

**PERMISSION TO CONSTRUCT ROAD IMPROVEMENTS AND MAINTAIN  
UNASSUMED ROAD**

Made this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

**BETWEEN:**

**THE CORPORATION OF THE CITY OF KAWARTHA LAKES**

(hereinafter called the "City")

- and -

**STEVEN JOHN TOIVO HARJULA**

(hereinafter called the "Licensee")

**WHEREAS:**

- a) The Licensee is using the property as a tree farm on the lands and premises legally described as COBOCONK CON 10 PT LOTS 16 AND 17; KAWARTHA LAKES (PIN: 63120-0588 (LT)] (the "Licensee's Lands"), and wishes to construct a residential dwelling on the Licensee's Lands;
- b) The City is the owner of those public highway lands legally described as RDAL BTN CON 10 AND CON 11 SOMERVILLE EAST OF BASELINE RD; KAWARTHA LAKES (PIN: 63120-1472 (LT) (the "Road Allowance"); and
- c) The Licensee has applied for permission to use a portion of the Road Allowance for the purposes of construction necessary to permit vehicular ingress and egress to and from the Licensee's Lands. This portion of the Road Allowance runs westerly from the southern terminus of Woodcock Line for a distance of 177 metres (the location of the proposed entrance to the Licensee's Lands) (the "Licensed Road Allowance");
- d) The Licensee has applied for permission to conduct regular summer and winter maintenance of the Licensed Portion of the Road Allowance for purposes of allowing continued access to the Licensee's Lands;
- e) The Licensee has received a conditional approval on minor variance application D20-2021-029 as of September 22, 2022;
- f) The Licensee acknowledges that the road will remain a public road and open to the travelling public;
- g) The portion of the Road Allowance to the west of the Licensed Portion and east of Baseline Road is unimproved for vehicular access;
- h) The Licensed Road Allowance is improved along the frontage of the Licensee's Lands as a 3 metre wide sand and gravel road with insufficient overhead clearance for emergency vehicles, insufficient width of travelled roadway for emergency vehicles, a lack of a turnaround, no shoulders. However, ditches are present; and
- i) The Licensed Road Allowance is not regulated by a Conservation Authority, does not cross a natural heritage feature as identified in Schedule B of the City's Official Plan 2012, and is outside the Oak Ridges Moraine Conservation Area.

**NOW THEREFORE, in consideration of the mutual covenants herein contained, the parties hereto agree as follows:**

**1. Grant of License for Construction**

1.1 The City hereby grants to the Licensee a non-exclusive license (the "License") to use the Road Allowance for the purposes of construction necessary to permit vehicular ingress and egress to and from the Licensee's Lands, including emergency vehicle access, in connection with the residential use and tree farm to be located thereon.

This License includes the right to carry out the following works on the Licensed Road Allowance, subject to the related requirements:

- a. Stake the property boundaries of the Licensed Road Allowance, which survey and Construction Plan shall include the location of the current edge of the travelled roadway, the width of the roadway along its length, the proposed areas for horizontal expansion of the roadway, the location of any existing or proposed ditches, the location of any utilities, and the location and width of the proposed driveway entrance. The survey will be conducted using a licensed Surveyor. The survey will be provided to the satisfaction of the Manager, Technical Services, prior to the commencement of any work.
  - i. The Construction Plan will only be accepted by the Manager, Technical Services, if prepared by a certified engineer. The resultant travelled road platform must be a minimum width of 4 metres. Construction may not commence until the Manager, Technical Services, has signed off on the Construction Plan in writing.
  - ii. The Construction Plan must be submitted to the Manager, Technical Services no less than 30 business days prior to commencement of construction.
- b. Clear overhead branches to provide a clearance of 5 metres above the entirety of the travelled roadway.
- c. Remove all organic material from the Licensee Lands where road platform will exist. Removal of any soil will be in compliance with the Excess Soil Guidelines to the *Environmental Protection Act*. The Licensee must hire a Qualified Person as that term is defined in the *Environmental Protection Act* and that person shall prepare a report to the satisfaction of the City to confirm that any soil removal will result in a final location of emplacement of that soil in accordance with the Environmental Protection Act.
- d. 150mm of granular 'A' shall be placed and compacted on the constructed road platform/traveled portion of the roadway. Granular placed on the road must be immediately placed and compacted; it may not be stored overnight.
- e. All areas within the Licensed Road Allowance and outside the traveled portion of the road disturbed by construction shall be covered by 150mm of screened topsoil complete with seed.
- f. The Licensee shall submit a Site Grading, Drainage, Erosion Control Plan to the satisfaction of the City prior to the commencement of any construction which, once approved, forms a schedule to this Agreement. All work shall conform to the approved Site Grading, Drainage and Erosion Control Plan. Culverts must be structurally sound and sufficient in size and depth to manage drainage needs along and across the roadway.
- g. A Hammer Head or equivalent turnaround shall be installed on the Licensee's Lands to allow for turnaround of emergency vehicles. The turnaround shall conform to OPSD 500.01 Type 'A' standards. Construction

