

**CENTRAL CARIBOO RECREATION AND LEISURE SERVICES
FACILITY MANAGEMENT AGREEMENT**

BETWEEN:

CARIBOO REGIONAL DISTRICT

AND:

CITY OF WILLIAMS LAKE

TABLE OF CONTENTS

1. INTERPRETATION	2
1.1 Definitions.....	2
1.2 Headings and Table of Contents	6
1.3 Section References	6
1.4 Statutory References	6
1.5 Number and Gender	6
1.6 Time of Day	6
1.7 Business Day.....	7
1.8 Use of the Word “Including”	7
1.9 Currency.....	7
1.10 Accounting Terms.....	7
1.11 Governing Law	7
1.12 Severability	7
1.13 Time of Essence.....	8
1.14 Schedules	8
2. APPOINTMENT OF MANAGER	8
2.1 Appointment of the City	8
2.2 Acceptance by the City	8
2.3 No Interest in Lands or Facilities or the delivery of the Services	8
2.4 Application of Revenue	8
3. DUTIES, OBLIGATIONS AND COVENANTS OF THE MANAGER	9
3.1 General.....	9
3.2 Duty and Obligation to Operate	9
3.3 Duty To Repair and Maintain	12
3.4 User Fees.....	13
3.5 Extraordinary Costs.....	14
3.6 Duty to Account and Report	14
3.7 Environmental Obligations	15
4. RESERVATIONS TO THE REGION	16
4.1 Public Programs	16
4.2 Signs and Banners.....	17
5. COMPENSATION AND RENTALS	17
5.1 Compensation	17
5.2 Space Rentals	17
5.3 Compliance with Rules	17

6.	DAMAGE OR DESTRUCTION	18
6.1	Damage or Destruction of the Facilities or the delivery of the Services	18
6.2	Abatement Period.....	18
6.3	Repair.....	18
7.	LIABILITY AND INDEMNIFICATION	18
7.1	Non-liability of Region	18
7.2	Indemnification of Region	18
7.3	Indemnification of City.....	19
7.4	Survival of Indemnification	20
8.	INSURANCE	20
8.1	City Insurance	20
8.2	Region Insurance.....	20
9.	TERM	21
9.1	Term.....	21
9.2	Future Agreement	21
10.	TERMINATION AND EXPIRATION	21
10.1	Termination and Expiration	21
10.2	No Further Claim	21
10.3	Default.....	22
10.4	Rights Upon Default	23
11.	DISPUTE RESOLUTION	23
11.1	Parties Representatives	23
11.2	Negotiation.....	23
11.3	Arbitration.....	23
12.	GENERAL TERMS	24
12.1	Region’s Powers Unimpaired	24
12.2	No Amendment.....	24
12.3	Fixtures	24
12.4	Labour Dispute.....	24
12.5	Competition	25
12.6	Force Majeure	25
12.7	Enurement.....	25
12.8	Notice.....	25
12.9	Waivers	26
12.10	Further Assurances.....	26
12.11	Submission to Jurisdiction	26
12.12	Remedies Preserved	26
12.13	No Assignment.....	27
12.14	Freedom of Information	27
12.15	Further Negotiation.....	27

12.16	Region Ownership and Mortgaging of Lands	27
12.17	Legal Advice	Error! Bookmark not defined.
12.18	Counterpart	28

SCHEDULE A - COMPENSATION

SCHEDULE B – REVENUE

SCHEDULE C – CMRC LANDS AND FACILITIES

SCHEDULE D – OTHER SERVICES

SCHEDULE E – OTHER SERVICES LANDS

SCHEDULE F – AGREEMENTS

SCHEDULE G – REGION POLICIES

THIS FACILITY MANAGEMENT AGREEMENT made as of the ___ day of _____, 2013.

BETWEEN:

CARIBOO REGIONAL DISTRICT

(the “Region”)

AND:

CITY OF WILLIAMS LAKE

(the “City”)

WHEREAS:

- A. The Region has adopted Central Cariboo Recreation and Leisure Services Bylaw 4226 (2005) to provide recreation facilities and for the delivery of specified recreation and leisure services in the central Cariboo.
- B. The Region may under terms of its Letters Patent pursuant to Section 176 of the Local Government Act make agreements for the management, maintenance, and operation of recreation properties owned by the Region and for the delivery of related activity programming.
- C. The City is engaged in the business of managing facilities for the purpose of delivering recreation and leisure services including ice rinks, swimming pools, sports fields, multi-purpose trails and other similar assets, as well as related activity programming.
- D. The Region wishes to engage the services of the City to manage the Land and Facilities and provide recreation and leisure activity programming to a high quality of customer service in a manner responsive to community needs on behalf of the Region.
- E. The Region is the owner of the Lands and Facilities and the land comprising the original parking lot while the City is the owner of the land comprising the parking lot expansion (completed in 2017), as shown collectively in Schedule C: Lands and hereinafter called the “Lands and Facilities”;
- F. The Region and the City wish to establish the terms and conditions under which the City will manage the Lands and Facilities in the central Cariboo on behalf of the Region.

NOW THEREFORE in consideration of the matters referred to in the foregoing recitals, the covenants and agreements in this recreation services and Facility Management Agreement, and other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged and agreed to by the parties) the parties hereto and hereby covenant and agree as follows:

1. INTERPRETATION

1.1 Definitions

In this Facility Management Agreement:

- (a) “**Building**” means the buildings, collectively know as the Cariboo Memorial Recreation Complex, comprising the Twin Ice Arenas, West Fraser Aquatic Centre, fitness room, Gibraltar Room, and any other structure situated on the Lands as shown in Schedule C;
- (b) “**Business Day**” means a day other than a Saturday, Sunday or statutory holiday in British Columbia;
- (c) “**Capital Costs**” means any new equipment, fixtures or improvements, including substantial structural additions or renovations, to the Facilities that are capital items as defined by the Region’s Tangible Capital Assets Policy and that exceed \$5000 per individual item;
- (d) “**Commencement Date**” means January 1, 2019;
- (e) “**Central Cariboo Joint Committee**” means a committee composed of the Electoral Area Directors for areas D, E, F, J and K of the Cariboo Regional District and the seven members of Williams Lake City Council. For the purpose of this Agreement and Central Cariboo Recreation and Leisure Services, only the participants in the service area being Electoral Areas, D, E and F and the City of Williams Lake, may vote on matters related thereto;
- (f) “**Compensation**” means the subsidy for recreation and leisure services payable by the Region to the City in each year of the Term as defined in Schedule A;
- (g) “**Compliance Costs**” means any capital costs required to bring the Facilities into compliance with changes in applicable laws and standards;
- (h) “**Complex Assets**” means the assets that make up the Facilities and the fixtures, furnishing and equipment provided by the Region;
- (i) “**Emergency Replacement or Repair Cost**” means an expenditure not included in the approved Facility financial plan which is necessary for continued operation of the Facility and consistent with the Region’s Emergency Purchases Policy wherein the purchase of goods or services is essential for the prevention and protection of danger to life, health and welfare to the public or significant damage to the Property.
- (j) “**Event of Force Majeure**” means acts of God or public enemy, wars (declared or undeclared), revolution, riots, insurrections, civil commotions, fires, floods, slides, epidemics, quarantine restrictions, strikes or lockouts, including illegal

