



BY-LAW

NO. 2023 –

Being a By-law to Authorize an Agreement with the Kincardine Bulldogs Hockey Club for Video Streaming at the Davidson Centre

Whereas Section 8 (1) and 9 of the Municipal Act, 2001, S.O. 2001, c. 25, as amended, provide that the powers of a municipality under this or any other Act shall be interpreted broadly so as to confer broad authority on the municipality to enable the municipality to govern its affairs as it considers appropriate and to enhance the municipality's ability to respond to municipal issues and has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under this or any other Act; and

Whereas the Corporation of The Municipality owns the Davidson Centre located at 601 Durham Street, Municipality of Kincardine; and

Whereas Council of The Corporation of the Municipality of Kincardine deems it advisable to enter into an Agreement with the Kincardine Bulldogs Hockey Club for the purposes of video streaming of Junior C hockey games at the Davidson Centre; now therefore be it

Resolved that the Council of The Corporation of the Municipality of Kincardine **Enacts** as follows:

1. That The Corporation of the Municipality of Kincardine enter into an Agreement with the Kincardine Bulldogs Hockey Club, for video streaming of Junior C hockey games at the Davidson Centre, 601 Durham Street, Municipality of Kincardine, in accordance with the terms and conditions outlined in the Agreement attached hereto as Schedule 'A' and forming part of this By-law.
2. That the Mayor and Clerk be authorized to sign and execute, on behalf of The Corporation of the Municipality of Kincardine, the Agreement with the Kincardine Bulldogs Hockey Club.
3. That this By-law shall come into full force and effect upon its final passage.
4. That this By-law be cited as "Kincardine Bulldogs Video Agreement (2023) By-law".

Read a First and Second Time this 25th day of October, 2023.

Read a Third Time and Finally Passed this 25th day of October, 2023.

Mayor

Clerk

Schedule 'A'

License Agreement

This License Agreement (this "Agreement") dated this 25th day of October, 2023 (the "Effective Date"), is by and between:

The Corporation of the Municipality of Kincardine (the "Municipality") and
Kincardine Bulldogs Junior Hockey Club (the "Club")

WHEREAS:

- a) The Club desires access to the Davidson Centre arena located at 601 Durham Street, Kincardine (the "Arena") owned by the Municipality, for the purpose of installing cameras (the "Cameras") and for subsequent exclusive filming of the Club's hockey games and practices, and
- b) The Municipality is willing to permit the Club access to the Arena for the purpose of installing, operating, maintaining, and removing the said Cameras, under the terms and conditions of this Agreement;

NOW THEREFORE in consideration of the mutual covenants and other terms and conditions hereinafter contained, and the sum of two dollars (\$2.00) now paid by each of the parties to the other, the receipt and sufficiency of which are acknowledged by both parties, the parties hereby covenant and agree with each other as follows:

License

1. The Municipality hereby grants to the Club the right to access and utilize the areas of the Arena permitted by the Municipality's arena supervisor or delegate for installation, maintenance, and removal of the Cameras. The Cameras shall only be installed in a location permitted by the Municipality's arena supervisor or delegate.
2. The License granted herein shall be for the 2023-2024 hockey season, commencing upon full execution of this Agreement (the "Term"). This License Agreement shall automatically be renewed on a yearly basis for the Club's successive hockey seasons, unless the Cameras are removed by the Club, or the Agreement is otherwise terminated in accordance with the terms herein.
3. During the Term, the Club shall be permitted to utilize the Cameras to film, stream, and otherwise record the Arena's ice surface during the Club's practices, games, and ceremonies (an "Event"). The Club may choose to enter into agreements with streaming service providers for this work, but under no circumstances shall the Municipality be made party to any third-party agreement with a streaming provider for this purpose.

Covenants of the Club

4. The Club shall take sole responsibility for the implementation of the Cameras. The Club shall submit to the Municipality a camera policy or protocol which shall provide the particulars of how the camera data is stored and protected from third party access. The Club shall adjust such policy or protocol to address any concerns raised by the Municipality.

5. The Club shall take sole responsibility for any technical issues related to the Cameras. The Club shall maintain and repair the Cameras and any related equipment at its own expense and shall keep the Cameras and related equipment in a good state of repair.
6. The Club shall ensure the Cameras are used only for the purpose of constituting an Event as described herein and for no other purpose whatsoever. The Club shall ensure that the Cameras are shut off and not filming at all times, except during the occurrence of an Event. In the event that, notwithstanding the foregoing, the Cameras film for any period of time outside of an Event, the Club shall notify the Municipality and follow all directions it may have to rectify the unauthorized filming, which may include deletion of the film.
7. The Club shall not make any alterations or additional installations to the Cameras at the Arena without the written consent of the Municipality.
8. The Club shall ensure the Cameras are operated according to reasonable standards for the respective type of operation. In operating the Cameras, the Club shall ensure compliance with all applicable statutes, laws, by-laws, regulations, ordinances, orders and requirements of governmental or other public authorities, from time to time or at any time, which have jurisdiction over or relate to or affect the Club, the Arena, or an Event (all of which are together hereinafter referred to as the "Applicable Laws").
9. The Club shall ensure the operation of the Cameras for any Event does not interfere with the operation of the Arena by the Municipality. To the extent that any matters relating to the Club's use of the Cameras and the Arena are not addressed herein, the Club shall cooperate in good faith with the Municipality in order to resolve the same.
10. The Club's employees, agents, volunteers, or independent contractors are not and will not under any circumstances be considered Municipality employees or represent themselves as Municipality employees.
11. The Club shall provide adequate signage at the Arena and appropriate public notice to advise of the existence of the Cameras to those who may be captured by the filming of the Cameras. The Municipality may request changes to the signage as it deems appropriate, in its sole discretion.
12. Upon written request, the Club shall provide the Municipality with any requested footage from the Cameras which the Municipality may require, which the Municipality warrants will be used for no improper purpose.

Fees and Payments

13. No fees shall be due to the Municipality of the Club in consideration for the use of the Arena for installation of and access to the Cameras.
14. The Club shall supply at its sole cost and expense all staff, equipment, and technical assistance necessary to purchase, install, maintain, stream, and remove the Cameras installed at the Arena.

Insurance Requirements

15. At all times during the Term of this Agreement and any renewals thereafter, the Club shall obtain and maintain and require its subcontracted service providers, if any, to obtain and maintain the following insurance:

- a) Commercial General Liability Insurance with Completed Operations Coverage for claims alleging bodily injury including death, and damage to property of others, with a combined single limit of \$2,000,000 for bodily injury and property damage per occurrence. This coverage above must be endorsed with a Waiver of Subrogation Endorsement, effectively waiving Club's right of subrogation with respect to the Municipality. In addition, this coverage shall reflect that the Municipality is an additional insured;
 - b) Workers Compensation (WSIB) coverage, pursuant to statutory requirements as may apply;
 - c) Employers Liability Insurance with a minimum of \$2,000,000 per occurrence.
16. On the Effective Date, the Club shall furnish to the Municipality certificates as evidence showing that the insurance policies it is required to carry in accordance with this provision have been obtained or alternatively proof of self-insurance in the required amounts. The Club shall not be permitted to make any changes to the insurance during the Term which would conflict with the insurance requirements noted herein.

Indemnification

17. In consideration of the Municipality consenting to the Club use of the Arena and Cameras as described in this Agreement, the Club agrees to defend, indemnify and hold harmless the Municipality from and against losses, damages, costs and expenses (including reasonable attorney fees) which are due to or arise in connection with or as a result of Club's use of the Arena and/or Cameras or breach of this Agreement including but not limited to injury to or death of persons or loss of or damage to property.

Termination

18. Either party shall be permitted to terminate this Agreement upon thirty (30) days' written notice to the other party.
19. The Municipality may immediately terminate this Agreement upon giving notice to the Club where:
- a) The Club or its employees and/or subcontractors breach any provisions of this Agreement;
 - b) The Club undergoes a change in control which adversely affects its ability to satisfy some or all of its obligations under this Agreement;
 - c) The Club assigns this Agreement without consent of the Municipality, and
 - d) The above rights of termination are in addition to all other rights of termination available under this Agreement or at law.

Notices

20. Any notification or written communication required by or contemplated under the terms of this Agreement shall be in writing and sent by mail or by email and shall be deemed to have been delivered after five business days (in the case of regular mail) or after one business day (in the case of email). Addresses for such notices shall be:

If to the Club: Attention: Warren Beisel, General Manager
Kincardine Bulldogs Junior Hockey Club
PO Box 1
Kincardine ON, N2Z 2Y6
Email: info@jrclubdogs.ca

If to the Municipality: Attention: Jayne K. Jagelewski, Director Community Services
The Municipality of Kincardine
1475 Concession 5
RR # 5
Kincardine ON, N2Z 2X6
Email: jjagelewski@kincardine.ca

Miscellaneous

21. The waiver of any provision hereof or the failure of any party hereto to enforce any right hereunder shall apply to that provision or right only and shall not be deemed to affect the validity of the remainder hereof.
22. No departure from or waiver of the terms of this Agreement shall be deemed to authorize any prior or subsequent departure or waiver and the Municipality shall not be obligated to continue any departure or waiver or to permit any subsequent departure or waiver.
23. This Agreement shall be constructed with all changes in number and gender as may be required by the context. Any titles used within this document are for reference purposes only and not an aid to interpretation.
24. All obligations herein contained, although not expressed to be covenants, shall be deemed to be covenants.
25. The parties agree that all covenants and conditions contained in this Agreement shall be severable, and that should any covenant or condition in the Agreement be declared invalid or unenforceable by a court of competent jurisdiction, the remaining covenants and conditions and the remainder of the Agreement shall remain valid and not terminate thereby.
26. This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.
27. This Agreement embodies the entire agreement between the parties with regard to the provision of deliverables and additional deliverables and supersedes any prior understanding or agreement, collateral, oral or otherwise with respect to the provision of the deliverables and additional deliverables, existing between the parties at the date of execution of the agreement.
28. This Agreement shall not be assignable by the Club without the prior written consent of the Municipality, in its sole discretion.
29. This Agreement may be executed in counterpart and exchanged by scanned or faxed copy. A combination of counterparts shall be deemed to be an original.
30. This Agreement shall enure to the benefit of, and be binding upon, the heirs, executors, administrators, successors and permitted assigns of the parties hereto.

IN WITNESS WHEREOF, the Municipality and the Club have respectively executed and delivered this Agreement on the date set out above.

The Corporation of the Municipality of Kincardine

by:

Date

Name: Kenneth Craig
Title: Mayor

Date

Name: Jennifer Lawrie
Title: Clerk
We have authority to bind the Corporation.

Kincardine Bulldogs Junior Hockey Club

by:

Date

Name:
Title:

Date

Witness Name: