

LICENCE OF OCCUPATION

THIS AGREEMENT dated for reference the 16 day of February, 2022.

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:

**THE UNIVERSITY OF BRITISH COLUMBIA**, on behalf of its Faculty  
of Creative and Critical Studies, having an address at CCS 153A 1148  
Research Rd., Kelowna, BC Canada V1V 1V7

(the "Licensee")

OF THE SECOND PART

**WHEREAS:**

- A. The City owns 1315 Water Street, Kelowna, BC legally described as PID 024-847-119, Lot A Plan KAP67454 District Lot 139 Land District 41 Parent Pcl (Art Gallery) exc leased portions ON 214-080250 TO 080259 (the "Property");
- B. The Licensee wishes to use that portion of the Property shown in black on the sketch plan attached hereto as Schedule A (known as the "Licence Area") for the purposes of displaying UBCO Creative and Critical Studies student work (the "Banners") on the existing thirteen banner posts within the Rotary Common and along the Art Walk (the "Purposes") as part of the Spring Festival program (the "Program");
- C. The City is prepared to grant the Licensee a licence for the Purposes on the terms and conditions set out in this Agreement.

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 licence (the "Licence") to enter onto and use the Licence Area for only the Purposes.
- 2. **Additional Rights** – For the purposes outlined in Section 1, the Licensee shall have the right to bring onto the Licence Area all necessary materials, vehicles, machinery and equipment.
- 3. **Term** – The duration of this Agreement and Licence herein granted shall be for a term from March 1, 2021 to August 31<sup>st</sup>, 2021 (the "Initial Term") unless earlier terminated in accordance with Section 18.

4. **Extension** – The term of this Agreement may be renewed for three further periods of one year each (each, a “Renewal Term”) upon mutual written agreement of the parties. Compensation to the City by the Licensee for the Renewal Period shall be no less than the Initial Term.
5. **State of Licence Area at Termination** – In the event that this Agreement terminates or expires for any reason, the Licensee will cease all occupation of the Licence Area and will remove all of its equipment, chattels, fixtures, buildings and other improvements, including the Banners from the Licence Area within a reasonable period. 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 Licence 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 Licence Area or entitle the Licensee to exclusive possession of the Licence 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 Licence Area.
7. **No Waste or Nuisance** – The Licensee will not do or permit anyone it is in law responsible for to do anything that may become a nuisance to occupiers or invitees on adjoining lands.
8. **Terms and Conditions**
  - a. The Licensee will comply with the following terms and conditions:
    - i. take all responsibility for the maintenance and installation/removal of the Banners;
    - ii. subject to compliance with the Safety Program (as defined below) and subject to the requirements in section 8(a)(viii), determine the size, materials and the content of the Banners;
    - iii. have an established safety program in place for any installation/removal activities, that is approved by the City (the “Safety Program”). During installation/removal, full responsibility lies with the Licensee to ensure the Safety Program is being followed by those doing the installation/removal;
    - iv. pay on a timely basis, all suppliers, and any other providers of services and/or materials associated with the Safety Program and Licensee’s installation of the Banners;
    - v. seek appropriate permits for related events, openings or showcases, held by the Licensee in the Rotary Common or along the Art Walk;
    - vi. will obtain any required building permits, development permits, business licences and other required permissions with respect to the Purposes;
    - vii. acknowledge the relationship with the City on all communications and promotional materials relating to the Purposes, such as programmes, brochures, posters, advertisements, websites, news releases and signs. Acknowledgement is provided by using the City logo in accordance with prescribed standards as obtained by the Licensee by email from I [culture@kelowna.ca](mailto:culture@kelowna.ca);
    - viii. use reasonable efforts to ensure that content of the Banners:
      - (a) does not include any advertisements or promotional content;
      - (b) are original artworks, and do not infringe upon any copyright; and
      - (c) is shared with the City, prior to display. The City reserves the right to decline any art which may be considered inappropriate.
  - b. The City will:

- i. support the Licensee in promotion of the Program through the Cultural Services e-newsletter, sharing Licensee’s social media posts and other means as deemed appropriate, provided that City must obtain the Licensee’s prior written consent to use the Licensee’s name, logos, and trademarks in each instance;
    - ii. provide the Licensee with a list of known hazards to assist in the development of the Safety Program;
    - iii. review and approve the Safety Program provided by the Licensee for the installation/removal activities;
    - iv. designate a contact person for the Licensee to direct all inquiries to. This contact person will be able to, as needed, direct the Licensee to different departments within the City.
  - c. Both parties also agree that:
    - i. the City has no interest, title or right in or to any of the Banners;
    - ii. the Licensee is an independent contractor and are not employees or agents of the City and as such are not entitled to employment-related benefits from the City;
    - iii. the City has the right to promote the Program prior to, during and after completion. The ability to promote the Program includes but is not limited to photographs of the Banners and participants. The Licensee will provide the City with all required consents, including prior written consent from the Licensee to use the Licensee’s name, logos, or trademarks in each instance and consent from the individuals who created the artwork on the Banners;
- 9. **Maintenance** – The Licensee will at its own expense keep the Banners within the Licence Area in a safe, clean and tidy condition, and will comply with the Safety Program prior to and during any construction.
- 10. **Compliance with Laws** – The Licensee will comply with all laws and regulations pertaining to its use and occupation of the Licence Area.
- 11. **Inspection by the City** – The City may review and inspect the Licence 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 Licence Area on an as-is basis and agrees that it will use the Licence 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 Licence Area except in the case of negligence or wilful 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 the use or occupancy of the Licence Area by the Licensee or 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 in law responsible, except to the extent caused by the negligence or acts or omissions of the City or the City’s officers, employees, contractors, agents or others for whom the City is in law responsible. 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 improvements in the Licence

Area, the expiry or termination of this Agreement, the exercise by the City of any of its rights under this Agreement or from or in any way connected with the Licensee's use of the Licence Area, except Claims arising from the negligence or acts or omissions of the City or the City's officers, employees, contractors, agents or others for whom the City is in law responsible.

16. **Insurance** – During the term of this Agreement, the Licensee will carry public liability insurance, in a form and with an insurer acceptable to the City, insuring the Licensee and the City under this Agreement in an amount not less than \$5,000,000.00 per occurrence in a form acceptable to the City, and any other type of insurance that the City may reasonably require. The Licensee will provide the City with proof of insurance at the time of execution of this Agreement and at other times upon request.
17. **Termination** – The City reserves the right to terminate this Agreement if the Licensee breaches any of its obligations under this Agreement and fails to remedy the breach with 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 Licence.
18. **Early Termination** – Either party reserves the right to terminate the Agreement at any time with seven (7) days written notice to the other party, without liability to compensate the other party for damages, costs or losses resulting from the exercise of this right of termination.
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 and communication regarding this Agreement will be through:

- a. Licensee: Denise Kenney  
[Denise.kenney@ubc.ca](mailto:Denise.kenney@ubc.ca)  
CCS 153A 1148 Research Rd., Kelowna, BC V1V 1V7  
Phone: 250-864-3974
- b. City: Cultural Services Branch, City of Kelowna, 1360 Ellis Street, Kelowna, BC V1Y 2A2

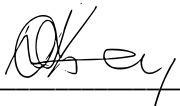
A notice will be deemed to be received on the day it is delivered, if delivered by hand, on the day of transmission, if sent by facsimile, or 3 days after the date it was mailed or if that day is not a business day, the next day that is a business day. If mailed, should there be at the time of mailing 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 Licence Area, all of which may be fully and effectively exercised in relation to the Licence 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 a party of any breach of any term, covenant or condition of this Agreement by the other party will not be deemed to be a waiver of any subsequent default by that party. Failure by a party to take any action in respect of any breach of any term, covenant or condition of this Agreement by the other party will 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 Agreement may be subject to approval of City of Kelowna 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.

**CITY OF KELOWNA** by its authorized )  
 Signatory: )  
 )  
 \_\_\_\_\_ )  
 Mayor )  
 )  
 \_\_\_\_\_ )  
 Clerk )  
 )

**THE UNIVERSITY OF BRITISH COLUMBIA**  
 by its authorized signatory: )  
 )  
 )  
 \_\_\_\_\_ )  
 Signature )  
 )  
**Denise Kenney** )  
 \_\_\_\_\_ )  
 Print Name )  
 )

Schedule A

LICENSE AREA

A portion of 1315 Water Street, Kelowna, BC legally described as PID 024-847-119, Lot A Plan KAP67454 District Lot 139 Land District 41 Parent Pcl (Art Gallery) exc leased portions ON 214-080250 TO 080259



The Banners are to be placed on the existing thirteen banner posts within the Rotary Common and along the Art Walk