work stoppages or slowdowns, or stop work orders issued by a court or Statutory Authorities including the Region (providing that such orders are not issued nor any such labour disputes occasioned as a result of an act or omission of the City, or any one employed or retained by the City), freight embargoes or power failures, or any event or circumstance which reasonably constitutes a material disabling event or circumstance, which is beyond the reasonable control of a party, which does not arise from the neglect or default of a party, and which results in material delay, interruption or failure by a party in carrying out its duties, covenants or obligation under this Agreement, but which does not mean or include any delay caused by a party's lack of funds or financial condition;

- (k) “**Environmental Laws**” means all laws from time to time relating to protection of the environment and health and safety of the workplace, including all common law and the *Canadian Environmental Protection Act* (Canada), the *Transportation of Dangerous Goods Act* (Canada), the *Fisheries Act* (Canada), the *Workers Compensation Act* (British Columbia), the *Waste Management Act* (British Columbia) and all rules, regulations, policies and criteria promulgated thereunder from time to time;
- (l) “**Environmental Notice**” means any citation, directive, order, claim, litigation, investigation, proceeding, judgment, letter or other communication from any person which is related to Environmental Laws;
- (m) “**Facilities**” means the Building, including the Complex Assets, furnishings, supplies and equipment therein, landscaping, parking and servicing constructed and installed on the Lands;
- (n) “**GAAP**” means generally accepted accounting principles in Canada from time to time;
- (o) “**Hazardous Substance**” means any substance which is regulated under Environmental Laws, including any hazardous product, contaminant, toxic substance, deleterious substance, waste, special waste, dangerous good or reportable substance; and
- (p) “**Lands**” means those certain lands described in Schedule C;
- (q) “**Manage**” means to manage, operate, market, maintain and keep safe and secure and includes without limitation responsibility for the day-to-day management, marketing and operation of the Facilities and all other activities required to manage, operate, market, maintain and keep safe and secure the Facilities in accordance with Prudent Management Practice;
- (r) “**Notice**” means any notice, approval, election, demand, direction, consent, designation, request, agreement, instrument, certificate or other communication required or permitted to be given or made under this Agreement;

- (s) “**Operating Costs**” means the total, without duplication, of all costs incurred for the continued management, operation, maintenance, repair, replacement, preservation, marketing and activity programming of the Facilities including the costs of the following:
- (1) repair and maintenance, including Replacement and Repair Costs;
 - (2) landscaping and gardening, line repainting, rental or purchase of signs and equipment, supplies, lighting, security protection, sanitary control, traffic control, refuse removal, removal of snow and ice, painting and otherwise maintaining the Facilities;
 - (3) wages and compensation paid for employees or agents of the City including payments for workers' compensation, unemployment insurance, vacation pay, Canada Pension Plan and fringe benefits whether statutory or otherwise to the extent that such wages and compensation are directly and solely attributable to the Operating Costs of the Facilities;
 - (4) service contracts with independent contractors in respect of the management, operation, maintenance, repair, replacement, preservation, marketing and activity programming of the Facilities;
 - (5) operating, maintaining, repairing and replacing security and life support systems, plumbing, electrical, heating, water, sewer, air-conditioning, refrigeration, sprinkler and other utility systems and services in respect of the Facilities including the building automation systems;
 - (6) liability insurance coverage required to be obtained by the City from time to time pursuant to this Agreement;
 - (7) supplying communications services, electricity, water, sewer, natural gas and other fuel and utility services to the Facilities;
 - (8) legal and accounting costs incurred by the City in connection with management and operation of the Facilities;
 - (9) all rates, charges, duties, assessments and taxes, excluding property taxes and local improvement charges, that may be levied, imposed, rated, charged or assessed against or in respect of the Facilities including, without limitation, Social Service tax, Goods and Services Tax on the Costs and other taxes and assessments, both general and special, ordinary and extraordinary and foreseen or unforeseen levied, imposed, rated, charged or assessed by Statutory Authorities;
 - (10) costs of promoting and advertising the Facilities;

- (11) all tax which is required to be paid to any government authority on goods and services which are supplied or provided to or for the benefit of the City with respect to the Facilities;
- 12) but excluding (a) any costs incurred by the City in relation to the development, interpretation or enforcement of this Agreement, or resolution of disputes arising under this Agreement, (b) costs payable separately by any community group or user pursuant to a separate agreement, (c) Region's Costs, (d) property taxes and local improvement charges on the Facilities for which the Region is responsible, and (e) any other costs not specified herein that would not, by industry custom, normally be the responsibility of a recreational facilities operator or recreation services provider.
- (t) **"Permit"** means any authorization, licence, approval or consent issued pursuant to any Environmental Laws;
- (u) **"Prudent Management Practice"** means the practices, methods and acts including those related to public availability, safety, cost and business conduct generally accepted at the relevant time by responsible and reputable ice rink, swimming pool, fitness centre and multi-purpose Facility in British Columbia and includes practices, methods or acts which would, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, have been expected to accomplish the same result as generally accepted practices;
- (v) **"Public Programs"** means activities normally associated with an ice rink, swimming pool, fitness centre and multi-purpose Facility which are open to the public and for groups, organizations and programs;
- (w) **"Public Purposes"** means the management, operation and maintenance of a publicly-constructed ice rink, swimming pool, fitness centre and multi-purpose Facility on Region land being managed and operated at the risk of persons other than the Region so as to provide an ice rink, swimming pool, fitness centre and multi-purpose Facility for the Region and its residents in a manner which reduces the risk of operational deficits to the Region;
- (x) **"Public Uses"** means an ice rink, swimming pool, fitness centre and multi-purpose Facility open to and accessible by the public on the terms set out in this Agreement, and the use thereof upon payment of applicable administration and registration fees for ice rink, swimming pool, fitness centre and multi-purpose purposes and any uses ancillary thereto;
- (y) **"Replacement and Repair Costs"** means costs of repair and replacement of the Facilities where the cost is not categorized as an Emergency Replacement and Repair Cost and is not the full replacement of the Building;

