

CROWSNEST PASS SWIMMING POOL OPERATING AGREEMENT

This Operating Agreement made the 25 day of JUNE, AD. 2014 (hereinafter referred to as the "Agreement").

BETWEEN:

MUNICIPALITY OF CROWSNEST PASS,
a Municipal Corporation incorporated under the laws of the Province of Alberta
(Hereinafter Referred to as the "Municipality")

Of the 1st Part

and

CROWSNEST PASS COMMUNITY POOL SOCIETY,
A Society incorporated under the Societies Act of Alberta
(Hereinafter referred to as the "Society")

Of the 2nd Part

WHEREAS the Municipality is the owner of the property in the Province of Alberta legally described as follows: 11973 – 20th Avenue, Blairmore, Alberta;

NOW THEREFORE the Municipality does hereby allow the Society to use the aforementioned property and associated premises (including the Swimming Pool building, interior amenities, and associated equipment) to operate the same as the Crowsnest Pass Swimming Pool subject to the terms and conditions hereinafter contained.

TERM

1. The term of this Agreement shall be from **May 1, 2014** to **April 30, 2030** (hereinafter referred to as the "TERM"), subject to earlier termination in accordance with the terms of this Agreement.

COVENANTS OF THE MUNICIPALITY

2. During the Term of this Agreement, the Municipality agrees to supply the following services to the Society if they are desired:
 - a. Finance support, including accounts payable and receivable administration
 - b. Payroll and related human resource functions using the processes and timelines established by the Municipality
 - c. Upon request, and in coordination with the Society, repair and maintenance services to the Pool facilities (i.e. building, pool, and mechanical systems)

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3. The Municipality's Director of Community Services will act as the municipal administrative liaison to the Society. The role of the liaison is to provide a primary contact for Society requests of the Municipality, assist with the exchange of information between the Society and Municipality, and to provide expertise and advice to the Society upon request.
4. During the Term of this Agreement, the Municipality shall provide insurance coverage under the Municipality's insurance as a Named Insured for all operations arising from this Agreement. Insurance shall include fire/theft insurance covering replacement of Municipal and Society chattels on the premises. The cost of all insurance shall be billed to the Swimming Pool portion of the Municipal annual operating budget.
5. The Municipality shall indemnify the Society from any loss, damage, injury, or harm as a result of services provided or actions of Municipal staff.
6. The Municipality shall be responsible for the maintenance and upkeep of the Swimming Pool access roads and parking area (including snow removal) to the standard set out by the Municipality.
7. The Municipality shall provide the Society access to Municipal Office meeting areas for the purpose of holding Society Board Meetings.

COVENANTS OF THE SOCIETY

8. The Society shall comply with the following terms and conditions:
 - a. The Society Board shall be comprised of up to seven members, all of which shall be appointed by the Council of the Municipality. These seven members will be comprised of two Crowsnest Pass Municipal Councillors and five members-at-large.
 - b. The Society shall submit to the Municipality copies of each Society Board Meeting's Minutes within two weeks of the meeting date.
 - c. In accordance with the Municipal budget development and approval timelines, recommend to the Municipality a Swimming Pool operating and capital budget.
 - d. The Society shall operate the Swimming Pool within the net annual operating budget approved by the Municipality. Any variance from the net annual operating budget must be approved by Municipal Council.
 - e. The Society shall inform the Municipality of the persons authorized by the Society to expend money from the Swimming Pool budget. Such purchases are subject to the Municipality requirements for documentation and financial auditing.
 - f. Society staff must submit sales receipts and revenue for each day to the Municipality on the next business day.

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- g. The Society shall not make any capital improvement to the Swimming Pool property and associated premises without first obtaining the approval of Municipal Council.
- h. The Society shall comply with all applicable municipal, provincial, and federal legislation, laws, and regulations in the operation of the Society and Crowsnest Pass Swimming Pool.
- i. The Society shall assume liability for any acts or omissions of its employees and volunteers in the exercise of their duties and for the actions of anyone over whom the Society exercises control. The Society shall indemnify and save harmless the Municipality from any and all liabilities, damages, costs, claims, suits, or actions resulting from operation of the Crowsnest Pass Swimming Pool and any act or omission of any Society assignees, agents, contractors, servants, employees, invitees, or licensees.
- j. The Municipal Director of Community Services, or designate, may at all reasonable times enter upon the lands and premises outlined herein for the purpose of inspection or emergency repair, provided that in so doing the Society's enjoyment of the lands and premises is not excessively disturbed.
- k. The Society shall supply the Municipality with keys, pass codes, and any other thing required to access to the Swimming Pool lands and facilities.
- l. In the event the Society ceases to function or operate the Crowsnest Pass Swimming Pool, all fixed assets of the Society will become the property of the Municipality. The Municipality shall not assume liability for any debts on any such assets, excepting where the Municipality was specifically required to assume liability as part of the financing agreement for an asset.

GENERAL PROVISIONS

- 9. This Agreement shall be binding upon and shall endure to the benefit of the parties hereto and each of their respective successors and assigns. The Society may not assign this Agreement without prior written consent of the Municipality.
- 10. Neither Party shall be held liable in the event of unscheduled closure of the Swimming Pool or related facilities due to circumstances beyond their control.
- 11. This Agreement shall be construed and governed by the laws of the Province of Alberta. If any provision of this Agreement is deemed illegal or unenforceable it is considered separate from the Agreement and the remaining provisions will remain in force.
- 12. A waiver by either Party of the strict performance of any covenants or provision of this Agreement shall not of itself constitute a waiver of any subsequent breach of such covenant or provisions or any other covenants, provisions, or terms of this Agreement.



TERMINATION

13. This Agreement may be terminated by either Party upon provision of 180 days written notice to the other Party.
14. If the Society is not abiding by the terms and conditions of this Agreement, the Municipality shall provide written notice to the Society of the default. Upon receipt of notice, the Society shall have 30 days to remedy the default. If the Society has not remedied the default after 30 days, the Municipality may consider the Agreement terminated.

NOTICES

15. Any notice required and contemplated by any provision by this Agreement shall be given in writing, via e-mail, delivered personally, or mailed by pre-paid registered mail to the other party at the contact address identified below. Notice given in any such manner shall be deemed to have been received by the party on the day of delivery or upon the seventh (7th) day after the date of mailing provided that normal postal service is in existence at the time of mailing and for seven (7) days thereafter.

Notice shall be given to the Society at:

Chairperson
Crowsnest Pass Community Pool Society
P.O. Box 600
Crowsnest Pass, Alberta
TOK OEO

Notice shall be given to the Municipality at:

Director of Community Services
Municipality of Crowsnest Pass
P.O. Box 600
Crowsnest Pass, AB
TOK OEO


16. The Parties acknowledges that there are no other covenants, representations, warranties, agreements, or conditions expressed or implied, collateral or otherwise, forming any part of in any way affecting this agreement, save as expressly set out herein and this Agreement constitutes the entire agreement between the Society and the Municipality and may not be modified except as herein expressly provided or except by subsequent agreement in writing, the formality between the Parties.
17. This Agreement and everything contained herein shall endure to the benefit of, and be binding upon, the Parties hereto and their permitted successors and assigns.

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IN WITNESS WHEREOF the Parties have hereunder affixed their seals duly attested to by their proper signing officers, the day and year as first above written.


SIGNED, SEALED, AND DELIVERED


MUNICIPALITY OF CROWSNEST PASS


Sheldon Steinke, CLGM
Chief Administrative Officer
Chief Administrative Officer


Director of Community Services

CROWSNEST PASS POOL SOCIETY


Chairperson


Board Member