

The Corporation of the Town of Essex

By-Law Number 2455

Being a by-law to authorize the execution of a Lease Amending Agreement between the Corporation of the Town of Essex and the Essex Area Food Bank for the Operation of a Food Bank located in the accessory building at 60 Fairview Avenue West, Essex, Ontario (formerly Fury Training Grounds)

Whereas The Corporation of the Town of Essex (the “Town”) is the owner of the property and buildings located at 60 Fairview Avenue West, Essex, Ontario (the “Premises”);

And Whereas the Town and the Essex Area Food Bank entered into a lease agreement dated March 4, 2024, whereby the Essex Area Food Bank leased space on the Premises for a food bank;

And Whereas the Town and the Essex Area Food Bank are desirous of amending the Lease Agreement to add additional leased space;

Now therefore the Council of The Corporation of the Town of Essex hereby enacts as follows:

That the Mayor and Clerk are hereby authorized to execute a Lease Amending Agreement between the Corporation of the Town of Essex and the Essex Area Food Bank in the form attached hereto as Appendix “A”; and

That this by-law shall come into force and take effect upon the final passing thereof.

Read a first, a second, and a third time and finally passed on June 16th, 2025.

Mayor

Clerk

Appendix "A"

LEASE AMENDING AGREEMENT

THIS AGREEMENT is dated the 16th day of June, 2025.

BETWEEN:

THE CORPORATION OF THE TOWN OF ESSEX

(the "Lessor")

- and -

THE ESSEX AREA FOOD BANK

(the "Lessee")

WHEREAS:

- A. Lessor and Lessee entered into a lease agreement dated March 4, 2024 (the "**Lease Agreement**"), attached hereto as Schedule 'A';
- B. The Lease Agreement, in its recitals defines the term "premises" to be approximately 4,000 sq. ft., and being composed of the area shown on Appendix "A" to the Lease Agreement; and
- C. The parties wish to amend the Lease Agreement as of the date first set out above to change the definition of "premises" in order to increase the premises size.

NOW THEREFORE, in consideration of the premises and the mutual covenants herein contained and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by all parties, the parties hereto agree as follows:

1. AMENDMENTS TO LEASE AGREEMENT

1.1 Amendments. The Lease Agreement is amended as follows:

- a) The fourth paragraph of the Lease Agreement is deleted and expunged in its entirety and replaced with the following:

"And Whereas, that in consideration of the rents, covenants and agreements hereinafter reserved and contained on the part of the said Lessee to be paid, observed

and performed, the said Lessor by these presents doth demise and lease unto the said Lessee all that messuage and tenement located in the Building consisting of approximately 4,000 sq. ft., along with an area of approximately twelve feet and six inches (12'6") by nine feet and six inches (9'6") outside of the Building in order to install and maintain a concrete pad to house a walk-in freezer, as more particularly detailed in Appendix "A" attached hereto this Lease Agreement (hereinafter called the "**premises**"), upon the following terms and conditions:"

- b) The following additional paragraphs are added to the Lease Agreement as Lessee covenants:
 - i. Lessee covenants and agrees that all fixtures installed by the Lessee shall be new and the Lessee shall not make any alterations to the premises without first obtaining the Lessor's written consent, after submission of plans and specifications. The Lessee shall present to the Lessor plans and specifications in form, content and such detail as the Lessor may reasonably require for such work at the time approval is sought. The Lessee covenants that any work that may be done in the premises by or on behalf of the Lessee shall not materially conflict or interfere with any work being done or about to be done by the Lessor in or about the Building, and the Lessee shall obtain all permits, licenses and final inspections in respect of any such work done by or on the Lessee's behalf in accordance with all municipal requirements. Notwithstanding anything herein contained, the Lessee shall make no alterations, additions or improvements that are of a structural nature or that would lessen the value or leasable area of the premises or the Building. The Lessee further agrees to install and maintain such alterations in good condition and repair at all times and in conforming with laws and regulations of governmental authorities. The Lessee agrees and covenants to obtain final inspection and approval by the municipality, as required, for any work performed at the premises for which municipal permits are required, and to provide any required certificates of final approval or occupancy to the Lessor;
 - ii. The Lessee covenants and agrees that any alterations made by the Lessee pursuant to this Lease Agreement shall be installed and maintained by the Lessee at its sole cost and expense; and
 - iii. The Lessee covenants and agrees that all alterations, additions and improvements made by the Lessee or made by the Lessor on the Lessee's behalf by agreement or under this Lease shall become the property of the Lessee, unless such alterations, additions and improvements are a permanent addition to the premises, whereby such alterations, additions and improvements shall become the property of the Lessor; and
- c) Appendix "A" to the Lease Agreement is deleted and expunged in its entirety and replaced with Schedule "B" attached hereto this Lease Amending Agreement.

2. INTERPRETATION

2.1 Terminology. All words and expressions defined in the Lease Agreement shall have the same meanings when used herein with all amendments necessary to give effect thereto. Any terms used herein and not specifically defined herein shall have the meaning set forth in the Lease Agreement. Where the two agreements conflict, the definitions contained herein shall govern.

2.2 Number and Gender. All words and personal pronouns relating thereto shall be read and construed as the number and gender of the party or parties referred to in each case require, and the verb agreeing with the required word and pronoun.

2.3 Headings. The Section, Subsection and Paragraph headings are not to be considered part of this agreement, are included solely for convenience, are not intended to be full or accurate descriptions of the content thereof and are not to be considered in the interpretation of this agreement.

SECTION 3 – GENERAL

3.1 Confirmation. The parties hereby confirm that all other terms, conditions and covenants contained in the Lease Agreement remain in full force and effect save as amended by this agreement.

3.2 Applicable Law. This agreement shall be interpreted according to the laws of the Province of Ontario and the federal laws of Canada applicable therein. Should any dispute of any kind arise in connection with this agreement, including but not restricting the generality of the foregoing, any question in respect of the interpretation, validity, termination or non-termination of this agreement or any renewal thereof, the parties agree to submit to the jurisdiction of the courts of the Province of Ontario exclusively.

3.3 Entire Agreement. Subject to the terms of the Lease Agreement, this agreement constitutes the entire agreement between the parties pertaining to the subject matter hereof, and its execution has not been induced by nor do any of the parties hereto rely upon or regard as material any representation or writings whatsoever not incorporated herein and made a part hereof and this agreement supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, of or between the parties pertaining to the subject matter hereof.

3.4 Schedules. The following Schedules are incorporated in and form part of this agreement:

1. *Schedule "A": The Lease Agreement; and*
2. *Schedule "B": The Premises Map.*

3.5 Successors and Assigns. This agreement shall be binding upon and enure to the benefit of the parties hereto and any respective heirs, executors, administrators, successors and assigns agreed to in writing by the other party.

3.6 Severability. The provisions of this agreement are severable and the invalidity of any provision of this agreement shall not affect the validity of any other provision contained in this agreement.

3.7 Further Assurances. The parties shall sign such further agreements, assurances, papers and documents and generally do and perform or cause to be done and performed such further and other acts and things that may be necessary or desirable from time to time in order to give full effect to this agreement and every part hereof.

3.8 Counterparts. This agreement may be executed in counterparts, each of which so executed shall be deemed to be an original and such counterparts together shall constitute one and the same document. Any signature to this agreement by facsimile or other electronic means shall be deemed to be an original.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement on the date first set out above:

— Balance of page left intentionally blank, signature page follows —

IN WITNESS WHEREOF the parties have executed this Agreement.

**THE CORPORATION OF THE TOWN OF
ESSEX**

By: _____
Name: Sherry Bondy
Title: Mayor

By: _____
Name: Joe Malandrucolo
Title: Director, Legislative Services

We have authority to bind the corporation.

