

THE CORPORATION OF THE CITY OF KENORA

BY-LAW NUMBER 32 - 2009

A BY-LAW TO EXECUTE AN AGREEMENT BETWEEN THE CORPORATION OF THE CITY OF KENORA AND LARRY CRUIKSHANK, FOR THE OPERATION AND MAINTENANCE OF ANICINABE PARK

.....
WHEREAS The Corporation of the City of Kenora is the owner of Anicinabe Park in the City of Kenora and requires a Contractor to supply services for the operation and maintenance of Anicinabe Park;

AND WHEREAS Larry Cruikshank wishes to provide services for the operation and maintenance of Anicinabe Park;

AND WHEREAS The Municipal Act, 2001, S.O. 2001, Chapter C.25, s.94 and 110, provide that by-laws may be passed by Council of Municipalities for entering into agreements for maintaining, operating or managing parks, recreational areas or playgrounds;

NOW THEREFORE The Corporation of the City of Kenora enacts as follows:

1. **THAT** The Corporation of the City of Kenora enter into an Agreement with Larry Cruikshank for the operation and maintenance of Anicinabe Park, on the terms and conditions as contained in the said Agreement, a copy of which is annexed to this By-law, to be effective the 1st day of April, 2009.
2. **THAT** the land known as Anicinabe Park be exempt from taxation for municipal and school purposes, from this date until December 31, 2013
3. **THAT** the Mayor and Clerk be hereby authorized to execute all documents related to this Agreement on behalf of The Corporation of the City of Kenora.
4. **THAT** By-law Number 24-03 is hereby repealed.

BY-LAW READ A FIRST & SECOND TIME THIS 9TH DAY OF MARCH, 2009

BY-LAW READ A THIRD & FINAL TIME THIS 9TH DAY OF MARCH, 2009

THE CORPORATION OF THE CITY OF KENORA:

Leonard Compton

MAYOR

Joanne McMillin

CITY CLERK

THIS AGREEMENT made this 1st day of April, 2009

B E T W E E N:

THE CORPORATION OF THE CITY OF KENORA
(hereinafter called "the City")

OF THE FIRST PART

LARRY CRUIKSHANK
(herein after called "Cruikshank")

OF THE SECOND PART

WHEREAS the City is the owner of Anicinabe park in the City of Kenora and requires a Contractor to supply services for the operation and maintenance of Anicinabe Park;

AND WHEREAS Cruikshank wishes to provide services for the operation and maintenance of Anicinabe Park;

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the premises, and the covenants and conditions hereinafter contained, the parties hereto covenant and agree as follows:

1. Scope of the Service

- a. Cruikshank shall provide all supplies, materials, equipment and staff required to maintain and operate those facilities in Anicinabe Park as outlined in the Operations Standards Policy attached hereto as Schedule "A", including the attached appendixes A - G.
- b. Cruikshank shall provide and staff a local telephone information line for inquiries and requests for information during regular hours of operation. A listing in the blue pages of the local directory of the Kenora Telephone Directory will be provided by the City of Kenora.
- c. Cruikshank shall not allow the parking of seasonal R.V. rentals and shall adhere to the Ontario Parks Rules and Standards which state the length of stay not to exceed 23 (twenty-three) days within a 31 (thirty-one) day period. Cruikshank shall not allow long-term storage or semi-permanent or permanent structures on the campsites or storage areas. This provision includes the same person, party or RV unit occupying similar space in the park within the same summer period. Cruikshank shall not allow overnight parking in the public parking lot nor overnight docking at the public docks.
- d. Cruikshank shall supply to the City the following required forms before the 1st day of April, 2009:
 - (i) City of Kenora - Business Licence
 - (ii) Clean Criminal Reference Check
 - (iii) Indemnification Agreement – duly signed document
 - (iv) Fairness is a Two-Way Street – duly signed document
 - (v) Pre-Qualification Check List – duly signed document
 - (vi) Undertaking to Comply – duly signed document

2. Term of the Agreement

- a. This Agreement shall come into force and effect commencing the 1st day of April, 2009, ending December 31, 2013. The City retains the option to further extend the contract for a two year term: if all terms of the Contract have been met by Cruikshank and if it is in the best interest of the City.
- b. Either party may terminate this Agreement by providing prior written notice by registered mail of sixty (60) days of they Party's intent to terminate;
- c. The City may terminate this Agreement with no notice in the event that Cruikshank is in breach of this Agreement.

3. Municipal Responsibilities

- a. The City shall maintain park roads and parking lots in accordance with Schedule "A".
- b. The City shall be responsible for maintenance costs in excess of \$100.00, per year, associated with the Anicinabe Park operations in accordance with Schedule "A", provided that the City must approve the work and costs, in writing, prior to the expense being incurred.

4. Capital Improvements

- a. Prior to undertaking any capital improvements, approval must be obtained, in writing, from the City.
- b. All capital improvements shall become the property of the City.

5. Insurance

- a. Cruikshank shall, at his own cost and expense, place, maintain and keep in force, general public liability insurance in a company or companies satisfactory to the City in the joint names of the City and Cruikshank, against claims for personal injury or death occurring upon, in, or about Anicinabe Park, such insurance to afford protection in respect to injury or death and in respect to property damage in such amounts as may from time to time be reasonably required by the City and Cruikshank shall furnish to the City during the continuance of this Agreement, evidence satisfactory to the City that such insurance is in full force and effect. Evidence of renewal or replacement of such policy shall be delivered to the City at least thirty (30) days before the expiration of each such policy. The amount of insurance for the first year and thereafter until Cruikshank is advised to the contrary shall be in the inclusive amount of not less than five million dollars (\$5,000,000.00).

- b. Cruikshank covenants to keep the City indemnified against all claims and demands whatsoever by any person, whether in respect of damage to person or property, arising out of or occasioned by or arising from the act, default, or negligence of Cruikshank, his agents, servants, employees, contractors, customers, invitees or licensees:
 - i. And Cruikshank agrees that the foregoing indemnity shall survive the termination of this Agreement notwithstanding the provisions of this Agreement to the contrary.
- c. Cruikshank shall carry insurance in his own name insuring against the risk of damage to Cruikshank's property within Anicinabe Park caused by fire or other perils and the policy shall provide for coverage on a replacement cost basis to protect Cruikshank's equipment, decorations and improvements.
- d. And Cruikshank shall provide the City with a certified copy of the policies.
- e. Cruikshank shall be required to produce a Workplace Safety and Insurance Board Certificate at the commencement of the Agreement and from time to time as may be required by the City.

6. Financial

- a. Cruikshank shall pay to the City, the fees set forth as follows:
 - i. 2009 - \$20,000.00 plus GST
2010 - \$20,600.00 plus GST
2011 - \$21,855.00 plus GST
2012 - \$22,511.00 plus GST
2013 - \$23,186.00 plus GST
- b. The annual fees shall be payable to the City of Kenora in two equal payments, as follows:
 - i. July 31st
 - ii. October 15th
- c. Cruikshank shall retain all fees and charges associated with the Anicinabe Park operation during the term of this Agreement.
 - i. Cruikshank shall keep accurate books and records of all funds received and disbursed in accordance with accepted accounting standards and deliver a copy to the City by November 30th of each year relating to the campground operations.

- ii. Cruikshank shall inform the City of the fee schedule and any changes, thereto, to park users. The 2008 Fee Schedule includes:

Tenting - Basic	\$ 20.00
Tenting - Serviced	\$ 23.00
Tenting – Lakeview	\$ 23.00
R.V. – Water & Electric	\$ 26.25
R.V. – Full Service	\$ 28.50
R.V. – Lakeview	\$ 31.50
Extra Person	\$ 6.00

- iii. Cruikshank shall collect fees for the following: tent campsite rentals, trailer campsite rentals, concession sales, firewood and equipment rentals.
- iv. Cruikshank shall provide the City with an annual report related to the operations identified in the above section (i).

7. Assignment

- a. Cruikshank shall not sublet, sub-contract or assign any of the works identified in this Agreement without the written consent of the City.

8. Notice

- a. Any notice, direction or other instrument required or permitted to be given to the City hereunder shall be in writing and may be given by mailing same, postage prepaid, or delivering same to the City at One Main Street South, Kenora, Ontario, P9N 3X2. Any notice, direction or other instrument required or permitted to be given to Cruikshank hereunder shall be in writing and may be given by mailing same, postage pre-paid or delivering same to Larry Cruikshank at 415 Third Street South, Kenora, Ontario. P9N 1J2.
- b. Any notice, direction or other instrument aforesaid if delivered shall be deemed to have been given or made on the date on which it was delivered, or, if mailed, shall be deemed to have been given or made on the next business day following the date upon which same was mailed.

9. Termination

Upon expiry or other termination of this Agreement:

- a. Cruikshank shall leave the assets and improvements of Anicinabe Park in a clean, repaired and well-maintained condition.
- b. Cruikshank shall give an up-to-date financial and activity report to the City.
- c. Cruikshank shall transfer to the City, all deposits.

10. This Agreement shall enure to the benefit of and be binding upon the respective parties hereto and their respective heirs, executors, administrators, successors and/or assigns.

IN WITNESS WHEREOF the parties have hereunto affixed their hands and seals the day and year first above written.

SIGNED, SEALED AND DELIVERED) THE CORPORATION OF THE CITY OF KENORA

in the presence of:

)

)

) per: _____

Mayor

)

)

) per: _____

City Clerk

)

)

)

Witness

)

Larry Cruikshank

)