

THIS AGREEMENT made this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

BETWEEN:

**CITY OF KELOWNA**

1435 Water Street  
Kelowna, British Columbia V1Y 1J4

(hereinafter called "the City")

OF THE FIRST PART

AND:

**PATHWAYS ABILITIES SOCIETY**

123 Franklyn Road  
Kelowna, British Columbia V1X 6A9

(hereinafter called "the Society")

OF THE SECOND PART

WHEREAS any lost or stolen bicycles found in the City of Kelowna and turned over to the Kelowna Detachment of the R.C.M.P., are the property of the City, unless claimed by the rightful owner or, after a ninety (90) day waiting period, retrieved by the registered finder;

AND WHEREAS any bicycles donated privately to the Society are the sole property of the Society until such time as they are sold or disposed of;

AND WHEREAS the City has agreed to contract with the Society to handle lost or stolen bicycles for the purpose of returning them to their rightful owners or registered finders, or to sell or otherwise dispose of the same;

NOW THEREFORE in consideration of the fee of One Dollar (\$1.00) of lawful money of Canada to be paid by the City to the Society, receipt of which is hereby acknowledged, the parties hereto agree as follows:

1. SOCIETY TO PICK UP BICYCLES. The Society will pick up bicycles as directed by the Kelowna Detachment of the R.C.M.P., complete with appropriate documentation, when notified to do so by the Kelowna Detachment of the R.C.M.P.
2. BICYCLES TO BE STORED SECURELY. Once picked up by the Society, all bicycles are to be kept on the premises of the Society in a secure compound for a period of ninety (90) days.
3. EFFORT TO LOCATE RIGHTFUL OWNER. During the ninety (90) day holding period, the Society will make every reasonable effort to locate the rightful owner of the bicycle.
4. OWNER FOUND. If a match is made between owner and bicycle, the owner shall be contacted and may retrieve the bicycle by paying a service charge of Twenty-five Dollars (\$25.00) to the Society.
5. EXPIRATION OF NINETY (90) DAY HOLDING PERIOD. Upon the expiration of the ninety (90) day holding period, if the rightful owner has not claimed the bicycle, the Society may sell or dispose of the bicycle in the manner that it sees fit.

6. PROCEEDS FROM SALE OF BICYCLES. That all proceeds from the return of bicycles to proven owners or to registered finders, and all proceeds from the sale of unclaimed bicycles will be the sole property of the Society, except as otherwise provided elsewhere in this agreement, at a rate to be set by the Society.
7. DISPOSAL OF NON-SALEABLE BICYCLES. If a bicycle is in a poor and unsafe condition, after the ninety (90) day holding period, it may be dismantled for parts and unusable portions may be disposed of.
8. SALE OR DISPOSAL OF A BICYCLE. Upon the sale or disposal of a bicycle, documentation showing the final disposition of a bicycle shall be forwarded to the Kelowna Detachment of the R.C.M.P. for their records.
9. CITY TO MEDIATE. In the event that the purchaser of a bicycle, who has purchased it in good faith from the Society, in challenged original owner who had not reported the loss of theft of the bicycle, to the Kelowna Detachment of the R.C.M.P., nor filed a claim with the Society, the decision of rightful ownership shall rest with the City.
10. REFUND OF PURCHASE PRICE. In the event that the original owner had previously reported the loss or theft of the bicycle with the Kelowna Detachment of the R.C.M.P., or filed a claim with the Society, and challenges the purchaser who has bought the bicycle in good faith from the Society, the bicycle will be forfeited to the proven owner upon payment of a twenty-five dollar (\$25.00) service charge, the costs of repairing it or upgrading the bicycle and a storage fee. The Society will reimburse the original purchase price to the purchaser.
11. ACCURATE RECORDS. The Society shall maintain accurate and full records on each bicycle handled by the.
12. REVENUE FROM SALE OF BICYCLES. All revenue received from the sale of bicycles as part of this agreement will belong to the Society.
13. CITY SUBSIDY. Upon receiving the yearly list of sold bicycles, the City shall pay the Society the following:

2020	\$13,250	Plus PAS retains the proceeds of the bicycle sales
2021	\$13,500	Plus PAS retains the proceeds of the bicycle sales
2022	\$13,750	Plus PAS retains the proceeds of the bicycle sales
2023	\$14,000	Plus PAS retains the proceeds of the bicycle sales
2024	\$14,250	Plus PAS retains the proceeds of the bicycle sales
14. GENERAL INSURANCE PROVISIONS.  
Society To Provide

The Society shall procure and maintain, at its own expense and cost, the insurance policies listed in section 2 of this Schedule, with limits no less than those shown in the respective items, unless in connection with the performance of some particular part of the agreement, services and/or occupancy the City advises in writing that it has determined that the exposure to liability justifies less limits. The insurance policy or policies shall be maintained continuously from commencement of this agreement, services and/or occupancy until the date that the City certifies in writing completion of the agreement, services and/or occupancy or such further period as may be specified by the City.

