



The Municipal Corporation of the Town of Fort Erie

BY-LAW NO. 79-2013

BEING A BY-LAW TO AUTHORIZE THE ENTRY INTO AND EXECUTION OF A CHARITABLE GAMING CENTRE MUNICIPALITY AGREEMENT WITH THE ONTARIO LOTTERY AND GAMING CORPORATION FOR THE NEW E-BINGO INITIATIVE IN THE TOWN OF FORT ERIE

WHEREAS at the Council-in-Committee Meeting held May 6, 2013 Report No. CDS-46-13 was approved and authorized as follows:

THAT:Council endorses the transition to the new e-bingo model and directs staff to inform the OLG, and further

THAT:Council directs the General Manager of Gaming to engage with the OLG in the preparation of the required contract for execution through by-law, and

WHEREAS it is deemed necessary to authorize the entry into a Charitable Gaming Centre Municipality Agreement with the Ontario Lottery and Gaming Corporation for the new e-bingo initiative in the Town of Fort Erie;

NOW THEREFORE the Municipal Council of the Corporation of the Town of Fort Erie hereby enacts as follows:

1. **THAT** the entry into and execution of a Charitable Gaming Centre Municipality Agreement with the Ontario Lottery and Gaming Corporation for the new e-bingo initiative in the Town of Fort Erie, annexed hereto as Schedule "A", be hereby authorized and approved.
2. **THAT** the Mayor and Clerk are hereby authorized and directed to execute the Charitable Gaming Centre Municipality Agreement and to affix the Corporate Seal thereto.
3. **THAT** pursuant to the provisions of Sections 23.1 to 23.5 inclusive of the *Municipal Act, 2001*, as amended, the Clerk of the Town of Fort Erie is hereby authorized to effect any minor modifications or corrections solely of an administrative, numerical, grammatical, semantical or descriptive nature or kind to this by-law or its schedules as such may be determined to be necessary after the passage of this by-law.

**READ A FIRST, SECOND AND THIRD TIME AND FINALLY PASSED THIS 12th DAY OF
AUGUST, 2013.**

MAYOR

DEPUTY CLERK

I, Carolyn J. Kett, the Clerk, of The Corporation of the Town of Fort Erie hereby certifies the foregoing to be a true certified copy of By-law No. 79-2013 of the said Town. Given under my hand and the seal of the said Corporation, this day of _____, 20_____.

CHARITABLE GAMING CENTRE MUNICIPALITY AGREEMENT

THIS AGREEMENT is made as of the _____ day of _____, 2013

B E T W E E N:

ONTARIO LOTTERY AND GAMING CORPORATION, a statutory corporation established under the *Ontario Lottery and Gaming Corporation Act, 1999*, with an office located at 4120 Yonge Street, Suite 500, Toronto, Ontario M2P 2B8, facsimile number 416-224-7074

(hereinafter referred to as "OLG")

OF THE FIRST PART

- and -

THE CORPORATION OF THE TOWN OF FORT ERIE, with its administrative office located at 1 Municipal Centre Drive, Fort Erie Ontario, L2A 2S6, Ontario, facsimile number 905 - 871- 9194

(hereinafter referred to as the "Municipality")

OF THE SECOND PART

WHEREAS OLG has the authority to conduct and manage lottery schemes on behalf of the government of Her Majesty in right of Ontario pursuant to Section 207(1)(a) of the *Criminal Code* (Canada) and in accordance with the *Ontario Lottery and Gaming Corporation Act, 1999* (Ontario) and to enter into agreements with third parties regarding any lottery schemes conducted or managed by OLG on behalf of the Province.

In consideration of the respective agreements, representations, warranties and indemnities herein contained and other good and valuable consideration (the receipt and sufficiency of which are acknowledged by each party hereto) the parties agree as follows:

1. DEFINITIONS

As used herein, the following terms shall have the respective meanings indicated below:

- (a) **"Charity Assignment"**, means a predetermined allotment of time when individual charities are scheduled and are required to provide volunteer resources to execute roles and responsibilities as required under the policies and standards as prescribed by OLG in return for a share of the charities proceeds.
- (b) **"Charitable Gaming Centre"** means the lands and buildings, or area in the lands and buildings, located at the address in the Municipality set out in, and more particularly described in, Schedule B hereto (regardless of whether or not any of the words "charitable", "bingo", "centre" or "hall" forms part of its name);
- (c) **"Charitable Gaming Centre Association" or "CGCA"** means, with respect to the Charitable Gaming Centre, an association formed by Permittees that, prior to the commencement of this Agreement, conducted regular bingo lottery events under the *Gaming Control Act, 1992* within the Charitable Gaming Centre, provided that OLG shall not be required to recognize more than one such CGCA in respect of the Charitable Gaming Centre.

