

The Corporation of the Town of Tecumseh

By-Law Number 2022-087

Being a by-law to authorize the execution of an amending Licence Agreement between The Corporation of the Town of Tecumseh and Conseil scolaire catholique Providence

Whereas the Conseil scolaire de district des écoles catholiques du Sud-Ouest, now known as Conseil scolaire catholique Providence (School Board), owns certain lands legally described as Part 1 Lot, Concession West River Peche, in the Town of Tecumseh (Town) as Part 1 on Plan 12 R-11069;

And whereas the Town and School Board entered into a Licence Agreement dated March 1, 2003 to allow the Town to develop a portion of the above described lands at the expense of the Town;

And whereas the term of the Agreement expires on December 31, 2022, and the School Board and Town wish to extend the term of the Agreement subject to certain amendments to the Agreement;

And Whereas pursuant to the *Municipal Act*, S.O. 2001, c.25 s.5(3), the powers of a municipality shall be exercised by by-law.

Now Therefore the Council of The Corporation of The Town of Tecumseh enacts as follows:

1. **That** the Mayor and the Clerk are hereby authorized and empowered on behalf of The Corporation of the Town of Tecumseh to execute an amending Licence Agreement with Conseil scolaire catholique Providence dated the 1st day of January 2023, a copy of which Licence Agreement is attached hereto and forms part of this by-law and to do such further and other acts which may be necessary to implement the Licence Agreement;
2. **That** this by-law shall come into full force and take effect on the date of the third and final reading thereof.

Read a first, second, third time and finally passed this 22nd day of November, 2022.

Gary McNamara, Mayor

Jennifer Alexander, Acting Clerk

AMENDED AND RESTATED LICENSE AGREEMENT

THIS AGREEMENT made this 1st day of January, 2023

BETWEEN:

THE CORPORATION OF THE TOWN OF TECUMSEH,

hereinafter called the “**Town**”

Of the First Part;

- and

CONSEIL SCOLAIRE CATHOLIQUE PROVIDENCE

hereinafter called the “**School Board**”

Of the Second Part.

WHEREAS:

- 1) The School Board owns certain lands situated within the geographic boundaries of the Town, as are more particularly described in Schedule “A” attached hereto (the “**School Board Lands**”);
- 2) Pursuant to a License Agreement dated March 1, 2003 (the “**Original License Agreement**”), Conseil scolaire de district des écoles catholiques du sud-ouest, the predecessor-in-interest to the School Board, granted a non-assignable exclusive license to allow the Town to develop and use a portion of the School Board Lands (the “**Original Park Lands**”) at the expense of the Town, in accordance with the provisions of the Original License Agreement;
- 3) The Town wishes to develop and use a further portion of the School Board Lands (the “**Additional Park Lands**”) at the expense of the Town, in accordance with the provisions of this Agreement; and
- 4) The School Board and the Town have agreed to amend the Original License Agreement and to enter into this amended and restated license agreement and restate the Original License Agreement on the terms set out herein.

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the premises contained herein and other good and valuable consideration (the receipt and sufficiency of such consideration being hereby acknowledged by the Parties as sufficient), the Parties hereto covenant, promise and agree one with the other as follows.

ARTICLE I-DEFINITIONS

In this Agreement and the recitals contained in this Agreement, unless something in the subject matter or context is inconsistent therewith:

