



The Municipal Corporation of the Town of Fort Erie

By-law No. 56-2020

Being a By-law to Authorize the Entry into Licence Agreement with The Niagara Parks Commission (Riverwalk)

Whereas by a Licence Agreement entered into between The Niagara Parks Commission (the "Commission") and The Corporation of the Town of Fort Erie (the "Town") on June 27, 2003, the Commission granted to the Town a licence of the lands and premises known as "Riverwalk" for the purposes of a public park for a period of five (5) years to and including June 26, 2008, and

Whereas the Commission and the Town entered into a Renewal Agreement for a further term of five (5) years, which expired on June 29, 2013, and

Whereas the Commission and the Town entered into a Renewal Agreement for a further term of five (5) years, which expired on June 29, 2018, and

Whereas Report No. CAO-05/LC-01-2018 was considered and approved at the Council-in-Committee Meeting held on February 12, 2018, directing staff to discuss the renewal of the Licence Agreement with the Commission for a further five (5) year term with a provision to keep the shore line clear along the "Riverwalk" so that the view is not obstructed, and

Whereas the discussions have taken place and a Licence Agreement with the Commission for a further five (5) year term with the provision to keep the shore line clear along the "Riverwalk" so that the view is not obstructed has been agreed to, and

Whereas it is deemed desirable to enter into a Licence Agreement with The Niagara Parks Commission for the use of "Riverwalk" for a five (5) year term with a provision to keep the shore line clear along the "Riverwalk" so that the view is not obstructed,

Now therefore the Municipal Council of The Corporation of the Town of Fort Erie enacts as follows:

1. **That** the entry into a Licence Agreement with The Niagara Parks Commission for the use of the lands and premises known as "Riverwalk" for the purposes of a public park, for a five (5) year term with a provision to keep the shore line clear so that the view is not obstructed, substantially in the form of Schedule "A" attached to and forming part of this by-law, is authorized and approved.
2. **That** the Mayor and Clerk are authorized and directed to execute the Licence Agreement and affix the corporate seal thereto.

3. **That** the Clerk of the Town is authorized to effect any minor modifications, corrections or omissions solely of an administrative, numerical, grammatical, semantical or descriptive nature to this by-law or its schedules after the passage of this by-law.

Read a first, second and third time and finally passed this 15th day of June, 2020.

Mayor

Clerk

I, Carol Schofield, the Clerk, of The Corporation of the Town of Fort Erie certifies the foregoing to be a true copy of By-law No. 56-2020 of the said Town. Given under my hand and the seal of the said Corporation, this day of , 20

This Licence Agreement made in duplicate this _____ day of _____, 2020,
with force and effect as of June 29, 2018.

B E T W E E N:

THE NIAGARA PARKS COMMISSION

hereinafter called the "Licensor"

OF THE FIRST PART;

- and -

THE CORPORATION OF THE TOWN OF FORT ERIE

hereinafter called the "Licensee"

OF THE SECOND PART;

WHEREAS the Licensor is the owner of certain parklands located at the property known as "Riverwalk" in the Town of Fort Erie, in the Regional Municipality of Niagara, as shown on Appendix "A" attached hereto and forming part of this agreement;

AND WHEREAS the parties entered into a Licence Agreement dated June 27th, 2003, whereby the Licensor granted to the Licensee permission by way of a non-exclusive licence to use the Licensor's property as a public park for a term expiring on the 29th day of June 2013, at an annual fee and upon terms and conditions prescribed therein;

AND WHEREAS the parties entered into the renewal of the Licence Agreement dated October 9th, 2013 for a further five-year term expiring on the 29th day of June 2018;

AND WHEREAS the parties have agreed to enter into a new Licence Agreement to permit the Licensee to continue to use the Licensor's property as hereinafter described as a public park, at an annual fee and upon terms and conditions hereinafter set forth;

NOW THEREFORE THIS AGREEMENT WITNESSETH THAT in consideration of the signing of this agreement, the mutual covenants and agreements contained herein and the sum of TWO DOLLARS (\$2.00) now paid by the Licensee to the Licensor, the receipt and sufficiency whereof is hereby acknowledged, the parties hereto mutually covenant and agree as follows:

1. The Licensor hereby grants a non-exclusive licence to the Licensee to use certain parklands located at the property known municipally as "Riverwalk and Freedom Park in the Town of Fort Erie, in the Regional Municipality of Niagara, as shown on Appendix "A" attached hereto and forming part of this agreement (hereinafter the "Licenced Premises") solely for purposes of a public park, for and during a term of (5) five years commencing the 29th day of June, 2018, and expiring on the 30th day of June 2023, at an annual fee of One Dollar (\$1.00) payable in advance on the first day of each year of the term, and subject to the terms and conditions contained herein.
2. The parties further agree that at the expiration of the five (5) year term hereby granted, the Licensee shall have an option to renew the licence for a further five (5) year term, on the same terms and conditions, which option shall be exercised in writing by the Licensee at least six (6) months prior to the expiry of the term.
3. Either party may terminate this licence for any reason at any time upon on six (6) months prior written notice.
4. The Licensee covenants:
 - (a) to use the Licenced Premises solely for purposes of a public park;
 - (b) not to assign this licence without the Licensor's prior written approval, which may be withheld by the Licensor or subject to such terms and conditions as the Licensor determines in its sole discretion;
 - (c) not to do or permit any act or thing which constitutes a nuisance or which is offensive or an annoyance to the Licensor, or the public generally. Without limiting the generality of the foregoing, the Licensee shall not cause or permit any unusual or objectionable noises, lights or odours to emanate from the Licenced Premises;
 - (d) not to erect any signs without the prior written approval of the Licensor which may be withheld by the Licensor in its sole discretion;
 - (e) not to construct any dock or other boat accommodation along the water's edge;
 - (f) to be solely responsible for the costs, maintenance and replacement of all "hard" features located on or within the Licenced Premises including water lines, electrical lines, benches, garbage receptacles, light fixtures, paving, and shoreline protection, and the reinstatement of any damage caused to the Licenced Premises as a result of the maintenance and replacement of such "hard" features to the satisfaction of the Licensor;
 - (g) to be responsible for the payment of all water and electrical bills for the Licenced Premises;

- (h) not to make any alteration in or addition to the Licenced Premises, including but not limited to any structure or “hard” feature thereon, or the installation of any new structure or “hard” feature, without the prior written consent of and approval of plans by the Licensor;
- (i) to comply with all applicable statutes, regulations, by-laws of any federal, Provincial or Municipal authority that in any way affect the Licenced Premises or their use by the Licensee; and,
- (j) not to introduce onto the Licenced Premises or allow to be brought onto the Licenced Premises, any toxic or hazardous substance or any substance which if it were to remain or escape from the Licenced Premises, would contaminate the Licenced Premises or any other property to which it came in contact.

5. The Licensor covenants to be solely responsible for the costs, maintenance and replacement of “soft” features located on or within the Licenced Premises such as litter pick-up, grass cutting, planting bed and plant material installation and maintenance, sweeping and clearing of hard surfaces, and clearing of shoreline debris, to a standard determined by the Licensor in its sole discretion. The Licensor shall not be liable to the Licensee for any interference or inconvenience caused by such works carried out by the Licensor on the Licenced Premises, or by any failure or interruption in the supply of water, electricity, or any other facility or utility. The Licensor shall, at its sole discretion, maintain scenic views of the Niagara River from the Licensed premises in keeping with ensuring benefits for everyone (people who travel, the adjacent communities, and the respective natural, social, and cultural environments). The Licensor’s maintenance of the scenic views include the management of shoreline vegetation encompassing removal of invasive species, and active maintenance through selective pruning of native plant material to maintain framed scenic views of the Niagara River. The Licensor agrees to manage, throughout a long-term plan, identified invasive plant species and replace with low-lying plant material which will not impact or obstruct the scenic views of the Niagara River. The Licensor will maintain the whole length of the Riverwalk to a standard as illustrated on Appendix “B” attached hereto.
6. The parties agree to provide each other with advance notice of all public and private events proposed within the Licenced Premises for purposes of co-ordinating the scheduling of, and applicable requirements for, all such events within the Licenced Premises. The Licensor reserves the right to impose such terms and conditions on the use of the Licenced Premises for purposes of public and private events as may be required.

7. The Licensor authorizes the encroachment of certain restaurant patios/decks onto the Licenced Premises, subject to the following:

- (a) the owner(s) of the land(s) on which the encroaching patio/deck is primarily located (the "Deck Owner") and any additional party in occupancy thereof (pursuant to this Licence or otherwise) (the "Deck Occupant") shall indemnify and save harmless the Licensor, on a joint and several basis, from and against any and all liabilities, damages, losses, expenses, costs, claims, suits and/or actions arising from the presence and/or use of such patio/deck;
- (b) the Deck Owner and the Deck Occupant shall, from time to time, provide the Licensor with evidence of reasonable property and liability insurance coverage for such encroaching restaurant patio/deck;
- (c) the Deck Owner and the Deck Occupant shall, within 30 days following receipt of a written request from the Licensor (issued by the Licensor in its sole and absolute discretion), remove such encroaching restaurant patio/deck from the Licenced Premises and restore same to its prior condition;
- (d) the Licensee shall cause the Deck Owner and the Deck Occupant (if applicable) to execute and deliver to the Licensor, within 10 days following execution of this Agreement, a written covenant to be bound by each of the obligations set out in this Section 7; and
- (e) for greater certainty, all rights referred to in this Section 7 shall cease to have force and effect from and after the termination of this Agreement.

8. The Licensee shall, during the term of this licence, at its sole cost and expense, obtain and maintain general liability insurance for property damage and public liability in respect of the operations of the Licensee on the Licenced Premises which are the subject of the licence hereby granted, naming the Licensor as an additional insured, in the amount of Five Million Dollars (\$5,000,000.00) and in such form as shall be satisfactory to the Licensor, to protect the Licensor from all claims for property damage and personal injury, including death, arising out of the exercise of the licence hereby granted and the use of the Licenced Premises by the Licensee. The Licensee shall deliver to the Licensor a certificate of insurance for such coverage naming the Licensor as an additional insured with a cross-liability and/or severability of interest clause upon execution of this agreement and from time to time upon request.

9. The Licensee shall and does hereby release, discharge and covenant and agree at all times to indemnify and save harmless the Licensor from and against any and all liabilities, damages, losses, expenses, costs, claims, suits or actions arising out of the use of the Licenced Premises by the Licensee, or arising out of any breach, violation or non-performance on the part of the Licensee of this agreement.
10. The Licensor shall and does hereby release, discharge and covenant and agree at all times to indemnify and save harmless the Licensee from and against any and all liabilities, damages, losses, expenses, costs, claims, suits or actions arising out of any breach, violation or non-performance on the part of the Licensor of this agreement.
11. The Licensee shall accept sole responsibility for risk in respect of loss, damage, injury, destruction or accident from whatsoever cause arising, for all "hard" features, installations, materials or articles of any nature or kind at any time laid, erected, brought upon or placed upon the Licenced Premises.
12. The Licensor, its agents, officers, employees and other persons for whom the Licensor is legally responsible shall not be liable for damage to, or destruction or loss of, any property or improvements on or to the Licenced Premises, or any bodily injury (including death), personal injury, damages for personal discomfort or illness or consequential injury or damage (including without limitation, loss of business income) sustained by the Licensee or any of its agents, officers, employees, customers, invitees or any other person who may be in or upon the Licenced Premises except where caused by the negligence of the Licensor, and further, except only in respect of negligence relating to any maintenance which is expressly required by this agreement to be performed by the Licensor.
13. The Licensee hereby grants to the Licensor a right of access across the northern 5.4 meters (17.8 feet) of the Licensee-owned lands municipally known as 120 Niagara Boulevard, in order to permit the Licensor to access and perform maintenance duties related to the Licenced Premises in accordance with this agreement.
14. Any notice, demand, acceptance or request provided for in this agreement shall be in writing and shall be deemed to be sufficiently given if personally delivered or sent by registered mail as follows:

To the Licensee at:
The Corporation of the Town of Fort Erie
Municipal Centre, One Municipal Centre Drive
Fort Erie, Ontario L2A 2S6
Attention: Town Clerk

To the Licensor at:
The Niagara Parks Commission
Box 150, 7400 Portage Road
Niagara Falls, Ontario L2E 6T2
Attention: Manager of Property

Any such notice shall be deemed to have been given on the date of delivery or on the second (2nd) day after the date of mailing by registered mail.

15. This agreement shall be governed by and interpreted in accordance with the laws of the Province of Ontario.
16. If any provision of this agreement is illegal, unenforceable or invalid, it shall be considered separate and severable and all the remainder of this agreement shall remain in full force and effect as though such provision had not been included in this agreement but such provision shall nonetheless continue to be enforceable to the extent permitted by law.
17. There are no covenants, representations, agreements, warranties or conditions in any way relating to the subject matter of the licence or this agreement, express or implied, collateral or otherwise, except as expressly set forth herein, and this agreement constitutes the entire agreement between the parties and may not be modified except by subsequent written agreement duly executed by the Licensor and the Licensee.
18. This agreement shall be binding upon and shall enure to the benefit of the parties hereto and their respective successors and permitted assigns.

(Signature page follows)

IN WITNESS WHEREOF the Parties have on the date set out above, affiliated their name under the hand of their proper signing officers duly authorized in that behalf.

THE NIAGARA PARKS COMMISSION

Name: Sandie Bellows

Title: Chair

Name: David Adames

Title: Chief Executive Officer

I/we have authority to bind the Corporation

**THE CORPORATION OF THE
TOWN OF FORT ERIE**

Mayor

Town Clerk

We are authorized to bind the Corporation



UTM NAD83 Zone 17N

0 20 40 80 Meters

Appendix A:
Riverwalk Park & Freedom Park



Appendix “B”

View Window Standard