- (d) **“Charitable Gaming Centre Service Provider”** or **“CGCSP”** means the service provider who has entered into a Charitable Gaming Centre Service Provider Agreement with OLG to provide operational services in the Charitable Gaming Centre;
- (e) **“Charitable Games”** or **“Charitable Gaming”** means paper and electronic lottery schemes of a social charitable nature, conducted and managed by OLG, tested and approved by AGCO and set out in Schedule A, but excluding OLG Lottery Games;
- (f) **“Charitable Organization”** means a charity or non-profit organization that meets the Permit Requirements and participates in assignments in the Charitable Gaming Centre;
- (g) **“Bona Fide Member”** means a member, 18 years of age or over, in good standing of a Permittee and who has other activities, beyond participating in lottery events, within the Permittee organization and, for greater certainty, excludes a member of convenience;
- (h) **“Eligible Charity”** means a charitable organization which: (1) as of the day immediately preceding the Start Date, held a valid, unsuspended licence, issued by the Registrar of Alcohol and Gaming based on an authorization issued by the Municipality, to conduct and manage a charitable gaming lottery event at the Charitable Gaming Centre; or (2) had held such a valid, unsuspended licence for a period wholly within the preceding 12 month period preceding the Start Date or held a Permit under the existing OLG initiative;
- (i) **“Gaming Revenue”** means, for any period, the total as calculated by OLG in OLG’s sole and unfettered discretion, absent manifest error, of all money constituting part of Gross Receipts which are derived from any Charitable Gaming activity at the Charitable Gaming Centre including without limitation the Charitable Games, whether such revenue is generated as cash sales or from OLG-authorized coupons;
- (j) **“Gross Receipts”** means, for any period, the total, as calculated by OLG, in OLG’s sole and unfettered discretion, absent manifest error, of all money received (exclusive of any applicable taxes) by, or in trust for, OLG from the retail sale of any products or services in the Charitable Gaming Centre before any deduction (this includes CGCSP commissions from the sale of OLG Lottery Game products, but otherwise excludes any amounts paid, directly or indirectly, by OLG to the CGCSP or from the sale of OLG Lottery Game products);
- (k) **“Net Gaming Win”** means Gaming Revenue less prizes, plus expired prize liabilities (which include player credits removed after a predetermined expiry date) plus or minus Charitable Gaming Centre adjustments, all as may be calculated by OLG in OLG’s sole and unfettered discretion, absent manifest error;
- (l) **“Adjusted Net Gaming Win”** means Net Gaming Win less the total percentage allocation of advertising and promotion expenditure. The total advertising and promotion expenditure is seven (7) per cent of Net Gaming Win, consisting of the Local Advertising and Promotion Component and the Provincial Advertising and Promotion Component.
- (m) **“Local Advertising and Promotion Component”** means five (5) per cent of the Net Gaming Win at the Charitable Gaming Centre, to be used for Charitable Gaming Centre specific advertising and promotional activities managed by the Charitable Gaming Centre;
- (n) **“Provincial Advertising and Promotion Component”** means two (2) per cent of the Net Gaming Win at the Charitable Gaming Centre, to be used for provincial level advertising and promotional activities managed by OLG;
- (o) **“Start Date”** means, with respect to the Charitable Gaming Centre, such date as OLG shall determine for the opening of the Charitable Gaming Centre to the general public and the operation of the Charitable Games

therein, provided that where the Municipality has previously entered into a bingo centre municipality agreement with respect to the Charitable Gaming Centre, the Start Date shall be such date as OLG shall determine for the replacement, with respect to the Charitable Gaming Centre, of such agreement with this Agreement. OLG shall provide the Municipality with written notification of the Start Date;

(p) **“Participation Requirements”** means such requirements and criteria that a charitable organization must meet and maintain (including those relating to use of proceeds) as OLG may from time to time prescribe, including such elements of the Alcohol and Gaming Commission of Ontario’s (“AGCO’s”) Lottery Licensing Policy Manual as OLG may specify;

(q) **“Permit”** means a permit governed by the Permit Requirements set out in Appendix 1 hereto and supplied by the Municipality to an Eligible Charity which is receiving the permit on behalf of OLG, confirming that that Eligible Charity meets the Participation Requirements in respect of the Permit Period;

(r) **“Permit Application Form”** means the form annexed hereto as Appendix 2;

(s) **“Permittee”** means, with respect to any CGCA, a charitable organization which holds a valid Permit from the applicable Permitting Authority;

(t) **“Permitting Authority”** means the Municipality;

(u) **“Permit Period”** means the twelve (12)-month period commencing on the Start Date (or such shorter Permit Period as OLG may allow or that past practices for a given eligible charity may dictate) but in no event a period that extends beyond twelve (12) months after the Start Date, subject to the discretion of the Permitting Authority;

(v) **“prescribe”, “prescribes” or “prescribed”** means specified, designated or approved in writing by OLG from time to time

(w) **“Quarterly Amount”** has the meaning ascribed to it in Section 4 hereof;

(x) **“Term”** means the period of time referred to and described in Section 2 hereof;

(y) **“OLG Lottery Game”** means any ticket lottery game conducted and managed by OLG now or in the future (other than a Charitable Game) and commonly referred to by OLG as a lottery game;

(z) **“Registrar of Alcohol and Gaming”** means the Registrar of Alcohol and Gaming established under the *Alcohol and Gaming Regulation and Public Protection Act, 1996* (Ontario) and includes such Deputy Registrars to whom the Registrar has delegated certain authority.

2. Term

2.01 (a) The Term of this Agreement will be eight (8) years with two consecutive automatic four-year renewal periods, with such Term commencing on the Start Date, and unless earlier terminated pursuant to the provisions hereof. However, OLG may provide no less than sixty (60) days’ notice of non-renewal to the Municipality prior to the end of the Term (or prior to the end of the first renewal period), in which case the Term shall not be renewed (or further renewed, as the case may be).

(b) Where, pursuant to paragraph (a) hereof, OLG provides no less than sixty (60) days’ notice of non-renewal to the Municipality prior to the end of the Term, then, for the purposes of winding down the parties’ respective

obligations under this Agreement, the Term will continue for a further period of two (2) years past the initial eight-year Term, unless earlier terminated pursuant to the provisions hereof.

(c) Where paragraph (b) hereof does not apply and, pursuant to paragraph (a), OLG provides no less than sixty (60) days' notice of non-renewal to the Municipality prior to the end of the first renewal period, then, for the purposes of winding down the parties' respective obligations under this Agreement, the Term will continue for a further period of one (1) year past the first four-year renewal period, unless earlier terminated pursuant to the provisions hereof.

2.02 Notwithstanding Section 2.01, OLG may, at its option, terminate this Agreement if the Municipality fails to perform or observe any term, covenant or agreement contained herein; provided that OLG shall first provide written notice of its intent to terminate, and termination shall be effective only if the Municipality fails to remedy such failure to perform within thirty (30) days of receipt of notice.

2.03 Notwithstanding Sections 2.01 and 2.02, OLG may, at its option, terminate this Agreement by providing the Municipality with ninety (90) days' written notice of termination.

3. Financial Calculations

OLG shall calculate the Adjusted Net Gaming Win on a calendar quarter basis.

4. Payment

In consideration for the Municipality's role, OLG shall, in accordance with the procedures set out herein, pay to the Municipality, in respect of each calendar quarter an amount (the "Quarterly Amount") equal to the amount calculated in accordance with Schedule B, and such payment is inclusive of any applicable taxes payable by OLG. Within twenty-one (21) days of the end of each calendar quarter, OLG shall pay to the Municipality the Quarterly Amount in respect of such quarter.

5. Municipality's Role

The Municipality shall act as the Permitting Authority and shall supply Permits to the Eligible Charities to receive the Permits on behalf of OLG.

