



Infrastructure Services

Prepared for: Council-in-Committee

Report: IS-13-2025

Meeting Date: June 9, 2025

1. Title

Tennis Club Operating Agreement

2. Recommendations

That: Council authorize entry into an operating agreement with the Fort Erie Tennis Club for the management and operation of the Oakes Park tennis courts.

3. Relation to Council's Corporate Strategic Plan

Priority: Quality of life and community well-being

4. List of Stakeholders

Mayor and Council of the Town of Fort Erie
Town of Fort Erie Ratepayers
Fort Erie Tennis Club

5. Purpose of Report

The purpose of this report is to seek Council's approval to execute the operating agreement with the Fort Erie Tennis Club.

6. Analysis

Background

Since 1988 the Fort Erie Tennis Club has operated the Oakes Park Tennis courts including the provision of programming. The former lease agreement expired in 2013, and the Club has continued to operate the site on behalf of the Town since that time. The Club has hosted youth tennis lessons annually along with many regional and international tennis tournaments from 1988 – 2024.

Operating Agreement Highlights

Staff have drafted an operating agreement (see Appendix 1) with the following principles included: improved information sharing on events, registration and public access; creation of a non-resident/taxpayer rate; inclusion of free public access times; guest fees; use of subsidy programs prioritizing youth; and a seasonal review of fees and access scheduled by the Town.

All fees will be administered by the Tennis club similar to registration fees for other sport groups. The Town will collect user fees from the Club as per the Town's user fee bylaw.

The agreement has an initial term of 10-years with the option for an additional 10-year renewal at the approval of Council. The club will be responsible for: insurance, scheduling of court use and events at the site, janitorial and general grounds maintenance of the site, operation of youth tennis programming and security. The Town shall continue to be responsible for: utilities, waste removal, and facility maintenance.

7. Financial, Staffing and Accessibility (AODA) Implications

The agreement includes an annual fee of \$1.00 payable by the Fort Erie Tennis Club to the Town of Fort Erie. The Town will also invoice the Club for user fees annually in accordance with the User Fee By-law, approximately \$1,500 annually.

8. Policies Affecting Proposal

By-law 136-2023 adopted Councils 2023-2026 Corporate Strategic Plan for the Town of Fort Erie. The recommendations provided conform to the priorities, goals and initiatives as described herein.

By-law 132-2024 to Establish Fees and Charges for the Town of Fort Erie.

9. Comments from Departments, Community and Corporate Partners

Comments and considerations from other relevant departments have been incorporated into this report.

10. Alternatives

Council can choose not to authorize the operating agreement and open the site to public use. The tennis courts at Oakes Park are the Town's only Class A courts and staff maintain that a fee should be paid to utilize the higher quality courts. Other Class B courts remain available for public use without access control. Further, the lack of access control will likely lead to increase vandalism at the site as the Club provides an increase in site security compared to public courts. The Club also requires secure storage for materials and court scheduling control in order to allocate time for programming.

11. Communicating Results

Staff will collaborate with the Club to make the public aware of registration dates, membership options, free public access times, guest fees, and event scheduling.

The Town's website will also be updated with any relevant changes.

12. Conclusion

Staff recommend that Council authorize entry into an operating agreement with the Fort Erie Tennis Club.

13. Report Approval

Prepared by:
Sean Hutton
Manager of Parks and Facilities

Submitted by:
Jordan Frost, P.Eng, PTOE
Acting Director of Infrastructure Services

Approved by:
Chris McQueen, MBA
Chief Administrative Officer

14. Attachments

Appendix 1 – Fort Erie Tennis Club Operating Agreement – 2025 (Draft)

THIS OPERATING AGREEMENT dated this day of , 2025

BETWEEN:

THE FORT ERIE TENNIS CLUB INC.
hereinafter called the "Club"

- and -

THE CORPORATION OF THE TOWN OF FORT ERIE
hereinafter called the "Town"

WHEREAS the Town is the registered owner of certain lands and premises municipally known as 373 Central Avenue, being a public park known as Oakes Park (the "Park"); and

WHEREAS a portion of the Park includes a clubhouse facility and seven (7) tennis courts, along with associated lighting, fencing, and appurtenances (collectively, the "Premises"), as more particularly illustrated in Schedule "A" attached hereto;

WHEREAS the Town and the Club entered into a Lease Agreement dated February 9, 1988, granting the Club exclusive use of the clubhouse located in the Park, for an initial term of 25 years, expiring in 2013, and continuing from year to year thereafter; and

WHEREAS the Town and the Club now wish to replace the previous lease arrangement with an Operating Agreement for the management and operation of the Premises, including the organization of leagues, tournaments, and lessons for both Club members and the broader community, as well as general maintenance, security, and the promotion of the sport of tennis; and

WHEREAS the Town agrees to permit the Club to use the Premises on a non-exclusive basis, subject to scheduled programming and public access requirements, under the terms and conditions set out in this Operating Agreement (the "Agreement"); and

WHEREAS entry into this Agreement is authorized by By-law No. XX-2025 passed by the Municipal Council of The Corporation of the Town of Fort Erie on [insert date of passage].

NOW THEREFORE, in consideration of the mutual covenants and obligations set forth herein, the parties agree as follows:

It is the mutual intent that the parties to this Agreement desire that this Agreement be interpreted in accordance with the following principles:

- **Information Sharing:** The Club shall provide the Town with information on events, registration opportunities, public access schedules, and lesson programs. The Town may redistribute such information through its communication channels at its discretion.
- **Non-Resident/Taxpayer Rate:** The Club shall apply a higher fee structure for non-residents and non-taxpayers compared to local resident/taxpayer rates.

- **Free Public Access Times:** The Club shall offer a minimum of six free public access times to encourage new memberships annually.
- **Guest Fees:** The Club shall maintain reasonable guest fees to allow non-members access to the Facilities while ensuring equitable cost recovery.
- **Subsidy Programs:** The Club shall utilize available subsidy programs to assist those unable to afford club memberships or lesson programs, prioritizing youth.
- **Seasonal Fee and Access Review:** The Club shall submit all proposed fees and public access schedules for the following season to the Town for review and input annually each winter.

1. TERM AND RENEWAL

1.1 Initial Term: The Town grants the Club the right to operate the Premises for a term of ten (10) years, commencing on the 1st day of May, 2025 (the "Commencement Date") and expiring on the 30th day of April, 2035 (the "Term"), subject to the renewal provisions set out in Section 1.2.

1.2 Renewal Option: The Club shall have the option to renew this Agreement for an additional term, subject to the following conditions:

- (a) the Club provides the Town with written notice of its intent to renew at least six (6) months prior to the expiration of the Term;
- (b) the renewal term, including its duration and any revised terms or conditions, is mutually agreed upon by both parties;
- (c) the Club is in full compliance with all terms and conditions of this Agreement at the time of renewal; and
- (d) the renewal is approved by the Municipal Council of The Corporation of the Town of Fort Erie.

2. FEES

2.1 Annual Fee: The Club shall pay to the Town an annual operating fee of One Dollar (\$1.00), plus applicable taxes, payable in advance on the first day of each year of the Term.

2.2 User Fees: The Town shall collect an annual user fee from each participant in accordance with the Town's Schedule of Fees and Charges. The Club shall ensure that all participants remit such fees as required.

2.3 Late Payment: Any amount payable to the Town under this Agreement, including but not limited to operating fees and user fees, that remains unpaid

for more than ninety (90) days from the due date shall accrue interest at a rate of 1.25% per month until paid in full.

3. **USE, OCCUPANCY & OPERATION OF PREMISES**

- 3.1 Authorized Use:** The Club shall use, maintain, and, where necessary, make reasonable improvements to the Premises for the operation of a clubhouse, Club functions, community events, and designated public access, in accordance with the terms of this Agreement.
- 3.2 Condition of Premises:** The Club accepts the Premises in its current condition as of the Commencement Date of this Agreement, on an "as-is, where-is" basis, without representation or warranty from the Town regarding its suitability for any particular purpose.
- 3.3 No Reimbursement for Alterations:** The Club shall not be entitled to any reimbursement from the Town for costs incurred in connection with any alterations, improvements, or other works undertaken by the Club, whether carried out pursuant to this Agreement or on its own initiative.
- 3.4 Authority Over Park Improvements:** The Town shall have exclusive authority over any and all alterations, improvements, or works to the Park, excluding the Premises. The Club shall not have any right, title, interest, or authority to make or approve any alterations, improvements, or works to the Park, nor shall the Club have any entitlement to consultation by the Town regarding any modifications the Town may undertake.

4 **CLUBS OBLIGATIONS**

- 4.1 The Club covenants and agrees with the Town as follows:

Insurance and Financial Responsibilities

- (a) To pay insurance premiums as invoiced by the Town for fire insurance coverage on the Clubhouse building only;
- (b) To obtain and maintain insurance coverage in accordance with Section 12, at its sole expense;

Maintenance and Use of Premises

- (c) To provide, at its own expense, any and all furniture, tools, and chattels required for the operation of the Clubhouse and tennis program;
- (d) To be responsible for and undertake all cleaning, janitorial services, and general grounds maintenance necessary for the operation of the Premises;
- (e) To keep the Premises in a clean and well-ordered condition, ensuring that no rubbish, refuse, debris, or other objectionable materials

accumulate, all to the satisfaction of the Town's Manager of Parks and Facilities;

- (f) To be responsible for the safeguarding and security of the Clubhouse building;
- (g) To ensure that nothing is done or kept at the Premises that may constitute a nuisance, cause damage, or interfere with the normal usage of the Park;
- (h) Not to store flammable or explosive substances on the Premises;

Renovations, Alterations and Signage

- (i) To obtain prior written approval from the Town's Manager of Parks and Facilities, which shall not be unreasonably withheld, before undertaking any works, renovations, alterations, or improvements requiring a building permit;
- (j) Not to make any changes to the surfacing, grade, or landscaping, erect any signs, buildings, or other structures, or make any structural additions or exterior alterations to the Clubhouse building without the prior written consent of the Town's Manager of Parks and Facilities;

Use and Occupancy

- (k) Not to assign or sublet the Premises, in whole or in part, except to a similar not-for-profit community organization, without the prior approval of the Municipal Council of the Town;
- (l) To be responsible for the booking and scheduling of the Premises' use;
- (m) To ensure that any Club events or functions requiring parking for a large number of vehicles in the Park's parking lot are scheduled in coordination with the Town's Manager of Parks and Facilities and do not conflict with Town-scheduled events or public use;
- (n) To grant the Town use of the Clubhouse, upon request and subject to availability, without charge;

Compliance and Legal Obligations

- (o) To comply with all applicable federal, provincial, and municipal laws, by-laws, rules, and regulations, including but not limited to the Town's Parks and Beaches By-law No. 119-03, as amended or replaced from time to time, and to indemnify and hold harmless the Town from any liability or costs resulting from the Club's failure to do so;
- (p) To comply with the *Accessibility for Ontarians with Disabilities Act*, 2005, S.O. 2005, c.11, and its associated regulations, as amended or replaced from time to time;

Alcohol and Special Events

- (q) Not to hold or permit any event involving the consumption of alcohol unless expressly approved by the Town;
- (r) Not to sell or dispense alcoholic beverages on the Premises unless expressly approved by the Town;

Termination and Removal of Property

- (s) Upon termination of this Agreement, at its own risk and expense, to remove within thirty (30) days any fixtures and chattels belonging to the Club, to repair any damage caused by such removal, and to leave the Premises in a neat, clean, and level condition, free of waste material, debris, and rubbish, all to the satisfaction of the Town's Manager of Parks and Facilities;

Remedy for Breach

- (t) If the Club fails to comply with any covenant or obligation under this Agreement within thirty (30) days of receiving written notice from the Town, the Town may enter the Premises and fulfill such obligations at the Club's sole expense. The Club shall reimburse the Town upon invoicing, and in default of payment, the Town may recover the amount as rent owing and in arrears.

5 TOWN'S OBLIGATIONS

5.1 The Town covenants and agrees as follows:

Quiet Enjoyment and Access

- (a) To grant the Club quiet enjoyment of the Premises, subject to the Town's right to inspect the Premises at any time during the Term or any renewal of this Agreement;

Utilities and Waste Management

- (b) To be responsible for the payment of all utility costs for the Premises;
- (c) To collect garbage from the Premises in accordance with municipal waste collection policies;

Maintenance and Repairs

- (d) To be responsible for the maintenance and repair of the Premises, including plumbing, electrical systems, roofing, and structural components of the Clubhouse;

Park Maintenance and Improvements

- (e) To maintain and improve the Park, excluding the Premises, in accordance with the municipal Community Park standard, including but not limited to:
 - i. grass cutting;
 - ii. litter pickup resulting from Park use;
 - iii. playground, structure, and sports field maintenance; and
 - iv. other activities deemed necessary by the Town to ensure safe public use of the Park;
- (f) To erect signage and undertake improvements to the Park, excluding the Premises, in accordance with the municipal Community Park standard, subject to Council approval and budget availability;

Insurance

- (g) To maintain comprehensive public liability insurance for the Park, excluding the Premises;
- (h) To maintain fire insurance coverage on the Clubhouse through the Town's insurer and invoice the Club for the associated premiums as they become due;

Use of Park Facilities

- (i) To grant the Club reasonable use of Park facilities, subject to availability and advance booking with the Town's Manager of Parks and Facilities.

6. PARKING

- 6.1 The Club shall have non-exclusive access to and use of the designated parking area within the Park, shared with the general public and other authorized users, in accordance with paragraph (m) of Subsection 5.1.
- 6.2 The Club shall not store, or permit the storage of, any materials, equipment, or vehicles of any kind in the parking area without prior written approval from the Town's Manager of Parks and Facilities.

7. TERMINATION

- 7.1 Subject to section 3.3, either party may terminate this Agreement without cause by providing one (1) year written notice to the other party.
- 7.2 Upon termination, the Club shall, at its own risk and expense, promptly:
 - (a) remove all fixtures, chattels, and personal property it has installed or placed on the Premises;
 - (b) repair any damage to the Premises caused by such removal; and

- (c) leave the Premises in a clean, safe, and orderly condition, to the satisfaction of the Town's Manager of Parks and Facilities.

8 BANKRUPTCY & INSOLVENCY

8.1 This Agreement shall terminate immediately upon the occurrence of any of the following events:

- (a) the Club makes an assignment for the benefit of creditors, becomes insolvent, or commits an act of bankruptcy as defined under the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, or any successor legislation;
- (b) the Club is subject to voluntary or compulsory liquidation or winding up; or
- (c) the Club ceases operations or abandons its responsibilities under this Agreement.

8.2 In the event of termination under this section, the Town shall have the sole discretion to assume control of the operations and assets related to the Club's use of the facilities.

9 DEFAULT AND REMEDIES

9.1 If either party fails to comply with any provision of this Agreement, the non-defaulting party shall provide written notice specifying the default and granting the defaulting party thirty (30) days to rectify the issue.

9.2 If the defaulting party fails to remedy the default within the specified period, the non-defaulting party may, at its discretion:

- (a) Terminate this Agreement immediately by providing written notice; or
- (b) Take any reasonable steps to remedy the default, with all associated costs recoverable from the defaulting party.

9.3 If the Town terminates this Agreement due to the Club's default, the Club shall remain liable for any outstanding obligations, including costs incurred by the Town in restoring the Premises or fulfilling the Club's unmet responsibilities.

10 OVERHOLDING

10.1 If the Club continues to occupy the Premises after the expiration of the Term (including any renewal) or after earlier termination of this Agreement:

- (a) With the Town's written consent but without executing a new agreement or renewal, the Club shall be deemed to occupy the Premises on a month-to-month basis, subject to the same terms and conditions as this

Agreement, except that either party may terminate such occupancy upon thirty (30) days' written notice to the other;

- (b) Without the Town's written consent, the Club shall be considered an unauthorized occupant, and there shall be no implied renewal or extension of this Agreement, despite any statutory provisions to the contrary.

