



THE CORPORATION OF THE MUNICIPALITY OF SOUTH HURON

BY-LAW # 6 - 2013

**"Being a by-law to authorize the execution of a Governance Agreement
between the Municipality of South Huron, Township of Perth South and the
Kirkton-Woodham Community Board"**

WHEREAS Section 20 of the *Municipal Act 2001, S.O. 2001*, as amended, provides that two or more municipalities may enter into an agreement for carrying out the operation of a Community Recreation Centre,

AND WHEREAS Kirkton-Woodham was incorporated for the purpose of maintaining, operating and conducting a Community Centre and to operate the Community Centre under the guidance of Perth South and South Huron;


AND WHEREAS an Agreement was previously entered into involving all parties and Council is desirous of entering into a new Agreement to govern the use of the Community Centre;


NOW THEREFORE BE IT RESOLVED THAT the Council of The Corporation of the Municipality of South Huron enacts as follows:

1. THAT the Agreement between the Municipality of South Huron, Township of Perth South and the Kirkton-Woodham Community Board attached hereto, is hereby adopted.
2. THAT any previous Agreement between the Municipality of South Huron (formerly Township of Osborne), Township of Perth South (formerly Township of Blanchard) and the Kirkton Board is hereby repealed.
3. THAT the Mayor and Clerk are hereby authorized to sign the Agreement on behalf of the Municipality of South Huron.
4. THAT this By-Law takes effect upon the date of final passing.

Read a First and Second Time


January 21, 2013.



George Robertson, Mayor
JIM DIETRICH, DEPUTY MAYOR


Michael Di Lullo, Clerk

Read a Third Time and Finally Passed

FEBRUARY 4, 2013.


George Robertson, Mayor


Michael Di Lullo, Clerk

This Joint Use Agreement (the "**Agreement**") is entered into as of the day of ,
2013

BETWEEN:

THE CORPORATION OF THE TOWNSHIP OF PERTH SOUTH
(hereinafter called "Perth South")

-and-

THE CORPORATION OF THE MUNICIPALITY OF SOUTH HURON
(hereinafter called "South Huron")

-and-

THE KIRKTON-WOODHAM COMMUNITY BOARD
(hereinafter called the "Community Board")

WHEREAS South Huron, formerly known as the Corporation of the Township of
Usborne and Perth South, formerly known as the Corporation of the Township of Blanshard,
had entered into an agreement dated December 1, 1988, to govern the use of the Kirkton-
Woodham Community Centre (the "Former Agreement");

AND WHEREAS Perth South and South Huron hereby revoke and rescind the
Former Agreement, and wish to enter into a new agreement to govern the use of the
Community Centre;

AND WHEREAS Perth South and South Huron are the registered owners of the
lands on which the Community Centre is located and which lands are more particularly
described in Schedule "A" attached hereto;

AND WHEREAS section 20 of the *Municipal Act*, S.O. 2001, c. 25, provides that two or more municipalities may enter into an agreement for carrying out the operation of a community recreation centre;

AND WHEREAS Kirkton-Woodham was incorporated for the purpose of maintaining, operating, and conducting a community centre and to promote the best interests of the community generally, and proposes to operate the Community Centre under the guidance of Perth South and South Huron pursuant to the terms of this Agreement;

NOW THEREFORE THIS AGREEMENT WITNESSES THAT, for good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the parties agree as follows:

1.0 DEFINITIONS

In this Agreement, the following terms have the following definitions:

"Community Centre" means the community hall, athletic field, bandshell, concession booth, and any other outbuildings as may be obtained from time to time;

2.0 TERM OF AGREEMENT

The term of this Agreement shall commence from the date of execution of this Agreement, and continue for a period of five (5) years. At the expiry of this Agreement, this Agreement shall be automatically renewed on the same terms for a further period of five (5) years, unless one of the parties hereto gives notice to the other parties that it does not wish such renewal or wishes to change the terms. Such notice is to be given no later than 90 days before the date of expiry of this Agreement, or 90 days before the date of expiry of any renewal period contemplated herein.

3.0 KIRKTON WOODHAM COMMUNITY BOARD

3.1 Composition of the Kirkton Woodham Community Board

For purposes of assisting with the administration of this Agreement, and the operation and maintenance of the Community Centre, the parties shall form a working committee to be known as the "Community Board".

The Community Board shall be composed of fourteen (14) representatives, being the following:

- One (1) councillor from Perth South;
- One (1) councillor from South Huron;
- Six (6) volunteers from Perth South; and
- Six (6) volunteers from South Huron.

The Community Board shall appoint a President, Vice-President, Secretary, and Treasurer on an annual basis.

3.2 Term of the Community Board

It is the responsibility of the Council of Perth South and the Council of South Huron to review the composition of the Community Board at least once every Council term. Council may review the composition of the Community Board more often if Council deems it reasonably necessary. In the event that a Community Board member wishes to resign from their position, a replacement Community Board member shall be appointed by the Council of Perth South or the Council of South Huron, depending on the vacant position, to ensure that all positions on the Community Board are filled at all times.

3.3 Meetings of the Community Board

Minutes of all meetings of the Community Board shall be kept by its secretary and circulated to all Community Board members and the Clerk of each Municipality. The parties agree that all minutes of the Community Board are to be accessible and available to the public at all times, subject to the *Municipal Freedom of Information and Protection of Privacy Act*.

4.0 FINANCIAL ARRANGEMENTS

The Parties agree to the following financial arrangements in connection with the annual financial statements of the Community Centre:

- (a) South Huron agrees to keep the annual financial statements in connection with the Community Centre, on behalf of South Huron and Perth South, in order at all times.
- (b) South Huron agrees to arrange for the financial statements of the Community Centre to be audited on a yearly basis. South Huron agrees to pay for the audit, and to submit a copy of the audited financial statements to Perth South and the Community Board forthwith after receipt of the financial statements from the auditor.

All monthly expenses are billed directly to South Huron, and are paid by South Huron. The Community Board shall reimburse South Huron for any day-to-day expenditures relating to the Community Centre as they become payable from time to time and shall remit payment promptly to South Huron as requested.

Perth South and South Huron agree to equally provide funds necessary for the cost of repair, reconstructions, replacement or inspection, and to offset the costs and operating or capital expense deficit (to be recouped from the Community Board within the subsequent year) in connection with the Community Centre from time to time as is necessary to ensure the Community Centre operates in accordance with all laws, bylaws and regulations, subject to contribution by the Community Board for additional capital costs which shall be at the approval of the Community Board.

All capital expenditures made from time to time will be subject to the established tendering policies and procedures followed by South Huron.

Perth South and South Huron agree to apply for grants from the appropriate Ministries as may be mutually agreed upon from time to time by Perth South and South Huron.

5.0 OBLIGATIONS OWED BY THE PARTIES

It is agreed by the parties as follows:

- (a) Perth South and South Huron agree to obtain any services, consultants, opinions, reports and advice with respect to the Community Centre as is reasonably necessary from time to time;
- (b) Perth South and South Huron agree to maintain their respective WSIB accounts in good standing at all times.

The Community Board will report directly to Perth South and South Huron from time to time, or as required by the Council of Perth South and/or the Council of South Huron. The Community Board shall be responsible for ensuring that all programs, events, or activities at the Community Centre are conducted in accordance with all applicable laws, regulations, bylaws, orders, and rules. The Community Board shall not allow the Community Centre to be used for any illegal or unlawful purpose or any dangerous, noxious or offensive trade or business.

All day to day maintenance, which shall include, but not be limited to, snow removal, lawn maintenance, general maintenance, etc., is the responsibility of the Community Board to organize and supervise.

The Community Board shall ensure that the Community Centre is in good condition at all times, and shall notify Perth South and South Huron of any required maintenance or repair necessary to the Community Centre.

The Community Board shall ensure that any person(s), corporations, or organizations that are providing goods or services with respect to the playing of, or otherwise conducting, a lottery, scheme, draw or game of chance in the Community Centre or on the Community Centre property shall apply through South Huron for a proper license.

The Community Board shall not allow the Community Centre to be used if it is found to be unsafe, and shall immediately report any unsafe conditions to Perth South and South Huron.

6.0 ARBITRATION

In the event of a dispute amongst the parties, a resolution shall be attempted by a good faith negotiation amongst the parties. In the event that such a dispute cannot be settled, then the dispute shall be referred to an arbitration panel consisting of three (3) persons; one arbitrator to be appointed by each of the parties hereto. If any arbitrator appointed refuses to act or is incapable of acting or dies, a substitute for him may be appointed by the party who originally appointed said arbitrator. The decision of the three arbitrators appointed or the majority of them shall be final and binding upon the parties hereto and there shall be no appeal therefrom. All costs and expenses of any such arbitration shall be borne by the parties hereto equally, unless a majority of the arbitrators in their decision otherwise direct.

7.0 UNLICENSED EVENTS

The sponsors of all unlicensed events shall be covered by supplementary insurance provided by South Huron which shall be billed back to the Community Board on a per-event basis; such rate which will be communicated to the Community Board before reviewing its annual rates.

8.0 LICENSED EVENTS

The Community Board shall not allow an event to serve alcohol unless the person(s), organization, corporation, or entity organizing the licensed event produces the following:

- (a) a valid Private Event Special Occasion Permit issued by the Liquor Control Board of Ontario specifically for that event which allows the person(s) to serve alcohol at the Community Centre. A Private Event Special Occasion Permit is restricted to events where only invited guests will attend. These events cannot be advertised and there can be no intention to gain from the profit from the sale of alcohol at the event.
- (b) a valid Public Event Special Occasion Permit issued by the Liquor Control Board of Ontario specifically for that event which allows the organization, corporation or entity to serve alcohol at the Community Centre. A Public Event Special Occasion Permit allows for public admission, can be advertised and allow for fundraising/profit from the sale of alcohol.

- (c) Proof of insurance for the licensed event which shall provide for a minimum liability amount of \$2,000,000.00 dollars and shall name all parties to this Agreement as additional insured's. The proof of insurance must be satisfactory to all parties to this Agreement in their sole and absolute discretion.
- (d) Proof that all servers at the licensed event are Smart Serve certified; a representative or member of the Community Board shall not, under any circumstances, be permitted to serve alcohol at a licensed event being held at the Community Centre if they are not certified.
- (e) Execution of an Indemnity and Release agreement which shall be signed by any person, group, or organization that rents or uses the Community Centre and holds or hosts a licensed event in which alcohol is being served which releases and indemnifies all parties to this Agreement from any actions, losses, damage, etc. in connection with the serving of alcohol and the hosting of a licensed event at the Community Centre.
- (f) Proof arrangements have been made for transportation from the licensed event.

All of the aforementioned must be produced by the person(s), organization, corporation, or entity that intends to hold a licensed event. Unless all of the aforementioned items are produced, and are satisfactory to all parties to this Agreement in their sole and absolute discretion, then a licensed event shall not be held at the Community Centre.

At least one member of the Community Board or a person designated in writing by the Board shall be present at all times during a licensed event and may assist, from time to time, with the serving of alcohol provided they have Smart Serve.

The Community Board and/or its designated representative shall immediately notify Perth South and South Huron of any incidents or accidents which happen at the Community Centre during a licensed event. The notification provided shall be in writing and signed by a member of the Community Board. The notice shall detail the time and date of the incident or accident, together with a detailed account of the facts.

8.0 INDEMNIFICATION AND INSURANCE

8.1 Indemnification

South Huron shall indemnify and hold all parties to this Agreement harmless from and against all liability, loss, claims, demands, costs and expenses, including reasonable legal fees, occasioned wholly or in part by: any negligence or acts or omissions by an employee, contractor, agent, or representative of South Huron, or out of a breach of South Huron's obligations under this Agreement.

Perth South shall indemnify and hold all parties to this Agreement harmless from and against all liability, loss, claims, demands, costs and expenses, including reasonable legal fees, occasioned wholly or in part by: any negligence or acts or omissions by an employee, contractor, agent, or representative of Perth South, or out of a breach of Perth South's obligations under this Agreement.

The Community Board shall indemnify and hold all parties to this Agreement harmless from and against all liability, loss, claims, demands, costs and expenses, including reasonable legal fees, occasioned wholly or in part by: any negligence or acts or omissions by an employee, contractor, agent, or representative of Kirkton-Woodham, or out of a breach of Kirkton-Woodham's obligations under this Agreement.

8.2 Insurance

Throughout the term of this Agreement, Perth South, South Huron and Community Board shall obtain and maintain the following insurance coverage :

- (i) Each party will maintain general liability insurance to cover their liabilities under this Agreement and shall include each of the other parties as additional insureds;
- (ii) South Huron will obtain standard all risk property insurance and General Liability Insurance of \$5,000,000 on behalf of the Community Board, and bill the Community Board for the full cost of the premiums;

Perth South, South Huron, nor the Community Board shall not do, omit to do, or permit to be done or omit to be done in or on the Community Centre any activity, task, etc. that may void coverage under or increase the premiums on the property insurance policies; and

Perth South, South Huron and the Community Board (through South Huron) will provide each other with evidence of the insurance described in clauses (i) and (ii) above and said evidence shall be delivered within 30 days of commencement of this Agreement and thereafter not less than once annually on renewal of such insurance coverage.

9.0 SURVIVAL OF CERTAIN OBLIGATIONS

Notwithstanding any termination of this Agreement, the parties' obligation to reconcile and to pay any amount(s) outstanding up to the date of termination of this Agreement, shall survive such termination.

10.0 GENERAL

10.1 Waiver

The failure of any party hereto at any time or times to require performance of any provisions hereof shall in no manner affect the right of such party to require such performance at a later time. No waiver by a party of any breach by the other party of any of its covenants, agreements or obligations contained in this Agreement shall be or be deemed to be a waiver of any subsequent breach thereof.

10.2 Headings

The headings in this Agreement are for convenience only and shall not in any way limit or be deemed to construe or interpret the terms and provisions of this Agreement.

10.3 Entire Agreement

This Agreement and the Schedule(s) hereto embody the entire agreement of the parties with regard to the matters herein, and no other agreement shall be deemed to exist, except as entered into in writing by each party to this Agreement.

10.4 Amendments

No subsequent alteration, amendment, change or addition to this Agreement shall be binding on any party to this Agreement unless in writing signed by each party.

10.5 Assignment

No party to this Agreement shall assign this Agreement or any part of it without obtaining the prior written consent of the other parties, which consent may at their sole discretion be withheld.

10.6 Enurement

This Agreement shall enure to the benefit of and be binding on the parties and their respective successors and assigns.

10.7 Notice

Any notices to a party under this Agreement shall be in writing and, unless this Agreement specifies otherwise, it shall be sent by email, facsimile transmission, delivery service or mail as follows:

- (a) To Perth South:
The Corporation of the Township of Perth South
3191 Road 122
St. Paul's, ON, N0K 1V0
Attention: Tim Ivanyshyn
Email: tivanyshyn@perthsouth.ca
Facsimile: 519-271-0647
- (b) To South Huron:
The Corporation of the Township of South Huron
322 Main Street South
Exeter, ON, N0M 1S6
Attention: Roy Hardy
Email: r.hardy@southhuron.ca
Facsimile: 519-235-3304
- (c) The Community Board
The Kirkton-Woodham Community Board
[•]
Attention: [•]
Email: [•]
Facsimile: [•]

A party may change its notice particulars for purposes of this section, from time to time, by notice in writing.

10.8 Governing Law

This Agreement shall be construed and enforced in accordance with the laws of the Province of Ontario.

10.9 Binding Agreement

This Agreement shall be binding upon the parties, and their successors and assigns.

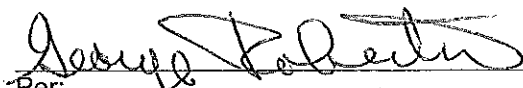
IN WITNESS WHEREOF the parties have executed this Agreement as of the date set forth above.

**THE CORPORATION OF THE TOWNSHIP
OF PERTH SOUTH**

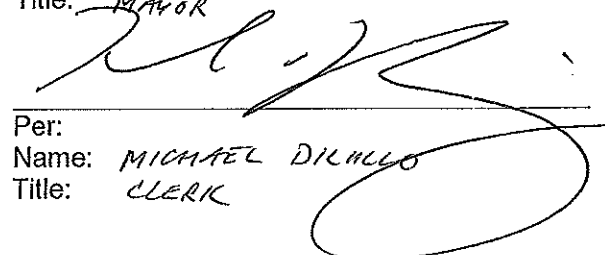
Per:
Name:
Title:

Per:
Name:
Title:

**THE CORPORATION OF THE
MUNICIPALITY OF SOUTH HURON**



Per:
Name: *GEORGE ROBERTSON*
Title: *MAYOR*



Per:
Name: *MICHAEL DIMILLO*
Title: *CLERK*

**THE KIRKTON-WOODHAM COMMUNITY
BOARD**

Per:
Name:
Title:

Per:
Name:
Title:

Schedule "A"

Concession South East Boundary Part Lot 7 Part Lot 8 (70497 Road 164) Municipality of South Huron being the whole of PIN 41265-0079 and municipally known as 70497 Road 164 (Hwy 23), Kirkton, Ontario, N0K 1K0