be a waiver of such term, covenant or condition.

24. **Reference** - Every reference to a party is deemed to include the heirs, executors, administrators, successors, servants, employees, agents, contractors and officers of such party wherever the context so requires or allows.

25. **General** -

- (a) This Agreement will bind and benefit each party to this Agreement, and its respective corporate successors;
- (b) The Schedules attached to this Agreement form part of this Agreement;
- (c) This Agreement constitutes the entire Agreement between the parties and may not be amended except by Agreement in writing signed by all parties to this Agreement;
- (d) Time is of the essence of this Agreement;
- (e) This Agreement must be construed according to the laws of the Province of British Columbia.
- (f) This License of Occupation is subject to approval of City Council.

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

SIGNED, SEALED & DELIVERED by the )  
CITY OF KELOWNA, in the presence of: )

CITY OF KELOWNA by its authorized signatories:

Signature of Witness )

Print Name )

Address )

Occupation )

\*As to both signatures )

SIGNED, SEALED & DELIVERED by the )  
Licensee, in the presence of: )

@ by its authorized signatories:

Signature of Witness )

Mark Crosbie  
Associate University Counsel

Print Name )

Print Name:

Address )

Louise Cowin

Occupation )

Print Name:

\*As to both signatures )

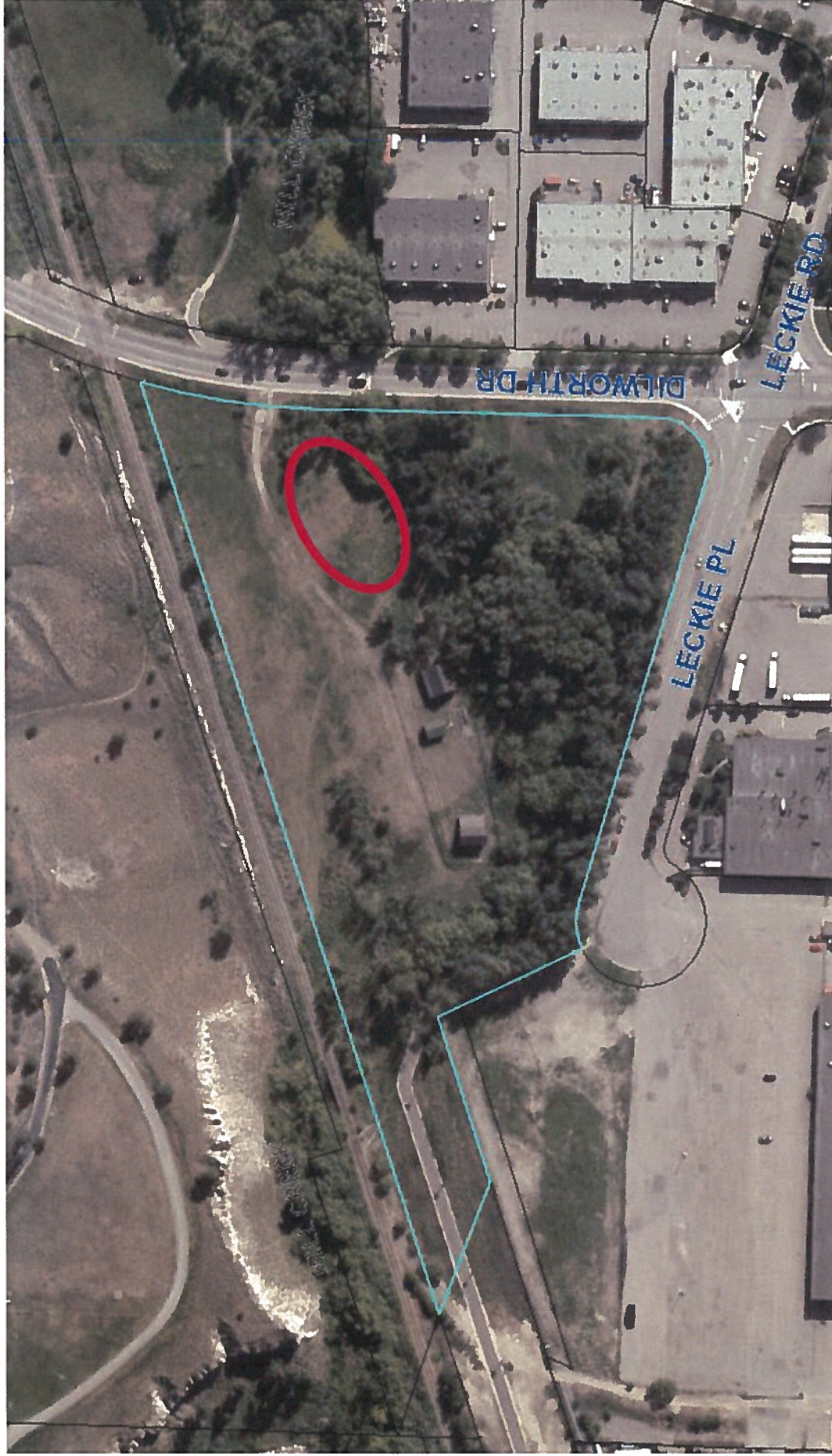
Louise Cowin  
VP, Students  
University of British Columbia

witness Abby Yellen

A Yellen  
Executive Assistant to the VP Students



Schedule 1 - License Area



Boundary of License Area





## Schedule 2 - Certificate of Insurance



### CERTIFICATE OF COVERAGE

**Certificate No:** UBCL-2014

This certificate is issued as a matter of information only and confers no rights upon the certificate holder other than those provided in the coverage. This certificate does not amend, extend or alter the coverage described herein.

