

Memorandum of Understanding

TOWN OF CANMORE (THE "TOWN") AND CANMORE TENNIS ASSOCIATION (THE "CTA")

REGARDING USE OF LIONS AND VETERAN'S PARK TENNIS COURTS

THIS AGREEMENT dated THE FIRST (1ST) DAY OF MAY, 2018 (the "Effective Date").

IN THIS MEMORANDUM OF UNDERSTANDING ("MOU") THE TOWN AND THE CTA AGREE AS FOLLOWS:

1. **PERMITTED USE** – The Town hereby grants the CTA and its members access to the Lions Park and Veterans Park Tennis Courts for the purpose of delivering programming to its members. The Town will also operate a court booking system which allows members of the CTA to book court time at no additional cost.
 - a. **Booking of Court Time**
 - i. Canmore Tennis Association (CTA) Members will be able to book court time up to 3 days in advance (compared to non-members who can book 2 days in advance). No additional court booking fee will be charged to CTA Members.
 - ii. Any member or non-member booking court time can only have 2 active tennis court bookings at any one time.
 - b. **CTA Program Booking**
 - i. The CTA will book court time in such a way that reasonable court access during prime time* for the public exists. The court schedule will be reviewed by the Manager of Recreation Services before each tennis season to ensure reasonable access is maintained.
 - ii. "Reasonable access" is achieved by ensuring that at any given time at least one court space is available for reservation by the public.
 - iii. The CTA will be responsible for inputting all program bookings into the court booking software at the beginning of each tennis season (approximately May 1)
 - iv. Ad hoc bookings (private lessons, unexpected events, etc.) can be made by the CTA at any time so long as the courts are not already booked for a different use. Should ad hoc bookings result in all Town of Canmore Tennis Courts being unavailable to the public during more than one prime time hour on a given day the CTA will request permission from the Facility Booking Coordinator before making the booking.
 - v. * Prime Time is considered Monday to Friday from 5pm – 8pm, Saturday, Sunday and Statutory Holidays from 9am – 4pm.
 - c. **Rental Terms and Conditions**
 - i. The CTA is expected to abide by all site specific Terms and Conditions in Schedule A.

Memorandum of Understanding

2. FEE COLLECTION AND REMITTANCE

- a. The Canmore Tennis Association will collect fees from its members and be responsible for entering member information into the booking software.
- b. Tennis bookings made and paid for by a member before membership information is entered will not be refunded.
- c. The Town of Canmore will be responsible for submitting the software licencing fee.
- d. Membership revenue will be divided as follows:
 - i. $\text{Total Membership Revenue} - (\text{Software Licence Fee} + \text{Transaction Costs}^*) = \text{Net Revenue}$
 - ii. $\text{Town of Canmore} = \text{Net revenue} \times 75\%$
 - iii. $\text{CTA} = \text{Net Revenue} \times 25\%$
 - iv. * Refers to payment processing costs (PayPal)
- e. The CTA will also collect court booking revenue from non-CTA members. This revenue will be itemized on a monthly invoices and provided to the Town of Canmore. The CTA will deduct transaction costs and indicate the amount deducted.
- f. The licencing fees for 5 months will be applied to the Total Membership Revenue Collected in May.
- g. CTA will submit a breakdown of revenue each month. Gross revenue – CTA fees. The net revenue will be directly deposited into the Town of Canmore account (preferred) or a cheque issued. Deposits and statements will be made within thirty (30) days of month end.
- h. Any changes to the payment schedule are subject to the approval of the Manager of Recreation.

3. MEMBERSHIP FEES

- a. CTA Membership fees and hourly court booking fees are subject to the approval of the Town of Canmore.
- b. The CTA will provide a 40% discount to those who possess a current Affordable Services Program (ASP) card. The Town of Canmore understands that if high participation of ASP card holders occurs that revenue projections may not be realized.

4. TERM

- a. The Term of this MOU shall be 6 months.

5. RENEWAL

- a. The CTA and Town of Canmore will have the opportunity to review the terms of this MOU before renewing for the 2019 season. Court use following 2019 will be agreed upon through a multi-year MOU and/or an agreement that formalizes the infrastructure repayment plan for the Lions Park court expansion project.

6. ACCESS – The CTA acknowledges and agrees with the following:

- a. All or portions of the Premises may be shut down from time to time by the Town for scheduled and unscheduled maintenance, statutory holidays, emergencies, seasonal closures, special events, or operational issues.
- b. The Town and its employees and agents have unfettered access to the Premises at any time.
- c. The CTA is expected to provide a level of oversight that ensures that booking privileges provided to its members are not being abused (Example: booking a court under a members account that will not be present for the booking).

Memorandum of Understanding

7. TOWN OBLIGATIONS - The Town will:

- a. Be responsible for cleaning and maintenance services. Service required to accommodate a large event (Example: BBQ) may be subject to an additional fee.

8. TERMINATION

- a. The CTA may terminate this MOU for any reason by giving thirty (30) days written notice to the Town.
- b. The Town reserves the right to cancel or suspend the MOU, without notice, in the event of a community emergency where the space is required to serve an emergency community need.
- c. The Town may terminate this MOU:
 - i. for any reason by giving thirty (30) days written notice to the CTA; or
 - ii. in the event of an Event of Default, as defined below.
- d. If the CTA should fail to uphold the terms outlined in the sections above, this MOU will automatically terminate.

9. REMEDIES OF THE TOWN ON EVENT OF DEFAULT:

- a. Each of the following will be considered an event of default:
 - i. The CTA has not paid in full any amount when due, and such default continues for seven (7) days after the due date;
 - ii. The CTA fails to observe, perform and keep any of the conditions of this MOU and persists in such failure after ten (10) days' written notice by the Town identifying such failure and requiring that the CTA remedy, correct, desist or comply; or
 - iii. The CTA purports to effect a transfer or assignment other than in compliance with the provisions of this MOU (each an "Event of Default").

Upon the happening of an Event of Default, the Town may immediately terminate this MOU and exercise any other remedy it may have at law or in equity. No remedies will be deemed to be exclusive, and the Town may from time to time have recourse to one or more of all of the available remedies.

10. RELATIONSHIP OF THE PARTIES – The CTA is an independent body and is not a servant, employee, or agent of the Town. Nothing contained in this MOU will create any relationship between the parties other than that of landlord and user group, and it is acknowledged and agreed that the Town does not in any way or for any purpose become a partner of the CTA in any business, or a joint venturer, or a member of a joint or common enterprise with the CTA.

If this MOU is executed by more than one person or entity as the CTA, the CTA's obligations hereunder shall be joint and several obligations.

11. RISK, INDEMNITY AND RELEASE

- a. The CTA acknowledges and agrees that any of its property kept or stored in the

Memorandum of Understanding

Premises is at the CTA's own risk. The Town has no liability and is not responsible for any damage to or loss of the property of the CTA.

- b. The CTA indemnifies and holds harmless the Town, its employees and agents from any and all claims, demands, causes of action, fees, expenses and costs, including solicitor client costs, for damage and injury, including death, to the person or property of any person, firm or corporation, arising out of the CTA's use of or operations in the Premises, including the adjacent lands and building.
- c. The CTA hereby releases the Town and its employees and agents from any and all liability for loss or claim, including all resulting consequential and indirect losses, as a result of loss, damage or injury to the property and persons of the CTA and its employees and whether or not such loss or claim may have arisen out of the negligence of the Town or those for whom the Town is in law responsible.

12. INSURANCE – The CTA will, at its own expense, insure its property and operations under a contract of general liability insurance, in accordance with the Alberta Insurance Act, in an amount not less than \$5,000,000 inclusive per occurrence, insuring against bodily injury, personal injury, and property damage, including loss of use thereof. The CTA's general liability insurance must also include CTAs legal liability. The CTA must name the Town as an additional insured on these policies and supply the Town with a Certificate of Insurance confirming this coverage upon signing the MOU and annually for any additional renewals thereafter. The CTA will, at its own expense, procure and maintain all Risk Property insurance covering equipment and contents owned by the CTA. Insurance shall be on a Replacement Cost basis. The CTA will, at its own expense, procure and maintain in effect during the term of this agreement, any additional insurance that the Town of Canmore may deem necessary from time to time.

The Town will, at its own expense, maintain insurance for its property and operations under a contract of commercial general liability insurance, in accordance with the Alberta Insurance Act, in an amount not less than \$5,000,000 inclusive per occurrence, insuring against bodily injury, personal injury, and property damage, including loss of use thereof.

13. PROTECTION OF INFORMATION – The terms of this MOU, including the name of the CTA, the length of term, and the details of the MOU are subject to disclosure under the *Freedom of Information and Protection of Privacy Act*.

14. CONFIDENTIALITY - Any data or information concerning the Town or any department, board, agency, or commission under the Town's administration, other than data or information available as a matter of public record, which is seen or obtained by the CTA as a result of its use and access to the Premises, will be treated by the CTA as confidential and not disclosed or made known to any other person without the prior written consent of the Town. This requirement will survive the completion or termination of this MOU.

15. ASSIGNMENT – The CTA may not assign or sublet the Premises, any part thereof or the space designated for the CTA's use without the prior written consent of the Town, which may be unreasonably withheld.

16. AMENDMENT – Upon mutual written agreement, the parties may amend the terms of this MOU.

Memorandum of Understanding

17. DISPUTE RESOLUTION - The Town and the CTA agree that they will at all times attempt to resolve any disputes with respect to issues or violations arising out of this MOU in an amicable fashion, through prompt communication of concerns and issues and through good faith negotiation.

Any disputes under this MOU will be referred to and finally resolved in accordance with the following procedure:

- a. A written notice of dispute shall be served by one party to the other;
- b. A designate of the Town and the CTA will meet within five (5) business days of receipt of the written notice, and attempt to resolve the dispute described in the notice; and
- c. If such persons are unable to resolve the dispute within ten (10) business days, the matter shall be referred to the Town's General Manager of Municipal Infrastructure or General Manager of Municipal Services for a final, binding decision.

18. SEVERABILITY – If any part of this MOU is found or deemed to be illegal or invalid, the remainder of the MOU remains in effect. This MOU shall be governed by the laws of the Province of Alberta.

19. ENTIRE AGREEMENT – This MOU constitutes the entire and exclusive agreement between the Town and the CTA.

20. INUREMENT – This MOU shall inure to the benefit of and be binding upon the respective successors and permitted assigns of the parties.

21. NOTICE - Any notice required or permitted to be given hereunder may be sufficiently given by mail, personal delivery or email, to the parties and addresses given as follows:

To the Town: Scott McKay, Acting Manager of Recreation
100 700 Railway Ave Canmore, AB T1W 1P4
smckay@canmore.ca

To the CTA:
George Crookshank
#13 164 Rundle Drive
Canmore AB.

Gacrook99@gmail.com

Delivery of any notice shall be effective on the third day following the date of mailing, or on the date of delivery of electronic transmission, in such cases. Facsimile correspondence will not be accepted as a method of notice.

22. COUNTERPART - This MOU may be executed in one or more counterparts, each of which will be deemed to be an original copy of this MOU, and all of which, when taken together, will be deemed to constitute but one and the same agreement. Electronic signatures received as a portable document format (PDF) attachment to electronic mail will be treated as original signatures for all purposes.

Memorandum of Understanding


23. **AUTHORITY** - If notice signatory, as the Town, to this Agreement is someone other than the registered owner on title of the Building or the Lands (the "Owner"), that the signatory hereby represents and warrants that it is authorized and has been granted full power, right and capacity to enter into and execute this Agreement on behalf of the Owner, or as agent of the Owner, as the case may be.

Memorandum of Understanding


IN WITNESS WHEREOF the parties have executed this MOU by their respective duly authorized officers in that behalf as of the Effective Date.

CANMORE TENNIS ASSOCIATION

PER: _____


GEORGE CROOKSHANK, PRESIDENT

PER: _____


SUSAN PALIDIS, TREASURER

THE TOWN OF CANMORE

PER: _____


SCOTT MCKAY, ACTING MANAGER OF RECREATION

PER: _____


SALLY CAUDILL, GM MUNICIPAL SERVICES

Memorandum of Understanding

SCHEDULE A – RENTAL PERMIT TERMS AND CONDITIONS (Tennis Courts)

In addition to the RENTAL PERMIT TERMS AND CONDITIONS (General) listed above and any applicable Town of Canmore Bylaws, the following RENTAL PERMIT TERMS AND CONDITIONS (Tennis Courts) apply to the use of the specific Facility for which the Rental Permit ('the Permit') is granted:

1. **Rental Season:** the Tennis Court surface is maintained from April 15 – October 15, depending on conditions as determined by the Town of Canmore Parks Department. Tennis and pickle ball play only.
2. **Behaviour:** Use of the Tennis Courts is authorized for the time and date specified on the permit only. The Renter and those represented by the Renter are required to leave the court on time and in a condition that will allow the next scheduled group to commence play immediately. The Renter must ensure that the area is free of debris and garbage. The Town of Canmore will not be responsible for lost, stolen or damaged articles. Any changes to the equipment or the playing surface must be reported to the Recreation Services Supervisor as soon as possible.
3. **Injuries / Hazards** must be reported to the Supervisor of Recreation immediately. A copy of any injury report completed in relation to an incident must be forwarded to the Supervisor of Recreation. All rental groups must supply their own first aid kits.
4. **Insurance:** It is recommended that individuals and groups renting the courts purchase insurance against public liability acceptable to the Town (minimum \$2 million, no participants exclusion). Such insurance shall include the Town of Canmore as an additional-insured.
5. **Liquor** may only be consumed when the Renter has obtained proper liquor permits to do so, and must be consumed and served strictly in accordance therewith.

Failure to abide by the RENTAL TERMS AND CONDITIONS (General), RENTAL TERMS AND CONDITIONS (Tennis Courts), Conditions of Use as outlined on the Permit and any applicable Bylaws may result in the cancellation of the rental or the forfeit of the Damage Deposit.

Facility Booking Coordinator - Phone (403) 678-7135, Fax (403) 678-0753,
Facility Booking Agent – Phone (403) 678-7295
Email: facilitybookings@canmore.ca