on the turnaround may only occur after the Manager, Technical Services has reviewed construction drawings issued for construction and has confirmed in writing that they are in compliance with these standards.

- h. All work and material shall conform to OPSD and OPSS standards. The Licensee will submit “for construction” stamped engineering drawings to the City for its approval prior to construction of the improvements.
- i. All employers on site will comply with the Occupational Health and Safety Act and the Workplace Safety and Insurance Board (WSIB) Act and the Licensee will provide the City with a WSIB Clearance certificate prior to commencing any construction. The Licensee is solely responsible to ensure compliance with health and safety legislation.
- j. All work to be completed to the satisfaction of the Director of Engineering and Corporate Assets or the Manager of Technical Services in that Department. “As built” drawings will be submitted to the Manager of Technical Services and to his satisfaction.
- k. The Licensee shall not burn nor permit to be burned by any person or entity that it has retained any refuse or debris within the Licensed Road Allowance or Licensed Lands, subject to any burn permit that may be issued by the Fire Department.
- l. The Licensee shall provide and erect temporary and permanent signs of such nature and at such locations as designated by the Manager of Technical Standards. The Licensee shall remove such signs upon the completion of the works or upon direction of the Manager of Technical Standards.
- m. The Licensee agrees to give five (5) business days’ notice prior to the anticipated commencement of any construction work to any immediate neighbors.
- n. The Licensee is responsible to make satisfactory arrangements with the appropriate authorities regarding the provision of any required utilities servicing the Land, any in accordance with their standards and specifications as the case may be in effect as at the date hereof.
- o. Following completion of construction, the Licensee will contact the Manager of Technical Services for an attendance. The Manager will note any deficiencies and direct their correction. Following completion of rectification of any deficiencies, the Manager of Technical Services will attend and confirm in writing that the 1 year warranty period has commenced. At the expiry of the 1 year warranty period, any securities remaining will be remitted to the Licensee.

## **2. Grant of License for General Maintenance**

- 2.1 The Licensee is entitled to, during the relevant Term of this License and without the necessity of receiving a road occupancy permit from the City, keep the Licensed Road Allowance in good condition (in a reasonable state of repair and free from hazardous conditions) and may, without notice, promptly conduct the following maintenance as would a prudent owner: grading, pothole filling, sanding and salting in the winter in accordance with City Standards, including salt reduction standards, snow removal and brushing (tree trimming and removal along the sides of the travelled roadway and within the road allowance, to maintain a 3 metre horizontal clearance outwards from each edge of the travelled roadway, and tree trimming to maintain a 5 metre vertical clearance above the travelled roadway).

- 2.2 As the road has not been assumed for maintenance purposes, the Licensee does not have a positive obligation to maintain the Licensed Road Allowance. However, the Licensee may not, by its actions, create a hazardous condition.
- 2.3 If further road improvement is required following the 2 year construction period (such as the installation of a culvert or ditches, the widening of the roadway from one to 2 lanes, the improvement of the surface to an asphalt surface) is required by the Licensee, then the Licensee will make an application for a road occupancy permit to the City and be granted such occupancy prior to commencing those further works not contemplated herein. Nothing in this paragraph is intended to fetter the City's discretion to grant or deny the occupancy permit.

### 3. Agreement Term

Subject to termination for the reasons hereinafter set out, this License for Construction (section 1 of this Agreement) shall be for a 3 year term and not subject to renewal. All works must be completed and 1 year warranty period conclude within this 3 year period, which commences on the later execution of this Agreement.

Subject to termination for the reasons hereinafter set out, this License to conduct general maintenance shall not end.

### 4. Security

Upon execution of the Agreement, the Licensee will deliver \$10,000, in the form of a letter of credit, to the City. The City will accept an irrevocable letter of credit drawn on a chartered bank of Canada acceptable to the City, provided such letter of credit shall be in a form acceptable to the City and contain the following provision: The letter of credit shall be security for any obligations of the Licensee pursuant to the provisions of this License.

