

## **AGREEMENT**

**THIS AGREEMENT** made this 5 day of June, 2023. (the "Effective Date")

### **BETWEEN:**

#### **THE CORPORATION OF THE MUNICIPALITY OF KINCARDINE**

(Hereinafter referred to as the 'Municipality')

-AND-

#### **THE BRUCEDALE COMMUNITY CENTRE ASSOCIATION**

(Hereinafter referred to as 'The Association')

**WHEREAS** the Municipality is the owner of site of The Bruce Dale Community Centre (the "Centre") which is municipally known as 1046 Concession 12 (the "Property");

**AND WHEREAS** the Bruce Dale Community Centre Association is desirous of entering into this agreement with the Municipality for the benefit of the citizens of the Municipality;

**AND WHEREAS** the Municipality of Kincardine is desirous of entering into this agreement with the Bruce Dale Community Centre Association to operate and manage the Centre for the benefit of the public;

**NOW THEREFORE** in consideration of the sum of \$1.00 and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree, and covenant as follows:

#### **1. Use of Premises**

- (a) The Municipality hereby grants and sets over to the Association the use of the Centre on and subject to the terms and conditions of this agreement.
- (b) Such use shall include exclusive possession of the premises and its fixtures and chattels provided the Association remains in existence and continues to actively pursue its program of operation the Centre to the benefit of the public.

#### **2. Term**

- (a) This agreement shall be for five years, to be in effect from January 1, 2023 to December 31, 2027.
- (b) The parties shall review the terms of this agreement at least once every five (5) years and the Association may renew this agreement for a further five (5) years subject to the Municipality's approval.

### **3. Terms of Operations**

The Association shall operate the Centre on the following terms and conditions:

- (a) The operation of the Centre must at all times be under the direction, supervision and control of the executive or designated members of the Association. They shall appoint a representative as a designated liaison person to meet with the Director of Community Services or their designate regarding the term of this Agreement. At no time may the Agreement or any rights hereunder be assigned to any other person by the Association.
- (b) The Association shall take no action which would result in the premises or any of the attached fixtures of chattels associated with it, being sold transferred or in any way encumbered.
- (c) The Association shall make the Centre available for use by individuals, businesses and community groups for activities deemed suitable and at rental rates established by the Association from time to time. These rates shall be reviewed by the Director of Community Services or their designate prior to being put into effect and at a minimum on a yearly basis.

### **4. Insurance**

#### *Indemnity*

The Tenant shall defend, indemnify and save harmless The Corporation of the Municipality of Kincardine, its elected officials, officers, employees and agents from and against any and all claims of any nature, actions, causes of action, losses, expenses, fines, costs (including legal costs), interest or damages of every nature and kind whatsoever, including but not limited to bodily injury, sickness, disease or death or to damage to or destruction of tangible property including loss of revenue or incurred expense resulting from disruption of service, arising out of or allegedly attributable to the negligence, acts, errors, omissions, misfeasance, nonfeasance, fraud or willful misconduct of the Supplier, its directors, officers, employees, agents, contractors and subcontractors, or any of them, in connection with or in any way related to the delivery or performance of this Contract. This indemnity shall be in addition to and not in lieu of any insurance to be provided by the Tenant in accordance with this Contract and shall survive this Contract.

The Tenant agrees to defend, indemnify and save harmless The Corporation of the Municipality of Kincardine from and against any and all claims of any nature, actions, causes of action, losses, expenses, fines, costs (including legal costs), interest or damages of every nature and kind whatsoever arising out of or related to the Tenant's status with WSIB. This indemnity shall be in addition to and not in lieu of any proof of WSIB status and compliance to be provided by the Tenant in accordance with this Contract, and shall survive this Contract.

The Association shall put into effect and maintain in its name, at its expense, all the necessary insurance that would be considered appropriate for a prudent tenant undertaking your type of operation with insurers acceptable to the Municipality, including:

The Association may be required to include non-owned automobile liability insurance and if the Association owns vehicles that will be used to provide the services, proof of automobile liability insurance is also required.

In cases where the Association members serves the alcohol, the Association is required to carry liquor liability insurance.

*All Risks Property Insurance-*

All risks (including sewer damage, flood and earthquake) property insurance in an amount equal to the full replacement cost of property of every description and kind owned by the Tenant or for which the Tenant is legally responsible, and which is located on or about the Demised Premises, including, without limitation, anything in the nature of a leasehold improvement.

*Commercial General Liability Insurance-*

The Tenant shall, at their expense obtain and keep in force during the term of the Lease, Commercial General Liability Insurance satisfactory to the Landlord and underwritten by an insurer licensed to conduct business in the Province of Ontario. The policy shall provide coverage for Bodily Injury, Property Damage and Personal Injury and shall include but not be limited to:

- (a) A limit of liability of not less than \$2,000,000/occurrence with an aggregate of not less than \$2,000,000
- (b) Add the Landlord as an additional insured with respect to the operations of the Named Insured
- (c) The policy shall contain a provision for cross liability and severability of interest in respect of the Named Insured
- (d) Non-owned automobile coverage with a limit not less than \$2,000,000 and shall include contractual non-owned coverage (SEF 96)
- (e) Products and completed operations coverage
- (f) Contractual Liability
- (g) Hostile fire
- (h) The policy shall provide 30 days prior notice of cancellation

*Tenant's Legal Liability Insurance-*

Tenant's legal liability insurance for the actual cash value of the building and structures on the demised premises, including loss of use thereof.

