

Appendix C

RIGHT OF USE MAINTENANCE AGREEMENT

THIS AGREEMENT made as of the _____ day of _____, 202__.

BETWEEN:

**THE CORPORATION OF THE
CITY OF KAWARTHA LAKES**
(hereinafter called the "City")

OF THE FIRST PART

- and -

**ONTARIO FEDERATION OF
SNOWMOBILE CLUBS – DISTRICT 3**
(hereinafter called the "User")

OF THE SECOND PART

WHEREAS the User is a member in good standing of the Ontario Federation of Snowmobile Clubs (OFSC);

AND WHEREAS the User intends to provide services on Right of Way (ROW) owned by the City on the terms agreed between the parties, and have a right to use and maintain the City's ROW for that purpose;

AND WHEREAS the parties have negotiated and agreed as to the terms upon which said right to use and maintain will be granted to the User by the City.

THE PARTIES HERETO HAVE AGREED AS FOLLOWS:

1. Grant of User

1.1 The City hereby grants to the User permission to legally enter, establish, groom, maintain, enforce, sign and use that portion of the premises herein designated by the City as road crossings and ROW as identified on Schedules A & B, for the sole purpose of allowing fully licensed snowmobiles and their riders to use said designated premises for snowmobiling, subject to the terms, conditions and covenants in this Agreement.

1.2 No changes shall be made to Appendix A or B without the written consent of both parties. The User is NOT authorized to use City properties not listed on Appendix A or B.

2. Term

2.1 The term of this Agreement shall terminate as of May 1st of the fifth calendar year of the date noted above, unless earlier terminated as per Section 3.

2.2 During the Term, the right to use and the obligation to maintain will be in force and effect for the period of time between November 1 of one year to May 1 of the following year (the “winter season”).

3. Termination

3.1 Notwithstanding anything to the contrary contained herein, the parties acknowledge and agree that this Agreement shall terminate as per Section 2 or upon receipt of written notification of termination from either party with Sixty (60) days notice or in the Event of Default.

3.2 In this Agreement, an Event of Default includes any of the following:

- (i) if either party substantially fails to satisfy any of its undertakings and agreements herein and subsequently fails to remedy such default within a period of not more than Thirty (30) business days from delivery of notice by the non-defaulting party to cure or remedy such default;
- (ii) the User does not maintain membership in good standing of the OFSC and/or it is not able to verify this to the City with a current OFSC certificate within Fifteen (15) days of request.
- (iii) the User fails to secure, maintain or provide evidence of the insurance required as detailed in this Agreement.

3.3 Upon the occurrence of any Event of Default, the non-defaulting party shall have available to it the following remedies which shall be in addition to, and not in substitution for, any remedies generally available to it at law:

- (i) the non-defaulting party may claim and recover damages suffered by it by reason of such Event of Default; and
- (ii) the non-defaulting party may terminate the Agreement either with or without notice to the defaulting party, but in no event without providing any period of notice of default required under this Agreement.

3.4 No remedy granted herein or otherwise available to the non-defaulting party at law shall be exclusive of any other remedy and all remedies of the non-defaulting party shall be cumulative.

4. Covenants of the User

4.1 All costs associated with the ongoing operation, maintenance, enforcement and use of the City's property (ROW) as designated herein shall be at the User's expense. The User shall be responsible for providing all needed equipment, labour and materials to maintain the property to ensure reasonably good condition for snowmobiling purposes only.

4.2 During the period of the agreement the User shall be authorized to be the City's agent(s) to cooperate with local law enforcement agencies in their efforts to supervise and enforce the uses defined hereunder with respect to the designated premises in accordance with the Trespass to Property Act R.S.O. 1990 c. T.21; the Motorized Snow Vehicles Act R.S.O. 1990 c. M.44; and the Occupiers Liability Act R.S.O. 1990 c. O-2, as amended.

4.3 The User shall comply with all applicable laws, regulations, City By-Laws or requirements.

4.4 The User shall undertake to post appropriate signage in compliance with all applicable laws, regulations and City requirements with respect to signage. All trail signage shall be installed in a manner as to not conflict with regulatory or warning signs controlling vehicular traffic traveling on the serviced roadway. Trail signs found in conflict with serviced roadway signs and/or in a state of disrepair and/or deficient shall be relocated, replaced, or added immediately upon notification by the City, verbal or written. Changes within the ROW that may require additional signage such as a new property entrance will be reviewed by the user prior to the commencement of each snowmobiling season and sufficient signage installed by the user. The User shall provide to the City a list of all sign locations: the list shall include the type and size of each sign, its location including GPS coordinates, and the direction the sign is facing. At no time shall the City be held responsible for or held liable for signage related to snowmobile trails or activities in this agreement, except to the extent that the City has directed the User to place signs elsewhere other than where the User proposed to put the signs.

4.5 In the event of damage to the designated premises caused by valid permitted and exempted snowmobiles and their riders on that portion of the designated property used for snowmobiling, separate from usual wear that would be caused by vehicles travelling or using the road platform, as determined by the City in its sole discretion, the User shall be responsible for restoring and repairing damage caused by valid permitted and exempted snowmobiles and their riders or caused by trail grooming equipment, on that portion of the designated property used for snowmobiling. In this agreement 'vehicle' has the same meaning as defined in the Highway Traffic Act, R.S.O. 1990, c. H. 8 Section 1 (1). For greater clarity and not to limit the generality of the foregoing, should damage be occasioned to the road crossings as a result of the use by the User, caused by valid permitted and exempted snowmobiles and their riders or caused by trail grooming equipment, such as sinking of the road bed or damage to the asphalt surface of the road, or snow packing in roadside ditches and culverts, the User shall be responsible to pay the City's reasonable costs within 30 days of receipt of invoice for same. The User is not responsible for damage caused outside the term of this agreement unless said damage is caused by the User.

4.6 The User acknowledges that snow packing in the ditch and culverts as a result of snowmobile travel in the ditches causes a maintenance issue for the City. It will communicate to its invitees that they must remain out of the ditches. In the event that the City determines that a maintenance issue has occurred as a result of the User's activities, the City has the option to notify the User of same, and invoice the User the City's costs respecting the resulting necessary maintenance. The User will pay the invoiced amount within 30 days of receipt of same.

4.7 Any work conducted on City property outside of routine trail grooming shall require a Road Occupancy Permit (ROP). ROP's are available through the Public Works Department – Road Operations Division. An ROP will be required for each date and location of work. The User will comply with all applicable terms of By-Law 2020-148 A By-law to Regulate the Activity on Municipal Right-of-Ways in the City of Kawartha Lakes.

4.8 Any use other than regular snowmobile travel and trail grooming requires written permission from the City prior to commencement of said use.

4.9 Trail grooming activities shall not occur on the road platform. For greater clarity, trail grooming is not permitted on the shoulder of the road or on the travelled portion of any road within the City boundaries. If trail grooming equipment is crossing a travelled City road, the trail groomer shall raise all grooming equipment before crossing the road. Grooming activity shall not place, drag, pull, or otherwise cause to be placed snow or any other type of debris or substance onto the travelled surface of any roadway.

5. Covenants of the City of Kawartha Lakes

5.1 The City shall permit the User during the term of this Agreement, at only the property(ies) as specified in Appendix A and B herein and shall allow the User and its agents access to the City owned properties for such purpose.

5.2 Appendix A and B shall consist of a current attached map and list indicating the location of trails on City property(ies)(ROW) And shall be initialed by both parties hereto and attached to this Agreement.

5.3 At each approved City property (ROW and road crossings) detailed in Appendix A and B, the City shall permit the User to access the property on an “as is” basis, prior to and after the winter months for the purpose of opening and closing, upgrading and maintaining the property when there is no snow cover. It is understood that the User will provide a detailed scope of work to the City and shall obtain written approval and apply for any necessary permits prior to commencement of any work on an annual basis in a reasonable time frame. See section 4.7.

6. Force Majeure

6.1 Neither party to this Agreement shall be responsible or liable in any way for its failure to perform or delay in performance of its obligations under this Agreement during any period in which performance is prevented or hindered by conditions reasonably beyond its control, including but not limited to, acts of God, fire flood, failure of public utilities, war, embargo, strikes, labour, disturbances explosions, riots, and laws, rules regulations and orders of any governmental authority. Upon the occurrence of any such event, and notwithstanding same, the User shall:

- (i) use all reasonable efforts to notify the City of the nature and extent of any such conditions, and
- (ii) use all reasonable efforts to ensure continuity of service.