**THIS IS TO CERTIFY TO:** City of Kelowna

This is to certify that coverage described herein have been issued to the University of British Columbia for the coverage period indicated.

**COVERED ENTITY** University of British Columbia  
Donald Rix Building (TEF II)  
Room 336, 2389 Health Sciences Mall  
Vancouver, BC V6T 1Z3

**ACTIVITY:** Memorandum of Understanding – Community Public Art Program – Dates throughout the term of the agreement

**COVERAGE:** General Liability on an occurrence basis, including blanket contractual liability, professional and malpractice liability, cross liability, tenant's legal liability, employer's liability and non-owned automobile liability coverage's as provided under the University, Colleges & Institute Protection Program.

**LIMITS OF LIABILITY:** \$5,000,000.00

**EXPIRY:** June 30, 2019

**ADDITIONAL INTERESTS:** Persons, firms, partnerships, companies or corporations City of Kelowna but only in so far as: (i) their legal liability arises out of the negligent use or operation by the University of British Columbia of their property, facilities or equipment and; (ii) the University of British Columbia has agreed in writing to provide coverage.

**ISSUE DATE:** May 11, 2015

Phil Grewar, Executive Director  
Risk Management Branch

UNIVERSITY, COLLEGE & INSTITUTE PROTECTION PROGRAM - RISK MANAGEMENT  
PO BOX 3586, VICTORIA BC V8W 3W6 Telephone: (250) 356-1794 Fax: (250) 356-6222

## Appendix B - Prime Contractor Agreement

### **The University of British Columbia** **PRIME CONTRACTOR AGREEMENT**

1. The Contractor shall, for the purposes of the Workers Compensation Act, and for the duration of the Work of this Contract:
  - .1 be the "prime contractor" for the "Work site", and
  - .2 do everything that is reasonably practicable to establish and maintain a system or process that will ensure compliance with the Act and its regulations, as required to ensure the health and safety of all persons at the "Work site".
2. The Contractor shall direct all Subcontractors, Sub-subcontractors, Other Contractors, employers, Workers and any other persons at the "Work site" on safety related matters, to the extent required to fulfill its "prime contractor" responsibilities pursuant to the Act, regardless of:
  - .1 whether or not any contractual relationship exists between the Contractor and any of these entities, and
  - .2 whether or not such entities have been specifically identified in this Contract.As per the requirements of the Workers Compensation Act Part 3, Division 3, Section 118(1-3) which states:

Coordination of multiple-employer Workplaces

**118(1)** In this section:

**"multiple-employer Workplace"** means a Workplace where Workers of 2 or more employers are Working at the same time;

**"prime contractor"** means, in relation to a multiple-employer Workplace,

  - (a) the directing contractor, employer or other person who enters into a written agreement with the owner of that Workplace to be the prime contractor for the purposes of this Part, or
  - (b) if there is no agreement referred to in paragraph (a), the owner of the Workplace.
- (2) The prime contractor of a multiple-employer Workplace must

(a) ensure that the activities of employers, Workers and other persons at the Workplace relating to occupational health and safety are coordinated, and

(b) do everything that is reasonably practicable to establish and maintain a system or process that will ensure compliance with this Part and the regulation in respect to the Workplace.

(3) Each employer of Workers at a multiple-employer Workplace must give to the prime contractor the name of the person the employer has designated to supervise the employer's Workers at that Workplace.

The Contractor covenants and agrees that when performing any work for the Owner, whether directly as a contractor or indirectly as a sub-contractor, it will adhere to all of the requirements of the B.C. Employment Standards Act (RSBC 1996), as may be amended from time to time, that are applicable to the work being performed, including but not limited to:


1) Section 36 (2); an employer must ensure that each employee has at least eight (8) consecutive hours free from work between each shift worked.

2) Section 39; despite any provision of this Part, an employer must not require or directly or indirectly allow an employee to work excessive hours or hours detrimental to the employee's health or safety.

I fully understand and accept the responsibilities of the prime contractor designation in accordance with the Workers Compensation Act and the B.C. Employment Standards Act while contracted by the City of Kelowna on (**project location:** ) and will abide by all Workers Compensation Board Regulation requirements.

Project: Habitat Restoration Project

Company: Mark Crosbie  
Associate University Counsel UBC

Signed: 

Louise Cowin

Louise Cowin  
VP, Students  
University of British Columbia

\_\_\_\_\_  
(The University of British Columbia)

Witness: Yvonne Loi

\_\_\_\_\_  
(Contractor's Signature)

Witness:  
A. Yeller  
A. Yeller

\_\_\_\_\_  
(Nancy Holmes)

\_\_\_\_\_  
(Contractor's Contract Liaison Signature)

Date: