

Bill No. 130
2022

By-law No. A.- _____ - ____

A by-law to authorize and approve an Agreement between The Corporation of the City of London and Hutton House Association for Adults with Disabilities, to create a Food Hub at Cavendish Park, 136 Cavendish Crescent, and to authorize the Mayor and the City Clerk to execute the Agreement.

WHEREAS section 5(3) of the *Municipal Act, 2001* S.O. 2001, c.25, as amended, provides that a municipal power shall be exercised by by-law;

AND WHEREAS section 9 of the *Municipal Act, 2001* provides that a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under this or any other Act;

AND WHEREAS it is deemed expedient for The Corporation of the City of London (the "City") to enter into an Agreement with Hutton House Association for Adults with Disabilities (the "Agreement");

AND WHEREAS it is appropriate to authorize the Mayor and the City Clerk to execute the Agreement on behalf of the City;

NOW THEREFORE the Municipal Council of The Corporation of the City of London enacts as follows:

1. The Agreement attached as Schedule "A" to this by-law, being an Agreement between the City and Hutton House Association for Adults with Disabilities for the creation of a Food Hub at Cavendish Park, 136 Cavendish Crescent, is hereby authorized and approved.
2. The Mayor and the City Clerk are hereby authorized to execute the Agreement authorized and approved under Section 1 of this by-law.
3. This by-law shall come into force and effect on the day it is passed.

PASSED in Open Council on March 22, 2022

Ed Holder
Mayor

Michael Schulthess
City Clerk

First Reading – March 22, 2022
Second Reading – March 22, 2022
Third Reading – March 22, 2022

Schedule A

LICENSE AGREEMENT

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

BETWEEN

**The Corporation of the City of London
(hereinafter called the "City")**

And

**Hutton House Association for Adults with Disabilities
(hereinafter called the "Licensee")**

1. License to Use:

The City grants to the Licensee the exclusive license for use of the Site as a "FoodHub", for the sole purpose as set out in Schedule "A".

2. Term:

The term of this agreement shall commence on April 1, 2022 and extend until December 31, 2027.

3. Termination - By either Party:

The City or Licensee may terminate this agreement upon sixty days' written notice for any reason. Such termination shall be without penalty. Upon termination the Licensee shall within sixty days of the written notice remove all buildings, structures, gardens beds, signage, debris, etc and make good the level gravel surface of the works yard at the licensee's expense.

In the event of termination, the City shall provide the Licensee with reasonable time to claim the personal property of the Licensee or the Licensee's Group. In the event that such personal property is not claimed within a reasonable time, and in any event no later than 60 days from the date of termination, all such personal property shall become the property of the City and the City may dispose of such property as in its sole discretion it sees fit.

4. License Fee:

The Licensee shall pay the City \$2.00 Dollars as a license fee payable in advance to the City Treasurer before the first day of the term of this agreement. The fees will be reviewed annually and amended as reasonably determined by the City.

LICENSEE'S OBLIGATIONS

5. Responsible for Licensee's Group:

The Licensee shall be responsible for all members of the group affiliated with the Licensee and any person for whom the Licensee is at law responsible, including invitees ("Licensee's Group").

6. Abide by all Laws, By-laws, Rules, Regulations and Policies:

The parties agree that this agreement does not confer any interest to any person in the Site or the property of the City.

The Licensee agrees that all structures built or installed on the Site shall comply with the applicable zoning for the Site.

The Licensee agrees to obtain all necessary permits and approvals, including but not limited to those required by the City and the Upper Thames River Conservation Authority, as required.

7. The Licensee shall ensure that:

- 1) no dangerous materials including, but not limited to, flammable or explosive materials are brought onto the Property or Site;
- 2) vehicles parked on the Property are located in designated parking areas only;
- 3) there is no drinking of alcohol or open containers of alcohol on the Property;
- 4) there is no smoking or use of tobacco or marijuana in any form in the Property;
- 5) there is no posting or displaying offensive or illegal material;
- 6) there is no use of open flames;
- 7) the Site is used only for the use as defined in this agreement and particularly in Schedule "A"; and,
- 8) there is no inappropriate activity, as determined in the sole opinion of City staff.

