

Bill No. 427
2018

By-law No. A.-_____

A by-law to approve and adopt a standard form Licence Agreement for the use of recreation spaces and assets; and to authorize the Managing Director, Parks and Recreation or the Managing Director Neighbourhood, Children and Fire Services, or their written designate, to insert information and execute Licence Agreements not exceeding \$10,000, for the use of recreation spaces and assets, which employ this form and to repeal By-law No A.-6690-195 and any amendments thereto.

WHEREAS subsection 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 section 10 of the *Municipal Act, 2001* provides that the City may provide any service or thing that the City considers necessary or desirable for the public, and may pass by-laws respecting same, and respecting economic, social and environmental well-being of the City, and the health, safety and well-being of persons;

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

1. The standard form Licence Agreement to be entered into between The Corporation of the City of London and individuals or incorporated organizations requesting to use a recreation space or asset in the care and control of the City of London, attached as Schedule "A" to this by-law, is approved and adopted as the standard form for all such Licence Agreements.

2. If the dollar value of the agreement does not exceed \$10,000, The Managing Director, Parks and Recreation, or Managing Director Neighbourhood, Children and Fire Services, or their written designate, is hereby authorized to:

- (1) insert the following information into the standard form License Agreement approved in section 1 above:
 - (a) name of licensee;
 - (b) recreation space or asset;
 - (c) term of Agreement;
 - (d) fees, additional fees;
 - (d) licensee address; and

(2) execute the License Agreement approved under section 1 above.

3. By-law No. A.-6690-195 entitled "A by-law to approve and adopt the standard form for Office/Storage Space Licence Agreements and to authorize the Executive Director of Community Services, to execute contracts which employ this form", and its amendments, are hereby repealed.

4. This by-law shall come into force and effect on the day it is passed.

PASSED in Open Council on July 24, 2018.

Matt Brown
Mayor

Catharine Saunders
City Clerk

First reading – July 24, 2018
Second reading – July 24, 2018
Third reading – July 24, 2018

SCHEDULE "A"

LICENCE AGREEMENT

THIS IS A STANDARD FORM AGREEMENT - TERMS CANNOT BE ALTERED WITHOUT
THE APPROVAL OF MUNICIPAL COUNCIL

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

BETWEEN

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

and

(hereinafter called the "Licensee")

WHEREAS the City is the registered owner of property described as _____, located at
Municipal Address: _____ ("Property") in the City of London;

AND WHEREAS the Licensee has requested permission to use certain portions of the Premises,
described _____ and more particularly set out in Schedule "A", attached to this
agreement ("Premises");

AND WHEREAS the City considers it in the interest of the municipality to provide support to the
Licensee and its services and these services benefit the community;

NOW THEREFORE in consideration of the premises and other good and valuable consideration,
the receipt of which is hereby acknowledged and admitted, the parties agree as follows:

1. Licence to Use:

The City grants to the Licensee the non-exclusive licence for use of the common facilities
in the Premises, and license to use _____ in the Premises, for the
sole purpose as set out in Schedule "A".

2. Term:

The term of this agreement shall commence on _____ and shall terminate on
_____, or shall terminate on such earlier date as set out in this agreement or as
determined by the City in its sole discretion.

3. Termination - By the City:

The City may terminate this agreement immediately without notice for any breach of the
agreement or for any reason as determined by the City in its sole discretion. Such
termination shall be without penalty.

4. Termination - By the Licensee:

The Licensee may terminate this agreement upon thirty days' written notice for any reason.
Such termination shall be without penalty.

5. License Fee:

The Licensee shall pay the City _____ Dollars plus applicable taxes as a license fee
payable in advance to the City Treasurer before the first day of the term of this agreement,
and thereafter in advance on a monthly/annual basis. The fees will be reviewed annually
and amended as reasonably determined by the City.

6. Additional Fees:

The Licensee additionally agrees to pay _____. (e.g utilities,
cleaning charges.)

LICENSEE'S OBLIGATIONS

7. 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").

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

The Licensee shall abide by and obey all applicable laws, by-laws, rules, regulations and policies of the City, the Province of Ontario and the Government of Canada. The Licensee shall ensure that the Licensee's Group abides by and obeys all laws, by-laws, rules and regulations of the City, the Province of Ontario and the Government of Canada. The City may inspect the Premises at any time to ensure such compliance.