- 1.1 “**Additional Park Lands**” has the meaning set forth in the Recitals;
- 1.2 “**Agreement**” means this Amended and Restated License Agreement;
- 1.3 “**Effective Date**” means the 1st day of August, 2003, being the commencement date of the Original License Agreement;
- 1.4 “**New School/School Board Facilities**” has the meaning set out in Section 7.12;
- 1.5 “**Original License Agreement**” has the meaning set forth in the Recitals;
- 1.6 “**Original Park Lands**” has the meaning set forth in the Recitals;
- 1.7 “**Park Lands**” means, collectively, the Original Park Lands and the Additional Park Lands, as shown outlined in red on the Site Plan;
- 1.8 “**School Board Lands**” has the meaning set forth in the Recitals;
- 1.9 “**Site Plan**” means the site plan attached hereto as Schedule “B”;
- 1.10 “**Regular School Hours**” means the time between 6:00 a.m. and 6:00 p.m. from Monday to Friday during the months of September, October, November, December, January, February, March, April, May and June in each and every year of this Agreement;
- 1.11 “**Services**” means those amenities, facilities, works and services pertaining to the Park Lands; and
- 1.12 “**Term**” means the period commencing on the Effective Date and ending on the 30th day of November, 2043.

ARTICLE II-EXCLUSIVE RIGHT TO USE THE PARK LANDS

- 2.1 For the duration of the Term of this Agreement, the School Board grants to the Town the exclusive right to use the Park Lands, subject to the following:
 - (a) the School Board’s right to use the Park Lands during Regular School Hours; and
 - (b) the School Board’s right to use the Park Lands outside Regular School Hours, with the written permission of the Town, which permission cannot be unreasonably withheld.

ARTICLE III-TOWN’S OBLIGATIONS

- 3.1 During the Term of this Agreement the Town shall, at its own expense:

- (a) subject to the provisions of Article 3.2 hereof, supply, construct and install the Services on the Park Lands in the manner, location and design shown in the Site Plan and otherwise in accordance with the terms of this Agreement;
- (b) provide all labour, equipment, tools and machinery necessary to maintain the Services;
- (c) provide, during Regular School Hours, School Board's students and teachers with access to all outdoor sports facilities of the Town located adjacent to the School Board Lands;
- (d) indemnify and hold harmless the School Board and its respective officers, trustees, duly authorized agents, employees and servants from and against all loss or damage and from and against any and all claims, actions, suits or proceedings brought against them for personal injury, property damage, death and any other losses, damages, charges or expenses, including legal fees, arising in connection with, or by reason of any act, omission or negligence of the Town on or about the Park Lands; and
- (e) if requested in writing by the School Board, purchase a policy or policies of insurance covering the perils delineated in paragraph 3.1(d) above, said policy or policies to include an endorsement showing the School Board as an additional named insured. All such policies of insurance shall additionally contain an endorsement giving School Board ten (10) days prior written notice in advance of any material alteration or cancellation of said policies. All such policies shall be written by insurers authorized to do business in the Province of Ontario and shall have coverage in the minimum cumulative amount of \$5,000,000.00. A copy of all such policies of insurance, including copies of all renewal documentation, shall, if requested by School Board, be delivered to School Board.

3.2 The parties acknowledge and agree that the portion of the Site Plan pertaining to the Park Lands is intended to depict generally a concept plan only of the Services to be constructed on the Park Lands by the Town. Notwithstanding any other provision of this agreement, the Services to actually be constructed on the Park Lands by the Town shall be determined by the Town, based upon the needs of the community, subject to the following:

- (a) the Services shall include soccer facilities and shall not include baseball facilities; and
- (b) the Services shall include parking for not less than 113 motor vehicles.

ARTICLE IV-ADDITIONAL OBLIGATIONS OF THE TOWN

4.1 Subject to the Town's obligations to construct and maintain the Services depicted on the Site Plan, the Town agrees that it will not make any further changes or alterations to the Park Lands without first obtaining the written consent of the School Board, which consent may not be unreasonably withheld.

- 4.2 If the School Board, acting reasonably, decides that any particular item of maintenance or repair to the Services depicted in the Site Plan has not been completed by the Town, the School Board shall have the right to give notice to the Town requiring the Town to commence to carry out such item of maintenance or repair within two (2) business days of the date of giving of such notice and complete the same with due dispatch. If the Town has not carried out or caused to be carried out such item of maintenance or repair within the said two (2) business days of the date of giving such notice, the School Board shall be entitled to enter the lands at any time without prior written permission, to carry out, or cause to be carried out the necessary work in order to correct the said item of maintenance or repair, and the Town shall forthwith upon receipt of invoices, reimburse the School Board for all of the costs it incurred for the work carried out. Provided however, that the indemnity contained in subsection 3.1(d) shall not apply with respect to any work carried out by the School Board pursuant to this section 4.2.

ARTICLE V-ASSIGNMENT

- 5.1 The license created by this Agreement is personal to the Town and shall not be capable of being assigned to any other party.
- 5.2 The School Board agrees that it will not sell, convey, assign or otherwise deal with its interest in the Park Lands during the Term of this Agreement.

ARTICLE VI-NOTICE

- 6.1 Any notice to be given by one party to this agreement to the other party to this agreement shall be sufficiently given if made in writing and addressed to the other party by means of telex, telegraph, or facsimile or by prepaid registered mail. In the event such notice shall be given by telex, telegraph, or facsimile, it shall be deemed to have been received on the first business day after the transmission of such notice, and in the event that such notice shall be given by registered mail, it shall be deemed to have been received upon the third business day next following the date of deposit of such notice in a government post office.
- 6.2 In the case of notice being given to the Town, such notice shall be sent to the following address:

The Corporation of the Town of Tecumseh
917 Lesperance Road
Tecumseh, Ontario N8N 1W9

Attention: Chief Administrative Officer
Facsimile: (519) 735-6712.

- 6.3 In the case of notice being given to the School Board, such notice shall be sent to the following address:

Conseil scolaire catholique Providence
7515 Forest Glade Drive
Windsor, ON
N8T 3P5

Attention: Surintendance des affaires
Facsimile: (519) 948-1091

- 6.4 Any Party to the Agreement may change particulars of its address and/or facsimile number for notice to the other party to this agreement in the manner set out herein.

ARTICLE VII-GENERAL MATTERS

- 7.1 This Agreement shall be registered on title to the School Board Lands at the expense of the Town. To the extent that any schedule attached hereto is removed to accommodate registration on title, the parties acknowledge and agree that they have retained a copy of this Agreement inclusive of all schedules.
- 7.2 This agreement shall enure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, successors (including subsequent owners of the School Board Lands) and assigns. The burden and benefit of this Agreement shall run with the School Board Lands.
- 7.3 This agreement shall be governed by, and interpreted according to, the laws of the Province of Ontario, and the laws of Canada applicable therein. The parties hereby attom to the exclusive jurisdiction of the Courts of Ontario.
- 7.4 If any term, covenant, or condition of this agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this agreement, or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term, covenant or condition of this agreement shall be valid and enforceable to the fullest extent permitted by law.
- 7.5 The division of this agreement into articles, sections and subsections and the insertion of headings into this agreement are for convenience or reference only and shall not affect in any way the construction or interpretation of this agreement.
- 7.6 This agreement may be executed in several counterparts, each of which when so executed shall be deemed to be an original, and such counterparts together shall constitute one and the same instrument and shall be effective as of the date set out above.
- 7.7 Schedules and other documents attached or referred to in this agreement are an integral part of this agreement and are hereby incorporated into this agreement by reference.

