

AGREEMENT

THIS AGREEMENT made this _____ day of _____, 2024. (the "Effective Date")

BETWEEN:

THE CORPORATION OF THE MUNICIPALITY OF KINCARDINE

(Hereinafter referred to as the 'Municipality')

-AND-

THE KINCARDINE AGRICUTURAL SOCIETY

(Hereinafter referred to as 'The Society')

WHEREAS the Municipality is the owner of the lands and premises located at 133 Broadway Street, Kincardine, Ontario and known as the Connaught Park Pavilion and which is referred to throughout this agreement as the "Pavilion";

AND WHEREAS the Society is desirous of entering into this agreement with the Municipality to operate and manage the Connaught Park Pavilion for the benefit of the citizens of the Municipality;

AND WHEREAS the Municipality of Kincardine is desirous of entering into this agreement with the Kincardine Agricultural Society to operate and manage the Pavilion 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 Society the use of the Pavilion, 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 Society remains in existence and continues to actively pursue its program of operating the Pavilion to the benefit of the public.

2. Term

- (a) This agreement shall be for two years, to be in effect from January 1, 2024 to December 31, 2025.

- (b) The parties shall review the terms of this agreement and the Society may renew this agreement for a further two years subject to the Municipality's approval.

3. Terms of Operations

The Society 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 executive or designated members of The Society. They shall appoint a representative as a designated liaison person to meet with the Director of Community Services or their designate regarding the terms of this Agreement. At no time may the Agreement or any rights hereunder be assigned to any other person by The Society.
- (b) The Society 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 Society shall make the Pavilion available for use by individuals, businesses and community groups for activities deemed suitable and at rental rates established by The Society 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.
- (d) The Society may rent the Pavilion, however, each group or rental must provide proof of insurance and shall add The Corporation of the Municipality of Kincardine as an additional insured to its Commercial General Liability insurance policy and provide a copy to the Municipality. Contents coverage for property located in the Pavilion will be the responsibility of the tenant(s) or rental groups.
- (e) The Society may use Connaught Park at no charge for their annual Labour Day Fall Fair activities and will take into consideration requests from other community groups for shared usage.

4. Insurance

Indemnity

The Society 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 Society, 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 Agreement. This indemnity shall be in addition to and not in lieu of any insurance to be provided by The Society in accordance with this Agreement and shall survive this Contract.

The Society 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 Society'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 Society in accordance with this Contract and shall survive this Contract.

The Society 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 Society 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 Society serves the alcohol, The Society is required to carry liquor liability insurance and adhere to the Municipal Alcohol Policy.

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 Society or for which The Society 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 Society shall, at their expense obtain and keep in force during the term of the Lease, Commercial General Liability Insurance satisfactory to the Municipality 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 Municipality 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 Connaught Park Pavilion.

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 Society's existing policy.

5. Services

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

- (a) The Municipality agrees to provide grounds maintenance including snow removal (including up to the building exits) and lawn care.
- (b) The Municipality agrees to provide and pay for property insurance for the Pavilion.
- (c) The costs of operating the Pavilion including regular maintenance of the facility as well as general supplies shall be the responsibility of The Society from the proceeds received from renting the Pavilion.

- (d) The Society shall provide at its cost all other services required to operate the Pavilion including but not limited to electricity, telephone, heat, regular garbage removal, etc.

6. Financial Terms

- (a) The Society shall put 25% of their annual rental revenue into capital reserves for future capital projects.
- (b) The costs of operating the Pavilion including regular maintenance of the Pavilion shall be administered by The Society from the proceeds received from renting the Pavilion.
- (c) The Society shall be responsible for all utilities and services required for the Pavilion.

7. Financial Reporting

- (a) It is agreed that the financial year-end of the Pavilion shall be December 31st in each year throughout the term of this agreement.
- (b) The Society shall prepare or cause to have prepared, annual financial statements which accurately reflect the financial state of affairs of the operation of the Pavilion. 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 Society must present a proposed budget by the end of January each year for the operation of the Pavilion for the following year.

8. Repairs and Improvements

- (a) It is acknowledged by The Society 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) The Society acknowledges and agrees to maintain the Pavilion 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 Society 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 building (including windows, roof, brickwork, doors and exterior lighting).
 - b. The Society shall be responsible for cleaning supplies, furniture, and anything that benefits the programs held within the Pavilion.
- (d) The Society undertakes to maintain in good and operating condition the Pavilion, including making repair investments from revenues.
- (e) 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.
- (f) The Municipality shall have the right to retain a key to the Pavilion and the right to enter the premises upon reasonable notice to The Society for the purpose for conducting inspections of the condition and state of repair to the Pavilion.

- (g) The Society 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 as per the Building Assessment Conditions report. 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 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.
- (b) 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.
- (c) This agreement may be terminated by either party giving one year's notice of termination to the other.
- (d) 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 Society ceasing to exist.

10. Assignment

This agreement shall not be assigned by The Society 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:

Kincardine Agricultural Society
133 Broadway Street
Kincardine, ON
N2Z 1A9

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

Jennifer Lawrie, Clerk

We have the authority to bind the Corporation.

THE KINCARDINE AGRICULTURAL SOCIETY

Anne-Marie Gomes, Ag Society President

Lindsay Dykeman, Treasurer

We have the authority to bind the Society.