Unused security, minus any set offs for rectification of deficiencies, completion of incomplete work, payments to subcontractors or to bond off a lien pursuant to the Construction Act, or other financial responsibilities of the Licensee as set out in this Agreement, will be released to the Licensee upon the conclusion of the warranty period or termination of the Agreement otherwise.

### 5. Payments to City

It is acknowledged that \$1,000 has already been paid to the City towards the amount owing to the City pursuant to the City's Fees and Charges By-law:

\$1,500 for legal work associated with the creation and registration of the agreement, due upon execution of the agreement (accordingly, a further \$500 will be owing and payable to the City upon execution of the agreement).

Upon delivery of the first set of engineering plans, the Licensee will make payment of \$440 to the City for cost recovery for review of engineering plans.

### 6. Timing and Nature of Tree Removal

- 6.1 Tree removal will only occur in the Spring and Fall months, so as to avoid damage and destruction of any nest of any migratory bird pursuant to the *Canada Migratory Birds Convention Act*.
- 6.2 Before commencing with the removal or brushing of any tree, the Licensee will conduct a visual of each tree to be removed. If an active nest is present, the

Licensee will not disturb the nest and will not cut any tree in the vicinity until the nest is no longer active.

- 6.3 Tree removal is subject to compliance with the terms of the *Endangered Species Act, 2007*, S.O. 2007, c. 6, and Ontario Regulation 230/08 thereto. The Licensee is responsible for tree removal in accordance with the Act, and will obtain any necessary permits from the Ministry of Natural Resources and Forestry.

## **7. Construction Liens**

- 7.1 If any person shall register against the Road Allowance a claim for lien under the *Construction Lien Act* (Ontario) in respect of any work carried out by the Licensee or its agents pursuant to this Agreement, the Licensee shall, upon having been given notice thereof or otherwise becoming aware of same, forthwith remove and vacate such lien at its sole cost and expense within twenty (20) days. In the event that the Licensee does not forthwith discharge any such lien and/or certificate registered as aforesaid within such twenty (20) day period, the City shall be entitled to do so at the sole cost and expense of the Licensee.

## **8. Insurance**

- 8.1 The Licensee shall carry Commercial General Liability insurance including, but not limited to, coverage for personal injury and bodily injury, including death, property damage including loss of use thereof, contractual liability, non-owned automobile liability, employers liability, owners' and contractors' protective insurance coverage and coverage for claims resulting from spills on the City's Lands. The insurance limit is to be not less than \$2,000,000.00 per occurrence or such higher limits as the City may reasonably require from time to time. To achieve the desired limit, umbrella or excess liability insurance may be used. The policy shall be issued by an insurance company authorized by law to carry on business in the Province of Ontario.
- 8.2 The insurance shall be non-contributing with and apply as primary and not as excess of any insurance available to the City.
- 8.3 The policy shall name the Corporation of the City of Kawartha Lakes as an additional insured and contain a cross-liability endorsement with severability of interest clause.
- 8.4 Upon execution of this License, and annually thereafter, the Licensee shall provide the City confirmation of the above requested insurance, and if requested by the City, the Licensee shall provide copies of the said insurance policies.
- 8.5 The insurance will not be cancelled, permitted to lapse or materially changed unless the insurer for the Licensee notifies the City in writing at least thirty (30) days prior to the effective date of cancellation, expiry or change.

## **9. Environmental**

- 9.1 The Licensee shall be, at its own expense, responsible for any loss, costs, damages, charges or expenses whatsoever which may be sustained by the City as a result of any environmental contamination, spill or hazard as may be created by the Licensee during its use of the Road Allowance.
- 9.2 Execution of this Agreement shall constitute confirmation that any environmental damage occurring as a result of its use of the Road Allowance shall be immediately remedied at the sole cost of the Licensee.

## 10. Indemnity

- 10.1 The Licensee shall at all times indemnify and save harmless the City its employees, agents and members of council from and against any and all manner of claims, demands, losses, costs, charges, actions and other proceedings whatsoever made or brought against, suffered by, or imposed on the City in respect of any loss, damage or injury to any person or property directly or indirectly arising out of, resulting from, or sustained, arising out of or occasioned by the construction or maintenance activities, use of the Road Allowance which occurs during the term of this Agreement, or as a result of this Agreement or any operation connected therewith, except for the willful misconduct of the City.
- 10.2 The Licensee further covenants to indemnify and save harmless the City with respect to any encumbrance on or damage to the Road Allowance or The Corporation of the City of Kawartha Lakes occasioned by or arising from the act, omission, default, or negligence of the Licensee, its officers, agents, servants, employees, contractors, customers and/or invitees.
- 10.3 The foregoing indemnities shall survive the termination of this Agreement.

## 11. Acts of Default and City's Remedies

11.1 An "Act of Default" has occurred when any of the following occurs:

11.1.1 The Licensee has breached its covenants or failed to perform any of its obligations under this License; and

- a) the City has given fifteen (15) days notice, or such longer period as the City may determine in its sole discretion, specifying the nature of the default and the steps required to correct it; and,
- b) The Licensee has failed to correct the default as required by the notice.

11.1.2 The Licensee has;

- a) Failed to construct the road in a good and workmanlike manner;
- b) Failed to construct the road in accordance with the stipulations set out in this Agreement or direction provided by the City
- c) Contravened or been charged with, and/or the City has been charged with contravention, under the *Canada Migratory Birds Convention Act*, the *Endangered Species Act*, or the *Ontario Occupational Health and Safety Act*, with respect to the works or activities undertaken pursuant to this Agreement, provided, however, that in the event the Licensee has disputed any such charge, the Licensee shall not be considered to be in default until the Licensee is found to have contravened the relevant Act by the authority having jurisdiction;
- d) become bankrupt or insolvent or made an assignment for the benefit of creditors;

- e) had its property seized or attached in satisfaction of a judgment;
- f) had a receiver appointed;
- g) committed any act or neglected to do anything with the result that a Construction Lien or other encumbrance is registered against the City's property, unless the Licensee has arranged for such lien or encumbrance to be vacated from the City's property within 20 days of the Licensee having received notice of same, or a claim is made against the City and the Licensee fails to comply with its indemnity obligations contained in this Agreement;

11.1.3 The Licensee has failed to maintain the requisite insurance policy.

11.2. When an Act of Default on the part of the Licensee has occurred:

11.2.1 The City shall have the right to terminate this License.

11.2.2 The City shall have the right to draw on the security to complete the work contemplated under this License, or to put the road back into its original condition or otherwise repair or improve the condition of the roadway.

11.2.3 Where the Act of Default is the failure to make payment for tree removal prior to construction: The City shall have the right to draw on the security to make this payment.

11.2.4 Where the Act of Default is the registration of a lien against the Licensor's Land: The City shall have the right to draw on the security to vacate the lien.

11.3. If, because an Act of Default has occurred, the City exercises its right to terminate this License prior to the end of the Term, the Licensee shall nevertheless be liable for payment of all fees and all other amounts payable by the Licensee in accordance with the provisions of this License.

11.4 If, when an Act of Default has occurred, the City chooses not to terminate the License, the City shall have the right to take any and all necessary steps to rectify any or all Acts of Default of the Licensee and to charge the costs of such to the Licensee.

11.5. If, when an Act of Default has occurred, the City chooses to waive its right to exercise the remedies available to it under this License or at law, the waiver shall not constitute condonation of the Act of Default, nor shall the waiver be pleaded as an estoppel against the City to prevent its exercising its remedies with respect to a subsequent Act of Default. No covenant, term, or condition of the License shall be deemed to have been waived by the City unless the waiver is in writing and signed by the City.

## 12. Termination

12.1. This License may be terminated by the City:

- 12.1.1 if the Licensee is in default under any of the terms of this Agreement and notice of such default has been given and not corrected within the period of time as required per section 11.1.1 of this Agreement;
- or

12.1.2 if the City, in its sole and unfettered discretion, assumes for maintenance purposes the Licensed Road Allowance.

**13. Notice**

13.1. Any notice required of permitted to be given by one party to the other pursuant to the terms of this License shall be given:

To the City at:

The Corporation of the City of Kawartha Lakes  
Engineering and Corporate Assets Department  
322 Kent Street West  
Lindsay, ON K9V 4T7  
Attention: Mike Farquhar, Manager, Technical Services  
Email: [mfarquhar@kawarthalakes.ca](mailto:mfarquhar@kawarthalakes.ca)

To the Licensee at:

[REDACTED]

13.2 The above addresses may be changed at any time by giving ten (10) days written notice to the other party to this License.

13.3 Any notice given by one party to the other in accordance with the provisions of this Agreement shall be deemed conclusively to have been received on the date delivered if the notice is served personally or sent by email, or 5 business days after mailing if the notice is mailed. Any notice served by email after 4:30 pm on a business day will be deemed to be served the next business day. Any notice served on a statutory holiday will be deemed to be served on the next business day.

**14. Assignment and Transfer**

14.1. This Agreement will be binding on successors in title to the Licensee's Lands.

14.2. Otherwise, the Licensee shall not assign or transfer all or any part of its interest in this License.

**15. Amendment**

No alteration, amendment, change or addition to this License shall be binding on the City and/or the Licensee unless such alteration, amendment, change or addition is reduced to writing and signed by both the City and the Licensee.

**16. Continued Public Access**

The parties hereto hereby confirm that this License is a non-exclusive license to occupy and use the Lands only and shall not constitute a lease of the Lands and that neighbouring properties or the general travelling public may use the Licensed Road Allowance without consideration to the Licensee. The Licensee may not block off the Licensed Road Allowance by way of gate or otherwise, may not sign the Licensed Road Allowance "private property" or in any other way attempt to prevent public access.



## **17. Entire Agreement**

It is agreed and understood that this Agreement (including the schedules referred to herein, which are hereby incorporated by reference) constitutes the entire Agreement between the parties with respect to the subject matter hereof and supersedes all prior arrangements, proposals, understandings and negotiations, both written and oral, between the parties or their predecessors with respect to the subject matter of this Agreement.

## **18. General Matters of Intent and Interpretation**

18.1 Each obligation under this Agreement is a covenant.

18.2 The headings in this Agreement are for ease of reference only and are not to be taken into account in the construction or interpretation of any provision to which they refer.

18.3 The use of the neuter singular pronoun to refer to the City or the Licensee is a proper reference even though the City or the Licensee is an individual, a partnership, a corporation or a group of two or more individuals, partnerships or corporations. The grammatical changes needed to make the provisions of this Agreement apply in the plural sense when there is more than one City or Licensee and to corporations, associations, partnerships or individuals, or any gender, are implied.

18.4 Whenever a statement or provision in this Agreement is followed by words denoting including or example (such as "including" or "such as") and there is a list of, or reference to, specific matters or items, such list or reference shall not be read so as to limit to restrict the generality of such statement or provision, even though words such as "without limitation" or "without limiting the generality of the foregoing" do not precede such list of reference.

18.5 If a part of this Agreement or the applications of it to a person or circumstance, is to any extent held or rendered invalid, unenforceable or illegal, that part:

18.5.1 is independent of the remainder of the Agreement and is severable from it, and its invalidity, unenforceability or illegality does not affect, impair or invalidate the remainder of this Agreement; and

18.5.2 continues in all circumstances except those as to which it has been held or rendered invalid, unenforceable or illegal.

18.6. This Agreement will be construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

18.7. Time is of the essence of this Agreement.

18.8. To the extent that liability exists at the time of expiry or earlier surrender or termination of this Agreement, the covenant(s) from which such liability is derived shall survive such expiry or earlier surrender or termination.

## **19. Force Majeure**

Except for any obligation to pay money, neither party will be liable for any failure or delay in its performance under this Agreement due to any cause beyond its reasonable control, including acts of war, acts of God, earthquake, flood, embargo, riot, sabotage, labour shortage or dispute, governmental act or failure of the Internet, provided that the delayed party: (i) gives the other party prompt notice of such cause, and (ii) uses its reasonable commercial efforts to correct promptly such failure or delay in performance.

**20. Compliance with Laws**

The Licensee agrees to comply with all lawfully enacted statutes, regulations and by-laws of the Province of Ontario, the Government of Canada, and the City, as such may from time to time apply to the Licensee or its occupation of the Lands.

**21. Successors & Registration of the Agreement on Title**

The rights and obligations under this Agreement extend to and bind the parties and their respective successors and permitted assigns. Accordingly, the Licensee consents to the Agreement being registered on title to the Licensee Lands.

**22. Electronic Execution**

This Agreement may be executed and transmitted electronically, which execution and copies will be treated as originals.

DATED at Lindsay, this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

THE CORPORATION OF THE CITY OF KAWARTHA LAKES

PER: \_\_\_\_\_

Doug Elmslie, Mayor

And PER: \_\_\_\_\_

Cathie Ritchie, Clerk

(We have authority to bind the Corporation per Council Resolution \_\_\_\_\_.)

We hereby accept the above License on the terms and conditions contained therein

DATED at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

PER: \_\_\_\_\_

Steve Harjula

(I am the sole owners of the Licensee’s Lands and thus have exclusive authority to make this agreement)