

The Corporation of the Town of Essex

By-Law No. 2041

Being a by-law to authorize the execution of an agreement between the
Town of Essex and Heritage Colchester for the use and operation of the
Colchester Schoolhouse Building located at 195 Bagot Street,
Colchester, Ontario

WHEREAS the Town of Essex is the owner of the facility known as the Colchester School House, located at 195 Bagot Street in the Town of Essex (Plan 18, Lot 5) hereinafter referred to as the “Colchester Schoolhouse”;

AND WHEREAS the Town of Essex wishes to enter into an agreement with Heritage Colchester, a Not for Profit Ontario Corporation hereinafter referred to as “Heritage Colchester”, to use and operate at the Colchester Schoolhouse;

AND WHEREAS the Town of Essex will retain control of the facility;

AND WHEREAS Heritage Colchester will operate and use the Colchester Schoolhouse for purposes relating to the restoration, development, maintenance and operation of a cultural, historic, educational and community Centre for use by the residents of Colchester Centre and the Town of Essex within the mandate of the Mission Statement, Constitution and By-Laws of Heritage Colchester and pursuant to the terms and conditions of the Agreement attached hereto as Schedule “A” to this By-law 2041.

AND WHEREAS the Town wishes to maintain exempt status of the facility for purposes of municipal and school board taxation;

Now, therefore, the Municipal Council of the Corporation of the Town of Essex enacts as follows:

1. That the Mayor and Clerk are hereby authorized to execute a Lease Agreement between The Corporation of the Town of Essex and Heritage Colchester for the purposes of Heritage Colchester operating as a cultural, historical, educational and community centre to benefit the general public and to be located at 195 Bagot Street in Colchester, Ontario, pursuant to the terms and conditions of said Agreement attached hereto as Schedule “A” and forming of By-law 2041.
2. That the Mayor and Clerk each be authorized to sign and provide such other documents and assurances so as to give effect to the Agreement attached hereto as Schedule “A”

Read a first and a second time and provisionally adopted on November 15, 2021.

Mayor

Clerk

Read a third time and finally adopted on December 6, 2021

Mayor

Clerk

**SCHEDULE "A" TO By-Law Number
2041**

This Agreement made in triplicate this 15th, day of August,
Between:

The Corporation of the Town of Essex

Hereinafter "Town"
Of The First Part

- And -

Heritage Colchester, an Ontario Not for Profit Corporation.

Hereinafter "Operator"
Of The Second Part

Witnesseth:

Whereas the Municipal Act, 2001, S.O. 2001, Chapter 25, provides the Municipality may, for its own purpose, exercise its powers under the culture, park, recreation and heritage sphere of jurisdiction in the Municipality;

And Whereas Section 11 provides that the Municipality may pass By-Laws respecting matters relating to culture, parks, recreation and heritage;

And Whereas the Town of Essex is the owner of the facility known as the Colchester Schoolhouse building located at 195 Bagot Street, in the Town of Essex, otherwise described as Plan, Plan 18, Lot 5, hereinafter referred to as the 'Colchester Schoolhouse';

And Whereas the Town wishes to enter into an agreement with Heritage Colchester to use and operate the Colchester Schoolhouse commencing December 1, 2021;

And Whereas the Town wishes to retain ownership and control of the Colchester Schoolhouse as a property of historical significance in the Town of Essex;

And Whereas the Town and Heritage Colchester are each desirous of the Colchester Schoolhouse being used for the purposes of and/or to operate for the cultural, historical, educational and community benefit of the general public;

And Whereas the Operator is a not-for-profit entity.

1.0 Duties of the Operator

The Operator agrees to perform the following duties related to management, operation and maintenance of the Colchester Schoolhouse and to be responsible for the payment of costs related to the Colchester Schoolhouse on the following basis:

1.1 Management and Operation

- a. Daily management of activities within the Colchester Schoolhouse;
- b. Staffing for Heritage Colchester at the Colchester Schoolhouse at no cost to the Town;
- c. Soliciting and collecting membership dues and fees for service from patrons, subject to the Town's review;
- d. Record keeping and administration of all activities of Heritage Colchester;
- e. Greeting customers and the general public at the Colchester Schoolhouse;
- f. Supplying information and interpreting the history of the Town and surrounding communities for customers and the general public;
- g. Promoting Heritage Colchester, as an educational opportunity for learning about the history of the Town and surrounding communities through interpretative programs, public lectures, school tours, etcetera; and
- h. Providing verbal and written reports and newsletters to the Town on activities of Heritage Colchester at the Colchester Schoolhouse as required.

1.2 Maintenance

- a. Cleaning of the interior property, including picking up of garbage and disposal of same;
- b. Cleaning and maintenance of the interior of the Colchester Schoolhouse;
- c. Completion at its own expense of any desired interior and/or exterior renovations and restoration of the Colchester Schoolhouse (over and above those required by law to make the property fit or ready for occupancy). If applicable such interior and/or exterior renovations and restoration to the property shall be as further identified and mutually agreed upon by the parties hereto. Any renovations, alterations, additions or improvements to the property shall not be made without first submitting the plans and specifications (including materials to be used) thereof to the Town and without first obtaining approval in writing of the Town, such approval may not be

unreasonably withheld. The Operator shall further covenant to be responsible for any applicable fees and all applicable inspections and the costs thereof, including but not limited to, those of the Town of Essex Fire and Building Departments;

- d. Supply of all materials, equipment, supplies, etc. to operate and manage the Colchester Schoolhouse; and
- e. Hiring of necessary trades people to perform maintenance, renovations and restorations of the Colchester Schoolhouse falling under the responsibility of the Operator.

1.3 Payment of Costs

- a. Payment of all utility costs (electrical, heat, water) related to the Colchester Schoolhouse; and
- b. Payment of all insurance costs as may be required to be provided by the Operator pursuant to the terms of this Agreement.

2.0 Duties of the Town

The Town of Essex agrees to provide the following:

- a. Property insurance for the Colchester Schoolhouse located at 195 Bagot Street in the Town of Essex; and
- b. Such capital works and maintenance , as may be required to establish and maintain the structure of the Colchester Schoolhouse as being fit for occupancy and at the discretion of the Town of Essex, such further capital maintenance and/or structural repairs to the roof, exterior walls, foundations, drains and sewers of the building as may be required from time to time unless the need for such further capital maintenance and/or structural repairs has been so caused by the misconduct or negligence of the Operator (but with reasonable wear and tear excepted) in which event such repair shall be made by the Corporation but at the expense and cost of the Operator. Operator further agrees that any requested and/or required capital works and maintenance and the completion thereof pursuant to this section shall: 1) require a formal request in writing from the Operator that the Town of Essex obtain, for submittal for Town of Essex Budget consideration, the necessary quotations as may be required pursuant to applicable Town of Essex procurement policies and 2) be conditional upon Town of Essex Budgetary and/or such other approvals as may be provided from time to time by Town of Essex Council.

- c. Lawn care and snow removal for the Colchester Schoolhouse and adjacent Town owned properties.

3.0 Finances

- a. All fees collected by the Operator shall become the property of the Operator;
- b. The Operator shall pay the Town five dollars (\$5) per annum for the right to operate the Colchester Schoolhouse on behalf of the Town; and
- c. Payment shall be made by the Operator annually on the 1st day of August.
- d. Funds collected by the Operator under Section 1.1 c. of this agreement shall be used solely by the Operator to maintain and operate the Colchester Schoolhouse and to offer cultural, historical, educational and community programs for the benefit of the general public as well as fund raising events.

2.0 Term

This agreement shall continue in effect for a ten (10) year term from December 1st, 2021 to August 31, 2031. Provided this agreement is in good standing and mutually agreeable to the Town and the Operator, the Operator shall have the right to renew this operating agreement for a second term.

3.0 General

- a. The Operator shall not make any assignment of this agreement, nor make any transfer in whole or any portion of the premises, nor grant any license to use any part of the premises without obtaining the prior consent, in writing, of the Town to such assignment, transfer, sub-lease or license. The Town reserves the right to withhold consent to any assignment, transfer sub-lease or license.
- b. The Town, its officers, servants or agents shall have full and free access to view and inspect any and every part of the premises as to the state of repair during normal business hours in the presence of the Operator, or a representative of the Operator. It is expressly understood and agreed that, in the case of emergency, the Town, its officers, servants or agents, shall have full and free access to the Colchester Schoolhouse.
- c. The Town and the Operator shall jointly inspect the premises yearly commencing one year from the date of this agreement and annually thereafter. The purpose of such inspection will be to assess the buildings, structures and equipment, etc. for purposes of determining the need for repairs and

replacements and determining required allocations for repair/replacement costs.

- d. The Town shall from time to time have access to the Colchester Schoolhouse for municipal purposes upon reasonable notice to the Operator.
- e. The Operator covenants that it 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.
- f. The Town shall have the right to cancel this Agreement at any time during the term of the Agreement for reason of any default by the Operator 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 and such default has not been remedied within 5 days written notice of such default.
- g. Each of the Town or the Operator shall have the right to cancel this Agreement at any time during the term of the Agreement upon providing notice in writing to the other of at least ninety (90) days.

4.0 Insurance

- 1. At all times during the Term of this agreement, and any renewal therefore, the Operator at its own expense, will maintain in force 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 Dollars (\$2,000,000) per occurrence covering the leased premises described herein. The Corporation of the Town of Essex 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 also insure against loss or damage to any equipment, inventory and supplies owned by the Operator and maintained on site. Such policy of insurance shall not be changed, cancelled or allowed to lapse without providing the Corporation with thirty (30) days' notice in writing. The Operator will provide a Certificate of Insurance for such comprehensive liability insurance upon entering into this Lease Agreement.

5.0 Covenants of the Operator

- a. At all times to indemnify and save harmless the Town from and against any and all manner of claims, demands, losses, costs, charges, actions and other proceedings whatsoever including those under or in connection with the Workplace Safety and Insurance Act, 1997, S.O. 1998, c. 16, Schedule A (or any successor legislation), made or brought against, suffered by or imposed on the

Town or its property in respect of any loss, damage or injury (including fatal injury) to any person or property (including, without restriction, employees, agents and property of the Town or of the Operator) directly or indirectly arising out of, resulting from or sustained as a result of the Operator's occupation or use of, or any operation in connection with the Demised Area or any fixtures or chattels therein except to the extent attributable to the Town's negligence.

- b. To observe and perform all the covenants, agreements, terms and provisions of this operating agreement to be observed and performed by the Operator;
- c. Not to commit or permit any use or any act or omissions which shall be in breach of any statute, municipal by-law or other law, or to be a nuisance, public or private, or make void or voidable any insurance from time to time in force with respect to the Colchester Schoolhouse.
- d. Not to permit any mechanics', labourers', material, construction or similar liens to stand against the Colchester Schoolhouse for any labour or materials furnished to, or with the consent of the Operator, its agents or contractors in connection with work of any character performed or claimed to have been performed on the premises by or at the direction or sufferance of the Operator, provided however, that the Operator shall have the right to contest the validity of or the amount claimed under or in respect of any such lien if, in law, such contestation will involve no forfeiture, foreclosure or sale of the premises or any part thereof, but upon such termination of such contestation, the Operator shall immediately pay and satisfy any judgment or decree made against the Operator with all proper costs and charges and cause such lien to be discharged and released from record, all without costs and expense to the Town.
- e. That the Operator will indemnify and save harmless the Town of and from all fines, suits, claims, demands and actions of any kind or nature to which the Town shall or may become liable for or suffer by reason of any breach, violation or non-performance by the Operator of any covenant, term or provision hereof or by reason of any insure occasioned to or suffered by any person or persons or loss of or damage to property incurred on the premises in any manner growing out of or in connection with the Operator use or operation of the Colchester Schoolhouse, or by reason of any act, neglect or default on the part of the Operator;
- f. Not to make any improvements or other alteration to the Colchester Schoolhouse without the prior written consent of the Town.

- g. Not to overload the electrical wires, equipment or fixtures within or serving the Colchester Schoolhouse so as to constitute a hazard, provided that the Operator may install conduit and equipment to provide additional electrical capacity if the Operator shall have first obtained the Town's approval in writing of the proposed additional installations, and provided that all parts of such additional installations, including such additional conduits and equipment, will become the property of the Town.
- h. That in the event of any damage being caused to the said building or to any fixtures of the Town by reason of insufficient heat or by reason of a window or door being left open so as to admit wind, rain, snow or hail, the Operator shall forthwith on demand pay the Town the cost of making good the damage so caused.
- i. That in the Operator's use and occupation of the demised premises, the Operator will observe and abide by and comply at its expense with all statutes, regulations and by-laws of any Federal, Provincial or Municipal authority which in any way affects the Colchester Schoolhouse or the use and occupation thereof and all orders and directions made or addressed by the Town under or in pursuance of any such statute, regulation or by-law.
- j. Not to use the Colchester Schoolhouse otherwise than in connection with offering cultural, historical, educational and community programs for the benefit of the general public as well as fund raising events.
- k. Not to use the Colchester Schoolhouse or any part thereof for sleeping apartments or accommodations.
- l. To deliver to the Town a key to the premises which the Town may use to enter the premises in case of an emergency.
- m. To maintain and leave the premises in good repair, reasonable wear and tear and damage by fire lightning and tempest only excepted.
- n. To pay any and all costs associated with the reasonable operation of the premises including those charges for utilities relating to heat, air-conditioning (if provided), hydro, water, gas, electricity consumed in the Premises. Operator acknowledges that Town shall not be liable for any interruption or failure in the supply of any such utilities to the Premises.

6.0 Notices

- a. Any written notice provided for in this Agreement will be effectively given, if intended for the Town, if delivered personally, or by registered mail addressed

to the Town at 33 Talbot Street South, Essex, Ontario N8M 1A8 or at such other address in Ontario as the Town may from time to time designate in writing to the Operator;

- b. Any written notice provided for in this Agreement will be effectively given, if intended for the Operator, if delivered personally, or by registered mail addressed to the Operator at the Colchester Schoolhouse, or at such other address in Ontario as the Operator may from time to time designate in writing to the Town; and
- c. Any written notice given by registered mail shall be deemed to have been received on the third (3rd) business day following the date of the mailing.

In Witness Whereof the said parties hereto have duly executed this Agreement.

Signed, Sealed and Delivered in the presence of:

Heritage Colchester

_____	_____
Witness as to signature of	, Authorized Signing Officer

Signed, Sealed and Delivered in the presence of:

The Corporation of the Town of Essex

_____	_____
Witness as to signature of	Mayor, Larry Snively

_____	_____
Witness as to signature of	Clerk, Robert Auger
	We have authority to bind the Corporation

Receipt of Lease Agreement:

I hereby acknowledge receiving a duplicate original copy of the herein Lease Agreement.

_____	_____
Date of Signature	, Authorized Signing Officer