The Municipality will not be held liable for any damage to items stored within the Brucedale Community Centre.

Each policy will provide that the insurer will not have any right of subrogation against the Landlord on account of any loss or damage covered by such insurance or on account of payments made to discharge claims against or liabilities of the Landlord or Tenant covered by such insurance. The cost or premium for each and every such policy will be paid by the Tenant.

*Primary Coverage-*

The proponent's insurance shall be primary coverage and not additional to and shall not seek contribution from any other insurance policies available to the municipality.

*Certificate of Insurance-*

The proponent shall provide a Certificate of Insurance evidencing coverage in force at least 10 days prior to contract commencement.

The Municipality at its sole discretion may in writing change the insurance required under this Agreement including, but not limited to, the limit of insurance. The revised insurance requirements will come into effect upon the next renewal date of the Tenant's existing policy.

**5. Services**

Both parties agree that the cost of operating the Centre shall be based on the following terms and conditions:

- (a) The Municipality agrees to supply water and sewage services to the Centre free of charge.
- (b) The Municipality agrees to provide grounds maintenance including lawn care.
- (c) The Municipality agrees to provide and pay for property insurance for the Centre.
- (d) The costs of operating the Centre including regular maintenance of the facility shall be administered by the Association from the proceeds received from renting the facility.
- (e) The Association shall provide at its cost all other services required to operate the Centre including but not limited to electricity, telephone, heat, regular garbage removal, etc.

**6. Financial Terms**

- (a) The costs of operating the Centre including regular maintenance of the facility shall be administered by the Association from the proceeds received from renting the facility.
- (b) The Association shall be responsible for all utilities and services required for the Centre.

**7. Financial Reporting**

- (a) It is agreed that the financial year-end of the Centre shall be December 31<sup>st</sup> in each year throughout the term of this agreement.
- (b) The Association shall prepare or cause to have prepared, annual financial statements which accurately reflect the financial state of affairs of the operation of the Centre. These statements shall be delivered to the Director of Community Services or their

designate prior to the end of January following each year end throughout the term of this agreement.

- (c) The Association must present a proposed budget by the end of January each year for the operation of the Centre for the following year.

## **8. Repairs and Improvements**

- (a) It is acknowledged by the Association that the Centre will be used by the public and must be maintained at all times in a safe condition for those using it.
- (b) The Association acknowledges and agrees to maintain the Centre in such a manner to meet the standards of the Ontario Occupier's Liability Act.
- (c) Plans for all capital improvements and proposed major repairs shall be submitted for approval to the Municipality by the Association together with estimates of the cost of such work and no such work shall be authorized until the approval of the Municipality has been given.
  - a. The Municipality shall be responsible for capital improvements to the shell of the Centre (including windows, roof, brickwork, doors and exterior lighting)
  - b. The Association shall be responsible for cleaning supplies, furniture, and anything that benefits the programs held within.
- (d) The Association undertakes to maintain in good and operating condition the Centre, including making repair investments from revenues.
- (e) All capital improvements to the Centre shall accrue to the benefit of the Municipality and shall remain with the Municipality upon the termination of this agreement.
- (f) The Municipality shall have the right to retain a key to the Centre and the right to enter the premises upon reasonable notice to the Association for the purpose for conducting inspections of the condition and state of repair to the Centre.
- (g) The Association agrees that upon termination of this agreement that they will surrender the possession of the Centre to the Municipality and shall leave it in as good a condition as when this agreement commenced. Prior to such termination, there shall be a complete inspection of the premises and inventory taken of all contents which are the property of the Municipality.

## **9. General**

- (a) This agreement shall not be assigned or transferred by the Association without the expressed written consent of the Municipality having been first obtained.
- (b) This agreement shall become in force and effect only upon its authorizations by a by-law of the Council of the Municipality of Kincardine and submission of proof of liability insurance.
- (c) Any changes or other amendments to this agreement may only be made by further agreement in writing and duly authorized and signed by the parties.
- (d) This agreement may be terminated by either party giving one (1) year's notice of termination to the other.

(e) This agreement may be terminated without notice at the discretion of either party upon any act of default of the terms of this agreement, by either party or upon the Association ceasing to exist.

**10. Assignment**

This agreement shall not be assigned by the Association without the expressed written consent of the Municipality having been first obtained as authorization by by-law.

**11. Notification**

Notification is deemed to be given to each of the respective parties if delivered to:

Bruce Dale Community Centre Association

ATTN: Association President

1046 Concession 12

Paisley, ON N0G 2N0

The Corporation of the Municipality of Kincardine

ATTN: Director of Community Services or designate

1475 Concession 5

RR5 Kincardine, ON N2Z 2X6

(519) 396-3468

Any change in notification address by one party shall be provided to the other within 10 calendar days of the change.

**IN WITNESS WHEREOF** the parties hereto have executed this indenture by their personal hands or by the hands of their proper signing officers duly authorized in that regard as at the date first set above.

**THE CORPORATION OF THE MUNICIPALITY OF KINCARDINE**

---

Kenneth Craig, Mayor


---

Jillene Bellchamber-Glazier, CAO

We have the authority to bind the Corporation.

**THE BRUCEDALE COMMUNITY CENTRE ASSOCIATION**

---

  
Dianne Ribey, Association President

I have the authority to bind the Association.