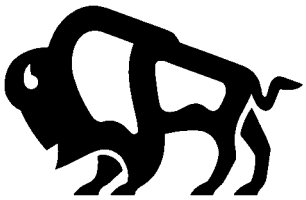
Appendix B

Manitoba Transportation and Government Services



LICENSE TO CONSTRUCT, OPERATE AND MAINTAIN

A RECREATIONAL TRAIL

ON OR IN PROXIMITY TO A DEPARTMENTAL ROAD

License No.

Date

Region

File No.

THIS AGREEMENT made in duplicate this _____ day of _____, 20__

BETWEEN:

HER MAJESTY THE QUEEN in right of the Province of Manitoba
represented by the Honourable Minister of Transportation and Government Services
(hereinafter called "the Province") of the First Part

AND:

address
(hereinafter called "the Operator") of the Second Part

WHEREAS:

A. Pursuant to The Highways and Transportation Act, the Province is the owner and has exclusive administration, control and management of departmental road rights-of-way including declared Provincial Trunk Highways, declared Provincial Roads, highways in unorganized territory and declared industrial roads (hereinafter called "the highway right-of-way");

B. Except under the authority of a permit issued by the minister, no person shall

(a) erect, build, or place, or cause to be erected, built, or placed, a structure or fixture on, under, or above the surface of the ground, within 125 feet of a departmental road outside a city, town, or village; or
(b) make, or cause to be made, an addition to such a structure or fixture;

C. The Province supports creation of the Trans Canada Trail system and is prepared to permit construction, operation and maintenance of a recreational trail on or in proximity to the highway right-of-way where no other practical alternative location exists and the construction and operation will not adversely affect the existing or proposed highway infrastructure or right-of-way;

D. The Operator is responsible for construction, operation and maintenance of a recreational trail or pathway that is accessible to and available for use by the general public for purposes such as hiking, cycling, horseback riding and cross country skiing (hereinafter called "the Trail");

E. The Operator wishes to use certain parts of the highway right-of-way for construction, operation and maintenance of the Trail in the manner hereinafter described and has asked the Province for permission to do so;

NOW THEREFORE, in consideration of these premises and the covenants and obligations reflected in this agreement, the Province hereby grants the Operator permission to use specified portions of the highway right-of-way (in so far as the use relates to matters under the jurisdiction of Manitoba Transportation and Government Services) subject to the following terms and conditions.

1. Definitions:

In this Agreement, the following words have the following meanings.

Department: Department of Transportation and Government Services

Highway Land: parts of the highway right-of-way described in paragraph 2 over which the Trail is constructed, operated and maintained by the Operator.

Trail: the improvements made to the highway right-of-way by the Operator for the purpose of the Trans-Canada Trail System, and the machinery, materials, equipment, signs and structures used on or installed on the right-of-way authorized by this agreement.

2. Location

a) The Operator shall construct, operate and maintain the Trail according to the accompanying Guidelines and plans(s) submitted by the Operator (marked Schedule "A") at the location identified on the Department's Drawing No. dated (marked Schedule "B"), both of which are attached to and form part of this agreement.

b) Any changes or modifications to the Trail as shown on Schedule "A" must be approved by the Province's Regional Technical Services Engineer prior to implementation.

c) If any changes or modifications are approved, "as constructed" plans may be requested and must be forwarded to the Province's Regional Technical Services Engineer within four weeks from the date of completion of the Trail. These plans will be attached to and form part of this agreement.

d) "As constructed" bridge or pedestrian bridge plans shall be forwarded to the Director of Bridges and Structures within four weeks from the date of completion of the Trail. These plans will also be attached to and form part of this agreement.

3. Nature of use

a) The Operator shall use the Highway Land only for construction, operation and maintenance of the Trail and for no other purpose. Any other use shall constitute violation of this agreement and may result in the Province, at its sole discretion, immediately terminating the rights granted herein.

b) Use of the Trail shall conform to the requirements of The Highway Traffic Act and The Off Road Vehicles Act.

4. Term

a) The rights granted pursuant to this agreement shall commence upon signing, and unless terminated sooner, shall continue for a period of 10 years. If the Highway Land is still required by the Operator

for operation and maintenance of the Trail at the expiry of the 10-year term, the Province may, in its discretion, give the Operator the option to renew this Agreement for an additional 10 years subject to any required permits and permissions.

b) The Province may terminate this agreement at any time upon 30 day's notice to the Operator, and the indemnity clause contained in this agreement shall be applicable to any claims that may be made against the Province by reason of said termination.

5. Non-exclusive right

a) The rights granted in this agreement do not entitle the Operator to exclusive use of the Highway Land.

b) The Province reserves the right to grant use of all or part of the Highway Land to utilities or other parties.

6. No interest in land

The parties expressly agree that the rights granted in this agreement over the Highway Land are in the nature of a license and shall not operate to create an interest in land. The Operator shall not have the right to register a caveat or any other encumbrance against the Province's land.

7. No assignment

The Operator shall not assign or transfer any rights granted in this agreement without first obtaining the prior written approval of the Province.

8. Operator will accommodate the Province and/or Utilities

a) Where necessary for highway or utility improvements, maintenance or repair, the Province may, upon 30 day's written notice, ask the Operator to stop or modify use of the Trail. The Operator shall comply with the request as soon as reasonably necessary and, in any event, before the end of the 30-day notice period. No compensation shall be payable to the Operator by the Province for the period of time that the use of the Trail is terminated or modified.

b) In the case of emergency, the Province may, without notice and without compensation to the Operator, suspend the rights granted herein immediately without notice.

9. No liability for damage

a) The Operator shall have no claim against the Province for any damage caused to or loss incurred by the Operator as a result of damage to or interference with the Trail, resulting from any maintenance, snow clearing or removal, or any other works carried out on the Highway Land by the Province, its officers, employees or agents.

b) The Operator shall have no claim against the Province for any damage caused to or loss incurred by the Operator as a result of damage to or interference with the Trail resulting from any works or maintenance carried out on the Highway Land by any third party.

10. Indemnity

The Operator shall indemnify and save harmless the Province, its officers, employees and agents from and against all claims, losses, liabilities, damages, costs (including legal fees), expenses and causes of action arising directly or indirectly from the construction, operation, maintenance or existence of the Trail on the Highway Land by the Operator, its contractors, officers, agents, employees and volunteers. This indemnification shall survive the termination of this agreement.

11. Insurance

a) The Operator shall purchase and maintain throughout the term of this agreement general liability insurance against claims for personal and bodily injury, death or damage to property, arising out of all the operations of the Operator, its officers, employees or agents under this agreement.

b) The insurance shall provide at minimum $5.0 million per occurrence limits of liability with terms and conditions satisfactory to the Province.

c) The Province, as owner of the highway right-of-way under this agreement, shall be added as an additional insured to the Operator's liability policy.

d) The policy shall contain a cross liability clause and provide coverage for operations, participant injury, blanket contractual, non-owned auto and extended bodily injury.

e) The Operator shall submit to the Province annual written evidence of the insurance coverage required under this Agreement.

12. Construction and Operation

a) A copy of this License, Schedules and Guidelines must be on site at all times during Trail construction.

b) The Operator shall notify the Department's Regional Maintenance Superintendent at least 48 hours (2 working days) prior to commencement of construction and upon completion of the Trail to allow for a site inspection. Please call at (204) .

c) The Operator shall ensure the safe and uninterrupted movement of highway traffic and pedestrians during construction, operation and maintenance of the Trail by providing and maintaining the necessary signs, barricades, channeling, and other devices in accordance with the Province's Work Zone Traffic Control Manual.

d) The Operator is responsible for locating all existing utilities and obtaining the necessary approvals from utility owners to locate on, over or adjacent to the affected utility prior to any construction taking place. The Operator is responsible for any protective measures that may be required by the utility to protect the existing installation from damage.

e) Where the Trail will be close to any bridge, culvert, ditch or other existing highway infrastructure, the Operator shall properly maintain and support such infrastructure in such a manner as not to interfere with its proper function.

f) The Operator shall not remove timber from the Highway Land without prior approval of the local Manitoba Conservation office.

g) The Operator shall not remove fill, sand or gravel from the Highway Land without prior permission from the Province. Earthwork is restricted to minimal quantities required for grading of the Trail. Existing highway side slope and back slope ratios must be maintained.

h) The Operator shall use due care and attention to avoid damage to the Highway Land and in the event of damage to this property during construction, operation and maintenance of the Trail, the Operator shall immediately notify the Regional Maintenance Superintendent and restore this property to a satisfactory condition. In the event the Operator fails to restore the disturbed areas, the Province may perform the restoration required and charge the operator with the full cost thereof.

i) The Operator is responsible for provision and maintenance of appropriate warning signs in accordance with the requirements of the most recent version of the "TAC Bikeway Traffic Control Guidelines for Canada":

- to alert trail users to prepare to stop when approaching an intersecting road/driveway crossing; and
- to direct pedestrians and cyclists to use the appropriate side of the road or bridge where shoulder travel is being allowed (i.e. pedestrians shall travel facing traffic while bicycles and horses shall travel with traffic).

