

Agreement made this ____ day of _____, 2019

BETWEEN:

THE CORPORATION OF THE MUNICIPALITY OF KINCARDINE

(Hereinafter called the "Municipality")

- AND -

FRIENDS OF THE KINCARDINE BEACH PAVILION COMMUNITY CENTRE

(Hereinafter called "Friends")

And who are

Successors to Friends of the Pavilion and Gary Gurbin and Barb Fisher, Trustee for Kincardine Pavilion Inc.

WHEREAS the Municipality is the owner of the lands and the building situated on them located at 156 Durham Street, Kincardine, Ontario and known as the Kincardine Beach Pavilion Facility, (hereafter called the "Pavilion").

AND WHEREAS the Friends is a non-profit corporation incorporated pursuant to the laws of the Province of Ontario for the purpose of preserving, restoring and promoting the operations of the Pavilion to the benefit of the area.

AND WHEREAS the Municipal Act, R.S.O. 1990, C.M.45, Section 18 (16) authorizes the council of the every municipality to pass by-laws providing for the use by the public of the lands of which the corporation is the owner and for the regulation of such lands and the protection of such lands.

AND WHEREAS it has been deemed desirable by the Council of the Municipality of Kincardine to allow Friends to operate and manage the facility for the benefit of the public.

NOW THEREFORE, in consideration of the sum of \$1.00 and other good and valuable consideration, the parties hereto agree as follows:

1. **Use of Premises**

- a) The Municipality hereby grants and sets over to Friends the use of the Pavilion 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 Friends remains in existence and continues to actively pursue its program of restoring and operating the Pavilion to the benefit of the area.

2. Term

- a) This agreement shall commence on December 1, 2019 and shall continue until November 30, 2029.
- b) Friends may renew this agreement for a further ten years subject to the Municipality's approval.

3. Terms of Operation

Friends shall operate the Pavilion on the following terms and conditions:

- a) The operation of the Pavilion must at all times be under the direction, supervision and control of the Board of Directors, Executive and staff or designated members thereof. They shall appoint a representative as a designated liaison person to meet with the Director of Parks and Recreation regarding the terms of this agreement.
- b) The Friends shall take no action which would result in the Pavilion or any of the attached fixtures or chattels associated with it, being sold, transferred or in any way encumbered.
- c) Friends shall make the building available for use by individuals, business and community groups for activities deemed suitable and at rental rates established by Friends from time to time and these rates shall reflect the local market rental rates.

4. Insurance

The Friends 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 this type of operation for the period during which the Agreement is in effect with insurers acceptable to the Municipality, including:

- i) Commercial General Liability Insurance, for third party bodily injury, personal injury and property damage to an inclusive limit of not less than Two Million Dollars (\$2,000,000) per occurrence. The policy shall include:
 - a) The Corporation of the Municipality of Kincardine as an additional insured;
 - b) Cross liability
 - c) Contractual liability
 - d) Tenants Legal liability
 - e) Contents coverage on a replacement basis for all property owned by the Friends and located at the Pavilion.
 - f) A thirty (30) day written notice of cancellation
- ii) Friends shall provide the Municipality with a valid Certificate of Insurance as evidence of the above coverages. The Friends shall also provide the Municipality with any renewal replacement certificates during the remainder of the agreement.
- iii) The Friends agrees to fully indemnify and hold harmless the Municipality from and against all suits, judgements, claims, demands, expenses, actions, causes of action and losses of any kind and for any and all liability for damages to property and injury to persons (including death) which the Municipality may incur, sustain or suffer as a result of, arising out of or in

any way related to the matters addressed in this Agreement, unless such losses are caused solely by the Municipality's own gross negligence or willful misconduct.

5. Services

- a) The Municipality agrees to supply water and sewage services to the Pavilion free of charge.
- b) The Municipality agrees to provide grounds maintenance including but not limited to, snow removal, parking lot grading, grass cutting and garden maintenance to the Pavilion and associated lands free of charge.
- c) The Municipality agrees to provide insurance coverage for the building, including all chattels owned by the Municipality.
- d) Friends shall provide at its cost all other services required to operate the Pavilion including but not limited to hydro, telephone, heat and garbage removal.
- e) Friends agree to provide and pay for property insurance for all items owned by them as set out in 4 e above.
- f) The Municipality and Friends will explore the feasibility of including the Pavilion facility bookings into their Active Net software program.

6. Operating Costs

- a) The costs of operating the Pavilion including regular maintenance of the Pavilion shall be administered/funded by Friends.
- b) This community owned facility is subject to the decisions of the Municipal Property Assessment Corporation (MPAC). In the event that MPAC assesses the Pavilion as taxable, Kincardine and Friends will negotiate who shall be responsible for paying any property taxes resulting from such assessment.
- c) All surplus remaining from the annual operation of the Pavilion shall be put in a dedicated reserve fund and be carried forward by Friends for purposes of future operations, debt reduction, capital work, continued renovations and promotion of the facility. In the event this agreement is terminated, the balance in the reserve funds shall be transferred to the Municipality for purposes of funding operating and/or capital costs of the Pavilion.
- d) All deficits from the operation of the Pavilion shall be the sole responsibility of Friends.

7. Financial Reporting

- a) Friends shall prepare or cause to have prepared, for each fiscal year that this Agreement is in force, annual Financial Statements prepared in accordance with GAAP, prepared by an Independent accountant with a recognized accounting body in the Province of Ontario. The annual Financial Statements shall be submitted to the Treasurer no later than six months after the end of the fiscal year.
- b) Friends shall deliver to the Treasurer any other documents or information as the Treasurer may request in writing from time to time in relation to the financial activity of Friends within 30 calendar days of the date of the written request.

c) The administration of this agreement on behalf of the Municipality shall be conducted by the Director of Parks and Recreation.

8. Repairs and Improvements

a) It is acknowledged by Friends that the Pavilion will be used by the public and must be maintained at all times in a safe condition for those using it.

b) Friends acknowledges and agrees to maintain the Pavilion in such a manner to meet the standards of the Ontario Occupier's Liability Act.

c) Friends undertakes to maintain in good and operating condition the Pavilion, including making capital and/or repair investments from revenues and/or its designated reserves deemed needed or advisable to safeguard and secure the Pavilion for the future.

d) All capital improvements to the Pavilion shall accrue to the benefit of the Municipality and shall remain with the Municipality upon the termination of this agreement.

e) The Municipality shall have the right to retain a key to the Pavilion and the right to enter the premises upon reasonable notice to Friends for the purpose of conducting inspections of the condition and state of repair of the Pavilion.

f) Friends agrees that upon termination of this agreement that they will surrender the possession of the Pavilion to the Municipality and shall leave it in as good a condition as when this agreement commenced, subject to normal wear and tear given that the Pavilion was re-built and restored by Friends. Prior to such termination, there shall be a complete inspection of the Pavilion and inventory taken of all contents which are the property of the Municipality.

9. General

a) This Agreement shall inure to the benefit and be binding on the Friends and the Municipality and their respective successors.

b) This agreement shall not be assigned by Friends without the expressed written consent of the Municipality having been first obtained as authorized by by-law.

c) This agreement shall become in force and effect only upon its authorization by a by-law of the Council of the Corporation of the Municipality of Kincardine and submission of proof of insurance.

d) 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.

e) This agreement may be terminated by either party giving one year's written notice of termination to the other.

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

10. Notification

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

Friends of the Kincardine Beach Pavilion Community Centre
156 Durham Street
Kincardine, ON
N2Z 2X9
Attention: Barb Fisher

519-386-9933

The Corporation of the Municipality of Kincardine
1475 5th Concession
RR # 5
Kincardine, ON
N2Z 2X6

(519)396-3468

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

Friends of the Kincardine Beach Pavilion Community Centre

President – Gary Gurbin

Secretary – Barb Fisher

We have the authority to bind the corporation

THE CORPORATION OF THE MUNICIPALITY OF KINCARDINE

Mayor – Anne Eadie

CAO – Sharon Chambers

We have the authority to bind the corporation