- (z) **“Revenue”** means Compensation and revenue from sources shown in Schedule B as City Revenue;
- (aa) **“Region’s Costs”** means Capital Costs, Compliance Costs and Emergency Repair and Replacement Costs
- (bb) **“Sign”** means any device, notice or medium, including its structure and other components erected or installed on the Lands or in or on the Facilities which is used or capable of being used to attract attention for advertising, information or identification purposes;
- (cc) **“Statutory Authorities”** means any federal, provincial, regional, municipal or other government or authorized agencies, department, or ministry thereof which has jurisdiction with respect of any matter referred to in this Agreement;
- (dd) **“Term”** means the term commencing on the Commencement Date and expiring on December 31, 2023; and
- (ee) **“User Fees”** means fees set from time to time in accordance with the procedure detailed herein for public use of the Facilities.

1.2 Headings and Table of Contents

The division of this Agreement into Sections, the insertion of headings and the provision of a table of contents are for convenience only and do not form a part of this Agreement and will not be used to interpret, define or limit the scope, extent or intent of this Agreement.

1.3 Section References

Unless otherwise specified, references in this Agreement to “Sections” and “Schedules” are to Sections of, and Schedules to, this Agreement.

1.4 Statutory References

Unless otherwise specified, each reference to a statute is deemed to be a reference to that statute, and to the regulations made under that statute, as amended or re-enacted from time to time.

1.5 Number and Gender

Unless otherwise specified, words importing the singular include the plural and vice versa and words importing gender include all genders.

1.6 Time of Day

Unless otherwise specified, references to time of day or date mean the local time or date in the City of Williams Lake, British Columbia.

1.7 Business Day

If under this Agreement any payment or calculation is to be made, or any other action is to be taken, on or as of a day which is not a Business Day, the payment or calculation is to be made, or that other action is to be taken, on or as of the next day that is a Business Day.

1.8 Use of the Word “Including”

The word “including” when following any general term or statement will not be construed as limiting the general term or statement to the specific matter immediately following the word “including” or to similar matters, and the general term or statement will be construed as referring to all matters that reasonably could fall within the broadest possible scope of the general term or statement.

1.9 Currency

All references to amounts of money mean lawful currency of Canada.

1.10 Accounting Terms

An accounting term which is not otherwise defined has the meaning assigned to it, and all accounting matters will be determined, in accordance with GAAP consistently applied.

1.11 Governing Law

This Agreement and each of the documents contemplated by or delivered under or in connection with this Agreement are governed exclusively by, and are to be enforced, construed and interpreted exclusively in accordance with, the laws of British Columbia and the laws of Canada applicable in British Columbia which will be deemed to be the proper law of this Agreement.

1.12 Severability

Each provision of this Agreement is severable. If any provision of this is or becomes illegal, invalid or unenforceable in any jurisdiction, the illegality, invalidity or unenforceability of that provision will not affect:

- (a) the legality, validity or enforceability of the remaining provisions of this Agreement, or
- (b) the legality, validity or enforceability of that provision in any other jurisdiction;

except that if:

- (c) on the reasonable construction of this Agreement as a whole, the applicability of the other provisions presumes the validity and enforceability of the particular provision, the other provisions will be deemed also to be invalid or unenforceable, and

- (d) as a result of the determination by a court of competent jurisdiction that any part of this Agreement is unenforceable or invalid and, as a result of this Section 1.12, the basic intentions of the parties in this Agreement are entirely frustrated, the parties will use all reasonable efforts to amend, supplement or otherwise vary this Agreement to confirm their mutual intention in entering into this Agreement.

1.13 Time of Essence

Time is of the essence for this Agreement.

1.14 Schedules

The following Schedules are attached to and form part of this Agreement:

<u>Schedule</u>	<u>Description</u>
A	Compensation
B	Revenues
C	CMRC Facilities and Lands
D	Region Policies

2. APPOINTMENT OF MANAGER

2.1 Appointment of the City

Subject to the terms and conditions of this Agreement, the Region hereby appoints, approves, and authorizes the City to Manage the Facilities for the Term in accordance with the terms and conditions of this Agreement.

2.2 Acceptance by the City

The City hereby accepts the appointment to Manage the Facilities for the Term in accordance with the terms and conditions of this Agreement.

2.3 No Interest in Lands or Facilities

The City acknowledges, agrees and covenants that it has no interest, legal or beneficial, at law or in equity; in the Lands or Facilities owned by the Region and that nothing in this Agreement does or is intended to create any such interest.

2.4 Application of Revenue

The City will in each year of the Term, account for and apply all Revenue generated or received as follows:

- (a) firstly to payment of Operating Costs and Capital Costs; and

- (b) secondly to payment of any surplus to the Region

Without limiting the generality of the foregoing the City covenants and agrees that it will not seek reimbursement, compensation or payment, except in respect of damages sustained as a result of a breach by the Region of any term or provision of this Agreement to be expressly observed or performed by the Region and other than as set out in this Agreement for any Costs incurred by the City in the fulfillment of its duties, obligations and covenants under this Agreement or any other agreement between the City and the Region in respect of the Facilities even if Operating Costs exceed Revenue.

3. DUTIES, OBLIGATIONS AND COVENANTS OF THE MANAGER

3.1 General

In addition to the other covenants and obligations to be performed by the City hereunder, the City covenants and agrees that it will, at all times during the Term:

- (a) perform promptly and safely all of its obligations under this; and
- (b) be just and faithful in the performance of its obligations under this Agreement and in its dealings with the Region under this Agreement. Without limiting the generality of the foregoing, the City shall make full, frank and immediate disclosure to the Region of all matters coming to the attention of the City or any of its officers, directors, employees, agents, servants or consultants in relation to the Facilities and this Agreement which are material and adverse to the interests of the Region.

3.2 Duty and Obligation to Operate

In addition to the other covenants and obligations to be performed by the City hereunder, the City covenants and agrees that it will, at all times during the Term:

- (a) Manage the Facilities on a year-round basis to accommodate the Public Purposes and Public Uses and establish suitable recreation programming for the benefit of the Region and its residents. The City acknowledges and agrees that the continued operation of the Facilities in accordance with the Public Purposes and Public Uses is of the utmost importance to the Region;
- (b) Manage the Facilities to a standard of performance equal to or greater than Facilities of a comparable nature and purpose;
- (c) Manage the Facilities substantially in accordance with the provisions of this Agreement and other relevant agreements entered into between the City and the Region in respect of the Facilities, the decisions and determinations and orders of any arbitrator pursuant to this Agreement, the directions of the Region that are not inconsistent with the foregoing and Prudent Management Practice and otherwise to the standard of Prudent Management Practice. The City will exercise that

standard of care and diligence that is consistent with Prudent Management Practice;

- (d) diligently encourage, promote and carry on in the Facilities the type of activities contemplated by the Public Purposes and Public Uses;
- (e) issue annual recreation access cards to residents within the recreation service area, and to users from outside the service area, in accordance with the Region's policies;
- (f) perform its obligations itself or through such reputable and competent agents or independent contractors as it may engage from time to time;
- (g) ensure that, unless prevented by applicable Statutory Authorities or for reasons of repair and maintenance, the Facilities are open and available to adequately accommodate the Public Programs and Public Uses each and every day, including early morning and evening hours and are available for rent for special events, programs and other functions in accordance with the policies of the Region as set out in Schedule E and the terms of this Agreement. The Facilities may only be closed to the public on statutory holidays or during the course of reasonable repair and maintenance works, or on any other day with the prior approval of the Region;
- (h) develop a program of evaluation through customer surveys to ensure compliance with customer service expectations;
- (i) Manage the Facilities in a lawful and orderly manner in full compliance with all applicable federal and provincial laws regulations and statutes; and local government bylaws (including appropriate bylaws of the Cariboo Regional District and City of Williams Lake);
- (j) Manage the Facilities in an orderly and lawful manner and so that no act or thing whatsoever may be done, permitted or omitted to be done upon the Facilities which may be or may become a nuisance, damage, or unlawful disturbance to the Region, or to the owners or occupiers of any neighbouring properties;
- (k) provide at the City's sole cost and expense, sufficient, experienced and qualified supervision and security for the year-round operation of the Facilities using its best skill and attention at all times. At the Region's reasonable request, the City will, subject to compliance with applicable collective agreements, if any, and the orders of applicable Statutory Authorities, remove from the Facilities any employee, agent or independent contractor of the City who becomes unsatisfactory to the Region. In order to ensure that conditions of labour harmony and patron safety prevail, the City will:

- (1) subject to compliance with applicable collective agreements and the orders of applicable Statutory Authorities, remove any or all of its staff at the Facilities when requested by the Region, acting reasonably, to do so; and
 - (2) in the event of any strike, walkout or other labour dispute directly or indirectly involving the City that, in the opinion of the Region, may adversely affect the Region or any of its activities the Region may and the City will after being notified by the Region, seek such orders or relief as may be required to prevent the continuance of the strike, walkout or other labour dispute from adversely affecting the Region or any of its activities. Any reasonable costs incurred by the Region, including lawyers fees and litigation costs, in the pursuit of such orders or relief will be paid by the City forthwith upon demand by the Region;
- (l) not do or suffer or permit to be done any act, activity or thing which may render void or voidable, or which may conflict with the requirements of any policy or policies of insurance in respect of the Lands and Facilities of which the City is aware;
 - (m) not do or suffer or permit to be done any act, activity or thing to encumber the Lands. Without limiting the generality of the foregoing the City will keep the Lands free of any builder's liens relating to the Facilities which relate to the actions of the City or any party for which the City is responsible at law. In the event that any such lien or a claim is filed in regard to work done or labour or material supplied to the Lands in connection with the Facilities or so claimed or alleged, the City will discharge same within fifteen (15) days after request made by the Region to the City. The City will indemnify and save harmless the Region from and against all costs, damages, expenses, actual lawyers' costs and fees arising from or relating to any such builder's liens filed or registered against the Lands or made or claimed against the Region in connection with the Facilities;
 - (n) not release, compromise, assign or transfer any claim, right or benefit of the Region;
 - (o) pay all Operating Costs and Repair and Maintenance Costs incurred in respect of the Facilities as same fall due irrespective of whether there is sufficient Revenue available to pay the costs;
 - (p) establish and enforce reasonable rules for the safe use of the Facilities by members of the public using the Facilities which are similar to the rules in effect for other private or public ice rink, swimming pool, fitness centre and multi-purpose facilities in the Cariboo area. The City will, from time to time, amend the rules in keeping with any reasonable changes made to rules at other facilities or at the reasonable request of the Region;

- (q) require, as a condition of use, that any group or league wishing to use the Facilities provide proof of liability insurance in an amount satisfactory to the Region;
- (r) provide the Region's manager with keys to the Facilities;
- (s) meet with the Central Cariboo Joint Committee as required throughout the Term to seek input on the general operation of the Facilities, third party use and occupancy agreements and Capital Cost purchases and consider the committee's input in the City's subsequent management decisions;
- (t) not erect, install or suffer or permit to be erected or installed any Sign in or on the Facilities, except Signs which are similar to Signs permitted, erected and installed in similar ice rink, swimming pool, fitness centre and multi-purpose facilities in British Columbia, without the prior written permission of the Region. The City may install signs during the Term bearing the City's corporate name and/or logo and provide equal and similar opportunity for the corporate name and/or logo of the Region;
- (u) provide, maintain and replace as necessary those fixtures, furnishings and equipment for the Facilities;
- (v) enter into and administer any third party advertising sign agreements in existence as at the Commencement Date and that may be entered into throughout the Term, including as required the installation, repair or replacement of signs.
- (w) enter into and administer any third party use and occupancy licence agreements in existence as at the Commencement Date and that may be entered into throughout the Term; and
- (y) work cooperatively with the Region to identify and take action on opportunities to reduce energy and water consumption at the Facilities in recognition that the Region is a signatory to the provincial Climate Action Charter.

3.3 Duty To Repair and Maintain

In addition to the other covenants and obligations to be performed by the City hereunder, the City covenants and agrees that it will, at all times during the Term:

- (a) assume sole responsibility for the condition, maintenance, repair and replacement of the Facilities to the extent that repair and replacement fall within Replacement and Repair Costs. The City acknowledges that the Region will not be obliged to repair, maintain, replace or alter the Facilities or any part thereof or to supply any services or utilities to the Facilities beyond those normally supplied by a regional district or municipality to a facility similar to the Facilities;

- (b) repair, maintain and keep the Facilities in a state of good repair to the same extent and in the same manner as a prudent owner would, to the extent that such work falls within the Replacement and Repair Costs, except only for reasonable wear that does not materially affect the foundations or structure of the Facilities, so that at all times throughout the Term and upon the termination of this Agreement the Facilities remain a fully operating and functioning ice rink, swimming pool, fitness centre and multi-purpose facility. Without limiting the generality of the foregoing the City will, at its sole cost and expense, (utilizing available insurance proceeds if and where applicable) repair, maintain and keep in a state of good repair and maintenance all of the Facilities including all appurtenances, equipment, fixtures, sidewalks, yards, heating, air conditioning and refrigeration equipment, water and sewer mains and connections and plumbing, electrical and gas pipes and conduits in, upon, or about the Facilities, to the same extent and in the same manner as a prudent and careful owner would do, and whether such repair and maintenance is interior or exterior, structural or non-structural, ordinary or extraordinary, foreseen or unforeseen, to the extent that such work falls within the Replacement and Repair Costs. All repairs will be in all respects to a standard at least substantially equal in quality of material and workmanship to the original work and material in the Facilities and will meet the lawful requirements of all Statutory Authorities;
- (c) not do, suffer or permit to be done any work, replacements, alterations or improvements to the Facilities which, in the Region's opinion acting reasonably, may weaken or endanger the structure or adversely affect the condition or operation of the Facilities or diminish the value thereof;
- (d) where in the opinion of the City any Capital Costs acquisition is desirable for the better management and operation of the Facilities, propose such acquisition to the Region during the annual business and financial planning process;
- (e) without limiting the generality of this Section 3.3, promptly upon Notice by the Region, make and do all repairs and maintenance which the City is obliged to make and do pursuant to this Agreement. If the City does not complete such work within thirty (30) days of being given said Notice or where such work, because of its nature, would require more than thirty (30) days to complete the City has not, within fifteen (15) days of being given said Notice, commenced such work and thereafter promptly, effectively and continuously proceeded with the work to completion, the Region will be entitled, in addition to any other remedies available to the Region, to make and do such repairs and maintenance at the sole cost and expense of the City and to deduct the cost of the work from any monies due and owing to the City by the Region.

3.4 User Fees

The City will recommend to the Central Cariboo Joint Committee User Fees for the Facility, including but not limited to access to the ice rink, swimming pool, fitness centre as well as space

rentals, and for the provision of goods and services and for the purchase of recreation access passes, to be approved and ultimately adopted in a fees and charges bylaw of the Region. The Region agrees not to unreasonably withhold approval for User Fees that are the greater of (a) within 15% of the average user fees for comparable Facilities in the interior of British Columbia and (b) 3% greater than the user fees for the Facilities in the previous year of the Term. If the City wishes to increase User Fees beyond the maximum fees approved from time to time by the Region, the City and the Region will consult and negotiate in good faith, considering the objective Costs of operating the Facilities and user fees charged in comparable Facilities in the interior of British Columbia. The Region and City agree to act reasonably in this regard. In lieu of approving increased User Fees in any particular instance the Region may in its sole discretion elect to increase the Compensation to account for revenues that would otherwise be earned from the increased User Fees.

The City may from time to time establish User Fees for specific activity programs to be delivered in the Facilities, which may not be contained within the Region's fees and charges bylaw.

3.5 Extraordinary Costs

In the event that extraordinary cost increases occur in any year of the Term, where such costs are not within the reasonable control of the City and can not be offset by increases in User Fees in accordance with Section 3.4 or from other Revenues, the parties agree to negotiate an amendment to the Compensation amount in good faith and in accordance with Section 11 if necessary.

3.6 Duty to Account and Report

In addition to the other covenants and obligations to be performed by the City hereunder, the City covenants and agrees that it will, at all times during the Term:

- (a) provide the Region, within thirty (30) days of the conclusion of each year of the Term, i) the final invoice for Compensation due to the City, ii) a list of all Capital Cost items procured for inclusion on the Region's tangible capital assets ledger and iii) a report on the usage of the Facilities for that year in such form and detail as may reasonably be required by the Region;
- (b) keep or cause to be kept true and accurate records and accounts in accordance with GAAP regarding the management and operation of the Facilities and keep these available for inspection by the Region during regular business hours;
- (c) permit the Region, at all reasonable times, at the Region's own cost and expense, to inspect and obtain copies of all records and accounts relating to repairs, replacements, alterations or improvements to the Facilities; and
- (d) turn over to the Region, forthwith upon the expiration or termination of this Agreement, copies of all records and accounts in respect of repairs, replacements, alterations, improvements or third party agreements throughout the Term and financial records for each year of the Term with respect to the operation of the

Facilities. This obligation will survive any expiration or termination of this Agreement.

3.7 Environmental Obligations

In addition to the other covenants and obligations to be performed by the City hereunder, the City covenants and agrees that it will, at all times during the Term:

- (a) Manage the Facilities in compliance with all Environmental Laws and all Permits;
- (b) not use or permit any person for whom it is in law responsible to use the Facilities or the Lands for the storage, use, treatment, disposal or introduction into the environment of Hazardous Substances in, on or under the Lands and the Facilities, except in compliance with applicable Environmental Laws;
- (c) without derogating from the City's obligations under Section 3.7(b) forthwith notify the Region of the occurrence of any of the following and provide the Region with copies of all relevant documentation in connection therewith:
 - (1) a release of a Hazardous Substance in or about the Facilities, except in strict compliance with Environmental Laws and any applicable Permits;
 - (2) the receipt by the City of an Environmental Notice; or
 - (3) the receipt by the City of information which indicates that Hazardous Substances are being used, dissipated, stored, disposed of or introduced into the environment by anyone in or on the Lands and the Facilities in a manner other than that authorized under Environmental Laws;
- (d) if the Region or the City receives information that Hazardous Substances, which have been brought onto or released at or from the Lands by the City or those for whom it is in law responsible are being dissipated, used, stored, disposed of or introduced into the environment in or on the Lands and the Facilities in a manner other than that authorized under Environmental Laws, conduct such investigations, searches, testing, drilling and sampling ("Investigations") as are requested from time to time by the Region acting reasonably or any Statutory Authorities to determine the existence of such Hazardous Substances in or about the Facilities;
- (e) if remedial work is required due to the presence of Hazardous Substances in, on or under the Lands and the Facilities which have been brought onto or released at or from the Lands by the City or those for whom it is in law responsible, take all necessary action, at the cost of the City, to restore the Lands and Facilities to a level acceptable to the Region acting reasonably and to all Statutory Authorities;
- (f) upon the request of the Region from time to time, provide to the Region satisfactory documentary evidence that all Permits are valid and in good standing;

- (g) without limiting any other obligation of the City under this Agreement or otherwise, indemnify and save harmless the Region, its officials, officers, employees, servants, agents and those for whom it is at law responsible, from and against any and all losses, claims, costs, expenses, damages and liabilities, including all costs of defending or denying the same, and all costs of investigation, monitoring, remedial response, removal, restoration or permit acquisition and including all solicitor's fees (on a solicitor and own client basis) and disbursements in connection therewith which at any time may be paid or incurred by or claimed against the Region, its officials, officers, employees, servants, agents and those for whom it is at law responsible, arising, directly or indirectly, out of:
- (1) a breach by the City of any of the covenants contained in this Section 3.7;
 - (2) the presence of or release of any Hazardous Substance contrary to any Environmental Laws on the Lands and Facilities, which Hazardous Substances were brought onto or released at or from the Lands by the City or those for whom it is in law responsible, except any Hazardous Substance present in or on the Lands prior to the Commencement Date;
 - (3) any action taken by the Region with respect to the existence of any Hazardous Substance on the Lands and Facilities, which Hazardous Substances were brought onto or released at or from the Lands by the City or those for whom it is in law responsible, except any Hazardous Substance present in or on the Lands prior to the Commencement Date, which existence is contrary to any Environmental Laws; and
 - (4) any action taken by the Region in compliance with any Environmental Notice with respect to the existence of any Hazardous Substance in or on the Lands and Facilities, which Hazardous Substances were brought onto or released at or from the Lands by the City or those for whom it is in law responsible, except any Hazardous Substance present in or on the Lands prior to the Commencement Date;

and such indemnity will survive the expiration or any termination of this Agreement.

Notwithstanding anything contained in this Section 3.7 to the contrary, the City will not be responsible for the remediation of Hazardous Substances migrating into, onto or under the Lands and Facilities from adjacent lands.

4. RESERVATIONS TO OWNER

4.1 Use by the Region and the City

The Region may, on reasonable notice to the City, obtain use of the Facilities for any special purpose the Region may require. Non-profit rate rental costs incurred for such use of the

Facilities will be paid by the Region. The City may obtain special use of the Facilities for its own purposes and non-profit rate rental costs incurred for such use will be paid by the City.

4.2 Signs and Banners

The Region may, at any time during the Term and without charge, install its own signs and banners in, on or around the Facilities.

5. COMPENSATION AND RENTALS

5.1 Compensation

The Region will, subject to a right of set-off of any monies due and owing from time to time by the City to the Region, pay Compensation to the City:

- (a) monthly for actual costs incurred, to be based upon receipt of an invoice from the City which provides acceptable detail regarding expenditures, including a breakdown of Operating and Capital costs;

If at any time throughout the Term the City fails to maintain the Facilities as available for use in accordance with the terms of this Agreement, the Compensation set out herein will be reduced by a proportionate amount.

5.2 Space Rentals

Subject to any rental or use and occupancy agreements in place, the City may rent space in the Building to bona fide arm's length third parties for uses consistent with the operation of the Facilities as a public recreation facility. All such arrangements must include an appropriate form of rental agreement executed by the proposed tenant and the City. The City will administer all approved rental agreements. For the purpose of this Agreement, the income generated by approved rental agreements will be treated as Revenue and the costs of administering approved rental agreements will be treated as part of the Operating Costs. The applicable revenue from any pre-paid rental agreement that exceeds one year in term will be annualized for the purpose of calculating Revenue in each year of the Term.

5.3 Compliance with Rules

The City may, acting reasonably:

- (a) expel from the Facilities any person causing damage to the Facilities during Public Programs or materially failing to comply with the rules and regulations prescribed for the Facilities;
- (b) require damage deposits from user groups where there is a likelihood that such groups may cause damage to the Facilities; and

- (c) pursue and seek compensation from any individual, group or organization which damages the Facilities.

6. DAMAGE OR DESTRUCTION

6.1 Damage or Destruction of the Facilities

If the Facilities are at any time damaged or destroyed (including smoke damage), as a result of fire or other hazard or casualty against which the Region is insured, then and so often as such event occurs the Agreement will continue in full force and effect, except as provided herein. The Region will take all reasonable steps to obtain payment of the insurance proceeds. The Region, subject to the extent of any recovery by the Region under its insurance policies taken out pursuant to the terms of this Agreement, will commence diligently to reconstruct, rebuild or repair the Facilities.

6.2 Abatement Period

Notwithstanding anything contained in this Agreement, if the Facilities are rendered wholly or partially unusable for the Public Programs the Region's obligations under Section 5.1 will abate in proportion to the reduction of the costs incurred by the City until the Facilities have been reconstructed, rebuilt or repaired to the extent that the Facilities are again available for use by the Public Programs ("Abatement Period").

6.3 Repair

Where the Region repairs, reconstructs or rebuilds the Facilities or any part or parts thereof, the Region may use plans and specifications and working drawings other than those used in the original construction of the Facilities in order to repair, reconstruct or rebuild the Facilities in a form similar to that which existed prior to the damage or destruction.

7. LIABILITY AND INDEMNIFICATION

7.1 Non-liability of Region

The Region will not be liable or responsible in any way for any loss or injury that may be sustained by the City or any loss or injury sustained by any employee, agent or independent contractor of the City or any other person who may be upon the Facilities for any loss of or damage or injury to property belonging to or in the possession of the City or any employee, agent or independent contractor of the City or any other person except loss, damage and injury resulting from the negligence or wilful misconduct of the Region, its employees, or such other persons engaged by the Region during the Region's use of the Facilities for special purposes.

7.2 Indemnification of Region

Without limiting any other obligation of the City under this Agreement or otherwise, the City will indemnify and save harmless the Region, its officials, officers, employees, servants, agents and those for whom they are in law responsible, from and against any and all liabilities, damages,

losses, costs, expenses, (including lawyer's fees and litigation expenses) actions, causes of actions, claims, suits and judgments which the Region may incur or suffer or be put to by reason of or in connection with or arising from:

- (a) any breach, violation or non-performance by the City of any obligation contained in this Agreement to be observed or performed by the City;
- (b) any loss of or damage or injury to property or any loss or injury to any person, including death resulting at any time therefrom, occurring in or about the Facilities except loss, damage and injury resulting from the negligence or wilful misconduct of the Region, its employees or such other persons engaged by the Region during the Region's use of the Facilities for special purposes; and
- (c) any wrongful act or neglect of the City, its employees, agents and independent contractors, in or about the Facilities.

Should the Region be made a party to any litigation commenced by or against the City where the Region is without fault, then the City will protect, indemnify and hold the Region harmless and will promptly pay all costs, expenses and legal fees (on a solicitor and own client basis) incurred or paid by the Region in connection with such litigation upon demand. The City will also promptly pay upon demand all costs, expenses and legal fees (on a solicitor and own client basis) that may be incurred or paid by the Region in enforcing the terms, covenants and conditions in this Agreement.

7.3 Indemnification of City

The Region will indemnify and save harmless the City, its directors, officers, employees, servants, agents and those for whom they are in law responsible, from and against any and all liabilities, damages, losses, costs, expenses (including lawyer's fees and litigation expenses), actions, causes of action, claims, suits and judgments which the City may incur or suffer or be put to by reason of or in connection with or arising from:

- (a) any breach, violation or non-performance by the Region of any obligation contained in this Agreement to be observed or performed by the Region;
- (b) any loss of or damage or injury to property or any loss or injury to any person, including death resulting at any time therefrom, arising from any defect in or structural failure of the Facilities, except such loss, damage and injury caused by or resulting from the negligence or wilful misconduct of the City, its employees or such other persons engaged by the City; and
- (c) any wrongful act or neglect of the Region, its officers, employees, agents or independent contractors, in or about the Facilities.

Should the City be made a party to any litigation commenced by or against the Region where the City is without fault, then the Region will protect, indemnify and hold the City harmless and will

promptly pay all costs, expenses and legal fees (on a solicitor and own client basis) incurred or paid by the City in connection with such litigation upon demand.

7.4 Survival of Indemnification

The City's and Region's respective obligations under Sections 7.2 and 7.3 will survive any expiration or termination of this Agreement.

8. INSURANCE

8.1 City Insurance

The City will obtain general comprehensive liability insurance including legal and employer's liability and contractual liability to cover the responsibilities assumed under this Agreement generally and specifically under Sections 3.7(g), so long as such insurance coverage is available to the City on commercially reasonable terms and containing the following terms and conditions:

- (a) providing for the minimum combined single limit of not less than \$10,000,000 or such other amount as the Region may reasonably require for each occurrence or accident;
- (b) providing coverage for damage because of bodily injury (including death at any time resulting therefrom) sustained by any person or persons or because of injury to or destruction of property caused by any occurrence or accident arising out of any activities in connection with the Facilities or its operation;
- (c) the policy will name the Region as an additional insured with a cross liability clause and, if required, extend to cover the employees of the insureds. The policy will contain a clause providing that the inclusion of more than one insured will not in any way affect the rights of any insured as respects to any claim, demand, suit or judgement made against any other insured;

Coverage will be with reputable insurers and upon terms and in amounts, as to deductibles and otherwise, satisfactory to the Region acting reasonably from time to time. The cost of premiums and deductibles for each and every such policy will be paid by the City. The City will obtain from the insurers under such policies, undertakings to notify the Region in writing at least thirty (30) days prior to any cancellation or amendment thereof. The City agrees that if the City fails to take out or keep in force such insurance, the Region will have the right to do so and to pay the premium therefor and deduct that amount from any monies due and owing to the City by the Region. The City will provide the Region with copies of all policies, or certificates of such insurance policies in lieu thereof as described herein and each renewal and replacement thereof and each endorsement thereto. The City will deliver to the Region Notice of the continuation of such policies not less than ten (10) days prior to their respective expiry dates.

8.2 Region Insurance

The Region will obtain and keep in force throughout the Term:

- (a) “all risk” insurance (including earthquake, flood and water damage insurance and, if applicable sprinkler leakage) on a replacement cost basis, covering the Facilities with loss payable to the Region and a waiver of subrogation in favour of the City, so long as such waiver is available on commercially reasonable terms. If there is a dispute as to the amount which comprises full replacement cost, the decision of the Region will be conclusive. The policy of insurance will contain a waiver of subrogation rights which the Region’s insurers may have against the City and against those for whom the City is at law responsible;
- (b) comprehensive general liability insurance with respect to the Facilities in such reasonable amounts and with such reasonable deductibles as would be carried by a prudent owner of reasonably similar Facilities.

9. TERM

9.1 Term

This Agreement will commence as of the Commencement Date and continue in full force and effect until December 31, 2023 unless earlier terminated pursuant to the terms of this Agreement.

9.2 Future Agreement

The City may, no later than one (1) year prior to the end of the Term, provide Notice to the Region that the City wishes to negotiate an agreement with the Region to Manage the Facilities for an additional period. If the Region (a) is satisfied with the performance of the City to the date of the Notice, and (b) does not intend to Manage the Facilities itself, the parties will commence negotiations for an agreement for an additional period. If the parties are unable to agree on the terms and conditions of a further agreement prior to six (6) months before expiry of the Term, neither party will have any obligation to continue negotiations and the Region may enter into any agreement with any person to Manage the Facilities. The City acknowledges and agrees that nothing herein confers any right of renewal or extension of this Agreement.

10. TERMINATION AND EXPIRATION

10.1 Termination and Expiration

This Agreement will terminate:

- (a) without further notice upon the expiration of the Term; or
- (b) upon that date specified in a Notice of termination given under Section 10.4.

10.2 No Further Claim

The City covenants and agrees that, upon termination or expiration of this Agreement, except in respect of damages sustained as a result of a breach by the Region of any term or provision of this Agreement to be expressly observed or performed by the Region:

- (a) the City will not have or commence any right of action whatsoever, including any direct or indirect right or action at law or in equity, for:
 - (1) any losses sustained by the City including capital and operating costs incurred by the City in respect of the Facilities; and
 - (2) any consequential damages sustained by the City; and
- (b) the Region will not be obligated to compensate the City in any manner whatsoever.

