

THE CORPORATION OF THE TOWN OF KINGSVILLE

BY-LAW 7 - 2019

Being a By-law authorizing the entering into of a Licence Agreement with Sun Parlour Folk Music Society


WHEREAS Section 9 of the *Municipal Act, 2001*, S.O. 2001, c. 25 confers natural person powers on municipalities which include the power to enter into agreements with individuals and corporations;

AND WHEREAS The Corporation of the Town of Kingsville (the "Town") deems it expedient for the Town to enter into a Licence Agreement with Sun Parlour Folk Music Society.

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE TOWN OF KINGSVILLE ENACTS AS FOLLOWS:

1. **THAT** the Town enters into and executes with Sun Parlour Folk Music Society a Licence Agreement, attached hereto as Schedule "A" and forming part of this By-law.
2. **THAT** the Mayor and Clerk are hereby authorized and directed on behalf of the Town to execute the Agreement attached as Schedule "A".
3. This By-Law comes into force and takes effect on the day of the final passing thereof.

**READ A FIRST, SECOND AND THIRD TIME AND FINALLY PASSED THIS
11th DAY OF FEBRUARY, 2019.**



MAYOR, Nelson Santos



CLERK, Jennifer Astrologo

THIS AGREEMENT made this 11th day of February, 2019.

BETWEEN:

THE CORPORATION OF THE TOWN OF KINGSVILLE
(hereinafter called the "Town")

-and-

Sun Parlour Folk Music Society
(hereinafter called the "Organizer")

WHEREAS the Town is the owner of the property located at 315 Queen Street South, known as Lakeside Park, which Premises includes Lakeside Park Pavilion and the Upper and Lower Bowls of Lakeside Park, and is more particularly described in Schedule "A";

AND WHEREAS the Organizer operates the Kingsville Folk Festival, an event during the second weekend of August each year;

AND WHEREAS the Organizer desires to use the Premises for the holding of the Festival;

AND WHEREAS the Town is agreeable to granting the Organizer the right to use the Premises on the terms and conditions contained within this Agreement;

NOW THEREFORE this Agreement witnesseth that in consideration of the mutual covenants, terms and agreements hereinafter expressed, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

Recitals

1. The recitals as set out above are true in substance and in fact, and all terms referenced therein are incorporated into and form part of this Agreement

Definitions

2. In this Agreement, the following words shall have the following meanings:

"Event Infrastructure" shall mean the equipment, goods and chattel necessary for the conduct of the Festival and includes items such as fencing, washrooms, handwashing stations, tents and stages.

"Festival" shall mean the Kingsville Folk Festival.

"Council" shall mean the Council of the Town.

"Premises" shall mean the property located at 315 Queen Street South, Kingsville, Ontario, which is known as Lakeside Park, and shall include Lakeside Park Pavilion, the Upper and Lower grassy bowls and all access routes within the park.

"Town" shall mean The Corporation of the Town of Kingsville.

Term

3. This Agreement shall extend for a period of 5 years, commencing on January, 2019, through to and including August 16, 2023 (the "Term"), and grants to the Organizer a licence to use and occupy the Premises for the holding of the Festival on the dates and times more particularly described below.

Grant

4. The Town hereby grants to the Organizer a licence to use and occupy the Premises for the purposes of holding the Festival and for no other purpose on the following days:

2019:	August 9 to August 11
2020:	August 7 to August 9
2021:	August 13 to August 15
2022:	August 12 to August 14
2023	August 11 to August 13

5. The Town grants to the Organizer a licence to use and occupy the Premises for the delivery and pick up of Event Infrastructure on the following days:

2019:	August 6 to August 13
2020:	August 4 to August 11
2021:	August 10 to August 17
2022:	August 9 to August 16
2023:	August 8 to August 15

Covenants of Town

6. The Town covenants and agrees:
 - a) To provide access to the Premises to those persons, as designated by the Organizer, on the dates outlined in sections 4 and 5 of this Agreement.
 - b) To provide sponsorship to the Organizer as follows:

2019:	\$20,000.00
2020:	\$20,000.00
2021:	\$20,000.00
2022:	\$20,000.00,
2023:	\$20,000.00

provided that the Festival is held at the Premises on the dates outlined in section 4 of this Agreement. The payment of this sponsorship shall be made by March 1 for each year.

- c) To provide the Organizer the right to use the following Town resources, for Festival related purposes, during the dates outlined in section 5:
 - i. Town owned garbage and recycling receptacles within the Premises;
 - ii. WDS containers; and
 - iii. Electrical panel boxes located within the Premises, for the purpose of providing an electrical connection for stage components.

Covenants of the Organizer

7. The Organizer covenants and agrees with the Town as follows:

- a) That the Festival shall be held at the Premises as outlined in Section 4 of this Agreement.
- b) The Organizer shall abide by all by-laws, laws, regulations, orders and ordinances of any federal, provincial, and municipal authorities and public bodies having jurisdiction and shall indemnify the Town against any and all damages, charges, actions or costs resulting from any non-compliance.
- c) The Organizer shall comply with the Town's Alcohol Risk Management Policy and the Special Events Policy and Procedures, as may be amended from time to time.
- d) The Organizer shall not do or permit anything to be done on, around or in relation to the Premises, or bring or keep anything thereon which may in any way increase or cause environmental contamination, adverse environmental effects, or which may be in contravention with *The Environmental Protection Act*, R.S.O. 1990, c.E. 19, as amended, or any other federal, provincial or municipal legislation, regulation ordinances, or rules regarding environmental protection. The Organizer shall be solely and entirely responsible for the clean-up and repair of any environmental damage, or adverse effects arising as a result of the breach of the covenants herein contained.
- e) The Organizer shall not make any improvements or alterations to the Premises, or install any fixtures, without the prior written consent of the Town, which consent may be unreasonably or arbitrarily withheld. Any improvements or alterations made by the Organizer in accordance with this Agreement shall be at the sole risk, cost and expense of the Organizer and shall be made to the sole satisfaction of the Town.
- f) The Organizer shall not do, suffer or permit to be done any act or things upon or above the Premises which is or would constitute a nuisance to the

occupiers of any lands or premises adjoining or in the vicinity of the Premises or to the public generally.

- g) The Organizer may, at its own risk and expense, store its equipment, chattel, and property in Lakeside Pavilion on the dates outlined in section 5. Further, the Organizer hereby irrevocably waives all claims against the Town, its directors, officers, employees, agents and elected officials for any loss, damage or theft to such equipment, chattel, and property.
- h) Unless consent in writing has been provided by the Town, the Organizer shall not place in, on or attach anything to trees, utility poles, light standards, receptacles, furniture or property owned by the Town.
- i) To comply with all rules and regulations applicable to the Festival as may be in place from time to time and to maintain orderly conduct on the part of the Organizer, its members, attendees, and invited guests at all times.
- j) To leave the Premises in a state of cleanliness and good repair and to be responsible for and to pay any cleaning required or repair of damages caused by the Organizer, its members, attendees, or invited guests.
- k) That the Organizer will notify municipal staff before entering any part of the Premises that is not in a clean, accessible or safe condition upon arrival. Failure to notify the municipal staff before entering will result in assumption of responsibility by the organizer for the condition of the Premises.
- l) That employees, officers, agents, or directors of the Town, may enter the Premises at any time during the dates outlined in Section 5 of this Agreement, for the purposes of ensuring compliance with this Agreement.
- m) The Organizer shall, at its own expense:
 - i. Return the Premises to the Town in the same condition as it was received by the Organizer.
 - ii. Provide adequate washroom facilities to service the anticipated number of participants and attendees;
 - iii. Ensure that all fire hydrants remain unobstructed at all times;
 - iv. Keep the Premises clean and the adjacent property clear of refuse and debris;
 - v. Provide and maintain any equipment, chattel and event infrastructure, excluding garbage and recycling receptacles, necessary for the operation of the Festival;
 - vi. Ensure that any event infrastructure, chattel, and equipment brought onto the Premises are sufficiently maintained, affixed, or weighted to prevent their being lifted or carried by wind and shall

not overhand outside of the Premises or obstruct visibility on the adjacent sidewalk or property;

- vii. Remove all Event Infrastructure at the end of the Festival each year, in accordance with the dates set out in Section 5 of this Agreement.
- viii. Ensure that there are adequate persons in place to maintain and manage the Festival, including but not limited to the following:
 - 1. To manage stands, concessions, and other saleable item tables or booths; and
 - 2. To manage and coordinate deliveries, parking, and parking lot(s), where applicable.
- n) Notwithstanding any reference made herein, in the event that the Organizer fails to do anything required of it under this Agreement, the Town has the right to perform such activity and the Organizer shall be responsible to the Town for the cost of the performance.

Additional Folk Music Events

- 8. For the duration of this Agreement, the Organizer agrees to host four (4) folk music concert events per year at Town owned sites/facilities, which use shall be provided to the Organizer at a cost of \$100.00 per event.
- 9. The Organizer shall be responsible for all the set up and take down of equipment at these concert events and the Town shall provide additional access to the site/facility for the set up and take down.
- 10. The Organizer shall be permitted to host an "After Hours" music event at Town Owned sites/facilities during the Festival weekend at a rental fee of \$100.00 per site/facility per day. The Organizer shall be responsible for obtaining all necessary permits/licences in respect of the sale or service of alcohol and shall be responsible for the management of the sale and service of alcohol.

Alcohol Prohibited

- 11. The Organizer acknowledges and agrees that the possession and/or consumption of alcohol at the Festival or at any of the above-mentioned fundraising concerts is strictly prohibited, except in accordance with the Town's Alcohol Risk Management Policy, and unless properly licenced by the Alcohol and Gaming Commission of Ontario.

12. The possession and/or consumption of alcohol by the Organizer and/or its members, patrons or invited guests, contrary to the provisions of this Agreement shall result in immediate termination of this Agreement without advanced notice.

Termination

13. If either party breaches this Agreement, the other party may terminate this Agreement by providing five (5) days' written notice, except that any such notice will not result in termination if the breaching party cures that breach before the five-day period elapses.
14. If either party materially breaches this Agreement, or repeatedly breaches this Agreement for which notice was provided, the non-breaching party may, at its option, immediately terminate this Agreement by providing the breaching party with written notice of the termination, and the non-breaching party will have no other or further obligations under this Agreement.
15. Notwithstanding any other provision regarding termination contained in this Agreement, the Town may immediately terminate this Agreement on the occurrence of any of the following:
 - a) The bankruptcy or insolvency of the Organizer; or
 - b) The Organizer is no longer recognized as a non-profit corporation, without share capital pursuant to the *Corporations Act*.
16. If the Town exercises its right to terminate this Agreement, the Town shall not be liable in any way to compensate the Organizer for any loss, costs, or damages which may be suffered by the Organizer, or by any person claiming under the Organizer by reason of such termination, and any amounts that have not been paid under section 6(b) of this Agreement shall be forfeited by the Organizer on termination.

Release, Indemnity and Insurance

17. The Organizer hereby releases and holds harmless the Town its directors, officers, employees, agents and appointed officials, of and from all actions, causes of action, suits, claims and demands of every nature and kind arising out of the execution of this Agreement or any action taken or things done or maintained by virtue of this Agreement or the exercise in any manner of rights arising hereunder.
18. The Organizer shall at all times indemnify and save harmless the Town its directors, officers, employees, agents and appointed officials from and against all claims and demands, loss, costs, damages, actions, suits or other proceedings by whomsoever made, brought or prosecuted in any manner based upon, occasioned by or attributable to the execution of this Agreement or any action taken or things done or maintained by virtue hereof; or the exercise in any manner of rights arising hereunder.
19. The Organizer shall obtain and keep in force Commercial General Liability Insurance, for third party bodily injury, personal injury and property damage,

underwritten by an insurer licensed to conduct business in the province of Ontario and including the following:

- a) a limit of liability in the amount of \$5 million per occurrence;
- b) the Town named as an additional insured;
- c) a provision for cross liability in respect of the named insured;
- d) non-owned automobile coverage with a limit of \$5 million per occurrence;
- e) products and completed operation coverage (broad form) with a limit of \$5 million per occurrence;
- f) a thirty (30) day written notice of cancellation, termination, or material change clause;

and provide a copy of a Certificate of Insurance to the Town upon request.

Notice

20. Any notice required to be given under this Agreement shall be in writing and provided by way of:

- a) hand delivery, in which case notice shall be effective on the date of delivery;
- b) electronic mail, in which case notice shall be effective on the day on which the electronic mail is received; or
- c) regular letter mail, in which case notice shall be effective on the fifth day following the date of mailing,

To the Town:

The Corporation of the Town of Kingsville
2021 Division Road
Kingsville ON N9Y 2Y9
Attention: Parks and Recreation Program Manager

Email Address: mdurocher@kingsville.ca

To the Organizer:

Sun Parlour Folk Music Festival
Box 394 Wheatley, ON N0P 2P0
Attention: John and Michele Law

Email Address: info@kingsvillefolkfestival.org

Generally

21. The Organizer shall not assign this Agreement or the use of the Premises without the written consent of the Town, which consent may be arbitrarily withheld in the sole and unfettered discretion of the Town.
22. This Agreement may not be amended or modified except by a written instrument executed by both parties.
23. Waiver by any party of any violation or breach of this Agreement in any instance shall not be taken or held to be a waiver of any subsequent violation or breach or as a waiver of the provision itself that is breached, nor shall any delay or omission on the part of any party to exercise any right arising from such violation or breach alter or impair that party's right as to the same or any future violation or breach. Nothing shall be construed or have the effect of a waiver except an instrument in writing signed by the party which expressly waives a right, power or condition under this Agreement.
24. If any portion of this Agreement shall be held to be invalid or unenforceable by a court or forum of competent jurisdiction, the remaining portions of this Agreement shall remain in effect and enforceable.
25. This Agreement shall be binding upon and endure to the benefit of the parties to it and their respective heirs, personal representatives, successors and permitted assigns.
26. The undersigned officer(s) of the Organization represent and warrant that he/she/they has/have authority to sign on behalf of and to bind the Organizer and agree to be personally liable for payment of all amounts owing pursuant to this Agreement in the event that the Organizer disputes the authorization or is not a legal entity.

IN WITNESS WHEREOF, the Town and the Team have duly executed this Agreement.

**THE CORPORATION OF THE TOWN
OF KINGSVILLE**



Nelson Santos, Mayor



Jennifer Astrologo, Clerk



Sun Parlour Folk Music Society
I/We have authority to bind the
Organization.