7. Insurance and Risk of Loss

7.1 The User shall provide and maintain during the term of this Agreement and any renewals thereof, Commercial General Liability Insurance including but not limited to bodily injury including death, personal injury and property damage, including loss of use thereof, contractual liability and contain a cross liability/severability of interest clause. This insurance shall be written with an insurance company authorized by law to underwrite such insurance in the Province of Ontario. The amount of insurance shall be not less than five million (\$5,000,000.00) dollars per occurrence and the Corporation of the City of Kawartha Lakes shall be named as an additional insured on the policy. The policy shall include a provision that the City shall be provided thirty (30) days written notice in

advance by registered mail of any cancellation or expiration of the policy. If the User receives actual notice during the term of this Agreement that the insurance policy limits are reduced to less than \$5,000,000.00, the User shall notify the City of the reduction in policy limits.

7.2 The User agrees that it shall at all times indemnify and save harmless the City, its employees and Members of Council from and against any and all manner of claims, demands, losses, 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, which are occasioned by or attributable to the operations usual to a snowmobile trail, except for the negligence or willful misconduct of the City.

7.3 The User shall provide the City with a Certificate of Insurance as well as a Workplace Safety and Insurance Board clearance certificate in advance of signing the Agreement and any renewals thereafter.

7.4 The User shall request approval to make any additions of new properties or deletions of approved City properties from the list of approved City properties (ROW) as specified in Appendix A and B.

8. End of Term

8.1 Upon expiration or termination of this Agreement, the User shall remove all Equipment (including signs and sign posts) owned by the User at any City owned property and shall restore or repair any damage to the property caused by such removal at the expense of the User and to the satisfaction of the City of Kawartha Lakes.

8.2 The User covenants that any properties owned by the City which are the subject of this Agreement shall, upon the expiration or termination of this Agreement, be left in the same condition in which they are found upon the commencement of this Agreement with the exception of any clearing or grading work previously approved by the City in writing. This includes but is not limited to the removal of all signage and any apparatus placed for trail use unless otherwise advised in writing by the City, restoring/replacing any gates or apparatus in place upon commencement of this agreement, removal of any litter, restore, repair or replace damaged property. The User further covenants that it shall be responsible for restoring the properties as is necessary to ensure compliance with this provision, and that such obligation shall survive the termination or expiration of this Agreement.

9. Notice

9.1 Any notice or communications between the parties regarding this Agreement shall be in writing and forwarded to the addresses set out below. If

forwarded by mail, notice will be deemed received on the third business day after mailing or if by fax or e-mail prior to 4:30 pm, the same business day:

The City of Kawartha Lakes
26 Francis Street
P.O. Box 9000
Lindsay, ON K9V 5R9
Contact Name: Manager, Area West B
Tel: (705) 324-9411, ext. 1175
Fax: (705) 324-1155
e-mail: pwroadspermits@kawarthalakes.ca

Ontario Federation of Snowmobile Clubs – District 3
Governor Ken Bertrand
454 Bolivar Street, Peterborough, Ontario, K9J 4R4
e-mail: ofscd3@gmail.com

OFSC District 3
Additional Contact Name: Katherine Johnston
Tel: 705-312-0551

Or as amended from time to time upon advance notice in writing to the other party.

10. Governing Law

10.1 This Agreement shall be governed by the laws of Ontario and the federal laws of Canada which are applicable therein. The User and the City shall comply with all applicable laws and regulations.

11. Severability

11.1 If any provision contained in this Agreement shall, to any extent, be invalid or unenforceable, the remainder of this Agreement shall not be affected except to the extent that such invalid or unenforceable provision is properly construed as a condition for the benefit of any party hereto or part of the fundamental consideration for the agreement herein contained, and, subject to the above, each provision of this Agreement shall be separately valid and enforceable to the fullest extent provided by law.

12. Assignment

12.1 The User agrees that it may not assign nor transfer their rights and status under this Agreement without the prior written consent of the City, which consent may be withheld at the sole discretion of the City.

13. Survivability

13.1 The obligations of the parties to conduct an Annual Review as per section 14 and that of the User to compensate the City for any costs associated with road repair and maintenance per sections 4.5 and 4.6 survive the termination of this Agreement.

14. Annual Review

14.1 On an annual basis, on or around April 1, the City and the User will review the ROW and all road crossings identified on Appendices A and B to determine any necessary repairs to be conducted by the User.

In Witness Whereof, the parties hereto have signed and sealed by their proper officers this Agreement. If a seal is not affixed, have a witness date, print and sign their name below.

Signed this _____ day of _____, 20__

The Corporation of the City of Kawartha Lakes

Doug Elmslie, Mayor

Cathie Ritchie, Clerk

Ontario Federation of Snowmobile Clubs – District 3

Ken Bertrand

Date

Witness Name

Witness Signature