10.2 The Club shall indemnify and hold harmless the Town from any and all claims, liabilities, damages, or expenses incurred by the Town as a result of the Club's unauthorized overholding.

10.3 The acceptance of any payments by the Town during any period of overholding shall not be construed as consent to continued occupancy.

11 INDEMNIFICATION OF THE TOWN

11.1 The Club agrees to indemnify and hold harmless the Town, its officers, employees, agents, contractors, and representatives (collectively, the "Indemnified Parties") from and against any and all claims, demands, losses, damages, liabilities, actions, causes of action, judgments, costs, and expenses (including reasonable legal fees and expenses) arising directly or indirectly from, or in connection with, the Club's use, occupation, or operation of the Premises, or any activities conducted on or within the Town's Park. This indemnification obligation applies to any loss, injury, damage, or death (including, but not limited to, injuries to persons, employees, contractors, agents, and property) sustained by any party, including but not limited to the Town, the Club, or third parties, except to the extent caused by the negligence, willful misconduct, or breach of duty of the Town or any of the Indemnified Parties.

12 INSURANCE

12.1 The Club agrees to maintain, at its sole expense and throughout the Term and any renewal thereof, Commercial General Liability and Property Damage Insurance, including coverage for Theft, Public Liability, Bodily Injury, and Tenant's Legal Liability, with a minimum coverage amount of Five Million Dollars (\$5,000,000.00) per occurrence. Such insurance policy or policies shall include the following provisions:

- (a) a cross-liability clause or endorsement;
- (b) an endorsement adding the Town of Fort Erie as an additional insured party;
- (c) an endorsement stating that the policy or policies will not be altered, cancelled, or allowed to expire without at least thirty (30) days' advance written notice to the Town; and
- (d) such insurance shall be in a form satisfactory to the Town.

- 12.2 The Club shall, at its sole expense, maintain insurance coverage for its personal property, including contents and equipment, throughout the Term and any renewal thereof.
- 12.3 The Town shall maintain, at its sole expense, fire insurance covering the building located on the Premises (exclusive of the Club's contents and improvements) under its municipal policy. The Club shall be responsible for the payment of premiums for this coverage, and shall reimburse the Town for such premiums upon receipt of an invoice.
- 12.4 The Town shall not be liable for any damage or loss caused by fire, theft, or any other incident to the goods, chattels, fixtures, or improvements owned by the Club or any third party, except where such damage or loss is caused by the negligence, willful misconduct, or breach of duty of the Town or any party for whom the Town is legally responsible.
- 12.5 The provisions of Section 12.4 shall remain in effect even after the termination of this Agreement, and shall apply during any periods when the Club continues to occupy the Premises for activities as outlined in of this Agreement.

13 LIABILITY FOLLOWING TERMINATION

- 13.1 The termination of this Agreement, whether by expiration or otherwise, shall not relieve either party of any liability or obligation that has accrued up to the effective date of termination and remains unsatisfied or undischarged. Any such obligations shall continue in full force and effect following termination, until properly fulfilled or resolved.

14 NOTICE

- 14.1 All communications and notices required or contemplated by this Agreement shall be in writing and shall be considered to have been validly given when delivered by hand, or deposited for mailing by Canada Post, Registered Mail service, to the address of the party to whom such notice is directed (as set forth below), or sent by facsimile transmission or e-mail or other means of written communication that effectively conveys the message to the party to whom such notice is directed, as follows:

If to the Club: Fort Erie Tennis Club Inc.
353 Central Avenue, Fort Erie, ON, L2A 3T8
Attention: Bill Pinto, President
E-mail: administrator@forteriesoccer.com

If to the Town: Town of Fort Erie
1 Municipal Centre Drive, Fort Erie, ON, L2A 2S6
Attention: Sean Hutton, Manager of Parks and Facilities
Facsimile: (905) 871-6100
E-mail: shutton@forterie.ca

or such other address of which either party has notified the other, in writing, and any such notice mailed or delivered shall be deemed good and sufficient notice under the terms of the Agreement.

