

THE CORPORATION OF THE TOWNSHIP OF PERTH SOUTH

BY-LAW NO. 6-2013

BEING a By-law to authorize the execution of a Governance Agreement between the Township of Perth South and the Municipality of South Huron for the Kirkton Woodham Community Pool.

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 Pool;

AND WHEREAS Kirkton-Woodham was incorporated for the purpose of maintaining, operating and conducting a Community Pool and to operate the Community Pool 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 Pool;

NOW THEREFORE the Council of The Corporation of the Township of Perth South **HEREBY ENACTS AS FOLLOWS:**

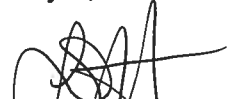
1. THAT the agreement between the Township of Perth South and the Municipality of South Huron attached hereto is hereby adopted.
2. THAT any previous agreement between the Township of Perth South (formerly Township of Blanshard) and the Municipality of South Huron (formerly Township of Osborne) and the Kirkton Board is hereby repealed.
3. THAT the Mayor and Clerk are hereby authorized to sign the agreement on behalf of the Township of Perth South.
4. THAT this By-law shall come into force and take effect on the final passing thereof.

READ a **FIRST** and **SECOND** time this 5th day of February 2013.

READ a **THIRD** time and **FINALLY PASSED** this 5th day of February 2013.



Mayor, Robert Wilhelm



Clerk, Lizet Scott

This Joint Use Agreement (the "**Agreement**") is entered into as of the 21st day of January 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 POOL COMMITTEE
(hereinafter called the "**Pool Committee**")

WHEREAS Perth South and South Huron are the registered owners of the lands on which the Community Pool 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 pool;

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 Pool” means the pool tank, appurtenances, pool-house, and any other equipment and outbuildings dedicated to its operations 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 POOL COMMITTEE

3.1 Composition of the Kirkton Woodham Community Pool Committee

For purposes of assisting with the administration of this Agreement, and the operation and maintenance of the Community Pool, the parties shall form a working committee to be known as the “Pool Committee”.

The Pool Committee shall be composed of representatives from the Kirkton-Woodham community, supported by Parks & Recreation Staff from the Municipality of South Huron, as appointed by the Perth South and South Huron Councils from time to time.

The Pool Committee shall appoint a Chair and Recording Secretary on an annual basis.

3.2 Term of the Pool Committee

It is the responsibility of the Council of Perth South and the Council of South Huron to review the composition of the Pool Committee at least once every Council term. Council may review the composition of the Pool Committee more often if Council deems it reasonably necessary. In the event that a Pool Committee member wishes to resign from their position, a replacement Pool Committee 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 Pool Committee are filled at all times.

3.3 Meetings of the Pool Committee

Minutes of all meetings of the Pool Committee shall be kept by its secretary and circulated to all Pool Committee members and the Clerk of each Municipality. The parties agree that all minutes of the Pool Committee 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 Pool:

- (a) South Huron agrees to keep the annual financial statements in connection with the Community Pool, 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 Pool 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 Pool Committee 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 Pool Committee shall reimburse South Huron for any day-to-day expenditures relating to the Community Pool as they become payable from time to time and shall remit payment promptly to South Huron as requested. Staff recruited by the Pool Committee will become seasonal employees of the Municipality of South Huron.

Perth South and South Huron agree to equally provide funds necessary for the operating and capital costs of the pool, including cost of staffing, recruitment, training, purchased services, maintenance and repair, reconstructions, replacement or inspection, and to offset the costs and operating or capital expense deficit (to be recouped from the pool operations within the subsequent year) from time to time as is necessary to ensure the Community Pool operates in accordance with all laws, bylaws and regulations.

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 Pool Committee 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 Pool Committee shall be responsible for ensuring that all programs, events, or activities at the Community Pool are conducted in accordance with all applicable laws, regulations, bylaws, orders, and rules. The Pool Committee shall not allow the Community Centre to be used for any illegal or unlawful purpose or any dangerous, noxious or offensive trade or business.

The Pool Committee shall advise the Municipalities 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.

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 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 INDEMNIFICATION AND INSURANCE

7.1 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.

7.2 Insurance

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

- a) 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;
 - (i) South Huron will obtain standard all risk property insurance and General Liability Insurance of \$5,000,000 on behalf of the Pool Committee, and bill the Pool Committee for the full cost of the premiums;

Perth South, South Huron, nor the Pool Committee shall not do, omit to do, or permit to be done or omit to be done in or on the Community Pool 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 Pool Committee (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.

8.0 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.

9.0 GENERAL

9.1 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.

9.2 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.

9.3 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.

9.4 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.

9.5 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.

9.6 Enurement

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

9.7 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 Pool Committee
The Kirkton-Woodham Pool Committee
[•]
Attention: [•]
Email: [•]
Facsimile: [•]

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

9.8 Governing Law

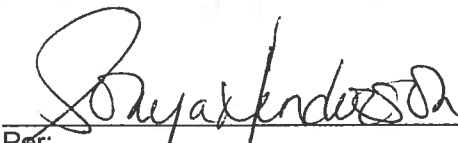
This Agreement shall be construed and enforced in accordance with the laws of the Province of Ontario.

9.9 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 KIRKTON-WOODHAM POOL COMMITTEE


Per: _____
Name: Sonya Henderson
Title: Chair of K-W Pool Committee


Per: _____
Name: _____
Title: _____

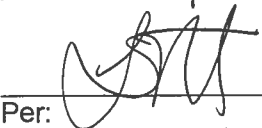
THE CORPORATION OF THE
MUNICIPALITY OF SOUTH HURON


Per: _____
Name: JIM DIETRICH
Title: DEPUTY MAYOR


Per: _____
Name: MICHAEL DILULLO
Title: CLERK.
#030-2013

THE CORPORATION OF THE TOWNSHIP
OF PERTH SOUTH


Per: _____
Name: Robert Wilhelm
Title: Mayor


Per: _____
Name: Lizet Scott
Title: Clerk