ESSEX AREA FOOD BANK

By: _____
Name: Lonnie Jones
Title: Treasurer

By: _____
Name: Gerald Belanger
Title: Chairman of Board of Directors

We have authority to bind the corporation.

SCHEDULE "A"
The Lease Agreement

Schedule "A" to By-Law Number 2313

This Lease Agreement made this 4th Day of March, 2024.

Between:

THE ESSEX AREA FOOD BANK

(the "Lessee")

And

CORPORATION OF THE TOWN OF ESSEX

(the "Lessor")

Witnesseth:

WHEREAS the *Municipal Act, 2001* (the "**Act**"), provides that the Lessor may, for its own purposes, exercise its powers under the culture, park, recreation, and heritage sphere of jurisdiction in the municipality of the Lessor;

AND WHEREAS, Section 11 of the Act provides that the Lessor may pass By-Laws respecting matters relating to culture, parks, recreation, and heritage;

AND WHEREAS the Lessor is the owner and operator of the building located at 60 Fairview Avenue West, Essex, Ontario (the "**Building**") which shares a parking lot with the Essex Sports Complex at 60 Fairview Ave W., Essex, Ontario (the "**Property**");

And Whereas, that in consideration of the rents, covenants and agreements hereinafter reserved and contained on the part of the said Lessee to be paid observed and performed, the said Lessor by these presents doth demise and lease unto the said Lessee all that message and tenement located in the Building consisting of approximately 4,000sq. ft., and being composed of the area as shown on Appendix "A" attached hereto (hereinafter called the "**premises**"), upon the following terms and conditions:

TO HAVE AND TO HOLD the premises for a five (5) year term (the "**initial term**") subject to an option for a further term of five (5) years as herein described below, to be computed from the 1st day of July, 2024, and ending on the 30th day of June, 2029, and will include an annual Consumer Price Index as published by The Bank of Canada adjustment to be made to the previous year's rent throughout the initial term and any extension thereof. The initial term and any extension thereof shall be referred to in this Lease Agreement as the "**Term**".

Yielding and paying therefore rental as follows:

- The Lessee shall, upon signing this Lease Agreement, provide the Lessor with cash, or certified funds in the amount of twenty thousand (\$20,000.00) dollars as a non-refundable deposit.
- Rent for the first year of the Term shall be the sum of twenty-seven thousand and six hundred (\$27,600.00) dollars plus Harmonized Sales Tax ("H.S.T."), payable in monthly installments of two thousand and three hundred (\$2,300.00) dollars plus H.S.T. starting July 1st, 2024, and ending June 30, 2025;
- During each subsequent year of the Term, the rent will be adjusted on July 1st of each year of the Term by the proportionate year over year change in the total Consumer Price Index as published by The Bank of Canada and a statement will be forwarded to the Lessee by the Lessor prior to July 1st of each year of the Term, noting such adjustment of the rent amount;

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- Rent shall be paid annually by way of twelve (12) monthly post-dated cheques made payable to the Lessor and remitted prior to July 1 of each year of the Term;
- The Lessee agrees to deposit with the Lessor at the time of signing this Lease Agreement, cash, or certified funds equivalent to the sum of first and last months' rent for the first year of the Term and further agrees to providing post-dated monthly cheques for the duration of the first year of the Term;
- In addition to the first and last months' rental payments as indicated above, the Lessee agrees to deposit with the Lessor the sum of one thousand (\$1,000.00) dollars as a damage deposit pending a full and final inspection of the premises (Appendix "A") as performed by the Manager Parks and Facilities and/or authorized staff of the Lessor as appointed by the Director, Community Services of the Lessor following the termination of this Lease Agreement to be applied to any damage or destruction to the premises over-and-above of normal wear and tear and will be refunded to the Lessee following a deduction of any such evaluated damage or destruction to said premises;
- The Lessee will comply with all applicable Federal, Provincial, Municipal, and local health unit (Windsor-Essex Health Unit) safety and licensing rules, laws, regulations, and provisions;
- The Lessee will immediately notify in writing to the Manager, Parks and Facilities of the Lessor of any problems, issues, concerns, repairs, or damage to the premises, including but not limited to Lessor equipment, Lessor leased equipment or Lessor mechanical fixtures, Lessor utility services or Lessor structures requiring immediate attention;
- The Lessee will ensure that absolutely no alcohol, tobacco or cannabis products of any nature, brand, or type will be sold, provided or used on the premises or any municipal property of the Lessor at any time throughout the term of this Lease Agreement;
- The Lessee to provide all cleaning supplies to maintain cleanliness and sanitary conditions of the premises to the satisfaction of the Lessor, in its sole discretion, including but not limited to removal of garbage/recycling;
- Subject to the *Commercial Tenancies Act*, if the Lessee abandons or vacates the premises at any time prior to the expiration of the Term, the Lessor shall be permitted to retain absolutely all of the aforesaid sum of monies so deposited with the Lessor, and;
- If any payments required to be made by the Lessee hereunder are not paid when due, then interest at the rate of one and a quarter (1.25%) percent per month from the date when such overdue amounts were due to the date when such overdue amounts are paid shall accrue and be due and payable as additional rent.

The Lessee covenants with the Lessor:

- To pay the rent;
- To pay municipal property taxes;
- To pay the cost and expenses incurred in the operating, replacing, maintaining and repairing of the premises, and the equipment located therein, save and except structural repair, which shall be the responsibility of the Lessor, including, but not limited to any individually assessed utilities, telephone, cable, wi-fi, hydro, water, gas, heating or air-conditioning, snow removal (winter control), landscaping, garbage removal, insurance and security costs required by the Lessee and assigned to the premises during the Term and further, the Lessee acknowledges that Lessor shall not be liable for any interruption or failure in the supply of any such utilities or services to the premises;

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- The Lessee will maintain, in accordance with the Town of Essex Snow Removal By-law #1108, or as amended from time to time, while following the provisions for an institutional facility, winter control on the paved areas of the premises, including but not limited to the entry sidewalk from the parking lot to the building and any future driveway installed as part of the premises operation.;
- The Lessee understands that parking for the premises is subject to availability and the use of the shared parking lot abutting the premises is considered non-exclusive use;
- Except with the advanced written permission of the Manager, Parks and Facilities, in the Manager's sole discretion, the Lessee shall not be permitted to operate on the premises during the annual operation of the Essex Fun Fest. Essex Fun Fest operational times normally occur one week during the summer on Thursday from 3:00 pm to Sunday at 6:00 pm and may be amended from time to time with notice provided to the Lessee. During the week of the Essex Fun Fest, there will be minimal parking at the shared parking lot abutting the premises, and it should be an expectation that patrons of the Lessee will park at the Maedel Community Centre and may have to walk to the premises;
- Not to carry on upon the premises any activities that may be deemed a nuisance or unlawful or by which the insurance on the premises will be increased, and further not to carry on any other business or activities other than the normal operations of the Lessee without the consent of the Lessor, such consent not to be arbitrarily or unreasonably withheld;
- To maintain the premises including the exterior areas of the Building, including all public areas, in good condition and free from litter. If any garbage/materials are left on site that belong to the Lessor, Lessee shall contact the Manager, Parks and Facilities of the Lessor, to report that cleanup may be necessary;
- The Lessee shall not place, or cause to be placed, any sign or advertising of any kind on the premises, the Building or the Property without first receiving approval, in writing, from the Lessor;
- That it has inspected the premises and conducted such examinations and tests as it deems desirable. The Lessee acknowledges that the Lessor does not warrant or represent the condition of the premises to the Lessee, and the Lessee accepts the premises in its present condition;
- That, except as herein otherwise specifically provided, Lessee assumes the entire responsibility for the condition, operation, maintenance, and management of the premises and Lessor shall have no responsibility whatsoever for such or for damage to the Lessee's property in and upon the premises under any circumstances whatsoever;
- That if, after reasonable notice given by the Lessor to the Lessee, the Lessee refuses or neglects to repair properly and promptly as required hereunder and to the reasonable satisfaction of the Lessor, the Lessor may make such repairs without liability to the Lessee for any loss or damage that may accrue to the Lessee's merchandise, fixtures or other property or to the Lessee's business by reason thereof, and upon completion thereof the Lessee shall pay as additional rent the Lessor's costs for making such repairs upon presentation of a bill therefore;
- That it shall throughout the Term, at its own expense, keep in force for the benefit of the Lessor and Lessee, comprehensive general liability insurance in respect of injury to or death of one or more persons or property damage with limits of not less than Two Million (\$2,000,000) Dollars per occurrence covering the premises described herein. The Corporation of the Town of Essex (33 Talbot Street South, Essex, ON N8M 1A8) shall be named as an additional insured in the policy of insurance and the policy shall contain a cross liability and separation clause. Such policy of insurance shall not be changed, cancelled, or allowed to lapse without providing the Lessor with thirty (30) days' notice

Schedule "A" to By-Law Number 2313

in writing. As a condition of the Lessor entering into this Lease Agreement, Lessee will provide a Certificate of Insurance for such comprehensive liability insurance to the Lessor upon entering into this Lease Agreement;

- The Lessee must ensure that the Lessee maintains current registration and insurance for any corporate vehicle of the Lessee, and the Lessor will not be held responsible for any damage that may occur to any such vehicle while on the Property;
- That it shall throughout the Term, at its own expense, keep in force insurance against loss or damage by fire on any equipment, inventory and supplies owned by Lessee and maintained on the premises;
- That it will indemnify Lessor and save Lessor harmless from and against any and all claims, actions, damages, liability and expense (including legal fees on a full indemnity basis) in connection with or arising from or out of any occurrence in, upon or at the premises or any part thereof, or occasioned wholly or in part by any act or omission of Lessee, or Lessee's agents, contractors, employees, servants, licensees or invitees;
- That it shall not make any alterations, additions, or improvements to the premises without first submitting the plans and specifications (including materials to be used) thereof to the Lessor and without first obtaining approval in writing of the Lessor, such approval may not be unreasonably withheld. Lessee shall further covenant to be responsible for any applicable costs, expenses, fees and all applicable inspections and the costs thereof, including but not limited to, those of the Lessor;
- To permit the Lessor and its agents access to the premises, upon providing reasonable notice to Lessee; and
- That Lessee is a duly incorporated not-for-profit corporation whose not-for-profit and corporate status is and shall remain in good standing for the duration of this Lease Agreement.

The Lessor covenants with the Lessee:

- To provide Lessee with quiet enjoyment of the premises, and
- During the Term, to make any required structural repairs to the roof, exterior walls, foundations, drains and sewers of the premises caused by structural defect or weakness unless caused by the act or neglect of Lessee, its agents, servants, invitees or those for whom Lessee is at law responsible in which event such repair shall be made by the Lessor but at the expense and cost of Lessee.

Provided that Lessee is not in breach of the terms of this Lease Agreement, Lessee may remove its fixtures, if such removal may be, and is done without injury to the premises.

Provided that in the event of damage to the premises by fire, lightning or tempest, rent shall cease until the premises are rebuilt.

Provided that, where the premises become vacant and so remain for a period of thirty (30) days, it shall be presumed that Lessee has abandoned the premises, and the Lessor may re-enter and take immediate possession of the premises.

Provided for re-entry by the Lessor on non-payment of rent or non-performance of covenants, provided that such re-entry shall, at all times, be in accordance with the provisions of the *Commercial Tenancies Act*.