15 NO WARRANTY OR REPRESENTATION BY TOWN

15.1 The Club acknowledges that, except as expressly set out in this Agreement, there are no covenants, representations, warranties, agreements, or conditions, whether expressed or implied, collateral or otherwise, affecting or relating to this Agreement or the Premises. This Agreement constitutes the entire understanding between the parties regarding the Premises and may only be amended by a further written agreement executed by both parties.

16 AUTHORITY TO ENTER INTO AGREEMENT

16.1 The Club represents and warrants to the Town as follows:

- (a) the Club is a corporation validly existing under the laws of Ontario and has the full corporate power and authority to enter into and perform this Agreement and any documents arising from it; and
- (b) all necessary corporate actions have been taken by the Club to authorize the execution and delivery of this Agreement.

17 SEVERABILITY

17.1 If any term or provision of this Agreement, or the application thereof to any person or circumstance, is held to be invalid or unenforceable to any extent, the remainder of this Agreement and the application of such term or provision to persons or circumstances other than those to which it is invalid or unenforceable shall not be affected. Each term and provision of this Agreement shall remain valid and enforceable to the fullest extent permitted by law.

18 AMENDMENTS TO AGREEMENT

18.1 Each of the Sections and attached Schedule(s) shall remain in effect throughout the Term of this Agreement and any renewal, unless amended, added to, or deleted by written agreement signed by both parties. This Agreement constitutes the entire understanding of the parties, superseding any prior written agreements, and may only be modified by a written agreement signed by both parties.

19 DISPUTE RESOLUTION

19.1 In the event of any dispute between the Club and the Town during the Term of this Agreement regarding any matter arising under it, either party may provide written notice to the other, detailing the nature of the dispute and demanding arbitration. Upon such notice, the Club and the Town shall agree on an arbitrator within seven (7) days. If they fail to do so, each party shall appoint an arbitrator within the seven (7) days. The arbitrators appointed

shall jointly select a third arbitrator immediately. The dispute shall be arbitrated without delay, and the decision of the sole arbitrator or, in the case of three arbitrators, the decision of any two arbitrators, shall be final and binding.

20 GOVERNING LAW

20.1 This Agreement, and the rights, obligations, and relations of the parties, shall be governed by and construed in accordance with the laws of the Province of Ontario.

21 ENUREMENT

21.1 The provisions of this Agreement shall be binding upon and enure to the benefit of the parties and their respective successors and, where applicable, permitted assigns.

22 ELECTRONIC SIGNATURE

22.1 This Agreement may be signed in any number of counterparts, each of which is an original, and all of which taken together constitute one single document. Counterparts may be executed either in original or electronic form and may be delivered in accordance with section and the Club and the Town adopt any signatures received by facsimile transmission or e-mail as original signatures.

[Signature page follows]

IN WITNESS WHEREOF the parties have signed and affixed their corporate seals under the hands of their proper officers duly authorized in that behalf.

FORT ERIE TENNIS CLUB INC.

Name:

Title:

Name

Title:

Date: _____

I/We have authority to bind the Club.

**THE CORPORATION OF THE
TOWN OF FORT ERIE**

Mayor

Clerk

We have authority to bind the corporation.

Date: _____

SCHEDULE "A"**Illustration of the Premises within Oakes Park**

For greater clarity, the Premises shall consist of the following:

1. The **clubhouse facility**, including all interior and exterior areas associated with its operation and maintenance;
2. The **seven (7) tennis courts**, along with all related features such as **court surfacing, fencing, and lighting**;
3. Any **immediate surrounding areas reasonably required for the Club's operations**, as determined in consultation with the Town; and
4. Any **other facilities or structures specifically identified** in this Agreement as part of the Club's operational responsibilities.

The Park, excluding the Premises, shall remain under the Town's control and subject to general municipal maintenance standards as outlined in this Agreement.