9. The Licensee shall ensure that:

- (i) the number of persons using the Premises does not exceed its approved capacity;
- (ii) no dangerous materials, including but not limited to flammable or explosive materials, are brought onto the Property or Premises;
- (iii) vehicles parked on the Property are located in designated parking areas only;
- (iv) there is no drinking of alcohol or open containers of alcohol on the Premises;
- (v) there is no smoking or use of tobacco or marijuana in any form in the Premises;
- (vi) there is no posting or displaying offensive or illegal material;
- (vii) there is no use of open flames;
- (viii) the Premises is used only for the use as defined in this agreement and particularly in Schedule "A"; and
- (ix) there is no inappropriate activity, as determined in the sole opinion of City staff.

10. 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 Premises 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;
 - (iii) Business interruption insurance as the Licensee may deem appropriate.
 - (iv) Tenant's legal liability insurance covering the full replacement cost of the Premises, including loss of their use.
- (b) The Licensee shall not do, omit to do, or permit to be done or omitted to be done in or on the Premises 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 Premises 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.

11. 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.

12. Asbestos - Harmful Substances - No Alterations:

- (a) The Licensee acknowledges that the Premises and/or Property may contain asbestos or other toxic or harmful substances.
- (b) The Licensee and the Licensee's Group shall not make any alterations to the Property or Premises, without the prior written express approval of the Managing Director, Parks and Recreation of Managing Director, Neighbourhood, Children, and Fire Services, or delegate. Alterations that shall not be made without such approval include, but are not limited to, the following: drilling holes in any walls, floors or ceilings; inserting nails into any walls, floors or ceilings; making any structural changes; painting walls.
- (c) The Licensee shall advise any person utilizing the Premises of subsections (a) and (b) of this agreement.

13. 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 Premises or Property if it is unsafe. The Licensee shall immediately report any unsafe conditions to the City.

14. Repair Costs:

The Licensee shall be responsible for any damage to the Premises 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, plus an administration charge of twenty percent of damage, in such amount as is determined by the City. The minimum administration charge for damage is \$50.00.

15. Neat, Clean:

The Licensee shall maintain the appearance of the Premises in a neat, clean and well-kept manner. The Licensee shall ensure that no rubbish, refuse or objectionable material accumulates in or about the Premises. 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.

16. 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.

17. Orientation & Emergency Procedures Training:

The Licensee shall ensure that its staff, volunteers or members occupying space in the Premises are trained in emergency procedures and are oriented to the Premises by the City. The Licensee shall request the City to provide such training and orientation.

18. List of Equipment & Furnishings:

The Licensee shall provide the City with a list of equipment and furnishings the Licensee places in the Premises

19. Costs for Telephone:

The Licensee assumes all costs for telephone system enhancements, related installation costs, including computer linkages and monthly billing. Should the Licensee use the existing City telephone system, the Licensee shall pay proportionate fees and monthly charges, as determined by the City.

20. Keys:

Where the City provides the Licensee with keys for the Property and/or Premises ("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 that any individual associated with the Licensee who possesses a City key shall have had a building orientation with the City's Facilities Operations Staff prior to accessing the space.

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

21. Accepts Premises/Property in their Condition:

The Licensee accepts the Premises and Property 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 Property or Premises more suitable for the proposed use by the Licensee.

22. No Assignment:

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

23. 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

24. 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.

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

Notwithstanding the use granted by this license, the Property and Premises shall not be available on days during which the Property or Premises 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 Premises by the City.

26. Signage:

The City may permit signage subject to prior written approval by the Managing Director or designate. The Licensee shall not install any signs, but instead all installations of signs will be completed by the City. The Licensee shall pay the City forthwith upon receiving the City's invoice. All signage must comply with the City's sign by-law.

27. Termination:

In the event of termination, the City shall return the license fee on a pro-rata basis, and the City shall not otherwise be liable in any way to the Licensee or the Licensee's Group.

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.

28. No Representations or Warranties:

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

29. City's Right to Inspect:

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

30. Care Custody and Control Remains with the City:

The complete care, custody and control of the Property and Premises shall at all times remain with the City through its management, supervisory, custodial and maintenance employees, excluding contents owned by the Licensee or the Licensee's Group.

31. 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.

32. 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.

33. 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.

34. Facsimile Copy of Licensee's Signature Sufficient:

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

35. 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.

36. 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

37. 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 parties hereto have duly executed this agreement.

SIGNED, SEALED AND DELIVERED

LICENSEE:

Date

Per (Signature):

Print Name Print Title

Date

Per (Signature):

Print Name Print Title
**I/We Have the Authority to Bind the Corporation*

THE CORPORATION OF THE CITY OF LONDON

Date

Per (Signature):

Authorized Signature