8 Insurance:

- (a) Throughout the term of this agreement, the Licensee shall obtain and maintain the insurance coverage shown below:
- (i) Third party general liability insurance covering all claims for property damage and bodily injury, including death, arising out of the use and occupation of the Property by the Licensee. Such policy shall include the City as an additional insured with respect to this agreement and be in an amount not less than Five Million (\$5,000,000.00) Dollars including personal injury liability, broad form property damage liability, contractual liability, owners and contractors protective liability, non-owned automobile liability, contingent employer's liability, and shall contain a severability of interests clause and cross-liability clauses;
 - (ii) "All risks" property insurance (including earthquake, flood and collapse) in an amount equal to one hundred percent (100%) of the full replacement cost, insuring (1) all property owned by the Licensee, or for which the Licensee is legally liable, or installed by or on behalf of the Licensee, and located within the Building, including, but not limited to, fittings, installations, alterations, additions, partitions and all other Leasehold Improvements and (2) the Licensee inventory, furniture and movable equipment; such policy shall include a waiver of subrogation in favour of the City;
- (b) The Licensee shall not do, omit to do, or permit to be done or omitted to be done in or on the Property anything that may increase premiums or void coverage under the property insurance policies carried by the Licensee or any other Tenant, Licensee or Landlord on the Property described in this agreement.
- (c) The insurance described in (i), (ii) (iii) and (iv) above shall not be cancelled or permitted to lapse unless the City is notified in writing at least thirty (30) days prior to the date of the cancellation. The Licensee shall provide evidence of such insurance (Certificate of Insurance) delivered to the City promptly at inception of this agreement and thereafter prior to the insurance renewal date.
- (d) The City reserves the right to request such higher limits of insurance or other types of policies appropriate to this agreement as the City may reasonably require.
- (e) Failure to satisfactorily meet these conditions relating to insurance shall be deemed a breach of this agreement.

7. Indemnification:

The Licensee agrees to protect, defend, indemnify and save the City harmless from and against:

- (a) All liability, loss, claims, demands, actions, proceedings, fines or penalties, including any costs and expenses incurred by the City thereby, including reasonable legal fees, for loss, damage or injury, including death, to any person or persons and to any property arising in connection with this license as a result of any act or omission of the Licensee or the group represented by or affiliated with the Licensee or their members, officers, employees, agents or contractors, invitees, or other persons for whom the Licensee is at law responsible; and
- (b) Any claim or finding that any of the Licensee, the Licensee's employees or persons for whom the Licensee is at law responsible are employees of, or are in any employment relationship with the City or are entitled to any Employment Benefits of any kind; and,
- (c) Any liability on the part of the City, under the Income Tax Act (Canada) or any other statute (including, without limitation, any Employment Benefits statute), to make contributions, withhold or remit any monies or make any deductions from payments, or to pay any related interest or penalties, by virtue of any of the following being considered to be an employee of the City from Licensee: Licensee's employees or others for whom Licensee is at law responsible in connection with the licensing of the Premises or otherwise in connection with Licensee's operations.

8. Harmful Substances - No Alterations:

- (a) The Licensee acknowledges that the Property may contain toxic or harmful substances.
- (b) The Licensee and the Licensee's Group shall not make any alterations to the Property, without the prior written express approval of the City. Alterations that shall not be made without such approval include, but are not limited to: disturbing the ground.
- (c) The Licensee shall advise any person utilizing the Property of subsections and (b) of this agreement.

9. Not Use if Unsafe - Report Unsafe Conditions:

The Licensee shall not use the Premises or Property if it is unsafe and shall ensure that no person in the Licensee's Group shall use the Property if it is unsafe. The Licensee shall immediately report any unsafe conditions to the City.

10. Repair Costs:

The Licensee shall be responsible for any damage to the Property or other City property as a result of any act or omission of the Licensee or the Licensee's Group and, in the event of such damage, to pay the City's costs of repairing the damage.

11. Neat, Clean:

The Licensee shall maintain the appearance of the Site in a neat, clean and well-kept manner. The Licensee shall ensure that no rubbish, refuse or objectionable material accumulates in or about the Site. The Licensee shall place all refuse in garbage bags or receptacles. Where the City deems additional cleaning necessary, the Licensee shall pay to the City a Clean-up Charge in such reasonable amount as is determined by the City.

12. List of Current Officers/Directors:

The Licensee shall forthwith provide the City with a list of its current officers and directors for emergency and business contact purposes, and the Licensee shall forthwith provide updated lists whenever changes occur.

13. Orientation & Emergency Procedures Training:

The Licensee shall ensure that its staff, volunteers or members occupying space in the Site are trained in emergency procedures.

14. List of Equipment & Furnishings:

The Licensee shall provide the City with a list of structures and equipment the Licensee places on the Site.

15. Keys:

Where the City provides the Licensee with keys for the Site ("City Keys"), the Licensee shall return the City Keys forthwith upon demand by the City. The Licensee shall forthwith provide the City with the names of any individuals who from time to time are in possession of the City Keys. The Licensee shall ensure that no duplicates of the City Keys are made. The Licensee shall ensure that only individuals for whom it is at law responsible have access to the City Keys. The Licensee shall notify the City forthwith of any lost City Keys, or if it becomes aware that duplicate keys have been made. Should the City be required to change any locks as a result of lost City Keys or duplicate City Keys being made, the cost of same shall be borne by the Licensee. The Licensee is responsible to reimburse the City for the replacement of any lost City Keys.

The Licensee shall ensure all required procedures for opening and closing the space are adhered to.

16. Accepts Premises/Property in their Condition:

The Licensee accepts the Site in their condition as of the date of this agreement and shall not call upon the City to do or pay for any work or supply any equipment to make the Site more suitable for the proposed use by the Licensee.

17. No Assignment:

The Licensee shall not assign this agreement nor sublicense the Site without the prior written consent of the City.

18. Licensee not Agent of City:

Nothing in this agreement shall entitle or enable the Licensee or any subcontractor to act on behalf of, or as agent for, or to assume or create any obligation on behalf of, or to make any representation, promise, and warranty or guarantee binding upon, or otherwise to bind the City. The Licensee and any subcontractor of the Licensee and the City is independent and not the agent, employee, partner or joint venture of any of the others.

GENERAL PROVISIONS

19. City Not Liable - Loss or Damage - Personal Property:

The City shall not be liable for any damage to or loss of any personal property belonging to the Licensee or Licensee's Group.

20. Premises Not Available - Property or Premises Closed – Emergency:

Notwithstanding the use granted by this license, the Site shall not be available on days during which the Site have been closed by the City because of inclement weather or

any other reason, or if there is an emergency requiring the use of the Property by the City.

21. Signage:

The City may permit signage subject to prior written approval by the Deputy City Manager or designate. All signage must comply with the City's sign by-law.

22. Municipal Services

The Licensee shall supply their own source of water to the Site. The Licensee will provide all hoses, spigots and watering components. The Licensee will pay all monthly costs for the use of water.

Should an electrical service be desired, the Licensee will pay to install this service to the satisfaction of London Hydro, and all monthly costs for the use of electrical services for the operations of the Food Hub

23. No Representations or Warranties:

The City makes no representations, warranties or other assurance regarding suitability of the Property for use by the Licensee.

24. City's Right to Inspect:

The City reserves the right to inspect the Site at any time to ensure compliance with the terms of this agreement, any Federal or Provincial legislation, or municipal by-laws.

25. Circumstances beyond the Control of Either Party:

Neither party will be responsible for damage caused by delay or failure to perform under the terms of this agreement resulting from matters beyond the control of the City and the Licensee including strike, lockout or any other action arising from a labour dispute, fire (other than a fire caused by the Licensee's negligence), natural flood, act of God, war, riot or other civil insurrection, lawful act of public authority, all of which cannot be reasonably foreseen or provided against.

26. Waiver of Breach by City - Without Prejudice:

Any waiver by the City of any breach by the Licensee of any provisions of this agreement shall be without prejudice to the exercise by the City of all or any of its rights or remedies in respect of any continuance or repetition of such breach.

27. Licensee Has Read & Understood Agreement:

The Licensee acknowledges it has read this agreement, acknowledges that it has had the opportunity to obtain independent legal advice, and understands it and agrees to be bound by its terms and conditions.

28. Facsimile Copy of Licensee's Signature Sufficient:

A facsimile copy of the Licensee's signature shall be sufficient and binding.

29. Executed in Counterparts:

This agreement may be executed in any number of counterparts with the same effect as if all parties had signed the same document. All counterparts shall be construed together, and shall constitute one and the same agreement.

30. Notice:

Any notice required to be given to the City or the Licensee under this agreement shall be sufficiently given if delivered or mailed postage prepaid to the addresses below. Such notice shall be deemed to have been received on the date of its delivery or in the case of mailing, three (3) business days after it was delivered to the post office.

City's Address

City Clerk
The Corporation of the City of London
300 Dufferin Avenue
P.O. Box 5035
London, ON N6A 4L9

Licensee's Address

Hutton House Association
for Adults with Disabilities
654 Wonderland Road North
London, ON N6H 3E5

31. Headings:

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

IN WITNESS WHEREOF the Licensor has attested by the hands of its duly authorized officer this ___ day of _____,

HUTTON HOUSE ASSOCIATION FOR
ADULTS WITH DISABILITIES

Per: _____

Name: _____

Title: _____

Per: _____

Name: _____

Title: _____

I/We Have the Authority to Bind the Corporation

IN WITNESS WHEREOF The Corporation of the City of London has hereunto caused to be affixed its Corporate Seal attested by the hands of its proper signing officers pursuant to the authority contained in By-Law No. ____ of the Council of the Corporation of the City of London passed the _____ day of _____, as amended.

THE CORPORATION OF THE CITY OF LONDON

Ed Holder,
Mayor

Michael Schulthess, City Clerk

DESCRIPTION OF SCHEDULES

Schedule "A" – Description and terms of Food

HubSchedule "B"- Location of Food Hub

Schedule "C" -Conceptual Site Plan of the Food Hub

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SCHEDULE A
Description and Terms of Food Hub

THIS AGREEMENT WITNESSETH THAT in consideration of the mutual promises, covenants and agreements hereinafter, the parties agree as follows:

1. The parties agree that the Food Hub shall be located within the Cavendish Park Works Yard, and the location being more particularly set out in Schedule "B" attached hereto.
2. The parties agree that the layout and design of the Food Hub shall be in accordance with Site Plan in Schedule "C" attached hereto.
3. Hutton House Association for Adults with Disabilities agrees that the Food Hub shall be constructed and installed at the sole risk and expense of Hutton House Association for Adults with Disabilities in conformity with Zoning By-law Z.-1 and the Site Plan Control By-law C.P.-1455-541, as shown in Schedule "C" including, but not limited to:
 - a) construction of raised gardens.
 - b) a trailer for administrative uses.
 - c) hoop houses.
 - d) accessory buildings.

Should the zoning of the lands be amended, Hutton House Association for Adults with Disabilities shall work with the City to alter the Site Plan to accommodate further Site enhancements in compliance with the new zone.

4. Hutton House Association for Adults with Disabilities will operate the Food Hub to further their Community Programs and may coordinate this work with Community partners as desired. All Operations of the Food Hub shall conform to the Licensed services that Hutton House Association for Adults with Disabilities provides

SCHEDULE B
Location of Food Hub

SCHEDULE C
Layout of Food Hub