

**RESOLUTION NO. 1342**

**A RESOLUTION APPROVING LAND USE LICENSE AGREEMENT WITH PRINEVILLE KIWANIS REGARDING THE CREATION OF A SPLASH PAD WATER RECREATIONAL AREA IN STRYKER PARK**

WHEREAS, the City of Prineville (“City”) is supporting the creation of a splash pad water recreational area to enhance its City park system and provide City residents with water recreation that will contribute to the City’s health, fitness, and wellbeing; and

WHEREAS, Prineville Kiwanis (“Kiwanis”) has solicited private donations for the purpose of constructing a splash pad within the City; and

WHEREAS, Kiwanis desires to construct the splash pad on the municipally owned property at Stryker Park; and

WHEREAS, Kiwanis has received a proposal from Anderson Poolworks for the construction of the Prineville Kiwanis Splash Park and donations received by Kiwanis are sufficient for the construction of the splash pad; and

WHEREAS, Kiwanis desires a Land Use License Agreement to construct the splash pad on the municipally owned property at Stryker Park.

NOW, THEREFORE, the City of Prineville resolves as follows:

1. The Land Use License Agreement attached to this Resolution is approved and that the Mayor is authorized to sign such Agreement on behalf of the City.

Approved by the City Council this 24<sup>th</sup> day of April, 2018.

  
Betty J. Roppe, Mayor

ATTEST:

  
Lisa Morgan, City Recorder

## LAND USE LICENSE AGREEMENT

THIS LICENSE AGREEMENT made as of this ~~24<sup>th</sup>~~ day of April, 2018 (the "Commencement Date") by and between **City of Prineville**, Oregon, an Oregon municipal corporation ("City" or "Licensor"), and **Prineville Kiwanis**, an Oregon Public Benefit Corporation ("Licensee" or "Kiwanis"); each of the City and Kiwanis are "Party" and together, the "Parties."

### RECITALS

- A. WHEREAS, City is supporting the creation of a splash pad water recreational area ("Project") to enhance its City park system and provide City residents with water recreation that will contribute to the City's health, fitness, and wellbeing; and
- B. WHEREAS, Prineville Kiwanis has solicited private donations for the purpose of constructing a splash pad within the City; and
- C. WHEREAS, Kiwanis desires to construct the splash pad on the municipally owned property at Stryker Park; and
- D. WHEREAS, Kiwanis has received a proposal from Anderson Poolworks for the construction of the Prineville Kiwanis Splash Park and donations received by Kiwanis are sufficient for the construction of the splash pad.

NOW, THEREFORE, in consideration of the Independent Consideration, and the mutual covenants and agreements contained herein, including the recitals which are incorporated herein by reference, which are relied upon by Parties and which constitute part and parcel of this Agreement; and other good and valuable consideration the receipt and sufficiency of which are expressly acknowledged by the Parties, the City and Kiwanis hereby agree as follows:

**I. Description of Licensed Premises.** City is the owner of that certain real 4.12 acre parcel located in Prineville, Oregon at Township 15S, Range 16E, Section 05BB, Tax Lot 000600, and more commonly known as Stryker Park. Licensor hereby grants Licensee, subject to the terms and conditions of this Agreement, license to use the west portion of such parcel, hereinafter known as the ("Licensed Premises").

### **II. Permitted Use.**

- A. Licensee may use the Licensed Premises solely for the purpose of the construction of the Project.
- B. No trees or shrubs shall be removed without prior written consent of Licensor. Licensee shall take responsible care to prevent injury or damage to the trees and shrubs on the Licensed Premises.



C. Licensee shall at all times use the Licensed Premises in accordance with all applicable laws, statutes, ordinances, regulations, permits, licenses and approvals.

**III. Term.** This license shall be valid from the Commencement Date until the completion of the Project.

**IV. Waste.** License shall not make, permit or suffer any Licensee Party (as such term is defined below) nor shall it permit or suffer the commission of waste upon the Licensed Premises by any such person.

**V. Alterations; Structures.** It is the primary purpose of this Agreement that Licensee shall construct an alteration to the Licensed Premises. Any such improvements shall be donated to the City upon completion/termination of this Agreement.

**VI. Public Access.** Licensee shall permit the public to use and traverse the Licensed Premises for passive recreational purposes and other activities approved by Licensor, as Licensor shall approve, provided, however, that Licensee, in accepting these conditions, does not thereby waive any remedies it may have against any member of the public who shall steal, damage, or destroy property on land covered by this License. In addition, Licensee is permitted to restrict access to the public if, in the opinion of Licensee, such access creates a safety risk for the public. Licensor, its agents and servants shall have unrestricted access to the aforesaid Licensed Premises at all times for inspection purposes.

**VII. Control of Agents.** Licensee expressly agrees that it shall exercise exclusive control and supervision over its agents, employees, servants, and other persons under its control, to insure that the provisions of this Agreement are carried out. Neither the City, nor any of its officers, agents, employees, boards, commissions, or committees shall be liable for any injury to persons or property resulting from any activity undertaken by Licensee or any persons acting under Licensee's control relating in any way to this License Agreement.

**VIII. Hazardous Materials.**

A. For the purposes of this License, the term "Hazardous Materials" shall include, but not be limited to, substances defined as "hazardous substances," "toxic substances," "hazardous wastes," "hazardous materials," "oil" or "asbestos" in any federal or state statute concerning hazardous materials now or hereafter enacted, including all regulations adopted or publications promulgated thereunder (Collectively, "Environmental Laws").

B. During the Term, no Hazardous Materials may be used, generated, stored, released, or disposed of on, under or about, or transported to, from or through the Licensed Premises (except for minor amounts of such materials that may be contained in cleaning materials and maintenance vehicles and machines customarily used in connection with the Permitted Use).

C. Licensee shall, with all due diligence, at its own costs and expense and in accordance with Environmental Laws (and in all events in a manner reasonably satisfactory to

Licensor), take all actions (to the extent and at the time or from time to time) as shall be necessary or appropriate for the remediation of Hazardous Materials at or released or migrating from the Licensed Premises, including all removal, containment and remedial actions. In conjunction with any actions by Licensee required above, to the extent permitted by law, Licensee shall pay or cause to be paid at no expense to Licensor all clean-up, administrative, and enforcement costs of applicable government agencies or the parties protected by such Environmental Laws which may be asserted against the Licensed Premises. Licensee shall indemnify Licensor from all claims, damages, losses, penalties, actions, liens, demands, costs, liabilities, expenses, fines, and judgments resulting from a breach of Environmental Laws or violations of any provision of this Article VIII.

**D.** The provisions of this Article VIII shall survive the expiration or earlier termination of this Agreement.

#### **IX. Condition of Licensed Premises and Licensee's Assumption of Risk**

Licensee acknowledges and agrees as follows:

**A.** The Licensed Premises are provided to Licensee in "AS-IS, WHERE-IS" condition.

**B.** Licensor is under no obligation to make any repairs, renovations, or alterations to the Licensed Premises.

**C.** Licensor makes no representations or warranties whatsoever regarding the Licensed Premises, including, without limitation, the suitability or fitness of the Licensed Premises for the Permitted Use.

**D.** Licensee agrees that Licensee shall enter upon and use the Licensed Premises and the areas surrounding the Licensed Premises at Licensee's own risk, and Licensor shall not be liable to Licensee or to any of Licensee's officers, agents, representatives, contractors, employees, invitees, and/or any other person claiming by or through Licensee ("Licensee's Parties") for any death or personal injury, or for any loss or damage to any personal property that is brought onto the Licensed Premises by, or on behalf of, Licensee or Licensee's Parties, including, without limitation, equipment, fixtures, vehicles or other personal property; provided, however, that notwithstanding the foregoing, Licensor shall be liable for claims, damages, costs, and expenses related to the negligence or willful misconduct of Licensor and Licensor's employees and agents. Licensee shall indemnify and hold harmless Licensor against all claims, damages, losses, penalties, actions, liens, demands, costs, liabilities, expenses, fines and judgments (including without limitation reasonable legal fees) related to Licensee's use of the Premises during the Term.