13. Maintenance

The Operator shall keep the Highway Land clean, free of debris and fire hazards.

14. Restoration

When the rights under this agreement end, the Operator shall contact the Department's Regional Maintenance Superintendent to determine the degree of restoration required. The Operator may be required to restore the Highway Land to the condition that it was in before this agreement was entered into and remove the Trail. If the Operator fails to do so in a timely fashion, the Province shall have the right to do so and the Operator shall be liable for the Province's costs.

15. Other permits/easements

a) This Agreement fulfils the requirement for a permit from the Department where the Trail crosses and is located on a departmental road (which includes a limited access highway).

b) A permit is required from the Department where the Trail crosses or is located within the 125 foot controlled area adjacent to a departmental road.

c) A permit is required from the Highway Traffic Board where the Trail crosses, or is located within the controlled area adjacent to, a limited access highway.

d) Approval of the local municipal authority is required where the Trail crosses a designated highway, which forms a connecting link between declared highway sections through the built-up area of a community.

e) The Operator will require:

- an easement from the Department where the Trail crosses adjoining land that is under the Department's administration and control;
- a Permit from Lands Branch where the Trail crosses adjoining Crown land that is under the Department of Conservation's administration and control; and
- a Land Use License or other acceptable document from affected landowners where the trail crosses adjoining privately owned lands.

f) All structures installed within Provincial Parks must conform with the requirements of The Provincial Park Lands Act and Regulations thereunder and any conditions prescribed by the Director of Parks.

g) The Operator shall comply with all applicable federal and provincial statutes and all applicable municipal bylaws and obtain any other approvals, licenses or permits that are required from other government departments and agencies, and acknowledges that this agreement may not necessarily be sufficient for the Operator's purposes. The Operator will be responsible for obtaining any environmental, water rights licensing and railway approvals that may be required.

h) Failure to obtain or comply with any applicable laws, bylaws, required licenses, permits or approvals shall constitute violation of this agreement and the Province shall have the right to immediately terminate all rights thereunder.

16. Workers Compensation

The Operator shall comply with all applicable rules and regulations with respect to workers compensation and workplace safety and health.

17. Weed control

The Operator shall be responsible for any desired weed control on the Highway Land beyond that normally provided by the Province as part of its regular highway maintenance program.

18. Operator will obtain expertise

a) If the Province is reasonably of the opinion that some form of expertise is required with respect to any matter which is part of or which arises from the rights granted under this agreement, the Operator shall obtain such expertise at its cost.

b) The Province may require detailed plans and analysis when the Trail impacts highway right-of-way due to significant geometric and/or topographical features such as hills, ditches, rock outcrops, rivers, waterways, drains or ravines. On request, the Operator must provide, at its cost, detailed plans and analysis prepared and sealed by a Professional Engineer registered in the Province of Manitoba or other appropriate qualified professionals addressing slope stability, drainage mitigation and all other trail location issues identified by the Department.

19. Notice

a) Any notice or other communication given under this Agreement shall be in writing and shall be delivered personally or sent by registered mail, postage prepaid.

   To the Province: Regional Office address

   To the Operator:

b) Either party may at any time change its address by advising the other party in writing.

20. Special provisions

IN WITNESS WHEREOF the parties hereto have executed this Agreement on the day and year first above written.

SIGNED IN THE PRESENCE OF:	)	HER MAJESTY THE QUEEN IN Right of the Province
	)	of Manitoba as represented by
	)	
	)	
	)	
	)	
_____		_____
WITNESS		for Minister of Transportation and Government Services
	)	
	)	
	)	
	)	
	)	
	)	
_____		_____
WITNESS (to signature if not sealed)		Operator

cc Director of Highway Planning & Design
Director of Bridges & Structures
Manager, Property Services