

The Corporation of the Town of Tecumseh

By-Law Number 2023-033

Being a by-law to provide for a Municipal Capital Facility and authorize the execution of an Municipal Facilities Agreement between the Corporation of the Town of Tecumseh and Maidstone Recreation Centre.

Whereas subsection 110(1) of the Municipal Act, 2001, S.O., c. 25, as amended (the “Act”) , provides that the Council of a municipality may enter into agreements for the provision of municipal capital facilities with any person(s);

And whereas pursuant to subsection 110 (6) of the Act the council of a municipality may exempt from taxation for municipal and school purposes land or a portion of it on which municipal capital facilities are or will be located;

And Whereas pursuant to subsection 110(2) of the Act and its Ontario Regulation 603/06, as amended, facilities related to the provision of municipal facilities used for municipal community centres, recreational purposes and parking facilities ancillary thereto are eligible municipal capital facilities for the purposes of a tax exemption under subsection 110 (6) of the Act.

And whereas on or about April 3, 2023 the Corporation of the Town of Tecumseh (the “Town”) is expected to become the legal registered owner of the lands and premises municipally known as 10720 County Road 34 and legally described as PT LT 295 Con. NTR Sandwich East as in R1519626; Tecumseh (PIN 75232-0124) (the “ Lands and Facilities”);

And whereas the Town and the non-profit corporation known as Maidstone Recreation Centre are desirous of the Lands and Facilities continuing to be used as a municipal community centre in accordance with the terms and conditions of a certain Municipal Facilities Agreement attached hereto and forming part of this By-law;

And whereas under Section 5 of the Municipal Act 2001, S.O. 2001 c.25, the powers of a municipality shall be exercised by its Council by by-law.

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

1. **That** the lands and premises municipally known as 10720 County Road 34 and legally described as PT LT 295 Con. NTR Sandwich East as in R1519626; Tecumseh (PIN 75232-0124) (the “Lands and Facilities”) are hereby designated or declared to be municipal capital facilities for the purposes of Subsection 110 (6) of the Municipal Act, 2001, S.O. 2001, c.25 as amended (the “Act”) and Ontario Regulation 603/06 as amended. Such Lands and Facilities shall be designated or declared to be municipal capital facilities exempt from taxation for municipal and school Board purposes effective as of April 3, 2023 or as of such date that the Town becomes legal

- registered owner of the Lands and Facilities. Such exemption shall continue while this By-law is in effect and for so long as the properties are used as municipal capital facilities.
2. Forthwith after the enactment of this By-law, the Clerk shall give written notice of the contents of this by-law pursuant to subsection 110(8) of the Act to :
 - a. The Minister of Education for the Province of Ontario;
 - b. The Municipal Property Assessment Corporation;
 - c. The Clerk of any other municipality that would, but for this by-law, have had authority to levy rates on the assessment of the Lands and facilities;
and
 - d. The Secretary of any School Board with jurisdiction in the area in which the Land and facilities are located.
 3. That the Mayor and the Clerk be and they are hereby authorized and empowered on behalf of The Corporation of the Town of Tecumseh, to execute the Municipal Facilities Agreement (Agreement) between the Corporation of the Town of Tecumseh and Maidstone Recreation Centre, a copy of which 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 said Agreement.
 4. **That** this by-law shall come into full force and take effect on the date the Corporation of the Town of Tecumseh becomes the legal registered owner of the Lands known as 10720 County Road 34 and legally described as PT LT 295 Con. NTR Sandwich East as in R1519626; Tecumseh (PIN 75232-0124).

Read a first, second, third time and finally passed this 14th day of March, 2023.

Gary McNamara, Mayor

Robert Auger, Clerk

THIS AGREEMENT made as of the ____ day of _____, 202____

B E T W E E N:

THE CORPORATION OF THE TOWN OF TECUMSEH,
hereinafter called the “Town”

OF THE FIRST PART;

- and -

Maidstone Recreation Centre Committee (MRCC).,
hereinafter called the “Lessee”

OF THE SECOND PART.

WHEREAS the Town has acquired the lands and premises known as the Maidstone Recreation Centre, located at 10720 County Rd 34 Maidstone, ON N0R 1K0, in the Town of Tecumseh (hereinafter “MRC”) from the Lessee for the purpose of the occupancy and use of the entire MRC as a “*Municipal community centre*” within the meaning of subsection 2(1), *O. Reg. 603/06* passed under the *Municipal Act, 2001*, S.O. 2001, c. 25;

AND WHEREAS the Lessee has applied to the Town for a Facilities Use agreement for permission to operate a community centre for the Town with focus on social, athletic and recreational activities for the general public at MRC, reflected in Attachment 1 and in the manner contemplated below;

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the rents, covenants and agreements contained herein, the Town does demise and grant access to the premises described herein to the Lessee upon the following terms and conditions.

1 THE TOWN COVENANTS AND AGREES:

- 1.1. To grant permission to the Lessee to operate a community centre for the Town providing social, athletic, and recreational activities, located within the MRC, for the initial Term of five (5) years starting the 3rd day of April 2023 and ending the 2nd day of April, 2028 (herein “the Term”). Each Term shall automatically renew for a subsequent period of the same length as the initial Term unless either party gives the other written notice of termination at least 30 days prior to expiration of the current term.
- 1.2. To provide property and liability insurance for all buildings and assets owned by the Town within the MRC (“the Town's insurance”) in such manner as the Town considers appropriate without limiting its recourse to the insurance maintained by the Lessee pursuant to the requirements below. The Lessee shall have no recourse to the Town’s insurance and shall execute such further assurances as may be required in that regard.

- 1.3. To provide property maintenance (lawn cutting, shrub trimming, weed control) regular cleaning , maintenance, repair, winterizing and spring commissioning of outdoor washrooms, and winter snow removal for the parking lot as per Town's standards for its recreational facilities.
- 1.4. To provide at its expense, be responsible for the continued maintenance and repair, of any and all aspects of the exterior of the buildings, including grounds, parking areas, sidewalks and building access areas located on the property, all appurtenances to the Buildings, including replacement if necessary, including any and all heating equipment and central air conditioning equipment located in or on the building now or in the future and also including the entire outdoor washroom building, to be constructed in 2023.
- 1.5. That the Town through ongoing consultation with Lessee will budget and provide for those reasonable "Capital" improvements to the MCR as may be identified and as may be approved by council from time to time and which may include security systems, outdoor washrooms, paving of parking lot, construction of outdoor pickle ball facility, and renovations to existing building. It is anticipated that Capital improvements will be directly arranged and paid for by MCR vis a vis its contractor with the Town reimbursing MCR for any budgeted amount in respect of any such approved Capital improvement.
- 1.6. Subject to subparagraph 1.7 below, the Lessee will receive all revenue generated from their operation of the social, athletic, and recreational activities (inclusive of programs currently offered by South County Volleyball, Community Living Essex County, Knights of Columbus Council#9226, individual renters, and similar future programs) provided the Lessee maintains its status as a non-profit service organization as further contemplated in this agreement.
- 1.7. The Town will have the right to book the MRC for its' purposes contingent on the facility being available as reasonably determined by the Lessee. The Town will notify the lessee of the booking request and upon the Lessee confirming availability, the Town will receive the revenue from these bookings (if any) and be responsible for set up, tear down, and clean up, and snow removal similar to other groups who use the building.
- 1.8. To be responsible and through consultation with the lessee design and install a historical storyboard recognizing the facilities past volunteer history contributions, the donation of the property before the end of the Term.

- 1.9. To meet with the Lessee at least annually in the early spring to evaluate and plan operations for the upcoming year.

2 THE LESSEE COVENANTS AND AGREES:

- 2.1. To operate and coordinate the use and/or delivery of social, athletic, and recreational activities based operation at the MRC, during the Term and otherwise accommodate the use of the MRC as a Town community centre. These operations include the ability to offer programs in these categories by means of rental or other joint venture with other clubs or third parties providing any such club or third party acts in compliance with the terms of this Agreement and Lessee's obligations hereunder and schedule the Town's direct booking of the MRC for any municipal purpose.
- 2.2. To be responsible for all utilities and all other operational costs of the MRC not otherwise expressly assumed by the Town under this Agreement
- 2.3. To be responsible for any and all other operational costs of the MRC not otherwise expressly assumed by the Town under this Agreement.
- 2.4. To pay any property taxes that **may** be assessed to the MRC assessed by the County of Essex or local school board(s) it being understood that the Town is anticipating that the MCR as a municipal facility will not be assessed for property taxes and the Town will refund its share of same if assessed. In that regard, the Lessee warrants: a) to the best of its knowledge (being the knowledge of its board of directors and officers) that prior to its transfer of the MRC by the Lessee to the Town, the Lessee owned and occupied the MRC as a "non-profit service organization" within the meaning of the Assessment Act and b) it will continue to carry on activities on site in a manner consistent with maintaining such status as a non-profit service organization. The Town undertakes to pursue a Municipal Capital Facility designation for the site within the meaning of subsection 110.(6) of the *Municipal Act*.
- 2.5. That the sale of alcohol will be undertaken solely through the Lessee's AGCO license and the Lessee shall strictly comply with their current license and any requirements of the Town's or Lessee's insurer. Where alcohol is served during a rental event the lessee will ensure the person signing the rental agreement acquires and complies with the special occasion permit.

- 2.6. To secure all licenses, permits, and approvals required for operation of the MRC Operations and shall pay HST, and other business taxes attributed to the operation.
- 2.7. To supply, install and provide all appliances and preparation tables/counters, coolers, freezers, and any other equipment required for the operation of the MCR which shall remain the property of the Lessee provided that the Town is not responsible for any damage or loss occurring to such property.
- 2.8. That no re-modeling or structural changes will be made to the MRC or any property of the Town without the prior written consent of the Town's Director of Community and Recreation Services in such person's sole discretion.
- 2.9. Except as expressly provided for herein, to be responsible for the cleaning and maintenance of the MRC and all related buildings, courts, parking lot, and equipment including annual maintenance and repair to the MRC, which results from normal use.. Any damage to the area resulting as a result of negligent operation of the lessee shall be repaired by the Town at the expense for the lessee. Payment shall be made within 15 days following delivery of invoice.
- 2.10. Shall defend, indemnify and save harmless the Town, its elected officials, officers, employees and agents from and against any and all claims of any nature, actions, causes of action, losses, expenses, fines, costs (including legal costs), interest or damages of every nature and kind whatsoever, including but not limited to bodily injury, sickness, disease or death or to damage to or destruction of tangible property including loss of revenue or incurred expense resulting from disruption of service, arising out of or allegedly attributable to the negligence, acts, errors, omissions, misfeasance, nonfeasance, fraud or willful misconduct of the Lessee or any club or third party operating under the permission of the Lessee, their directors, officers, employees, agents, contractors and subcontractors, or any of them, in connection with or in any way related to the delivery or performance of this Agreement. This indemnity shall be in addition to and not in lieu of any insurance to be provided by the lessee in accordance with this Agreement and shall survive this Agreement
- 2.11. The Lessee shall during the entire term hereof, at its sole cost and expense, take out and keep in force and effect the following:
 - a) Public liability insurance applying to all operations of the Lessee and which shall include insurance against personal injury, death, property damage, products liability, non-owned automobile liability and lessee

legal liability with respect to the occupancy by the Lessee of the Premises. Such policies shall be written on a comprehensive basis with limits of no less than five million (\$5,000,000.00) dollars per occurrence. Such policy shall include coverage for sale of alcohol under their AGCO.

b) Insurance for theft, loss or damage of all property of the Lessee;

2.12. The Lessee agrees that:

- a) all insurance policies shall be taken out with insurers reasonably acceptable to the Town;
- b) shall name the Town as an additional insured;
- c) shall contain a severability of interest clause or a cross liability clause;
- d) shall be in a form and contain terms satisfactory to the Town and Town's insurer.

2.13. Lessee further agrees to submit to the Town certified copies of each such insurance policy if requested and otherwise a Certificate of Insurance before taking occupancy and thereafter from time to time in advance of any expiry date shown on any previously provided certificate or otherwise upon reasonable request from the Town. All policies shall contain an undertaking by the insurers to notify the Town in writing not less than thirty (30) days prior to any material change, cancellation or other termination thereof.

2.14. To be familiar with and comply with all requirements of "Applicable Law" respecting the operation and use of the MRC. Applicable Law means, all applicable federal, provincial, state, regional, or territorial, laws, statutes, treaties, codes or ordinances, whether domestic or foreign, or municipal by-laws or policies of any Governmental Authority of competent jurisdiction, including applicable regulations, Orders. Applicable Law shall, without limiting the generality of the foregoing, include the Workplace Safety & Insurance Act, the Occupational Health and Safety Act, Environmental Protection Act, Liquor Licence and Control Act and all public welfare, health and safety laws, regulations, licensing terms, and by-laws. The Lessee shall provide evidence of compliance as requested from time to time including any certificate from the applicable Governmental Authority. "Governmental Authority" means (i) any court, judicial body or arbitral body, (ii) any government whether multinational, national, federal, provincial, territorial, municipal or local and any governmental agency, governmental authority, governmental tribunal or governmental commission of any kind whatever, (iii) any subdivision or authority of any of the foregoing, (iv) any quasi-governmental or private body exercising any regulatory, expropriation or taxing authority under or for the account of any of the above.

2.15. Without limiting the general requirements in 2.14 above, to comply with the Town's Policy on Health & Safety and any other applicable policies and understands and agrees to ensure that employees are advised and have a sound knowledge of this policy. The Lessee shall:

- a) Provide and maintain the necessary items and equipment as called under the First Aid Regulations of the Workplace Safety and Insurance Act and the Occupational Health and Safety Act
- b) Comply with requirements of Workplace Hazardous Materials Information System (WHMIS) regarding use, handling, storage, and disposal of hazardous materials; and regarding labeling and provision of material safety data sheets acceptable to Labour Canada and Health and Welfare Canada. Deliver copies of WHMIS data sheets to the Town on delivery of materials.
- c) Provide the Lessee's Health and Safety Policy within thirty (30) days of the Agreement.

3 Additional Provisions

- 3.1. That this Agreement may not be transferred or assigned by the Lessee. The Lessee shall not sublet any portion of the MRC areas without written approval from the Town. Any such approval shall be at the Town's sole discretion.
- 3.2. Upon termination of this Agreement, the Lessee shall at its own expense remove all of its chattels from the premises and leave the MRC in a clean and well-maintained state of repair. The Lessee shall not be entitled to be compensated for any of the affixed improvements, which the Lessee may have made to the MRC which shall become property of the Town.
- 3.3. That the Town may terminate this Agreement at any time if the Lessee fails to perform any of its covenants and obligations (herein an event of default") provided that the Town provides at least thirty (30) days' notice in writing of the default. If within the thirty (30) day period the Lessee cures the default and complies with all covenants and obligations contained in this Agreement then the notice of termination will become null and void failing which this agreement shall be determined and the Lessee shall vacate the MRC without prejudice to the Town's rights to recover any damages sustained as a result of the default. In such event, the Lessee's obligations to indemnify and hold harmless the Town as stipulated above shall remain in full force and effect notwithstanding the determination of this Agreement.

- 3.4 It is further understood and agreed by and between the parties hereto that all notices, demands and requests which may be or are required to be given or delivered by the Town to the Lessee or by the Lessee to the Town under the provisions of this Agreement, shall be in writing and may be mailed or personally delivered, and shall be addressed:

in the case of the Lessee, to: Maidstone Recreation Centre :
Att: President
10720 County Rd 34
Maidstone, ON N0R 1K0

or in the case of the Town, to: Town of Tecumseh
917 Lesperance Road
Tecumseh, ON N8N 1W9
Attention: Director of Community and
Recreation Services

or to such other address as either party may from time to time designate by written notice to the other.

Any communication so personally delivered shall be deemed to have been validly and effectively given on the date of such delivery. Communications so sent by registered and receipted mail shall be deemed to have been validly and effectively given on the Business Day next following the day on which it is received, as evidenced by the postal receipt. Communications so sent by facsimile transmission or other means of recorded telecommunication shall be deemed to have been validly and effectively given on the Business Day next following the day on which it is sent. Any party may from time to time change his or its address for service on written notice to the others.

“Business Day” means any day, other than a Saturday, Sunday or any other day on which the principal chartered banks located in the Town are not open for business during normal banking hours

- 3.5 The parties agree that any disputes (apart from a failure to negotiate renewal terms) pursuant to this Agreement will be determined pursuant to the Arbitrations Act, R.S.O. 1990, Chapter A-24.
- 3.6 This Agreement and all other agreements, security and documents to be delivered in connection with this agreement shall be governed by and

construed in accordance with the applicable laws of the Province of Ontario and of Canada.

3.7 **No Adverse Inference against the Town as Drafting Party**

It is agreed and acknowledged that both parties, directly or through their agents, principals, representatives and/or solicitors, have participated in the preparation and/or negotiation of the provisions of this agreement.

Should any provision of this agreement require judicial interpretation, mediation or arbitration, it is agreed that the court, mediator or arbitrator interpreting or construing the same shall not apply a presumption that the terms thereof shall be more strictly construed against one party or so as to disadvantage any party on the basis that such party and/or its solicitor or agent:

- a. *Prepared this agreement or any part of it; or*
- b. *Seeks to rely on this agreement or any part of it.”*

3.8 **INDEPENDENT LEGAL ADVICE**

To the extent that the solicitors of Wolf Hooker Professional Corporation has been involved in the preparation of this agreement, such solicitors act solely as solicitors for the Town and with regard to the interests of the Town and not for any other party to this agreement. It is strongly recommended that all other parties to this agreement obtain independent legal advice prior to signing this agreement. Each such party acknowledges:

- 1) having obtained independent legal advice from his, her, or its' own solicitor with respect to the terms of this Agreement prior to its execution or having otherwise been given a reasonable opportunity to obtain such advice and declined to so;
- 2) that he *or* she *or* it understands the terms, and his *or* her rights and obligations, under this Agreement.

See next page for signing...

3.9 This Agreement and everything herein contained shall ensure to the benefit of and be binding upon the parties and their administrators and their organizational successors.

IN WITNESS WHEREOF the parties hereunto affixed their signatures and corporate seals, attested to by the hands of their proper officers duly authorized in that behalf.

SIGNED, SEALED & DELIVERED	)	THE CORPORATION OF THE
In the presence of	)	TOWN OF TECUMSEH
	)	By:
)	
)	
"Seal"	)	_____ Name: Gary McNamara
	)	Title: Mayor
)	
)	
	)	_____ Name:
	)	Title: Clerk
)	
)	
	)	Maidstone Recreation Centre
)	
)	
)	
_____ Witness:	)	_____ Name: Jim Croft
	)	Title: President
)	
)	
	)	_____ Name: Philip Eyraud
	)	Title: Treasurer
	)	<i>I/We have authority to bind the Corporation.</i>

Attachment 1: