

The Corporation of the Town of Essex

By-Law Number 2121

Being a By-Law to Enter into Lease Agreement between

The Corporation of the Town of Essex and

Her Majesty the Queen, in right of Canada,

as Represented by the Minister of Fisheries and Oceans

Whereas Her Majesty the Queen, in right of Canada as represented by the Minister of Fisheries and Oceans owns a harbour facility in Ward 3 of the Town of Essex, known as Colchester Harbour;

And Whereas the Corporation of the Town of Essex operates the said Colchester Harbour facility;

And Whereas the current operating agreement expires on January 31, 2022;

And Whereas The Corporation of the Town of Essex and Her Majesty the Queen, in right of Canada, as represented by the Minister of Fisheries and Oceans desire to enter into a new five year operating agreement;

Now therefore be it resolved that the Council of the Corporation of the Town of Essex enacts as follows:

1. That the operating Agreement between the Corporation of the Town of Essex and Her Majesty the Queen in Right of Canada, as represented by the Minister of Fisheries and Oceans for the operation of the Colchester Harbour shall be those attached hereto and marked as Schedule "A".
2. That the Mayor and Clerk are hereby authorized to sign the said Agreement on behalf of the Corporation of the Town of Essex.
3. That this By-Law shall come into full force upon the final passing thereof.

Read a first, second and third time and adopted on February 7, 2022.

Mayor

Clerk

Schedule "A" – Lease Agreement Fisheries and Oceans Canada



Fisheries and Oceans
Canada

Pêches et Océans
Canada



ORIGINAL

OP-4566-H-2201

LEASE

BAIL

SMALL CRAFT HARBOURS BRANCH
AND

DIRECTION DES PORTS POUR PETITS BATEAUX
ET

THE CORPORATION OF THE TOWN OF ESSEX

AUTHORITY
Autorisation _____

DATE OF DOCUMENT
Document daté du January 19, 2022

BEGINNING OF TERM
La période de location commence le February 1, 2022

END OF TERM
La période de location se termine le January 31, 2027

RENT PAYABLE
Loyer payable \$500.00 (FIVE HUNDRED DOLLARS) PLUS TAXES PER ANNUM OR 20% OF
GROSS REVENUE PLUS TAXES

LANDS OR RIGHTS DEMISED
Cession ou transfert ALL AND SINGULAR those certain parcels or tracts of land and land covered by water,
being Part of the bed of Lake Erie, situate, lying and being in the Township of Essex, Province of Ontario,
TOGETHER WITH the Government Wharf and marine related facilities located thereon, (hereinafter
referred to as "the said premises"), being more particularly shown outlined in red on Plan 12R-9608 hereto
annexed and designated Schedule "A".

FILE No.
No de dossier 5882 - Colchester

REMARKS / Remarques

THIS AGREEMENT made in duplicate this 19th day of January, 2022;

BETWEEN –

HER MAJESTY THE QUEEN, in right of Canada,
represented herein by the Minister of Fisheries and Oceans
(hereinafter called “the Minister”)

OF THE FIRST PART;

-and-

THE CORPORATION OF THE TOWN OF ESSEX, incorporated as a
corporation under the laws of the Province of Ontario
(hereinafter called “the Agent”)

OF THE SECOND PART;

WITNESSETH that the Minister, in consideration of the rents, covenants,
provisos, and conditions hereinafter contained, hereby leases unto the Agent:-

Description

ALL AND SINGULAR those certain parcels or tracts of land and land
covered by water, being Part of the bed of Lake Erie, situate, lying and being in the
Township of Essex, Province of Ontario, **TOGETHER WITH** the Government Wharf
and marine related facilities located thereon, (hereinafter referred to as “the said
premises”), being more particularly shown outlined in red on Plan 12R-9608 hereto
annexed and designated Schedule “A”.

Habendum

TO HAVE TO HOLD the said premises unto the Agent for a term of five
(5) years from and including February 1, 2022 to January 31, 2027 and then fully to be
complete and ended.

Reddendum

YIELDING AND PAYING therefor, during the currency of this Agreement,
unto the Minister, to the Receiver General of Canada, in lawful money of Canada the
following rent or sum, namely:-

- (a) FIVE HUNDRED DOLLARS (\$500.00) PLUS TAXES per annum, payable each
year in advance, or
- (b) TWENTY PER CENT (20%) PLUS TAXES of all gross revenue derived by the
Agent from the management and operation of the said premises, whichever is the
greater amount, and the difference between the \$500.00 paid in advance and 20% gross
revenue is payable within sixty days of the end of each agreement-year.

Interpretation

IN THIS AGREEMENT;

- (i) “Minister” means the Minister of Fisheries and Oceans and any person he has
delegated to act on his behalf.
- (ii) “Regional Director” means the Regional Director of Small Craft Harbours
Branch of the Department of Fisheries and Oceans and any person he has
delegated to act on his behalf.