The service of supplying the Permits includes the Municipality's performance of the following:

- (a) reviewing and processing the Permit Application Form submitted to the Municipality by each Eligible Charity within the time limits prescribed by OLG;
- (b) notifying OLG in writing, no less than thirty (30) days prior to the Start Date, of the identity of any Eligible Charity that has not submitted a Permit Application Form to the Municipality;
- (c) notifying OLG in writing, no less than twenty (20) days prior to the Start Date of the identity of any Eligible Charity to whom the Municipality has not supplied a Permit;
- (d) where an Eligible Charity has submitted a properly completed Permit Application Form to the Municipality, the supply of a Permit in accordance with the provisions of paragraph (f) below to that Eligible Charity within twenty (20) days of receipt of Permit Application Form;
- (e) supplying Permits only in the form annexed hereto as Appendix 1;
- (f) when considering the issuance of new Permits or the renewal of Permits on or after the Start Date, the

Municipality shall consider factors such as the number of bingo authorizations already issued, the Eligible Charity's financial need and community benefit, remaining consistent with the Participation Requirements;

(g) monitoring each Permittee's compliance with the Permit Requirements set out in Appendix 1 annexed hereto and investigating any breaches of the Permit Requirements set out in Appendix 1;

(h) monitoring the CGCA's compliance with the distribution requirements of issued Permits by:

(i) ensuring monthly reports are received from the CGCA that certify members of the CGCA have acted in compliance with such distribution requirements; (ii) ensuring the CGCA has pooled and distributed funds electronically as set out in the respective Permits; (iii) reviewing CGCA Distribution reports (Appendix 3) submitted to the Municipality to ensure that the Permittees have received their share of Charitable Gaming proceeds only where they have a valid Permit and have fulfilled attendance requirements; (iv) upon request, ensuring Bona Fide Member attendance reports are received from CGCA and Bona Fide Member lists are received from CGCA; (v) validating that the Permittees have met attendance requirements [including, at the Municipality's discretion, by conducting periodic checks and verifying that attendance reports submitted by CGCSP's match Bona Fide Member lists submitted by the CGCA (Sample attached as Appendix 5)]; (vi) notifying OLG as quickly as practicable (and, in any event, no less frequently than once per year) of the CGCA where it has not fulfilled, or is not fulfilling, the above requirements;

(i) not imposing any other requirements, terms or conditions on any Permittee, other than the Permit Requirements set out in Appendix 1, or as set out below:

The Municipality may place any or all of the following conditions on a Permit: (i) conditions transcribing the approved eligible use for the proceeds from the application form in line with the Participation Requirements; (ii) a requirement to provide the financial reports referred to in Appendix 4 on a monthly basis; (iii) other additional conditions which may be necessary and have received prior approval by OLG (including the conditions set out in the Participation Requirements);

(j) no later than sixty (60) days following the Start Date, refunding to each Eligible Charity any fees paid by it to the Municipality in respect of the unexpired term (pro-rated to the Start Date) of any licence issued by the Registrar of Alcohol and Gaming based on an authorization issued by the Municipality to the Eligible Charity to conduct and manage a bingo lottery event at the Charitable Gaming Centre;

(k) no later than the Start Date, retrieving from each Eligible Charity, and cancelling, the authorization referred to in subsection (j);

(l) not supplying any Permit to any person or organization that is not an Eligible Charity; for greater certainty, if an Eligible Charity is under investigation by the Municipality or the AGCO as of the day immediately preceding the Start Date, then the Municipality shall: (i) ensure that the Permit supplied to such Eligible Charity is conditional upon the outcome of such investigation; and (ii) inform OLG of the outcome of such investigation as soon as practicable after it has been completed;

(m) not supplying any more concurrently valid permits than the total number of eligible charities that held a valid licence or Permit as of the day immediately preceding the Start Date or as OLG may specify;

(n) in the event that the number of eligible charities that have been supplied with permits by the Municipality as of the Start Date decreases, the Municipality may supply additional permits (up to the maximum allowable number of permits) to applying charitable organizations that meet the Participation Requirements;

(o) not issuing to any person or organization any authorization to conduct and manage a bingo lottery event at the

Charitable Gaming Centre during the Permit Period;

(p) ensuring charity compliance through the following mechanism:

(i) notifying OLG as soon as practicable after the Municipality becomes aware that an Eligible Charity has contravened, or is about to contravene, any of the Participation Requirements or Permit Requirements;

(ii) cancelling, suspending, revoking or terminating a charity's Permit where it fails to meet the requirements of that Permit and subject to the following conditions:

(1) the Municipality has first investigated the alleged contravention and has, in good faith, attempted to resolve any issues with the charity and the corresponding CGCA (or any agent acting on their behalf); (2) the Municipality immediately (within two (2) working days) of cancelling, suspending, revoking or terminating a charity's Permit, has informed OLG, indicating the charity involved and why the Permit was cancelled, revoked, terminated or suspended; (3) OLG reserves the right to reverse, in whole or in part, any decision made by the Municipality with respect to the cancellation, revocation, termination or suspension of any Permit;

(iii) cancelling, revoking, terminating or suspending a Permit immediately upon OLG's direction to the Municipality to that effect;

(iv) forwarding to OLG any suggestions or possible improvements to the enforcement process for discussion;

(v) informing the CGCA of the situation in order to ensure good communication.

(q) for the purposes of supporting the Charitable Gaming Program objectives of supporting and encouraging innovation and encouraging cooperation among Charitable Gaming stakeholders, sharing with OLG any possible improvements, innovations, best practices or issues of potential benefit or interest;

(r) maintaining books and records consisting of Permit applications, copies of Permits, the CGCA's monthly reports, each Permittee's report in accordance with Appendix 4 hereto and the Municipality's investigation notes, recommendations and reports pursuant to this Agreement, and causing such books and records to be made available to OLG;

(s) monitoring each Eligible Charity's use of proceeds from the Charitable Games, and, within thirty (30) days of the receipt of the financial report annexed hereto as Appendix 4, furnishing to OLG a written report with respect thereto, such report to be in such format as may be prescribed by OLG (but, in any event, listing each Eligible Charity's name and, beside each name, the Municipality's confirmation that there have been no breaches of the Participation Requirements by the Eligible Charity revealed by the Municipality during the reporting period);

(t) if requested by OLG, providing to OLG such copies of any Permit Application Form and other materials submitted by an Eligible Charity in connection with such Permit Application Form; and

(u) for greater certainty, not charging any fees (including administrative fees) for any of the foregoing.

6. Representations and Warranties

The Municipality hereby covenants, represents and warrants as follows and acknowledges that OLG is relying thereon in connection with entering into this Agreement:

(a) that it has the right and capacity to enter into this Agreement and to perform its obligations hereunder;

(b) that each Eligible Charity meets at the time of issuing the Permit, and is expected by the Municipality to

continue meeting, the Participation Requirements; and

- (c) that, in addition to subsection (b), prior to the Start Date, the Municipality, in previously having decided to issue an authorization to the Eligible Charity to conduct and manage a bingo lottery event at the Charitable Gaming Centre, took into account factors such as the number of authorizations already issued, the Eligible Charity's financial need and community benefit, remaining consistent with the Participation Requirements.

7. Further Assurances

The parties agree to do, or cause to be done, all acts or things and execute all such further documents as may be necessary to implement and carry into effect this Agreement to its full extent.

8. No Liability of OLG

The Municipality acknowledges that OLG and any provincial agency, ministry or crown corporation shall not be liable to the Municipality for any loss, direct, indirect or consequential damages or injury relating to the operation of the Charitable Games or the Charitable Gaming Centre, including but not limited to loss of fees resulting from the operation or malfunction of equipment.

9. Notice

Any notice permitted or required to be given by OLG to the Municipality may be given by posting the same by prepaid registered mail; by personal delivery to the Municipality; or by telefax addressed to the Municipality at the address appearing in this Agreement. Any notice permitted or required to be given by the Municipality to OLG may be given by posting the same by prepaid registered mail; by personal delivery to OLG; or by telefax addressed to OLG at the address appearing in this Agreement (to the attention of "Vice-President, Emerging Business" in the case of OLG, and to the attention of "City Clerk" in the case of the Municipality), or to such other address, and to the attention of such other person or office, as the subject party may designate in writing by notice given in the aforesaid manner. Any notice posted by pre-paid registered mail shall be deemed to have been received on the fifth day following such mailing and any notice personally delivered or sent by telefax shall be deemed to have been received on the day so delivered or sent by telefax. During periods of a postal strike or of a general interruption of postal services, any notice shall be given by personal delivery or telefax.

10. Relationship of Parties

The Municipality acknowledges that the Municipality is not an employee, agent or representative, joint venturer, or partner of OLG, and the Municipality shall not represent itself to others as being authorized to assume, incur or create any obligation of any kind (express or implied) on behalf of (or in the name of) OLG or any other provincial agency, ministry or crown corporation, or purport to bind OLG or any other provincial agency, ministry or crown corporation in any respect.

11. Severability

If any covenant or term hereof or the application thereof to any person, or in any circumstance, to any extent is held invalid or unenforceable, the remainder of this Agreement or the application of the term, covenant or condition to any person or circumstance, other than those as to which it is held invalid or unenforceable, will not be affected thereby and each term, covenant and condition shall be valid and enforceable to the fullest extent permitted by law, except that if on the reasonable construction of this Agreement as a whole, the applicability of the other provisions presumes the validity and enforceability of the particular provision, the other provisions will be deemed also to be invalid or unenforceable.

12. Governing Law

This Agreement shall be interpreted and the rights of the parties shall be governed by and construed in accordance with the laws of the Province of Ontario and each party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of such Province.

13. Time

Time shall in all respects be of the essence of this Agreement. The time for doing or completing any matter provided for herein may be extended or abridged by an agreement in writing signed by the parties.

14. Counterparts

This Agreement may be executed in counterparts, each of which shall constitute an original and all of which taken together shall constitute one and the same instrument.

15. Disclosure

The parties acknowledge that OLG is a Crown Agency and that it is subject to the *Freedom of Information and Protection of Privacy Act*, and that the Municipality is subject to the *Municipal Freedom of Information and Protection of Privacy Act*, and that, as a result, either party may be required to observe certain obligations with respect to the disclosure or non-disclosure of information, whether to government agencies or ministries or otherwise.

16. Waiver

No waiver or any breach of any provision of this Agreement shall constitute a waiver of any prior, concurrent or subsequent breach of the same or any provision hereof and no waiver shall be effective unless made in writing and signed by an authorized representative of the waiving party.

17. Modifications

If the parties shall deem it necessary or expedient to make any alteration in or addition to this Agreement, they may do so by a written agreement between them which shall be supplemental hereto and form part hereof.

18. Assignment

No transfer, sale or assignment by the Municipality of this Agreement or the Municipality's rights hereunder is valid without the prior written consent of OLG, which consent shall not be unreasonably withheld. This Agreement shall enure to the benefit of, and be binding upon, the parties and their respective successors and permitted assigns.

[The next page is the signature page]

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the date first written above.

ONTARIO LOTTERY AND GAMING CORPORATION

per: _____

Name: Rod Phillips_____

Title: President & CEO

I have the authority to bind the Corporation

THE CORPORATION OF THE CITY OF FORT EIRE

per: _____

1. Name: Douglas G. Martin_____

Title: Mayor_____

per: _____

2. Name: Carolyn Kett _____

Title: Town Clerk_____

Schedule A

For the purposes of this Agreement, the Charitable Games are certain specified games conducted and managed by OLG, namely:

- session play paper bingo games
- session play electronic bingo games
- paper break-open ticket lottery games
- electronic break-open ticket dispensers
- personal play electronic bingo
- personal play electronic break-open tickets
- personal play electronic instant games
- rapid draw bingo
- electronic shutterboard games

If OLG so determines:

-BIG LINK BINGO

The availability of the certain specified games as listed above will be determined based on OLG's charitable gaming centre service provider Implementation Schedule.

OLG may from time to time add games to the list of Charitable Games listed above, consistent with direction from OLG's Board of Directors and the Government of Ontario.

For greater certainty, the Charitable Games do not include OLG Lottery Games.

Schedule B

Name and Address of the Charitable Gaming Centre:

Charitable Gaming Centre Address:

Uncle Sam's Bingo Hall
427 Garrison Rd, Fort Erie
ON L2A 6E6

Golden Nugget Bingo
655 Garrison Rd, Fort Erie
ON L2A 1N5

Quarterly Amount Payable to Municipality:

Three (3) % of unaudited Adjusted Net Gaming Win at the above-listed Charitable Gaming Centre, subject to OLG adjustments.