

## LICENCE AGREEMENT

This agreement (this “License”) made in duplicate the \_\_\_\_\_ day of \_\_\_\_\_, 2024.

### **B E T W E E N:**

#### **SHERKSTON COMMUNITY GROUP**

(hereinafter called the “**SCG**”)

**- and -**

#### **THE CORPORATION OF THE CITY OF PORT COLBORNE**

(hereinafter called the “**City**”)

**WHEREAS** the City owns the Sherkston Community Center (“SCC”) located at 4893 Sherkston Rd, Sherkston, ON. L0S 1R0 in the City of Port Colborne;

**AND WHEREAS** the SCG is a legally incorporated not-for-profit entity;

**AND WHEREAS** the SCG and City agree that the SCG shall act as the custodian and have a license to use and program the SCC located in the City of Port Colborne in accordance with the terms hereof;

**NOW THEREFORE** this agreement witnesses that in consideration of the premises and the obligations herein expressed and for other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged) the SCG and City hereby agree as follows:

### **1. Designated Space**

- a. Subject to section 8 below, the City hereby grants to the SCG the right to act as the custodian, use and program the areas within the SCC grounds and building as identified in Schedule A – Designated Space (DESIGNATED SPACE) for the purposes as identified in section 2 below for the grant outlined in Schedule A – Designated Space.
- b. The DESIGNATED SPACE is accepted “as is, where is” by the SCG.
- c. The City shall be entitled to reasonable access to, and use of, the DESIGNATED SPACE as reasonably required for the City’s use and operations of the balance of

the SCC.

## **2. Purpose**

- a. The SCG acting as custodian, user and programmer of the SCC shall:
  - i. align its purposes and decision making with the mission, vision, values, and strategic priorities of the City;
  - ii. provide residents of the Sherkston community, Port Colborne and abroad with space and programming to be active, learn and engage with on another;
  - iii. be inclusive in the fostering of a welcoming, livable, and healthy community;

## **3. Term**

- a. Subject to section 8 below, the initial term of this license shall commence on January 1, 2024 (Commencement) and shall terminate five (5) years from the commencement date on December 31, 2029 (INITIAL TERM).
- b. Upon the expiring of the INITIAL TERM, the SCG and the City shall have the option to extend the INITIAL TERM of this license for three (3) additional periods of five (5) years (EXTENDED TERM). To facilitate an EXTENDED TERM:
  - i. the SCG will need to provide written notice to the City at least six (6) months prior to the expiration of the INITIAL TERM; and
  - ii. if the City agrees to the EXTENDED TERM, provide written acceptance of the EXTENDED TERM request to the SCG.

In the event of the exercise of the EXTENDED TERM, such extension shall be upon the same terms and conditions as this license.

## **4. SCG Covenants**

- a. The SCG covenants and agrees with the City that, throughout the term of the agreement the SCG shall:
  - i. observe all the terms, covenants and conditions of this agreement including, without limiting the generality of the foregoing, maintaining the

DESIGNATED SPACE within the terms and timelines contained in Schedule A – Designated Space hereto;

- ii. only use the DESIGNATED SPACE for the purpose of SCG and subject to section 2;
- iii. operate to the City's values and comply with all City policies and procedures, including but not limited to the City's code of conduct and zero tolerance for smoking and illicit substances on City property which includes the DESIGNATED SPACE;
- iv. comply with all laws, directions, rules and regulations of all governing and governmental bodies and authorities having jurisdiction, including the City;
- v. comply with all environmental laws, directions, rules, and regulations, and agrees not to contaminate the DESIGNATED SPACE or allow any discharge of any contaminants of any nature into the DESIGNATED SPACE;
- vi. be responsible to ensure any rental requiring a lottery or alcohol license from the Alcohol and Gaming Commission of Ontario (AGCO) or the City, as applicable, has the appropriate license;
- vii. communicate space rental rates and any changes to the City, 30 days prior to implementing rate changes;
- viii. not advertise SCG sponsors on or around DESIGNATED SPACE without the express written consent of the City;
- ix. be responsible for and make reasonable efforts to inform the public of any programming or space rental cancellations and be responsible for refunding any monies collected for canceled programs or space rentals.
- x. maintain insurance compliant with section 6 below;
- xi. ensure user groups provide valid certificate of insurance with general liability in an amount prescribed by the City but not less than 2 million that names SCG and the City or purchases the City's participant insurance as outlined in 4. a. xii.
- xii. participate in and administer components of the City's participant insurance program, as delegated by the City, including charging participants (unless

otherwise covered under section 4. a. xi) and reimbursing the City on quarterly basis applicable rates as set by the City to cover the cost of the City's participant insurance policy held through a third-party insurance company for activities related within the DESIGNATED SPACE;

- xiii. Keep records of users in participant insurance program including group, booking type, date of booking and rate charged and provide reporting in a mutually agreed upon format to the City on a quarterly basis;
  - xiv. communicate any significant changes in use of space or programming prior to implementation;
  - xv. make public SCG board meeting agendas and meeting minutes on a schedule that follows scheduled board meetings;
  - xvi. provide an annual report to Council;
  - xvii. provide annual, unaudited financial statements to the City within 90 days of SCG's year end. Allow the City and the City's auditors, if requested, access to financial records, including but not be limited to receipts and invoice or expense information.
- b. Specific to the DESIGNATE SPACE, the SCG covenants and agrees with the City that, throughout the term of the agreement the SCG shall:
- i. Sign for and subsequently be issued five (5) keys to the SCC building by the City for the DESIGNATED SPACE. The SCG shall not duplicate or share these keys and will abide by all rules and regulations of the City with respect to building safety and security. The SCG shall return the keys immediately upon request by the City, failing which will result in the locks being changed and the SCG being charged the cost of doing so;
  - ii. maintain the DESINGATED SPACE, including the SCG building to reasonable housekeeping standards, including collecting all waste and recyclables and placing them in appropriate containers and location for waste and/or recycle pickup;
  - iii. provide for general maintenance requirements of the DESIGNATED SPACE, including the SCG building and grounds, which includes but are not limited to painting, gardening, snow removal and lawn maintenance ;

- iv. provide for general supplies required in the DESIGNATED SPACE, including the SCG building, which includes but are not limited to tables, chairs, cleaning supplies and toiletries;
- v. Be responsible for the payment of utility costs, which includes but are not limited to hydro, gas, water, telephone, cable, telephone, and internet;
- vi. be responsible, including related costs, for the installation, maintenance and replacement of all trade fixtures and improvements within the DESIGNATED SPACE, including, but not limited to all shelves, racks, counters, signage, and specialized lighting;
- vii. not make any repairs, alternations, replacements, decorations, or improvements (work) to the DESIGNATED SPACE without the express written consent of the City. Any approved work that is fixed to the building will immediately become the property of the City and shall not be removed subject to section 4 (b) (x) below;
- viii. be responsible, including related costs resulting from damage to the DESIGNATED SPACE, including the SCC building, its employees, volunteers, participants, users, contractors, invitees, customers, and others for whom it is in law responsible;
- ix. not use any appliances, including but not limited to refrigerators, ovens and stoves, washers, and dryers without the express written consent of the City. Any appliances will be required to have a high energy efficiency rating;
- x. upon the termination of this agreement remove any fixtures and improvements requested for removal by the City from the DESIGNATED SPACE and if requested by the City, return the DESIGNATED SPACE to the same state as it was at the beginning of the term, subject only to reasonable wear and tear.
- xi. participate and where applicable lead or join partnership development, sponsorship activities, fundraising and grant initiatives to support the repair, replacement, and maintenance of the DESIGNATED SPACE.

## **5. City Covenants**

- a. City covenants and agrees with the SCG that, throughout the term of the

agreement the City shall:

- i. observe all the terms, covenants, and conditions of this agreement;
- ii. The request to replace any items described as “Capital Items” such as and not only including the following: New boiler, roof, plumbing system, HVAC unit, (as applicable), new electrical wiring shall be made in writing to the City, who will inform the committee accordingly. The committee would have option of cancelling the agreement.
- iii. reserve the right to restrict access to the DESIGNATE SPACE for purposes such as required repair and maintenance or health and safety resulting from an event such as severe weather. The City appreciates such situations may impact the SCG operations. The City is not responsible for any resulting financial loss that may result to the SCG;

## **6. Insurance**

- a. The SCG shall, throughout the INITIAL TERM and any EXTENDED TERM, at its own expense, take out and maintain commercial general liability insurance (POLICY) satisfactory to the City and underwritten by an insurer licensed to conduct business in the Province of Ontario. The POLICY shall provide coverage for bodily injury, property damage and personal injury and shall include but not be limited to:
  - i. A limit of liability of not less than \$5,000,000 per occurrence;
  - ii. Add the City as an additional insured with respect to the operations of the SCG;
  - iii. The POLICY shall contain a provision for cross liability and severability of interest in respect of the SCG;
  - iv. Non-owned automobile coverage with a limit not less than \$2,000,000 and shall include contractual non-owned coverage (SEF 96);
  - v. Tenant’s legal liability;
  - vi. Products and complete operations coverage;
  - vii. Contractual liability;
  - viii. Work performed on behalf of the SCG by sub-contractors;
  - ix. The POLICY shall be provided 30 days prior notice of cancellation.

- b. The SCG agree to furnish the City with proof of the POLICY in a form satisfactory to the City on or before the acceptance of this agreement by the City and for subsequent POLICY updates to be provided to the City as they expire or at the request of the City to verify coverage is maintained.

## **7. Indemnity**

- a. The SCG shall defend, indemnify and save harmless the City, 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 SCG, its 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 License. This indemnity shall be in addition to and not in lieu of any insurance to be provided by the SCG in accordance with this License and shall survive this License.
- b. The SCG agree to defend, indemnify, and save harmless the City 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 arising out of or related to the SCG's status with WSIB. This indemnity shall be in addition to and not in lieu of any proof of WSIB status and compliance to be provided by the SCG in accordance with this License and shall survive this License.

## **8. Default**

- a. Any of the following occurrences or acts shall constitute an event of default by the City or SCG under this agreement:
  - i. failure to make any payment of any sums herein required to be paid, where such failure shall continue for fifteen (15) days after the other party shall have given the defaulting party notice specifying such failure;
  - ii. failure to perform any covenant or condition required to be performed or observed by such party hereunder, where such failure shall continue for fifteen (15) days after delivery by the other party of notice specifying such failure and, if such default cannot be reasonably cured within such fifteen (15) day period, such longer period as may be reasonably required to cure such default; and
  - iii. the bankruptcy or taking the benefit of any legislation providing protection for insolvent parties or winding up or otherwise ceasing to exist.

- b. In the event default shall occur and be continuing after any applicable curative period, the non-defaulting party, in addition to all other rights it may have, shall have the following rights:
  - i. to immediately terminate this agreement and the term by giving written notice of such termination to the defaulting party. Any payments for which the SCG is liable under this agreement shall thereupon be apportioned and paid in full and refunded, if necessary, to the date of such termination, and the SCG shall immediately deliver possession of the DESIGNATED SPACE to the City and the City may re-enter and take possession thereof;
  - ii. to perform the covenant or condition required to be performed or observed by the defaulting party (the costs of doing so shall be a debt from the defaulting party to the non-defaulting party and, if the City is the defaulting party, may be set off against any future payments); and
  - iii. if the SCG is the defaulting party, upon written notice to the SCG, the City may re-enter the DESIGNATED SPACE.

**9. Assignment**

- a. The SCG shall not assign this agreement, in whole or in part, or enter any sub-license or otherwise permit any other party to occupy the DESIGNATED SPACE or any part thereof without the written consent of the City.
- b. Subject to the foregoing, this agreement shall ensure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

**10. Notices**

- a. Any demand, notice, direction, or other communication made or given hereunder (Communication) shall be in writing and shall be made or given by personal delivery, courier, facsimile transmission, or sent by registered mail, charges prepaid, addressed as follows:

To the SCG:	Attention: Ashley Collee 4893 Sherkston Road, Sherkston, ON. L0S 1R0 (289) 690-0480
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To the City:	Attention: City Clerk 66 Charlotte Street Port Colborne, ON L3K 3C8 (905) 835-2900
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or to such other address or facsimile number as either party may, from time to time, designate in accordance with this section.

- b. Any communication made by personal delivery or by courier shall be conclusively deemed to have been given and received on the day of actual delivery thereof or, if such day is not a business day, on the first business day thereafter. Any communication made or given by email on a business day before 5:00 p.m. (local time of the recipient) shall be conclusively deemed to have been given and received on such business day, and otherwise shall be conclusively deemed to have been given and received on the first business day following the transmittal thereof. Any communication that is mailed shall be conclusively deemed to have been given and received on the fifth business day following the date of mailing but if, at the time of mailing or within five business days thereafter, there is or occurs a labour dispute or other event that might reasonably be expected to disrupt delivery of documents by mail, any Communication shall be delivered or transmitted by any other means provided for in this section. When used in this agreement, "business day" shall mean a day other than a Saturday, Sunday, or any statutory holiday in the province in which the SCG is located.

**11. General Provisions**

- a. The City and SCG shall, without charge, at any time and from time to time, within ten (10) days after request by the other party, certify by written instrument to the other party or any other person, firm or corporation specified by the other party, that this agreement is unmodified and in full force and effect (or, if there have been any modifications, that this agreement is in full force and effect as modified and stating the modifications), whether or not there are then existing any known set-offs or defences against the enforcement of any of the agreements, terms, covenants or conditions of the certifying party and, if so, specifying the nature of same and confirming the dates, if any, to which any charges hereunder have been paid.
- b. This agreement constitutes the entire agreement of the parties with respect to the matters governed by it and supersedes all prior agreements and understandings, whether written or oral, relative to the subject matter hereof. Except as otherwise specifically set forth in this agreement, neither party makes any representation or warranty, express or implied, statutory, or otherwise, to the other. This agreement may not be amended or modified except by a written instrument executed by both parties.

- c. The parties hereto disclaim any intention to create a partnership between them or to constitute any of them the agent of the other or to create any fiduciary relationship between them. Nothing in this agreement shall constitute the parties being construed as partners or agents of one another, nor except as may be expressly provided in this agreement, constitute any of them the agent of the other party.
- d. If any covenant, provision, or restriction contained in this agreement is found to be void or unenforceable in whole or in part by a competent authority, it shall not affect or impair the validity of any other covenant, provision or restriction and, without limitation, each of the covenants, provisions and restrictions contained herein and hereby declared to be separate and distinct covenants, provisions and restrictions.
- e. Unless the context otherwise requires, words importing the singular in number only shall include the plural and *vice versa*, words importing the use of gender shall include the masculine, feminine and neuter genders, and words importing persons shall include individuals, corporations, partnerships, associations, trusts, unincorporated organizations, governmental bodies and other legal or business entities.

**IN WITNESS WHEREOF** the parties hereto have caused this license agreement to be duly executed as of the day and year first above written.

THE CORPORATION OF THE CITY OF PORT COLBRONE

\_\_\_\_\_  
William C. Steele, Mayor

\_\_\_\_\_  
Interim City Clerk

\_\_\_\_\_  
Greg Zwiep, Manager Recreation

SHERKSTON COMMUNITY GROUP

Ashley Collee, President Sherkston Community Group  
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## Appendix A – Designated Space

Space	Payment <sup>1, 2</sup>	Payment Term
SCC Building (Appendix C - Layout)	No charge to SCG, City to provide grant to SCG for acting as the custodian, providing access to, and programming the designated space. In addition to the grant from the City, SCG to retain space rental fees less participant insurance fees to be charged by SCG and reimbursed to the City.	City to provide funding by March 15 <sup>th</sup> of each year.
SCC Grounds (Appendix D – Layout)		

<sup>1</sup> plus HST (Harmonized Sales Tax), if SCG has an HST number.

<sup>2</sup> for grant and in-kind grounds maintenance as follows:

Term	Year	Grant	Appendix B – Grant Grounds Maintenance <sup>3</sup>	Total <sup>4</sup>	Change
Initial 5 Year License Term	1	\$10,000	\$5,200	\$15,200	
	2	\$10,300	\$5,400	\$15,700	\$500
	3	\$10,600	\$5,600	\$16,200	\$500
	4	\$10,900	\$5,800	\$16,700	\$500
	5	\$11,200	\$6,000	\$17,200	\$500
Optional 5 Year Extension License Term	6	\$11,500	\$6,400	\$17,900	\$700
	7	\$11,800	\$6,600	\$18,400	\$500
	8	\$12,100	\$6,800	\$18,900	\$500
	9	\$12,400	\$7,000	\$19,400	\$500
	10	\$12,700	\$7,200	\$19,900	\$500

<sup>3</sup> In lieu of the City performing grounds maintenance, including but not limited to lawn cutting and snow removal the following grant is provided. SCG can utilize the funds to either hire a third-party contractor or perform the tasks themselves either through a paid or volunteer process. In the event the grounds maintenance costs are less than the grant SCG can repurpose the funds to other purposes within the mandate of SCG. In providing this grant SCG agrees to the minimum maintenance standards as set out in Appendix B.

<sup>4</sup> City grant plus in-kind estimate for grounds maintenance. Any cost that may arise for repairs, replacement, or maintenance (labour, parts, and materials) are in addition to the figures shown in the table above. Consistent with 5 (a) (ii) above, the City is under no

obligation for any repair, replacement, or maintenance of the designated space.

In the event the license is extended for a third and fourth term the grant is to be renegotiated at that time.

## **Appendix B – General Maintenance**

SCG agrees to the following minimum grounds maintenance standards with respect to the DESIGNATED SPACE:

Task	Description
Lawn Cutting	Cut and trim grass to a height of approximately 2 1/2"-3". All clippings to be blown from hard surfaces after lawn has been cut (minimum bi-weekly cuts)
Snow Removal	Plow snow in driveway and parking spots. Remove all snow from main walkways.

SCG can maintain the lawn cutting and snow removal at a higher standard should it desire.

In the winter SCG to implement practices and procedures to eliminate ice causing poor parking or walkway conditions. In addition, SCG to install reflective stakes to mark entrances to parking and walkways.

Appendix C – SCC Grounds