Provided Lessee has not been in default during the initial term and it is mutually agreeable between the Lessor and Lessee, Lessee shall have and is hereby granted, an option to

Schedule "A" to By-Law Number 2313

extend the term of this Lease for an additional five (5) year period upon providing such notice in writing to the Lessor at least ninety (90) days prior to the end of the initial term, with such renewal to begin upon the expiration of the initial term of this Lease. If the option to lease for a further term of five (5) years is exercised, the rental amount thereafter shall continue to be adjusted year over year, effective on July 1 of each year, in proportion to the applicable Consumer Price Index as published by The Bank of Canada.

Provided that, if at the end of the Term, whether by effluxion of time or any other reason, the Lessor permits Lessee to remain in possession of the premises and accepts rent in respect thereto, a tenancy from year to year shall not be created by implication of law but the Lessee shall be deemed to be a monthly Lessee only subject in all respects to the provisions of this Lease Agreement.

Provided that the Lessor shall have the right to cancel this Lease Agreement at any time during the Term for reason of any default by Lessee under this lease such default being a failure to pay rent when due or a failure to perform its covenants or any other of its obligations under this Lease Agreement and such default has not been remedied within five (5) days written notice of such default.

Provided further that the Lessor shall have the right to cancel this Lease Agreement at any time during the term of the Agreement as a result of declaring the premises surplus or determining another use for the premises, upon providing notice in writing to Lessee of at least ninety (90) days.

It is hereby declared and agreed that the expressions "Lessor" and "Lessee" wherever used in this Lease Agreement, shall, when the context allows, include, be binding on and enure to the benefit of not only the parties hereto, but also their respective heirs, executors, administrators, and assigns.

And it is further agreed between the parties hereto that wherever the singular and masculine are used throughout this Lease they shall be construed as if the plural or feminine had been used, where the context or the party or parties hereto so require, and the rest of the sentence shall be construed as if the grammatical and terminological changes thereby rendered had been made.

Lessee acknowledges and agrees that nothing herein shall entitle the Lessee in law or in equity to any title or interest in, to or under, or relating to, the premises, the Property or the Building. The Lessee covenants and agrees to indemnify the Lessor and save it harmless from and against any and all claims, actions, damages, liabilities and expenses with regard to such, including all reasonable costs, expenses and solicitors and counsel fees, on a solicitor and his own client basis, incurred or paid by the Lessor in connection with such.

Lessor and Lessee acknowledge and agree that each has joined in and contributed to the drafting of this Lease Agreement and as a result there shall be no presumption in construing the provisions of this Lease Agreement favoring or burdening either Lessor or Lessee based upon draftsmanship or similar rule of construction. Lessor and Lessee further acknowledge and agree that each have had the opportunity to consult and obtain independent legal and professional advice in conjunction with this lease and its obligations thereto and have either done so or waived their right to such.

This Lease Agreement may be executed in any number of separate counterparts, each of which, when executed and delivered, shall be an original, but such counterparts shall together constitute one and the same document. Delivery of an executed counterpart of this Lease Agreement with a facsimile signature shall have the same binding effect as delivery of an executed original.

Schedule "A" to By-Law Number 2313

And the following addresses are provided for the Lessor and Lessee for purposes of providing notice:

Lessor: The Corporation of the Town of Essex
33 Talbot Street South, Essex, Ontario, N8M 1A8
Telephone: 519-776-7336

Lessee: Essex Area Food Bank
PO Box 3
Essex, ON N8M 2Y1
Telephone: 519-776-4070
Email: essexareafoodbank@gmail.com

IN WITNESS WHEREOF the parties hereto have duly executed this Lease Agreement on the date first set out above.

Essex Area Food Bank



Lonnie Jones, Treasurer



Gerald Belanger, Chairman of Board of Directors

We have authority to bind the Corporation

THE CORPORATION OF THE TOWN OF ESSEX



Sherry Bondy, Mayor



Joseph Malanduccolo, Clerk

We have authority to bind the Corporation

Schedule "A" to By-Law Number 2313

Appendix 'A' – The Essex Area Food Bank Leased Space



SCHEDULE "B"
The Premises Map