- 7.8 This agreement constitutes the entire agreement among the parties and except as herein stated and in the instruments and documents to be executed and delivered pursuant hereto, contains all of the representations and warranties of the respective parties. There are no oral representations or warranties among the parties of any kind. This agreement may not be amended or modified in any respect except by written instrument signed by all parties.
- 7.9 This agreement shall enure to the benefit of and be binding upon the parties hereto, their respective successors and assigns.
- 7.10 During the Term of this Agreement, conditional upon the Town continuing to fulfill all of its obligations under Article III of this Agreement and subject to the requirements of the *Education Act* (Ontario) and the regulations promulgated thereunder, if the School Board receives any *bona fide* offer that it is willing to accept (herein called the “**Offer**”) for the purchase of the School Board’s interest in the School Board Lands and the Park Lands, the School Board shall send the Town notice of such Offer, together with, in all instances, a copy of the executed Offer. The Town is hereby granted Ten (10) days after receipt of such notice and Offer in which to notify the School Board of its desire to purchase the School Board’s said interest, on the same terms and conditions as the Offer, and said notice shall constitute a binding agreement of purchase and sale, with closing to take place on the date set for closing in the Offer, or a date mutually acceptable to the School Board and the Town. If the Town does not provide notice of its intention to the School Board to purchase the said interest, the School Board shall be free to sell the said interest on the terms and conditions set forth in the said Offer. If the said interest is not sold on substantially the same terms of that Offer, the School Board shall be obliged to submit any further offer to the Town by giving written notice thereof to the Town in the manner provided in this paragraph 7.10.
- 7.11 Notwithstanding anything in this agreement to the contrary, School Board agrees and hereby grants to the Town the final, sole and exclusive authority to determine whether a sports facility or playing field on the Park Lands, or on any other land which School Board, its students or teachers have access to under this Agreement is in a condition which is fit for play. If in pursuance of the said authority the Town decides that a sports facility or playing field is not fit for play, then such facility or field shall be closed and not used by School Board, its students or teachers for such duration of time deemed advisable by the Town.
- 7.12 Notwithstanding anything in this agreement to the contrary, the School Board shall have the right to terminate this Agreement by providing 180 days written notice to the Town if, during the Term hereof, the School Board requires the Park Lands for the purposes of and in fact constructs a school or School Board facilities (the “**New School/School Board Facilities**”) operating under its school board jurisdiction. The said written notice shall be given no earlier than 225 days prior to the date on which construction of the New School/School Board Facilities begins. In the event that for any reason whatsoever, construction of the New School/School Board Facilities is not commenced within the 225 day period as aforesaid, or in the event less than all of the Park Lands is required for the purposes of the New School/School Board Facilities, the following shall apply:

- (i) in the event construction is not commenced as aforesaid, at the option of the Town, the Notice of Termination shall *nunc pro tunc* have no force or effect, and the license and the Term created by these presents shall continue uninterrupted; and
- (ii) in the event less than all of the Park Lands are required, at the option of the Town, the unused portion of the Park Lands shall continue to be subject to the license and Term created by these presents, and this Agreement shall continue to apply, *mutatis mutandis*, to such unused portion of the Park Lands.

IN WITNESS WHEREOF the parties have executed this agreement.

Signed, sealed and delivered in the presence of:

THE CORPORATION OF THE TOWN OF TECUMSEH

Per: _____
Name:
Title:

Per: _____
Name:
Title:

CONSEIL SCOLAIRE CATHOLIQUE PROVIDENCE

Per: _____
Name:
Title:

Per: _____
Name:
Title:

SCHEDULE "A"
DESCRIPTION OF PROPERTY

PIN: 75271-0017

PART LOT 1, CONCESSION WEST OF RIVER PECHE, TECUMSEH (FORMERLY MAIDSTONE AND ST. CLAIR BEACH), DESIGNATED AS PART 1, 12R-11069

SCHEDULE "B" PARK LANDS



TOPOGRAPHIC SURVEY
 OF
 PART OF LOT 1, WEST PIKE CREEK
 CONCESSION
 IN THE TOWNSHIP OF WAINFORD
 IN THE MUNICIPALITY OF TECUMSEH
 COUNTY OF ESSEX, ONTARIO

© TOTAL TECH SURVEYING INC.

SCALE: 1"=40'

BEARING REFERENCE:
 BEARINGS AND DISTANCES TO THE NEAREST 0.1 FEET AND DISTANCES TO THE NEAREST 0.1 FEET

LEGEND

NOTE

SITE BENCHMARKS

SURVEYOR'S CERTIFICATE

Total Tech Surveying Inc.

A100