

THIS AGREEMENT dated the ____ day of _____, 20__.

BETWEEN:

WHEATLAND COUNTY,
a municipal corporation within the meaning of the *Municipal
Government Act*, R.S.A. 2000, Chapter M-26

(the "**County**")

- and -

LIONS CLUB OF CARSELAND
a registered Society within the Province of Alberta

(the "**Licensee**")

LICENSE OF OCCUPATION AGREEMENT (OPTIONAL AMENITIES)

WHEREAS the County has the ownership, direction, control and management of certain lands within the County, as described on certificate of title # **151 210 307** as:

PLAN 8210745
BLOCK 1A
LOT 2
EXCEPTING THEREOUT ALL MINES AND MINERALS

(hereinafter known as the "**County Lands**");

AND WHEREAS the Licensee wants to construct and operate an Electronic Sign (hereinafter known as the "**Amenity**") on a portion of the County Lands in accordance with Development Permit Approval No. DP2019-145 (the "**Development Permit**");

AND WHEREAS the County is agreeable to the construction and operation of the Amenity on that portion of the County Lands outlined in red on **Schedule "A"** (hereinafter known as the "**Licensed Area**"), in accordance with the terms of this License of Occupation Agreement which includes operation, repair and maintenance provisions;

NOW THEREFORE in consideration the mutual covenants and agreements contained in this Agreement and other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged), the Parties agree as follows:

1.0 GRANT OF LICENSE TO OCCUPY

1.1 The County grants the Licensee the non-exclusive right to occupy the Licensed Area to construct, maintain, operate and remove the Amenity located upon the Licensed Area within the County Lands in a good and workmanlike manner and in compliance with all the terms and conditions of this Agreement, together with a right of ingress and egress over the County Lands for all purposes useful in connection with or incidental to the exercise and enjoyment of the rights granted within this Agreement.

1.2 Nothing contained in this Agreement shall be deemed to limit or in any manner prohibit the County or its assigns or licensees from fully using and enjoying any portions of the County Lands in any lawful manner whatsoever.

1.3 The County makes no warranties or representations about the condition of the Licensed Area or its suitability for the Amenity. The Licensee acknowledges that it has conducted its own inspection of the Licensed Area prior to entering into this Agreement and agrees that it is occupying and using the Licensed Area on an "as is" basis.

2.0 TERM AND TERMINATION

2.1 The term of this Agreement shall be for five (5) years, commencing on the ____ day of _____, 20__ and ending on the ____ day of _____, 20__ (the "**Term**"), unless terminated earlier in accordance with the provisions of this Agreement.

2.2 Provided that the Licensee is not in default of any of its obligations contained within this Agreement, and provided the Licensee has a valid development permit regarding the Amenity, the Licensee may request that the County agree to extend the Term of this Agreement for any additional period equal to the original Term, or such other period as the parties may mutually agree upon. The County's agreement to extend or renew this Agreement shall be subject to such conditions or amended terms as the parties may mutually agree upon.

2.3 In the event that the Amenity is destroyed or partially destroyed, the Licensee may rebuild or repair a similar amenity upon the undeveloped and unused portions of the Licensed Area located within the County Lands in the approximate location shown upon **Schedule "A"** attached to this Agreement. If the County, in its sole and unfettered discretion, determines that it is unreasonable for the Licensee to rebuild or repair the destroyed or partially destroyed portion of the Amenity having regard to the nature of the structure, and the extent and nature of the damage, the County shall notify the Licensee and thereafter the rights and privileges granted to the Licensee pursuant to the terms of this Agreement shall expire with respect to the destroyed or partially destroyed Amenity.

2.4 Unless this Agreement is terminated pursuant to Section 2.5, upon the expiry of the Term or earlier termination of this Agreement, the Licensee shall leave the Licensed Area in substantively the same condition as it was prior to the commencement of the Term and, at the discretion of the County, either:

- (a) remove the Amenity from the Licensed Area at its sole cost; or
- (b) transfer ownership of the Amenity to the County free and clear of all encumbrances and thereafter the County shall be responsible for the ongoing operation, maintenance and repair of the Amenity. Concurrent with the transfer of ownership of the Amenity to the County, the Licensee shall provide the County with all operation and maintenance manuals applicable to the Amenity, licences and permits.

2.5 Notwithstanding anything contained within this Agreement, the parties agree that the Licensee may terminate this Agreement by providing the County with not less than thirty (30) days' written notice if the Licensee determines the rights granted pursuant to this Agreement are no longer required and the Licensee intends to remove the Amenity from the County Lands. The removal of the Amenity will be at the sole cost of the Licensee.

2.6 The County shall be entitled to terminate this Agreement upon thirty (30) days written notice to the Licensee.

3.0 OCCUPATION OF THE LICENSED AREA AND THE WORK

3.1 The Licensee acknowledges and agrees that the Amenity shall only be used for the sole purpose of:

- (a) promoting community events and meetings, and/or information about the Licensee's services;

and for no other uses whatsoever without the prior written consent of the County.

3.2 With respect to the installation, maintenance, repair, replacement or operation of the Amenity (the "**Work**") carried out or authorized to be carried out by the Licensee in or on the Licensed Area and with respect to the Amenity, the Licensee shall, at its sole cost and expense:

- (a) provide all materials, equipment and labour;
- (b) restore the Licensed Area, including any surface disturbance, insofar as is practical to its former condition upon completion of the construction of the Amenity;
- (c) apply for and obtain any and all permits and approvals for the Amenity;
- (d) cover any and all costs of having power supplied to the Amenity, including the supply and installation of a separate meter to measure use for billing from the utility provider, and obtain the County's consent for the location of such services prior to installation;

- (e) provide the County with a contact person and contact information to be used in case of an emergency;
- (f) operate and maintain the Amenity in accordance with all relevant municipal, provincial and federal standards as well as the maintenance standards as set out in **Schedule "B"**;
- (g) conduct and complete the Work in accordance with the Development Permit to the satisfaction of the County;
- (h) perform the Work in a manner that safeguards and protects all other structures, transmission lines, equipment, facilities and improvements of any kind present in as well as any users of the County Lands;
- (i) maintain the Licensed Area in a tidy, clean and safe condition and in substantively the same condition as existed at the commencement of the Term, as determined by the County acting reasonably, at all times to reasonable standards;
- (j) conduct the Work in a manner which does not create a danger or hazard to public safety or property;
- (k) leave the County Lands in substantially the same condition in which it existed immediately prior to any Work. If, within ninety (90) days subsequent to notifying the Licensee that the restoration of the County Lands is inadequate given reasonable cause for such inadequacy, the County may take reasonable measures to complete the required restoration, and the cost of such restoration to be borne by the Licensee;
- (l) give to the County no less the seven (7) days notice in advance (weekends and statutory holidays excluded) before commencing any maintenance Work involving a ground disturbance;
- (m) attempt to give the County verbal notice before commencing any emergency work involving a ground disturbance;
- (n) if the County requires that any Work to be stopped, the Licensee shall cease such Work upon delivery of a written notice to the Licensee to that effect by the County;
- (o) carry out such Work in the County Lands only during daylight hours except if required otherwise in cases of emergency; and
- (p) be liable for and pay all taxes, rates and assessments of any kind and description whatsoever that may be lawfully imposed by any authority by reason of the presence of Amenity located upon the Licensed Area within

the County Lands or by reason of this Agreement and shall indemnify and save harmless the County from and against all such taxes, rates and assessments.

3.3 The Licensee agrees to provide the County with the necessary approvals and consents that may be required under the provincial or federal legislation to allow for the maintenance of municipal works that may be located in close proximity to the Amenities or other works.

3.4 The County may have a representative present at the County Lands prior to, during and following the performance of any Work.

3.5 The Licensee acknowledges and agrees that its rights to enter upon and use the Licensed Area granted under this Agreement shall not confer upon the Licensee any exclusive right whatsoever with respect to the use or occupation of the Licensed Area, and that the Licensee shall have no claim to the Licensed Area other than as herein provided.

3.6 The Licensee specifically acknowledges and agrees that in the event the Licensee breaches any of its obligations pursuant to the terms of the Development Permit, the County may, in addition to or as an alternative to any other available remedies, rely upon its statutory remedies pursuant to the *Municipal Government Act*, R.S.A. 2000 Chapter M-26 to remedy such a breach.

4.0 RESERVATION OF RIGHTS

4.1 The County on behalf of itself, its employees, officers, contractors, representatives and agents hereby reserves its right to full and complete unfettered access to the Amenity and the Licensed Area at all times during the Term for the purposes of examining the condition of the Amenity and the Licensed Area and ensuring that all terms of this Agreement are being complied with and for exercising all of the County's common law and statutory rights and obligations with respect to the Amenity and Licensed Area.

4.2 Notwithstanding Section 8.1, where measures, corrective or otherwise, including but not limited to operating, maintenance and repair requirements in relation to the Amenity and/or Licensed Area are required and communicated to the Licences in writing by the County, the Licensee shall comply with all such requests in a timely and prompt manner and within the time frame specified by the County or as otherwise agreed to in writing between the Parties. Where, the County deems there is a risk to public safety, the County may require that the Licensee must comply with the directions immediately. Where no time frame is specified by the County or is otherwise agreed to in writing between the Parties, the Parties agree that the Licensee must comply with the County's instructions to address any public safety risk identified by the County within ten (10) days after receipt of the instructions.

4.3 Where the Licensee fails or refuses to comply with the directions of the County within the applicable time frames referenced within Section 4.2, the County may, in addition to any other available remedies, undertake any such repairs or maintenance at the Licensee's sole cost

and expense and the Licensee shall be responsible to pay the County's invoice for all costs incurred by the County within thirty (30) days of issuance of the invoice by the County.

5.0 COVENANTS OF THE LICENSEE

5.1 The Licensee covenants with the County:

- (a) to comply with the provisions of this Agreement;
- (b) to pay to the County all amounts payable under the terms of this Agreement;
- (c) to comply with any directive issued by the County pursuant to Section 4.2 within the time period specified;
- (d) to notify the County immediately of any accident, damage or injury to persons, property, the Amenity or the Licensed Area;
- (e) to notify the County immediately of the existence of any conditions upon the Amenity or the Licensed Area of which the Licensee is aware which could constitute a risk or hazard to public safety or property;
- (f) to comply with all applicable County, Provincial and Federal bylaws, legislation, regulations, policies, approvals, permits and authorizations; and
- (g) not to alter, expand, remove or replace the Amenity without the prior written approval of the County.

5.2 The Licensee shall not carry on any business nor do or suffer, authorize or permit any act or thing which in the opinion of the County constitutes a nuisance or would result in a nuisance, or which would be offensive or an annoyance to the County or any other landowner in the area, or which would offend the County's Nuisance and Unsightly Property Bylaw nor do or suffer, authorize or permit any waste or damage, disfiguration or injury to the Licensed Area.

5.3 With the exception of the construction of the Amenity, the Licensee will not, without the prior written consent of the County, excavate, drill, install, erect nor permit to be excavated, drilled, installed or erected over, under or through the Licensed Area any pit, foundation, pavement, building, fence, sidewalk or any other form of structure or installation whatsoever. In the event that any alteration, addition, improvement or installation has been made without the written consent of the County, the County may require the Licensee to restore the Licensed Area to such an extent as the County may require at the Licensee's sole cost and expense.

5.4 With the exception of the construction of the Amenity, the Licensee will not, without the prior written consent of the County, bring on or deposit nor permit to be brought on or deposited any soil or fill on the Licensed Area. In the event that any soil or fill has been brought onto the

Licensed Area without the written consent of the County, the County may require the Licensee to restore the Licensed Area to such an extent as the County may require at the Licensee's sole cost and expense.

5.5 The Licensee will not bring on, deposit, store, spray or apply nor cause or permit to be brought on, deposited, stored, sprayed or applied on the Licensed Area any chemical fertilizer, herbicide, pesticide or other chemical or petroleum product or any substance which is capable of contaminating the Licensed Area or any body of water on or adjacent to the Licensed Area.

5.6 The Licensee shall be responsible for the payment of electrical utilities consumed on, within or by the Amenity and Licensed and the Licensee shall be responsible for, and prompt payment when due, including, without restriction, all telephone, internet, and such other similar utilities and service rates and charges during the Term as are directly related to the Use under this agreement.

6.0 INSURANCE

6.1 The Licensee shall maintain insurance in sufficient amount and description as will protect the County from claims for damages, personal injury including death and for claims from property damage which may arise under this Agreement, including but not limited to the installation, maintenance or operation of the Amenity in, on, under, over, along and across the County Lands or any act or omission of the Licensee's employees, agents, contractors, or licensees. The Licensee shall provide proof of sufficient insurance to the County within five (5) business days of receiving a request.

7.0 LIABILITY AND INDEMNIFICATION

7.1 The County shall not, in connection with this Agreement, be liable for any damage to the Amenity or other property of the Licensee, or for the injury or death of any officer, employee, agent, contractor, licensee or invitee of the Licensee except where caused by the willful misconduct or gross negligence of the County or its employees.

7.2 The Licensee hereby indemnifies the County from and against all losses, liabilities, costs, damages, and expenses (including legal fees on a solicitor-client full indemnity basis and disbursements) incurred by the County as a result of:

- (a) the existence of the Amenity on the County Lands;
- (b) any claim, action, suit or proceeding based on a claim of injury to the person or property of any third party in any way relating to the presence of the Amenity on the County Lands;
- (c) the misconduct or negligence of the Licensee, its officers, employees, agents, contractors, licensees or invitees; and

- (d) any breach or default of the Licensee under this Agreement, and all costs of enforcing the terms of this Agreement.

8.0 DEFAULT AND NOTICE

8.1 At any time, the County may terminate this Agreement by providing the Licensee with not less than thirty (30) days' written notice if the County determines, in its sole discretion, that the Licensee is in breach of any of the Licensee's obligations pursuant to this Agreement and the Licensee has not cured nor rectified such default within fourteen (14) days of issuance of written notice of default by the County. Where the Licensee remedies the default to the satisfaction of the County within the fourteen (14) day period, the Licensee shall be deemed to be in compliance with its obligations pursuant to this Agreement.

8.2 Notwithstanding anything contained within this Agreement, the County may terminate this Agreement immediately at the option of the County if:

- (a) the Licensee is adjudged bankrupt;
- (b) the Licensee makes a general assignment for the benefit of its creditors,
- (c) the Licensee files a petition in bankruptcy or insolvency or for any readjustment of debts or creditor's arrangement;
- (d) the Licensee enters into the winding up or the liquidation whether voluntary or otherwise other than for the purpose of reconstruction or amalgamation;
- (e) any execution, attachment or similar process shall be issued against the Licensee or any encumbrance shall take any action or proceedings whereby all or substantially all of the improvements, fixtures, or Amenity on the Licensed Area shall be taken or attempted to be taken by someone other than the Licensee, unless the execution, attachment or similar process, action or proceeding be set aside, vacated, discharged or abandoned within fifteen (15) days after its commencement;
- (f) the Licensee attempts to make any bulk sale of its property;
- (g) at any time any person other than the Licensee has or exercises a right to manage or control the Amenity or Licensed Area or any of the operations carried on therein, other than subject to the direct supervision and control of the Licensee;
- (h) a receiver, receiver manager, custodian or any official having similar powers shall be appointed with respect to the Amenity or other property on the Licensed Area, the business or affairs of the Licensee, or any substantial portion thereof with respect to the Licensee; or

- (i) in its sole and unfettered discretion, the County determines that the use of the Licensed Area no longer serves a public interest.

8.3 The County shall not be liable for any costs, losses, economic losses or expenses sustained directly or indirectly by the Licensee as a direct or indirect result of termination of this Agreement in accordance with this Part 8.

8.4 The County may from time to time resort to any or all rights and remedies available to it in the event of any default hereunder by the Licensee, either by any provision of this Agreement, by statute, at law or in equity and all rights and remedies are intended to be cumulative and not alternative and the express provisions hereunder as to certain rights and remedies are not to be interpreted as excluding any other or additional rights and remedies available to the County at law or in equity.

9.0 DISPUTE RESOLUTION

9.1 Unless specifically described herein to the contrary, the following provisions shall apply to the resolution of conflicts between the Parties as they arise:

- (a) the Parties agree to utilize all reasonable efforts to resolve any dispute, whether arising during the Term or at any time after its expiration promptly and in an amiable manner by negotiations between the Parties;
- (b) the Parties shall continue to perform their respective obligations during the resolution of any dispute or disagreement, including during any period of mediation and arbitration, unless and until this Agreement is lawfully terminated according to its terms;
- (c) initially, the dispute shall be referred to the Community Services Coordinator for the County and the _____ of the Licensee, or their respective designates. These individuals shall meet as soon as is reasonably possible after the dispute is referred to them, giving due regard to the nature and the impact of the issue under consideration; and
- (d) except for the purposes of preserving a limitation period or obtaining an appropriate interim order or remedy where reasonably necessary, unless otherwise agreed to by the Parties in writing, it is a condition precedent to the bringing of any legal proceedings that the means or procedures in this Article have been used and followed in good faith.

10.0 NOTICES

10.1 Whenever under the provisions of this Agreement any notice, demand or request is required to be given by either party to the other, such notice, demand or request may be given by

delivery by hand, by courier, by email, by facsimile, or by registered mail sent to the respective addresses of the parties being:

(a) To the County

Wheatland County
HWY 1, RR1, Strathmore, AB T1P 1J6
Via Fax: 403-934-4889
Via E-Mail: admin@wheatlandcounty.ca
Attention: Community Services Coordinator

(b) To the Licensee

Via Fax: _____
Via E-Mail: _____
Attention: _____

11.0 GENERAL

11.1 This Agreement constitutes the entire agreement between the County and the Licensee and supersedes and takes the place of any and all previous agreements or representations of any kind, written, oral or implied heretofore made by anyone in reference to the Amenity and Licensed Area.

11.2 This Agreement shall be governed by and construed in accordance with the laws of the Province of Alberta and each Party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of such Province and all courts competent to hear appeals therefrom.

11.3 Any condoning, excusing or overlooking by either party of any default, breach or non-observance by the other party at any time or times in respect of any covenant, provision, or condition herein contained shall not operate as a waiver of the party's rights hereunder in respect of any subsequent default, breach or non-observance nor as to defeat or affect in any way the rights of any party hereunder in respect of any subsequent default breach or non-observance by the other party.

11.4 No covenant, term or condition of this Agreement or any breach thereof shall be deemed to have been waived by either party unless such waiver is completed in writing and signed by the party waiving as the case may be.

11.5 The rights conferred upon the Licensee are not, and shall not be construed as covenants running within the land. The Licensee shall not register at the Land Titles Office any instrument whatsoever which claims any interest, legal or equitable, in the County Lands.

11.6 The Licensee will not transfer, assign, license or sublet this Agreement, the County Lands, or any portions thereof, nor mortgage, pledge, or in any way encumber this Agreement or the County Lands, without the prior consent in writing of the County, which consent may be withheld for any reason whatsoever.

11.7 The County is subject to the *Freedom of Information and the Protection of Privacy Act*, R.S.A. 2000, Chapter F-25 and notwithstanding the termination or expiry of this License of Occupation Agreement, the Parties acknowledge that this License of Occupation Agreement is subject to and may be released pursuant to a request made under the *Freedom of Information and Protection of Privacy Act*.

11.8 Time shall be of the essence of this Agreement.

11.9 The division of this Agreement into articles and sections is for convenience of reference only and shall not affect the interpretation or construction of this Agreement.

11.10 If any article, section, sub-section, term or provision of this Agreement is deemed to be or becomes void, illegal, invalid or unenforceable, it shall be severable herefrom and ineffective to the extent of such voidability, illegality, invalidity or unenforceability and shall not invalidate, affect or impair the remaining provisions hereof.

11.11 In the event that either Party is rendered unable wholly, or in part, by reason of fire, flood, explosion, war, embargo, governmental actions, act of public authority, Act of God or any other cause beyond its control with the exception of labour disruptions ("**Force Majeure**") to carry out its obligations under this Agreement, other than its obligations to make payments of money due hereunder, such Party shall give written notice to the other Party stating full particulars of such Force Majeure. The obligation of the Party giving such notice shall be suspended during the duration of the delay resulting from such Force Majeure, to a maximum of thirty (30) days. In the event that such Force Majeure lasts longer than thirty (30) days, then either Party may terminate this Agreement immediately without further liability, expense or cost of any kind owing to the other Party

11.12 The Schedules to this Agreement are incorporated herein by reference and are deemed to be a part of this Agreement.

IN WITNESS WHEREOF the Parties hereto have executed this Agreement as of the day and year first above written by their duly authorized officers and representatives.

WHEATLAND COUNTY

Per: _____
C/S

Per: _____

Per: _____
C/S

Per: _____

SCHEDULE "A"
MAP OF COUNTY LANDS AND LICENSED AREA



SCHEDULE "B"

AMENITY AND LICENSED AREA MAINTENANCE AND REPAIR STANDARDS

Lights and functionality of the sign is maintained;

Maintenance is complete as manufacturers recommendations, and in recommended intervals;

Graffiti is removed within a week of being noticed or reported to the Licensee;

Repairs are completed in a timely fashion;

DRAFT