It is agreed by and between the said parties hereto that these Presents are made
and executed upon and subject to the covenants, provisos, conditions and reservations
hereinafter set forth and contained, namely:

Purpose

1. a) The Agent shall use and occupy the said premises and carry out the management and operation of the said premises in accordance with the Fishing and Recreational Harbours Act and the Fishing and Recreational Harbours Regulations as amended from time to time, or any other applicable act or regulations enacted or made during the currency of this Agreement.

b) Nothing in Clause No. 1a) hereof, shall relieve the Minister from discharging any of his duties under the said Fishing and Recreational Harbours Act and the said Fishing and Recreational Harbours Regulations.

c) That the Minister shall supply to the Agent, one copy of the said Act and Regulations, as amended from time to time.

To Pay Rent

2. That the Agent will pay all annual rental fees herein reserved at the time and in the manner in these Presents set forth, without any abatement or deduction whatever.

Taxes

3. That the Agent will pay or cause to be paid all rates, taxes and assessments, of whatsoever description, that may at any time during the existence of these Presents be imposed, or become due and payable upon, or in respect of the said premises.

Compliance with Law

4. The Agent shall in all respects abide by and comply with all rules, regulations and by-laws of municipalities and other governing bodies, in any manner affecting the said premises.

Public Use

5. Subject to Clause No. 19 hereof, the Agent shall not interfere with the public use of the said premises during the currency of this Agreement; it being expressly understood and agreed, however, that the Agent may refuse the use of the said premises to any vessel on which tolls and dues are outstanding and the Agent may take all lawful action through Small Debts Court or otherwise to obtain payment of outstanding or overdue accounts.

Access

6. a) That the Minister, his servants or agents shall, at all times and for the purpose of inspecting the said premises, have full and free access to any and every part of the said premises.

b) The Minister shall, upon reasonable notice to the Agent, except in the case of emergency, have full and free access to the said premises for the purposes of repairing and maintaining the said premises.

Assignment

7. That the Agent shall not make any assignment of these Presents, nor any transfer or sub-lease of any of the premises, rights or privileges demised or leased hereunder, without obtaining the prior consent in writing of the Minister to such assignment, transfer or sub-lease. The Agent shall pay to the Minister a reasonable charge for the preparation of any consent thereto expressed in writing, and shall be responsible for any costs incurred by the Minister in addressing the request for consent, provided that such costs are reasonable.

Repair and Maintenance

8. That the Agent shall not, during the currency of this Agreement, do, suffer or permit to be done any act or thing which may impair, damage or injure the said premises beyond the damage occasioned by reasonable use, and shall inspect, maintain, and effect minor repairs of the said premises which may at any time become damaged, whether due to the negligence of the Agent or otherwise. Nothing in this provision shall obligate the Agent to be responsible to effect repairs of any major or structural kind but, in the event that such repairs are needed, it shall be the responsibility of the Agent to provide notice to the Minister of the need for major or structural repairs, and to take whatever steps are appropriate to deal with continued use of the premises while such repairs are pending. When such repairs are warranted, the parties hereto shall consider, and together decide how and when to effect such repairs.

Care of Property

9. That the Agent shall, at its own cost and expense, at all times during the currency of this Agreement, keep the said premises in a neat and tidy condition, removing or causing to be removed therefrom all papers, refuse, litter, waste or rubbish arising out of the operations of the Agent under this Agreement, all to the satisfaction of the Regional Director.

Improvements

10. That any improvements made to the said premises by the Agent at any time during the term of this Agreement, to make the said premises suitable for the purpose referred to in Clause No. 1 hereof, shall be at the risk, cost and expense of the Agent and to the satisfaction of the Regional Director.

Construction of Buildings or Structures

11. That the Agent shall not construct or erect any buildings or other structures on the said premises without obtaining the approval of the Regional Director, of plans showing the design and nature of construction of such buildings or structures and their proposed locations.

Annoyance Nuisance and Disturbance

12. That the Agent shall not, at any time during the currency of this Agreement do, cause or permit to be done, any act or thing in or upon the said premises which shall, or may be, or might become, an annoyance, nuisance or disturbance to the occupiers of any lands or premises adjoining or in the vicinity of the said premises.

Title

13. That is hereby declared, and this Agreement is accepted by the Agent, upon the express condition that the Agent shall have no recourse against the Minister, should the minister's title to the said premises be found to be defective, or should these Presents prove ineffectual by reason of any defect in such title.

Claims and Damages

14. That the Agent shall not have any claims or demand against the Minister for loss, damage or injury of any nature whatsoever, or howsoever caused to the said premises or to any person or property, at any time brought, placed, made or being on the said premises unless such damage or injury is due to the negligence of any officer, servant, agent, contractor or sub-contractor of Her Majesty the Queen in right of Canada while acting within the scope of his duties or employment.

Indemnification

15. That the Agent shall at all times indemnify and save harmless Her Majesty the Queen in respect of any action, claim, cause of action, suit, debt, loss, damage, cost, expense or demand whatsoever, at law or in equity, arising by way of any breach by the Agent, its employees, servants, agents, sub-lessees or persons for whom it is by law responsible, of any provisions of this Agreement or arising by way of the Agent and her Majesty's ownership, occupation and control of the premises, except claims for damages resulting from the negligence of any officer, servant, agent, contractor or sub-contractor of Her Majesty the Queen while acting within the scope of his duties.

Termination

16. That this Agreement may be terminated at any time:

(a) By the Agent upon sixty (60) days' notice in writing, such notice to be signed by the Agent and delivered to or mailed addressed to the Regional Director, Small Craft Harbours Branch, Department of Fisheries and Oceans, 867 Lakeshore Road, Burlington, Ontario, L7S 1A1, or

(b) By the Minister upon sixty (60) days' notice in writing, signed by the Minister, and either delivered to the Agent or any officer of the Agent, or mailed addressed to the last known place of business or office of the Agent, and thereupon, after the expiration of such period of notification, these Presents shall be determined and ended, and the Agent shall thereupon, and also in the event of the determination of this Agreement in any other manner, except re-entry under Clause No. 17 hereof, forthwith remove from the said premises all things at any time brought or placed thereon by the Agent and shall also to the satisfaction of the Regional Director repair all and every damage and injury occasioned to the said premises by reason of such removal or in the performance thereof, but the Agent shall not, by reason of any action taken or things performed or required under this Clause, be entitled to any compensation whatsoever, provided that, unless required by the Minister, no goods, chattels, materials, effects or things shall be removed from the said premises until all rent due or to become due under this Agreement, is fully paid.

Default

17. That, notwithstanding anything in this Agreement contained, if the rent above reserved or any part thereof, shall be in arrears or unpaid, whether or not the same shall have been in any manner demanded, or in the case of default, breach or non-observance to be made or suffered by the Agent at any time or times, in, or in respect of any of the covenants, provisos, conditions, and reservations herein contained, which on the part of the Agent ought to be observed and performed, then, and in every such case, provided such non-payment of rent, default, breach or non-observance is not cured within thirty (30) days from the date of notice thereof in writing from the Minister to the Agent, the Minister may terminate this Agreement by giving to the Agent a notice in writing, signed by the Minister, and either delivered to the Agent or any officer of the Agent, mailed addressed to the last known place of business or office of the Agent, and thereupon after delivery or mailing of such written notification, this Agreement shall be determined and ended, and in that event, it shall be lawful for the Minister, his servants or agents, to re-enter and thereafter to have, possess and enjoy the said premises and all improvements thereon.

And no acceptance of rent subsequent to any breach or default, other than non-payment of rent, nor any condoning, excusing or overlooking by the Minister on previous occasions of breaches or defaults similar to that for which re-entry is made shall be taken to operate as a waiver of this condition nor in any way defeat or affect the rights of the Minister hereunder.

The Agent shall pay in addition to any other provisions hereof the reasonable fees and disbursements of counsel to the Minister in connection with the enforcement of this Agreement, or in the event of default hereunder.

Hold Over

18. Provided always and that it is hereby agreed by and between the parties hereto that if the said Agent shall hold over after the expiration of the term hereby granted, and if the Minister shall accept rent, the new tenancy thereby created shall be a tenancy at will and not a tenancy from year to year, and the Agent shall pay as rent during the time of such occupancy a rental to be determined at the discretion of the Minister, and shall be subject to the covenants and conditions herein contained so far as the same are applicable to tenancy at will.

**Tolls, Dues
& Charges**

19. That the Agent shall, during the currency of this Agreement, charge tolls or dues established under the authority of the Fishing and Recreational Harbours Act or by Regulations approved from time to time by the Governor in Council respecting the said premises. The Agent may collect additional reasonable charges for services such as electrical power outlets, water outlets, watchman services, etc., provided at the Agent's expense for the benefit and use of the boating public using said premises.

**Accounting
Records**

20. That during the currency of this Agreement, the Agent shall cause to be kept records of its operation hereunder, such records to be kept according to accepted principles of accounting, and the Agent shall supply to the Regional Director, a certified statement for each accounting period during the currency of this Agreement.

**Audit
Inspection**

21. That the books of the Agent concerning the operation and management of the said premises, shall be open for audit and inspection at all times during business hours, by the accredited officers of the Minister.

Pollution

22. That the Agent shall not place or deposit, or cause or permit to be placed or deposited, any fill, sand, gravel, detritus, waste, debris or other materials, articles or things on the said premises which may form a deposit thereon or therein without the prior consent, in writing, of the Regional Director.

**Environmental
Protection**

23. (i) The Agent agrees to abide by and comply with all federal environmental legislation, including the relevant provisions of the Canadian Environmental Protection Act, affecting the said premises, as well as with the regulations and guidelines made and established under it, and all applicable Provincial, Territorial and municipal environmental legislation, regulations, rules or guidelines affecting the said premises.

(ii) The Agent shall not process, use, deposit or store on the said premises or in its subsoil any toxic substances, as defined in the Canadian Environmental Protection Act, nor any other substance that constitutes or may constitute a danger to the environment or to human life or health.

(iii) The Agent agrees to clean up, at its expense, to then current federal and provincial standards, any part or all of the said premises contaminated during the term of this Lease or any renewal of it immediately upon becoming aware of the contamination.

**Service
Reservation**

24. That this Agreement is granted strictly subject to the right of the Minister and Lessees and Licensees of the Minister to maintain and operate services installed on the said premises at the date of this Agreement, and to the right of the Minister to grant leases or licences, as the case may be, at any time during the currency of this Agreement, covering the right and privilege or permission to install, lay, maintain and use services on, over or across the said premises and the Agent shall not, at any time during the currency hereof, do anything or cause or permit anything to be done which will in any way interfere with the rights and privileges or permissions thereby granted, provided however, that such leases or licences will be granted subject to this Agreement and provided that the Lessees or Licensees thereunder shall not commence to exercise the rights and privileges or permissions thereby granted unless and until the consent in writing is first obtained from the Agent, and which consent shall not be unreasonably withheld.

Concession

25. That no application for permission to establish concessions of any kind shall be granted without the prior approval in writing of the Regional Director.

- Use by Agent** 26. That in the event that any portions of the said premises are used for the purposes of the Agent, the Agent shall establish a market rental for such use and the Reddendum Clause shall be applied to such rental.
- Fire Prevention** 27. That the Agent shall take all necessary precautions against fire occurring in or on the said premises.
- Navigation Protection Act** 28. That the Agent shall fulfill in all respects the requirements of "Works" Section of the Navigation Protection Act, Chapter N-22 of the Revised Statutes of Canada 1985.
- Members of Parliament** 29. No member of the House of Commons shall be admitted to any share or part of this Agreement or to any benefit to arise therefrom.
- Discrimination** 30. That the Agent and any Sub-lessee shall not discriminate against any person by reason of race, colour or creed, in any manner whatsoever, pertaining to the operation of the said premises.
- Sale or Transfer** 31. (i) Notwithstanding any other provision of this Agreement, in the event that the Minister disposes of its interest in the leased premises, or any part thereof, by way of sale, transfer or other conveyance, including a transfer of administration and control to Her Majesty the Queen in right of the Province of Ontario, the Minister shall be entitled at their sole option to assign this Agreement, or such portion thereof, to the transferee, or to terminate this Agreement, and the Agreement shall upon notice thereof be terminated forthwith.
- (ii) In the event of notice of termination being given by the Minister to the Agent, the Agent agrees that it shall forthwith vacate the said premises, and remove any chattels from the said premises in accordance with the provisions of this Agreement. The Agent further agrees and acknowledges that it shall have no cause of action against the Crown arising out of early termination of the Agreement, and hereby releases the Minister from any liability or otherwise that may be said to flow from the aforesaid early termination of this Agreement.
- Financial Administration Act** 32. If the Agent defaults in the payment of any amount due under this Agreement, the Agent shall be responsible for and pay interest on such defaulted payment (to the extent permitted by the Financial Administration Act R.S.C. 1985, Chapter F-11 and the Interest and Administration Charges Regulations SOR/96-188 (the Regulations) or any amendments thereto) up to the date payment is received by or on behalf of Her Majesty. For greater certainty and until such time as the Regulations are amended, in the case of default in respect of any monetary amount due, interest on the amount in default shall be calculated and compounded monthly at the average bank rate plus three per cent and accrue from the due date of the payment, until paid. Furthermore, in the event that any instrument is tendered in payment or settlement of any amount due to Her Majesty hereunder which for any reason is dishonoured, the Agent shall be responsible and pay an administrative charge of \$15.00 to Her Majesty, or any amount prescribed therefor by the Regulations will be applicable and in addition to the outstanding amount due.
- Insurance** 33. That the Agent shall, in addition to the payment of yearly rental hereunder, at its own cost, insure concurrently with the execution of this Agreement, and thereafter during the currency of this Agreement, maintain in force, a policy of liability insurance for the ownership, possession and control of the said premises with coverage of at least Two Million Dollars (\$2,000,000.00) per occurrence and including Her Majesty as a named co-insured in that policy. The Agent, on the anniversary of this Agreement, in each and every year, shall submit to the Regional Director, proof of such insurance.