**15. INSURANCE.** As a minimum, the Society 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:

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

15.2 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 applicant shall become legally obligated to pay for 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, Society'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.

15.3 Automobile Liability Insurance covering all motor vehicles, owned, operated and used or to be used by the Society 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. THE CITY NAMED AS ADDITIONAL INSURED.**

The policies required by sections 15.1, 15.3 and 15.4 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.

**17. SOCIETY'S SUB-CONTRACTORS.**

The Society shall require each of its sub-contractors to provide comparable insurance to that set forth under section 2 of this Schedule.

**18. CERTIFICATES OF INSURANCE.**

The Society agrees to submit Certificates of Insurance (Schedule "A -1") for itself and all of its sub-contractors to the REBS of the City prior to the commencement of this agreement, services and/or occupancy. Such Certificates shall provide that 30 days' written notice shall be given to the REBS of the City, prior to any material changes or cancellations of any such policy or policies.

**19. OTHER INSURANCE.**

After reviewing the Society's Certificates of Insurance, the City may require other insurance or alterations to any applicable insurance policies in force during the period of this contract and will give notifications of such requirement. Where other insurances or alterations to any insurance policies in force are required by the City and result in increased insurance premium, such increased premium shall be at the Society's expense.

**20. ADDITIONAL INSURANCE.**

The Society 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 set out in this Schedule "A-1".

**21. INSURANCE COMPANIES.**

All insurance, which the Society is required to obtain with respect to this agreement, shall be with insurance companies registered in and licensed to underwrite such insurance in the Province of British Columbia.

**22. FAILURE TO PROVIDE.**

If the Society fails to do all or anything which is required of it with regard to insurance, the City may do all that is necessary to effect and maintain such insurance, and any monies expended by the City shall be repayable by and recovered from the Society. The Society expressly authorizes the City to deduct from any monies owing the Society, any monies owing by the Society to the City.

**23. NON-PAYMENT OF LOSSES.**

The failure or refusal to pay losses by any insurance company providing insurance on behalf of the Society or any sub-contractor shall not be held to waive or release the Society or sub-contractor from any of the provisions of the Insurance Requirements or this agreement, with respect to the liability of the Society otherwise. Any insurance deductible maintained by the Society or any sub-contractor under any of the insurance policies is solely for their account and any such amount incurred by the City will be recovered from the Society as stated in section 9 of the Schedule.

**Indemnification and Hold Harmless Clause**

The Society must indemnify and hold harmless the Owner, its elected officials, officers, agents and employees (including the Owner's Representative), from and against all liabilities, losses, damages, personal injury, death, property loss or damage, actions, causes of action, costs (including legal fees and costs) or expenses in connection with loss of, or damage or injury (including death) to, any person or property that occurs in the course of the performance of the Contract, whether suffered, incurred or made by the Society or an employee of the Society or other party for whom the Society is responsible and caused through a willful or negligent act or omission or other actionable wrong of the Society, its officers, agents, employees, or sub-contractors, or any of their officers, agents or employees, and at its expense the Society must defend any and all actions and pay all damages and legal costs and other costs arising therefrom to the extent of its sole or partial fault as determined by a court of competent jurisdiction or other mutually agreed alternative dispute resolution body, apportionment or reimbursement of any such costs not attributed solely or partially to the fault of

the Society as determined by a court of competent jurisdiction or other mutually agreed alternative dispute resolution body shall be made only following the binding determination by a court of competent jurisdiction or other mutually agreed alternative dispute resolution body.

The Society shall be liable for all loss, costs, damages, and expenses whatsoever incurred or suffered by the Indemnitees including but not limited to, damage to or loss of property and loss of use thereof, and injury to or death of a person or persons resulting from or in connection with the performance, purported performance, or non-performance of this Agreement, services and/or occupancy excepting only where such loss, costs, damages and expenses are as a result of the sole negligence of the Indemnitees.

**24. TERM OF AGREEMENT:** This agreement shall be for five years from and including the 1<sup>st</sup> day of January, 2020 to the 31<sup>st</sup> day of December, 2024.

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

CITY OF KELOWNA  
by its authorized signatories:

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Authorized Signatory  
COLIN BASRAN, MAYOR

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Authorized Signatory  
Stephen Fleming, City Clerk

PATHWAYS ABILITIES SOCIETY  
by its authorized signatories:

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Authorized Signatory

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Authorized Signatory