

# Village of Hines Creek Council Request for Decision (RFD)

Meeting:	Regular Council Meeting
Meeting Date:	October 22, 2019
Originated By:	Leanne Walmsley, Chief Administrative Officer
Title:	New Business – Dr, Lease Agreement
File:	0602

## BACKGROUND/PROPOSAL:

License Agreement between the following:

Municipal District of Fairview No. 136, Town of Fairview, Clear Hills County and the  
Village of Hines Creek

And

Dr. Sally Andreiuk

## DISCUSSION/OPTIONS/BENEFITS/DISADVANTAGES

License Agreement

Whereas:

- A. Pursuant to the Head Lease between the Alberta Health Services and the Licensor, a true copy of which is attached hereto as Schedule "A", Alberta Health Services leased a portion of the Lands to the Licensor for a term of 20 years.
- B. Pursuant to Article 10 of the Head Lease, the Licensor is entitled to grant rights to the Licence Area, or any portion thereof, to medical practitioners;
- C. the Licensor has agreed to license the Licence Area to the Licensee in accordance with the terms, covenants and conditions contained herein.

Now therefore in consideration of the rents and the mutual covenants and agreements contained herein, the sufficiency of which is hereby acknowledged by each of the parties, the parties hereby agree as follows:

## RECOMMENDED ACTION:

That Council enter into a License Agreement jointly with the Municipal District of Fairview No 136, Town of Fairview, and Clear Hills County and with Dr. Sally Andreiuk on the terms and conditions outlined in the attached agreement.

Initials show support- Reviewed by:

Manager:

C.A.O.

SW  
9b

THIS LICENSE made this seventeenth (17<sup>th</sup>) day of September 2019.

BETWEEN:

**MUNICIPAL DISTRICT OF FAIRVIEW NO. 136, TOWN OF FAIRVIEW, CLEAR HILLS COUNTY and  
VILLAGE OF HINES CREEK**  
(jointly and severally, the "Licensor")

- and -

Dr. Sally Andreiuk (the "Licensee")

### LICENSE AGREEMENT

**WHEREAS:**

- A. Pursuant to the Head Lease between the Alberta Health Services and the Licensor, a true copy of which is attached hereto as **Schedule "A"**, Alberta Health Services leased a portion of the Lands to the Licensor for a term of 20 years;
- B. Pursuant to Article 10 of the Head Lease, the Licensor is entitled to grant rights to the Licence Area, or any portion thereof, to medical practitioners;
- C. The Licensor has agreed to license the License Area to the Licensee in accordance with the terms, covenants and conditions contained herein.

**NOW THEREFORE** in consideration of the rents and the mutual covenants and agreements contained herein, the sufficiency of which is hereby acknowledged by each of the parties, the parties hereby agree as follows:

### ARTICLE 1- DEFINITIONS

1.1 Definitions

In this License:

- (a) "Commencement Date" means the 17<sup>th</sup> day of September 2019;
- (b) "Common Area" means waiting room for all the patients of the clinic and workrooms for the registered nurse and doctors' assistants;
- (c) "CPI Inflation Index" means an amount equal to the Consumer Price Index, for All-items, in Alberta, as at the first day of the year, as published by Statistics Canada (CANSIM code 326-0021), or, if such index in its present form becomes unavailable, such similar index as may be agreed by the parties acting reasonably;
- (d) "Head Lease" means the lease agreement contained within Schedule "A" attached hereto;
- (e) "Lands" means the lands legally described as Plan 6406NY, Block 7, Lot 14, Excepting Thereout All Mines and Minerals and municipally known as 10624 110 Street, Fairview, Alberta, together with all buildings and improvements located thereon;

- (f) "License" means this License agreement as from time to time amended in writing and agreed to by the parties hereto;
- (g) "License Area" means all that portion of the medical clinic building located upon the Lands consisting of 1 office and 2 examination rooms, together with the Common Area to be shared with other doctors;
- (h) "Permitted Use" means the providing a physicians' clinic and for no other purpose whatsoever;
- (i) "Rent" means the monthly rental payments payable by the Licensee to the Licensor pursuant to Section 4.1 of this License, together with any other amounts payable by the Licensor pursuant to the terms of this License;
- (j) "Term" means the Term of this License as specified in Section 3.1 of this License.

