

**THE CORPORATION
OF THE
TOWN OF NIAGARA-ON-THE-LAKE
BY-LAW NO. 5209-20**

A BY-LAW TO AUTHORIZE THE LORD MAYOR AND TOWN CLERK TO EXECUTE THE FIRE TRAINING CENTRE FACILITY USE AGREEMENT BETWEEN THE CORPORATION OF THE TOWN OF NIAGARA-ON-THE-LAKE AND THE CORPORATION OF THE TOWN OF FORT ERIE AND RESCIND BY-LAW 4875-16

BE IT ENACTED AS A BY-LAW OF THE CORPORATION OF THE TOWN OF NIAGARA-ON-THE-LAKE as follows:

1. THAT the Fire Training Centre Facility Use agreement dated the 24th day of February, 2020 between The Corporation of the Town of Niagara-on-the-Lake and the Corporation of the Town of Fort Erie, be and the same is hereby approved; and
2. THAT the Lord Mayor and Clerk be authorized to affix their hands and the Corporate Seal; and
3. THAT By-law 4875-16 be rescinded; and
4. THAT this by-law shall come into force and take effect immediately upon the passing thereof.

READ A FIRST, SECOND AND THIRD TIME AND PASSED THIS 24th DAY OF FEBRUARY 2020

LORD MAYOR BETTY DISERO

DEPUTY CLERK COLLEEN HUTT

FIRE TRAINING CENTRE FACILITY USE AGREEMENT

THIS AGREEMENT made in quadruplicate as of the 24th day of February, 2020.

BETWEEN:

THE CORPORATION OF THE TOWN OF FORT ERIE
(hereinafter called the "Town")

-and-

THE CORPORATION OF THE TOWN OF NIAGARA-ON-THE-LAKE
(hereinafter called "the Licensee")

WHEREAS the Town of Fort Erie is the owner of a fire training centre located at 525 Industrial Drive, Fort Erie, legally described as Part of Lot 5, Concession 2 Niagara River, Bertie, being Parts 15, 16, 18, 19 & 30, Reference Plan 59R-1849, Fort Erie, and

WHEREAS the Licensee wishes to make use of the Town's Fire Training Centre for the purpose of engaging in training and educational exercises, and

WHEREAS the Municipal Council of the Town of Fort Erie passed By-law No. 111-10 delegating authority to the Fire Chief to enter into Facility Use Agreements with municipalities and other agencies for the use of the Fire Training Facility for training and educational exercises;

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the mutual covenants and agreements contained herein and other good and valuable consideration, and subject to the terms and conditions in this agreement the parties agree as follows:

1. Terminology

1.1. In this Agreement:

"Fire Training Centre" means the fire training centre owned by the Town located at 525 Industrial Drive, Fort Erie, and includes without limitation, the Training Tower, the Mask Confidence Maze, the Pumping Station Unit and the equipment, materials and facilities therein, used or intended for use in the operation of any part of the Fire Training Centre.

2. Licence

2.1 THE TOWN HEREBY GRANTS to the Licensee during the term of this Agreement, a licence of occupation, subject to the terms and conditions of this Agreement and revocable in accordance with the terms hereof, to occupy and use all or part of its Fire Training Centre on the days and at

the times ("Scheduled Time") set out in Schedule "A" attached hereto and forming part of this Agreement.

TOGETHER WITH the non-exclusive right to use in common with all others entitled thereto from time to time, stairs, washrooms in the Fire Training Centre, and all driveways, walkways, and parking areas located on the lands on which the Fire Training Centre is located, subject to the terms of this Agreement. The right of use of the several parts of the Common Areas shall be restricted to their appropriate intended use and shall be subject to such rules and regulations as may be imposed from time to time by the Town.

- 2.2** Notwithstanding any other provision to the contrary in this Agreement, the Licensee's right of access to the Fire Training Centre is subject to the Town's reasonable security requirements in effect from time to time.
- 2.3** The Licensee shall have the right to cancel any Scheduled Time for use of the Fire Training Centre upon two (2) days prior notice and provided such notice is given, no fee shall be payable to the Town for such cancelled Scheduled Time.

3. Licence Fee

- 3.1** The Licensee hereby agrees to pay to the Town a daily licence fee for the use of the Fire Training Centre for each day of Scheduled Time, at the rate set out in Schedule "A", for each day of Scheduled Time, or part thereof, for the rights and privileges granted under this Agreement.
- 3.2** The Licence Fee payable for Scheduled Time, together with any fees or charges for additional services, shall be due and payable within thirty (30) days of the Town invoicing the Licensee. The invoice shall set out the particulars of the calculation of the fees and charges, and reflect any payments received.

4. Town Staff

- 4.1** The Licensee understands that the Town's Deputy Fire Chief, or designate, must conduct an orientation of the Fire Training Centre with the Licensee, the cost of which is included in the daily fee. The Town agrees to make the necessary arrangements for the Town's Deputy Fire Chief, or designate, to be available for the Licensee throughout the Scheduled Time.
- 4.2** It shall be the sole responsibility of the Town's Deputy Fire Chief, or designate, to:
 - (a) prepare the Fire Training Centre for use by the Licensee;

- (b) maintain, repair as necessary, all of the equipment and facilities which forms part of the Fire Training Centre;
- (c) to advise the Licensee with respect to the use and operation of the equipment and facilities which form part of the Fire Training Centre; and
- (d) to assist as necessary with respect to any aspect of the Fire Training Centre.

4.3 The Town represents and warrants that the Town's Deputy Fire Chief, or designate, will be appropriately qualified, and will possess the skill and knowledge to fulfill the duties assigned.

4.4 The Town understands and agrees that it is not intended by this Agreement that the Town's Deputy Fire Chief, or designate, be or be deemed to be an employee of the Licensee for the purpose of the *Income Tax Act*, the *Canada Pension Plan Act*, the *Employment Insurance Act*, the *Workplace Safety and Insurance Act*, and the *Health Insurance Act*, all as amended from time to time and any legislation in substitution therefore.

5. Fees – Additional Supplies/Services

5.1 The Town's Deputy Fire Chief, or designate, will make available to the Licensee, upon request, the supplies, facilities, etc. identified on Schedule "A" at the rates set out on Schedule "A". The Town shall invoice the Licensee for the use of such supplies and services. Payment of the invoice shall be due within thirty (30) days of being invoiced.

6. Use of Licensed Space

6.1 The Licensee agrees to use the Fire Training Centre for the purpose of training and educational exercises and for no other purpose except with the written consent of the Town.

6.2 The Licensee shall conduct the training exercises in the Fire Training Centre, in accordance with the Licensee's operating procedures for training exercises, and such reasonable rules for the use of the Fire Training Centre as may be posted by the Town in the Fire Training Centre or otherwise communicated to the Licensee's Fire Chief.

6.3 The Town acknowledges it has been provided with a copy of the Licensee's operating procedures for training exercises to be conducted in the Fire Training Centre, has reviewed same, and has no objection to same. The Licensee's Fire Chief shall provide the Town with copies of significant amendments thereto made during the term of this Agreement.

7. Condition of Fire Training Centre

- 7.1** The Town represents and warrants that the Fire Training Centre and all equipment and facilities therein are appropriate for the permitted use to be made by the Licensee and compliant with all federal, provincial and municipal laws, by-laws, rules and regulations affecting the Fire Training Centre, and the equipment and facilities therein, and the permitted use thereof.
- 7.2** The Town shall ensure that the Fire Training Centre shall be in good condition and all equipment and facilities therein are in good working order during the Scheduled Time.
- 7.3** The Licensee agrees that in its use of the Fire Training Centre, it shall:
- (a) make no permanent alterations to the Fire Training Centre;
 - (b) advise the Town of any damage to the Fire Training Centre of which it is aware, whether or not it is responsible for same; and
 - (c) at the end of each day of Scheduled Time, to vacate and return the Fire Training Centre to its original condition, usual wear and tear excepted.

8. Instructors Acting on Behalf of the Licensee

- 8.1** The Licensee shall be fully responsible to ensure that its instructor or instructors acting on its behalf is fully qualified to perform any training exercises that they have been contracted to perform on behalf of the Licensee. At no time is the Licensee, its instructor or any participants to engage the services of the Town's Deputy Fire Chief, or designate, to assist in the training or be in any way part of the Licensee's training program.

9. Indemnity

- 9.1** The Licensee agrees to indemnify and save the Town harmless from all claims, actions and proceedings including reasonable legal costs and expenses incurred for loss, damage or injury, (including death) to any person or persons or to property, based upon, occasioned by, or attributable to its use and occupation of the Fire Training Centre except claims for damage resulting from the negligence of the Town or any of its officers, employees, contractors, servants or agents while acting within the scope of their duties or employment or any defect in or failure to maintain the Fire Training Centre or any part thereof.
- 9.2** Section 9.1 shall survive the termination of this Agreement.

10. Insurance – the Licensee

10.1 With respect to any of the Licensee's use, occupancy of, or things in the Fire Training Centre or any of the Licensee's respective directors, officers, members, employees, agents, volunteers or other persons in law it is responsible for, the Licensee covenants to carry and maintain in place, at its expense (including the cost of deductibles), during any Scheduled Time at the Fire Training Centre during the term of this agreement, with an insurer licensed in Ontario:

- (a) a policy of comprehensive general liability insurance on an occurrence basis, with limits of not less than \$5,000,000, in addition to coverages for defence and claimants' costs, all for any one occurrence or such higher amount as either may reasonably require, insuring against bodily injury including death, personal injury, property damage or loss (direct or indirect and including loss of use thereof), contractual liability, non-owned automobile, broad form Tenant legal liability with a limit of \$250,000, owner's and contractor's protective, products and completed operations, contingent employers' liability. The policy shall contain a cross liability severability of insured clause. Additionally, the said policy of insurance shall contain no warranties or exclusions (other than standard IBC policy exclusions) that would contravene the obligations of the insured party under this Agreement or otherwise be to the detriment of the Town;

The insurance policy shall add the Town as an additional insured as its interest may appear.

- (b) Standard OAP 1 Automobile policy for vehicles owned, leased or operated by or on behalf of the Licensee in connection with the Services provided or to be provided under this Agreement, with coverage of not less than Two Million (\$2,000,000) Dollars per claim;
- (c) If applicable, the Licensee shall take out or cause to take out a professional liability policy with a minimum limit of \$2,000,000 on a claims-made basis, providing coverage for any instructors in the rendering of, or failure to render, their professional services in connection with this agreement and all aspects of training delivery.
- (d) If applicable, Property Insurance coverage on a full replacement cost basis, for all equipment or items owned by the Licensee housed at the Fire Training Centre Facility including any equipment leased, borrowed rented or operations on behalf the Licensee. The policy shall not allow subrogation claims by the Insurer against the Town.

- 10.2** (a) Every policy of insurance shall contain a deductible amount of no less than \$5,000 or an amount as agreed to by the Town. The Licensee shall be responsible to pay all deductible amounts provided for in its insurance policy.
- (b) The Licensee covenants to provide or cause to be provided to the Town, ten (10) business days prior to its scheduled training, a certificate of insurance on the Town's standard form which shows that the policies placed and maintained by the Licensee comply with the requirements of this Agreement. No review or approval of any such insurance certificate by the Town shall derogate from or diminish the Licensee's obligations contained in this Agreement.
- (c) All policies shall be endorsed to provide the Town with not less than 30 days' written notice of cancellation, any failure to renew the policy, termination or material amendment to the policies.
- (d) All policies shall apply as primary only and non-contributing with or excess to any insurance available to the Town.

11. Insurance – The Town

- 11.1** The Town covenants that it shall effect and maintain during any time that the Licensee has Scheduled Time in the Fire Training Centre with an insurer licensed in Ontario:
- (a) "all risks" insurance which shall insure the Fire Training Centre for not less than the full replacement cost thereof against loss or damage by periods now or hereafter from time to time embraced by or defined in a standard all risks insurance policy; and
- (b) boiler and machinery insurance for not less than the full replacement cost thereof on objects defined in a standard comprehensive boiler and machinery policy against accidents as defined therein.
- (c) Comprehensive General Liability insurance with limits of no less than \$5,000,000 per occurrence.

12. Termination

- 12.1** Either party may terminate this agreement in writing, for default of a material obligation by the other party, which remains uncorrected after 30 days notice in writing setting out the particulars of the material default.

13. Notices

13.1 All communications and notices required or contemplated by this Agreement shall be in writing and shall be considered to have been validly given when delivered by hand, or deposited for mailing by Canada Post, Registered Mail service, to the address of the party to whom such notice is directed (as set forth below), or sent by facsimile transmission or e-mail or other means of written communication that effectively conveys the message to the party to whom such notice is directed, as follows:

If to the Licensee: Niagara-on-the-Lake Fire & Emergency Services
Attention: Nick Ruller, Fire Chief
1593 Four Mile Creek Rd., Ontario, L0S 1T0
Phone: (905) 329-3436
E-mail: nick.ruller@notl.com

If to the Town to: Fort Erie Fire Department
444 Central Avenue
Fort Erie, Ontario, L2A 3T7
Attention: Ed Melanson, Fire Chief
Facsimile: (905) 871-6422
E-mail: emelanson@forterie.on.ca

or such other address of which either party has notified the other, in writing, and any such notice mailed or delivered shall be deemed good and sufficient notice under the terms of the Agreement.

14. Licensee not a Lessee

14.1 No legal title or leasehold interest in the Fire Training Centre shall be deemed or construed to have been created or vested in the Licensee by anything contained herein.

15. Assignment

15.1 The Licensee may not assign or transfer its interest in this Licence Agreement, or any of the rights granted hereunder, without first securing the written consent of the Town, which consent may be withheld, or granted, subject to terms and conditions established by the Town in its sole discretion.

16. Survival

16.1 The expiry or other termination of this Agreement shall not affect the liability of either party to this Agreement to the other with respect to any obligation under this Agreement which has accrued up to the date of such termination but which has not been properly satisfied or discharged.

17. Amendment

17.1 This Agreement shall only be amended by further written Agreement, signed by the parties.

18. Force Majeure

18.1 A party hereto shall not be responsible for failures in performance resulting from matters beyond the reasonable control of such party, including acts of God, riots or other civil insurrection, war, strikes and lockouts.

19. General

19.1 All provisions herein shall be binding upon the parties hereto and shall ensure to the benefit of the parties and their respective successors and permitted assigns.

20. Number and Gender

20.1 This Agreement shall be read with the appropriate changes in gender and number as may be required in the circumstances.

21. Governing Law

21.1 This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario.

22. Severability

22.1 If any provision contained herein shall be found by a Court of competent jurisdiction to be illegal or unenforceable, then such provision shall be considered separate and severable from the rest of this Agreement, and the remainder of this agreement shall continue to be in full force and effect and shall continue to be binding upon the parties as though the illegal or unenforceable provision had never been included.

23. Headings

23.1 This Agreement shall be construed as a whole in accordance with its fair meaning. Captions and headings are for reference only and should not be used to construe the meaning of this Agreement.

24. Further Assurances

24.1 The parties to this Agreement agree to execute such other and further documents as may be necessary or proper in order to consummate or give effect to the transactions contemplated by this Agreement.

IN WITNESS WHEREOF the Parties hereto have hereunto affixed their corporate seals duly attested by the hands of their proper signing officers in that behalf.

)
) **THE CORPORATION OF THE TOWN
OF NIAGARA-ON-THE-LAKE**

Per:

)
)
)
)
) _____
) Lord Mayor Betty Disero

) _____
) Town Clerk Peter Todd
) We have authority to bind the
) corporation.

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

)
)
) _____
) Fire Chief
) I have authority to bind the corporation.

)
)
)
)

SCHEDULE "A"

**SCHEDULED TIME
and DAILY LICENCE FEE FOR USE OF FIRE TRAINING CENTRE**

Licence Fee per day is \$473.23 (plus hst) unless the Fire Chief waives or adjusts the daily fee for joint training or reciprocal training exercises). Classroom only is \$61.99 (plus hst).

DATE	TIME	DAILY LICENCE FEE (plus HST)
		\$
		\$
		\$
		\$
		\$
		\$
		\$
		\$
		\$
		\$

FEEES FOR ADDITIONAL SERVICES / SUPPLIES

SERVICE / SUPPLY	FEE (if applicable)
Use of Town Fire Truck	\$150 per day plus actual cost of any fuel or fluids actually used
Straw ~ Common Use ~ 4 Bails	\$16.00 flat fee
Wood Pallet ~ Common Use ~ 16 pallets	\$48.00 flat fee
Instructor (1 FEFD Firefighter Instructor Required for Live Burns)	\$24.88 / hour / instructor
Instructor (Fire Chief or Deputy Fire Chief Required for Technical Training)	\$70.97 (plus hst) / hour / instructor
Propane	Current propane rate Usage / per litre
Clean- up Fee ~ If Training Facility Requires Clean Up After Use	3 ff x \$24.88 x 3 hrs = \$223.92