**E.** Licensee accepts complete liability for the acts, omissions, and negligence of Licensee and Licensee's Parties, while present upon the Licensed Premises or in connection with this License; provided, however, that Licensee does not accept liability for claims, damages,



costs and expenses related to the negligence or willful misconduct of Licensor and Licensor's employees, agents and/or invitees.

**F.** Without limiting the foregoing, Licensor shall not have any liability to Licensee or to any of Licensee's Parties for any injury, death, loss, or damage caused by any act of Licensee's Parties or members of the general public; provided, however that notwithstanding the foregoing, Licensor shall be liable for claims, damages, costs and expenses related to the negligence or willful misconduct of Licensor and Licensor's employees and agents.

**G.** Notwithstanding the provisions of Sections IX(D) and IX(F) above, if Licensor and Licensee are jointly, concurrently or successively liable for an actionable wrong to an injured person, each party shall have a right to contribution from the other party. The right of contribution shall be limited to the amounts paid by a party in excess of that party's share of liability, based upon principles of equity (including the principle of comparative fault). If either party receives any claim, demand, suit or judgment for which the other party is or may be jointly, concurrently or successively liable, that other party shall be given prompt notice thereof. If Licensor and Licensee become co-defendants, either may file a cross-complaint against the other for a declaration of rights respecting the relative responsibility of each for contribution. If either Licensor or Licensee becomes a defendant in an action or proceeding in which the other is a non-party, the defendant therein may either file a cross-complaint against the non-party for a declaration of rights of contribution or may bring a separate and independent action against the non-party for contribution.

**H.** The provisions of this Article IX shall survive the expiration or earlier termination of this Agreement.

**X. Termination.** If Licensor shall determine at any time during the term of this Agreement that Licensee is using the Licensed Premises for any use other than the Permitted use, Licensor may, at its election at any time thereafter, terminate this Agreement by giving written notice thereof to Licensee, specifying the effective date of such termination (such termination date to be at least thirty (30) days following the date such notice is sent by Licensor), and thereupon, upon the date so specified this Agreement shall terminate, but such termination shall not prejudice or waive any rights or remedies which Licensor may have against Licensee because of any default or failure to observe and comply with the terms and conditions of this Agreement up to the date of such termination.

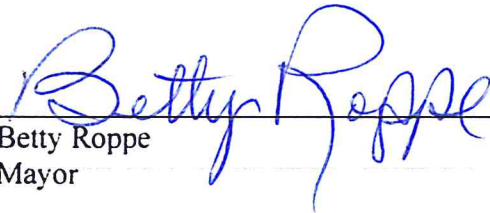
**XI. Assignment.** Licensee shall not assign or transfer by power of attorney, or otherwise, the right and privilege conferred upon it by this license, or any portion thereof, without the previous written consent of Licensor, nor shall any such rights or privileges be subject to or otherwise reached by any legal or equitable process. Notwithstanding, Licensor understands and agrees that Licensee is employing Anderson Poolworks to construct the Project and Licensee hereby acknowledges that for purposes of this Agreement, Anderson Poolworks shall be considered its assigns.

**XII. Notice.** Any notice, demand or request required to be given hereunder shall be deemed sufficiently given or served on either of the parties hereto if mailed by certified mail, return

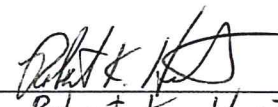
receipt requested, postage prepaid, to Licensor at City Hall, 387 NE Third Street, Prineville, Oregon, 97754 Attention: City Manager, and to Licensee at Prineville Kiwanis, PO Box 282, Prineville, Oregon, 97754, or to such address as shall be designated by either party in writing for that purpose.

EXECUTED as of the day and year first written above.

**CITY OF PRINEVILLE,**  
a municipal corporation of the State of Oregon

By:   
Name: Betty Roppe  
Its: Mayor

**The Kiwanis Club of Prineville, Oregon**  
an Oregon Public Benefit Corporation

By:   
Name: Robert K. Horton  
Its: President