**ARTICLE 2- DEMISE**

2.1 Demise

- (a) The Licensor hereby grants to the Licensee the right to use and occupy the License Area for the Term and upon and subject to the terms, covenants and conditions contained within this License.

**ARTICLE 3- TERM**

3.1 Term

- (a) The Licensee shall have and hold the License Area until the Licensee or Licensor has terminated the agreement.
- (b) Either party can give a 30 (thirty) days written notice to the other party with intention to renegotiate this License Agreement.

3.2 Termination

- (a) Notwithstanding Section 3.1, this License shall automatically terminate on the thirtieth (30<sup>th</sup>) day following either party serving written notice upon the other party to terminate this License. Save and except for those terms which are to survive the termination of this Lease, all obligations under this License shall cease as of the date for termination noted within this Section 3.2.

#### **ARTICLE 4- RENT**

##### 4.1 Rent

- (a) The Licensee shall pay to the Licensor the sum of \$1291.00 per month, including GST, payable in advance on the first day of each and every month of the Term commencing with the Commencement Date. In the event that the Term commences upon any date other than the first of the month, or expires upon any date other than the last day of the month, the monthly payment of Rent payable by the Licensee for such partial months shall be adjusted on a per diem basis to reflect any occupancy for a portion of a month. The Licensor and Licensee understand that the Rent includes a cost-sharing for the phone system and utilities.
- (b) Notwithstanding Section 4.1(a) hereof, the Rent shall be increased by the CPI Inflation Index on the first day of January in each and every year of the Term.

#### **ARTICLE 5- GENERAL COVENANTS**

##### 5.1 Licensor's General Covenants

The Licensor covenants with the Licensee:

- (a) for quiet enjoyment;
- (b) to observe and perform all of the covenants and obligations of the Licensor contained within this License.

##### 5.2 Licensee's General Covenants

The Licensee covenants with the Licensee:

- (a) to pay Rent when due;
- (b) to observe and perform all of the obligations of the Licensor under the Head Lease as those obligations relate to the License Area only;
- (c) to observe and perform all of the covenants and obligations of the Licensee contained within this License.

#### **ARTICLE 6- TAXES AND EXPENSES**

##### 6.1 Taxes

The Licensee shall be responsible for all property taxes which may be charged in respect of the License Area during the Term of this License.

##### 6.2 Licensee's Taxes

The Licensee shall promptly pay when due all business, sales, machinery, equipment and all other taxes, assessments, charges and rates, other than property taxes, as well as any permit or license fees, attributable to any business, sales, or income of the Licensee in respect of the License Area.

6.3 Caretaking

All cleaning and caretaking of the License Area shall be carried out by the Licensor at the Licensor's expense.

**ARTICLE 7- USE AND OCCUPANCY OF THE LICENSE AREA**

7.1 Use of the License Area

- (a) The License Area shall be used continuously during the Term by the Licensee for the Permitted Use, and for no other use whatsoever. The Licensee shall not carry on nor permit to be carried on the Lands any other trade or business without prior written consent of the Licensor and Alberta Health Services as landlord under the Head Lease.
- (b) The Licensee acknowledges and agrees that its rights to enter upon and use the License Area granted under this License shall not confer upon the Licensee any exclusive right whatsoever with respect to the use or occupation of the License Area, and that the Licensee shall have no claim to the License Area other than as herein provided.

7.2 Nuisance

The Licensee shall not carry on any business nor do or suffer any act or thing which in the opinion of the Licensor constitutes a nuisance or would result in a nuisance, or which would be offensive or any annoyance to the Licensor or any other land owners in the area, nor do or suffer any waste or damage, disfiguration or injury to the Lands or the License Area.

7.3 Compliance with Laws

- (a) The Licensee will promptly comply with and conform to the requirements of every applicable law, by-law, regulation ordinance and order at any time or from time to time in force during the Term affecting the License Area, the business carried on within the License Area or the equipment and other facilities located in the License Area. The Licensee will not use the License Area in any way, whether within the Permitted Use or not, which would or may impose upon the Licensor any obligation to modify, extend, alter or replace any part of the License Area nor any of the equipment or other facilities located on or in the License Area except where previously agreed to by the Licensor in writing.
- (b) The Licensor will promptly comply with and conform to all applicable statutes, laws, by-laws, regulations, ordinances and orders at any time or from time to time in force during the Term affecting the License Area.

7.4 Improvements, Alterations, Fixtures

- (a) The Licensee will not, without the prior written consent of the Licensor and Alberta Health Services, construct, install, erect or permit to be constructed, or erected upon or within the License Area any alteration, addition, partition, improvement or other structure. If the Licensee desires to construct, install, erect or permit to be constructed, or erected any alteration, addition, partition, improvement or other structure upon or within the License

Area, the Licensee shall, at the time of its application for the Licensor's consent, inform the Licensor and furnish plans and specifications of the necessary work and if the Licensor shall consent to such work being done, the Licensor shall have the right impose any reasonable conditions upon such consent which the Licensee may deem necessary. In the event any alteration, addition, improvement or installation has been made without the written consent of the Licensor, the Licensor may require the Licensee to restore the License Area to such an extent as the Licensor deems expedient.

- (b) Upon the expiration or other termination of this License, all alterations, additions, partitions, improvements or structures which may have been made or installed by the Licensee upon the License Area, (whether with or without the Licensor's consent) and which are attached to the License Area shall remain upon and be surrendered with the License Area as a part of the License Area without disturbance, molestation or injury and such be and become the absolute property of the Licensor.
- (c) Notwithstanding Section 7.4(b), the Licensor may, by written notice to the Licensee prior to or after the termination or expiration of the Term, require the removal at the expense of the Licensee of any and all alterations, additions, partitions, improvements or structures on the License Area and/or the restoration of the License Area to the same condition that they were in before any alterations, additions, partitions, improvements or structures were made, erected or installed, such work to be done by or at the direction of the Licensor.
- (d) Notwithstanding Section 7.4(b), but subject to Section 7.4(a) and 7.4(c), and provided the Licensee has paid the Rent and performed and observed all the covenants and conditions contained in this License, the Licensee shall at the expiration or other sooner termination of this License have the right to remove its trade fixtures, but shall make good the damage caused to the License Area which may result from such installation and removal including the restoration of the License Area to the same condition that they were in before any improvement, alteration or fixture was made, erected or installed, such work to be done by or at the direction of the Licensor.

## 7.5

### Insurance

- (a) The Licensee shall throughout the Term and during any other time the Licensee occupies the License Area or a portion thereof, at its sole cost and expense, take out and keep in full force and effect, the following insurance:
  - (i) commercial general liability insurance with inclusive limits of not less than \$2,000,000.00; and
  - (ii) any other form of insurance as the Licensor may reasonably require from time to time in form, in amounts and for insurance risks against which a prudent Licensee under similar circumstances would insure.
- (b) Each insurance policy referred in Section 7.5(a) shall name the Licensor and any person, firm or corporation designated by the Licensee as additional named insureds as their interest may appear and such policies will contain where appropriate:
  - (i) a waiver of any subordination rights which the Licensee's insurers may have against the Licensor;
  - (ii) a severability of interests clause or a cross liability clause; and

- (iii) a clause stating that the Licensee's insurance policy will be considered as the primary insurance and shall not call into contribution any other insurance that may be available to the Licensor.
- (c) All policies shall be taken out with insurers and shall be in a form acceptable to the Licensor acting reasonably. The Licensee agrees that certificates of insurance acceptable to the Licensor or if required by the Licensor, certified copies of each such insurance policy, will be delivered to the Licensor as soon as practicable after the placing of the required insurance. All policies shall contain an undertaking by the insurers to notify the Licensor in writing, of any material change, cancellation or termination of any provision of any policy, not less than thirty (30) days prior to the material change, cancellation or termination thereof.

#### 7.6 Signs

Any signs placed by the Licensee in or around the License Area shall be subject to the prior approval of the Licensor, and shall conform to all government statutes and regulations. The placement, maintenance and repair of any signs relating to the Licensee shall be the Licensee's responsibility.

#### 7.7 Indemnity

The Licensee hereby indemnifies and saves harmless the Licensor and its successors and assigns from and against any and all losses, liabilities, damages, costs (on a solicitor and his own client basis) and expense of any kind whatsoever including, without limitation:

- (a) the costs of defending, counter-claiming or claiming over against third parties in respect of any action or matter including legal fees, costs and disbursements on a solicitor and his own client basis and at all court levels;
- (b) any cost, liability or damage arising out of a settlement of any action entered into by the Licensor with or without the consent of the Licensee; and
- (c) the costs of repair, clean-up or restoration paid by the Licensor and any fines levied against the Licensee,

which at any time or from time to time may be paid, incurred or asserted against the Licensor, whatsoever arising from or out of, directly or indirectly, the Licensee's use or occupancy of the License Area or occasioned wholly or in part by any act or omission of the Licensee, its agents, contractors, employees, sub-licensees, concessionaires or anyone permitted by the Licensee to be in or on the License Area. This indemnification shall include any and all such costs that may arise due to the release of hazardous substances by the Licensee (or those for whom the Licensee is responsible), and shall survive the expiration of the Term of this License and the termination of this License for whatever cause or any renewal of this License.

## **ARTICLE 8- REPAIRS**

### 8.1 Licensee's Repairs

The Licensee covenants to maintain, repair and keep tidy the License Area as determined by the Licensor. The Licensee shall take all preventative measures and obey all operating instructions of the Licensor relative thereto and shall not permit waste. The Licensee shall make all repairs and maintenance with all due diligence and to the satisfaction of the Licensor.

### 8.2 Access

The Licensee covenants that the Licensor may enter the License Area upon twenty-four (24) hours' notice to the Licensee to determine the conditions of the License Area. The Licensee will forthwith repair any damage or undertake the maintenance required, as directed by the Licensor in writing. In the event that the Licensee fails to make such repair or maintenance, or repair or maintain to the satisfaction of the Licensor, the Licensor on not less than five (5) days' notice to the Licensee or, in the event of an emergency forthwith without notice, may make the repairs or perform the maintenance without liability to the Licensee for any loss or damage that may occur to the Licensee's fixtures or other property or to the Licensee's business. Upon completion thereof the Licensee will pay the Licensor's cost of the repair or maintenance plus twenty (20%) percent for overhead, on demand as Rent. The Licensee agrees that the maintenance or repair by the Licensor pursuant to this Section 8.2 is not a re-entry nor a breach of quiet enjoyment contained in this License. The failure by the Licensor to give direction to repair or to maintain shall not relieve the Licensee from its obligation to repair or to maintain.

### 8.3 Repair Where Licensee is at Fault

If any part of the License Area becomes damaged or destroyed through the negligence, carelessness or willful act or omission of the Licensee, or those in law for whom the Licensee is responsible, or though it or them, the costs of the necessary repairs, replacements or alterations will be borne by the Licensee, and the Licensee will pay this amount to the Licensor on demand as Rent.

### 8.4 Notice of Accident, Defects, Etc.

The Licensee shall give the Licensor prompt notice of any accident to or defect in the License Area or of any damage or injury to the License Area or to any person therein howsoever caused, provided that nothing herein shall be construed so as to require repairs to be made by the Licensor except as expressly provided in this License.

## **ARTICLE 9- LICENSES, ASSIGNMENTS AND SUBLETTINGS**

### 9.1 Licenses, Assignments and Subletting

The Licensee will not transfer, assign, license or sublet this License, the License Area, or any portions thereof without the prior consent in writing of the Licensor, which may be unreasonably withheld. Pursuant to the terms of the Head Lease, the prior written consent of Alberta Health Services shall also be required.



### ARTICLE 10- LIABILITIES

10.1            Theft

Area.            The Licenser shall not be liable for the theft of any property at any time in or on the License

10.2            Personal Injury

The Licenser shall not be liable for any injuries or death, or any losses or damages caused to any individual while within the License Area as a result of or in any way arising out of the occupation or use of the License Area by the Licensee or any of its invitees.

### ARTICLE 11- LICENSEE'S DEFAULT

11.1            Default

Notwithstanding anything herein contained to the contrary, upon the occurrence of any one of the following events the Licenser may, at its option, re-enter and take possession of the License Area with or without terminating this License as though the Licensee or the servants of the Licensee or any other occupants of the License Area was or were holding over at the expiration of the Term:

- (a) if the Term or any of the goods and chattels of the Licensee on the License Area are seized or taken in execution or attachment by a creditor of the Licensee;
- (b) if the Licensee becomes insolvent or bankrupt, or makes an assignment for the benefit of creditors, or is declared bankrupt, or takes the benefit of any legislation that may be in force for bankrupt or insolvent debtors;
- (c) if proceedings are taken against the Licensee under any legislation to wind up companies;
- (d) if the Licensee sells or attempts to sell all or substantially all of its assets;
- (e) if the Licensee (or its agent) falsifies any report or information required to be furnished to the Licensee pursuant to this License;
- (f) if the Licensee fails to pay the Rent when due;
- (g) if the Licensee abandons the License Area; or
- (h) if the Licensee fails to perform any of its obligations under this License as and when required, and such default continues for a period of seven (7) days after written notice from the Licenser of such default.

11.2            Remedies Upon Default

Upon the occurrence of an event of default, as defined within Section 11.1 of this License, The Licenser shall be entitled, at its option, to declare the current month's Rent, together with the Rent for the next three (3) months ensuing, to be immediately due and payable and, at the Licenser's option, the Term shall become forfeited and void, and the Licenser may without notice or any form of legal process

whatsoever forthwith re-enter upon the License Area, or any part thereof, in the name of the whole and repossess and enjoy the same as its former estate, anything contained in any statute or law to the contrary notwithstanding. No re-entry or taking possession of the License Area shall be construed as an election on the part of Licensor to terminate this License unless at the time of or subsequent to such re-entry or taking of possession written notice of such termination has been given to the Licensee.

#### 11.3 Additional Remedies

The rights and remedies of the Licensor pursuant to Sections 11.1 and 11.2 of this License are in addition to the rights and remedies of the Licensor at law or as otherwise contained within this License. The forfeiture of this License by the Licensee shall be wholly without prejudice to the right of the Licensor to recover arrears of Rent or damages for any antecedent breach of covenant on the part of the Licensee and, notwithstanding any such forfeiture, the Licensor may subsequently recover from the Licensee damages for loss of Rent suffered by reason of this License having been determined prior to the end of the Term and this liability and the other rights under this Section shall survive the termination of this License whether by act of the parties or by operation of law.

#### 11.4 Interest and Costs

The Licensee shall pay to the Licensor interest calculated at the rate of the Alberta Treasury Branches prime rate plus 3% upon all Rent and all other amounts which the Licensee is required to pay pursuant to the terms of this License from the due date for payment thereof until the same, including interest, is fully paid and satisfied. The Licensee shall indemnify the Licensor against and shall pay on demand all costs incurred in enforcing payment thereof, and in obtaining possession of the License Area after default of the Licensee or upon expiration or earlier termination of the Term, or in enforcing any covenant, term or condition contained in this License including, without restriction, legal costs calculated on a solicitor and his own client full indemnity basis.

#### 11.5 Licensor's Right to Perform

All covenants, terms and conditions to be performed by the Licensee under any of the provisions of this License shall be performed by the Licensee, at the Licensee's sole cost and expense, and without any abatement of Rent. If the Licensee shall fail to perform any act on its part to be performed under this License, and such default shall continue for seven (7) days after notice thereof from the Licensor (or immediately in the case of an emergency of which the Licensee has knowledge), the Licensor may (but shall not be obligated so to do) perform such act without waiving or releasing the Licensee from any of its obligations relative thereto. The Licensee shall pay to the Licensor on demand for all costs incurred by the Licensee in performing such act, together with interest thereon at the rate required within this License from the date each such payment was made or each such cost was incurred by the Licensor, until paid in full.

#### 11.6 Waiver

The waiver by the Licensor of a breach of a term, covenant or condition contained in this License will not be deemed to be a waiver of a subsequent breach of the same or another term, covenant or condition herein contained. No covenant, term or condition of this License will be deemed to have been waived by the Licensor unless the waiver is in writing and signed by the Licensor.

## ARTICLE 12- GENERAL PROVISIONS

### 12.1 License Entire Agreement

It is understood and agreed between the parties that the terms and conditions set forth herein, together with the terms and conditions set forth in the rules and regulations, if any, and any schedules and plans annexed hereto, embrace all of the terms and conditions of this License entered into by the Licensee and the Licensor and supersede and take the place of any and all previous agreements or representations of any kind, written, oral or implied heretofore made by anyone in reference to the License Area. If any provision of this License is illegal or unenforceable it shall be considered separate and severable from the remaining provisions of this License, and the remaining provisions shall remain in force and be binding as though the said illegal or unenforceable provisions had never been included.

### 12.2 Parties Hereto

This License shall endure to the benefit of and be binding upon the parties hereto, and their respective heirs, executors, successors and permitted assigns of the parties hereto.

### 12.3 Notices

A notice, demand, request, consent or other instrument required or permitted to be given under this Sublease shall be in writing and shall be given and deemed to have been received as provided in this Section.

"Notices" shall be addressed:

- |     |                             |  |
|-----|-----------------------------|--|
| (a) | to the Licensor as follows: | c/o Town of Fairview<br>P.O. Box 730<br>Fairview, Alberta<br>T0H 1L0                         |
| (b) | to the Licensee as follows: | Dr. Sally Andreiuk<br>c/o Fairview Medical Clinic<br>Box 725<br>Fairview, Alberta<br>T0H 1L0 |

Any Notice must be mailed in Canada by registered mail or prepaid courier. A Notice shall be deemed to have been received by the party to whom the Notice is addressed on the day which is five (5) business days following the date that the Notice was mailed, provided that at the time of mailing there is not an actual or apprehended interruption in mail service by labour dispute or otherwise. Notwithstanding the aforesaid, in the event of an actual or apprehended interruption in mail service, or at any time if the party giving notice so elects, Notice shall be in writing and delivered to and left at the address for Notice of the party to whom it is to be given during normal business hours on a business day and shall have been deemed to be received on the date of delivery.

A party may at any time give Notice to the other party of a change of its address for the purpose of giving Notice and from and after the giving of such Notice, the address therein shall be deemed to be the address of that party.

12.4 Time of the Essence

Time shall be of the essence for this Sublease and for each and every part thereof.

**IN WITNESS WHEREOF** the parties hereto have executed this Sublease on the date specified on page 1 hereto.

**MUNICIPAL DISTRICT OF FAIRVIEW NO. 136**

Per: Peggy Johnson

Per: Sarah F c/s

**TOWN OF FAIRVIEW**

Per: [Signature]

Per: [Signature] c/s

**CLEAR HILLS COUNTY**

Per: \_\_\_\_\_

Per: \_\_\_\_\_ c/s

**VILLAGE OF HINES CREEK**

Per: \_\_\_\_\_

Per: \_\_\_\_\_ c/s

**Dr. Sally Andreiuk**

Per: Sally Andreiuk

Per: \_\_\_\_\_ c/s

SCHEDULE "A"

The Head Lease