10.3 Default

The occurrence of any one or more of the following events by or in respect of the City shall constitute a “Default” by the City under this Agreement:

- (a) subject to Sections 10.3(b) and (c), if the City is in breach of any term, provision or obligation under Sections 3.2(h) or (m) hereunder and such breach has not been cured within ten (10) days of being given Notice specifying the breach;
- (b) subject to Section 10.3(c), if the City is in breach of any term, provision or obligation under Sections 3.2(h) or (m) and such breach because of its nature would reasonably require more than ten (10) days to cure and the City has not within five (5) days of being given Notice specifying the breach commenced curing the breach and thereafter promptly, effectively and continuously proceeds with the curing of the breach to completion;
- (c) if an arbitration under Section 11 is commenced with respect to a breach under Section 3.2(h) or (m) alleged in a Notice from the Region, and within ten (10) days of the determination by the arbitrator that the City is in breach of a term, provision or obligation under Section 3.2(h) or (m), the breach has not been cured or where such because of its nature would reasonably require more than ten (10) days to cure, the City has not, within five (5) days of the determination by the arbitrator commenced curing the breach and thereafter promptly, effectively and continuously proceeds with the curing of the breach to completion;
- (d) subject to Sections 10.3(e) and (f), if the City is in breach of any term, provision or obligation hereunder other than those set out in Sections 3.2(h) and (m) hereunder and such breach has not been cured within sixty (60) days of being given Notice specifying the breach;
- (e) subject to Section 10.3(f), if the City is in breach of any term, provision or obligation hereunder other than those set out in Sections 3.2(h) and (m) hereunder and such breach because of its nature would reasonably require more than sixty (60) days to cure and the City has not within thirty (30) days of being given Notice specifying the breach commenced curing the breach and thereafter promptly, effectively and continuously proceeds with the curing of the breach to completion;

- (f) if an arbitration under Section 11 is commenced with respect to a breach alleged in a Notice from the Region, other than a breach under Section 3.2(h) or (m) hereunder, and within thirty (30) days of the determination by the arbitrator that the City is in breach of a term, provision or obligation hereunder the breach has not been cured or where such breach because of its nature would reasonably require more than thirty (30) days to cure, the City has not, within fifteen (15) days of the determination by the arbitrator commenced curing the breach and thereafter promptly, effectively and continuously, proceeds with the curing of the breach to completion.

10.4 Rights Upon Default

Without prejudice to any other rights the Region may have in respect of this Agreement, whether at law or in equity, if any Default shall occur and be continuing, the Region may terminate this Agreement upon Notice in writing to the City.

11. DISPUTE RESOLUTION

11.1 Parties Representatives

Each party will appoint a person as its representative for the purpose of coordinating all matters and obligations of the parties as required by this Agreement. Each party will advise the other party in writing of the name, telephone number and fax number of its representative and each party may change its representative from time to time by notice in writing to the other.

11.2 Negotiation

If any dispute arises between the Region and the City with respect to this Agreement then, within seven (7) days of Notice from one party to the other, or such time as agreed to by both parties, the representatives of the parties will participate in good faith negotiations in order to resolve and settle the dispute. In the event that such representatives are unable to resolve the dispute within fourteen (14) days of the first written Notice, or such other time period agreed to by both parties, each party will appoint a senior representative that has not been previously involved in the matter in dispute, to attempt to resolve the dispute.

11.3 Arbitration

If the matter is not settled through the process in Section 11.2 within forty-five (45) days of the notice of the dispute being given the matter may, if the parties agree, be referred to a single arbitrator pursuant to the *Commercial Arbitration Act* of British Columbia. The single arbitrator will be selected by agreement of the parties or failing agreement of the parties a person shall be selected as follows:

- (a) within fourteen (14) days of written notice from one party to the other of the intention to arbitrate, each party shall appoint an arms-length representative, ("Appointment Agents") who will, pursuant to this Agreement be given the

authority to meet and agree upon the selection and appointment of a single arbitrator;

- (b) if within the fourteen (14) days either party fails or refuses to appoint its Appointment Agent, or if the Appointment Agents fail to appoint a single arbitrator within ten (10) days thereafter then a single arbitrator will be appointed pursuant to the provisions of the *Commercial Arbitration Act* of British Columbia.

A single arbitrator will be an experienced professional versed in the matters in dispute and the cost of the arbitrator shall be shared equally by the City and the Region. Each party will bear its own costs of the arbitration, including all costs of its Appointment Agent, regardless of the arbitrator's decision.

12. GENERAL TERMS

12.1 Region's Powers Unimpaired

Nothing contained or implied herein shall derogate from the obligations of the City or prejudice or affect the Region's rights, powers, duties or obligations in the exercise of its functions pursuant to the *Local Government Act*, *Community Charter* or successor legislation, as amended from time to time, and the rights, powers, duties and obligations of the Region under all public and private statutes, bylaws, orders and regulations.

12.2 No Amendment

No amendment, supplement, restatement or termination of any provision of this Agreement is binding unless it is in writing and signed by the parties to this Agreement at the time of the amendment, supplement, restatement or termination.

12.3 Fixtures

The City agrees that any goods, alterations, additions, improvements and fixtures made to or installed upon or in the Facilities, whether before or after the Commencement Date, will immediately upon affixation become the property of the Region and remain with the Facilities as part thereof upon the expiration or earlier termination of this Agreement.

12.4 Labour Dispute

In the event of any strike, walkout or other labour dispute directly or indirectly involving the Region that adversely affects the operation of the Facilities the Region will, upon the request of the City, seek such orders or relief as may be required to prevent the continuance of the strike, walkout or other labour dispute from adversely affecting the operation of the Facilities.

12.5 Competition

Nothing in this Agreement will prevent either party from owning and operating ice rink, swimming pool, fitness centre and multi-purpose facilities even if those operations compete with the Facilities.

12.6 Force Majeure

Notwithstanding anything to the contrary contained in this Agreement, if either party is bona fide delayed or hindered in or prevented from the performance of any term, covenant or act required under this Agreement by reason of an Event of Force Majeure, the said party will be relieved from the fulfillment of such term, covenant or act during the period of such interruption and the period for the performance of any such term, covenant or act will be extended for a period equivalent to the period of such delay. Every obligation in this Agreement except any payment obligation will be deemed to be subject to an Event of Force Majeure.

12.7 Enurement

This Agreement enures to the benefit of and binds the parties and their respective successors and assigns.

12.8 Notice

Each Notice to a party must be given in writing. A Notice may be given by delivery to an individual, by fax or by email, and will be validly given if delivered on a Business Day to an individual at the following address, or, if transmitted on a Business Day by fax or email addressed to the following party:

if to the Region:

Name: Cariboo Regional District
 Address: Suite D, 180 North Third Avenue, Williams Lake, BC V2G 2A4
 Attention: Manager of Community Services (dcampbell@cariboord.bc.ca)
 Fax No.: (250) 392-2812

if to the City:

Name: City of Williams Lake
 Address: 450 Mart Street, Williams Lake, BC V2G 1N3
 Attention: Director of Community Services (gpaynton@williamslake.ca)
 Fax No.: (250) 392-4408

or to any other address, fax number or individual that the party designates. Any Notice:

- (a) if validly delivered, will be deemed to have been given when delivered;

- (b) if validly transmitted by fax or email before 3:00 p.m. on a Business Day, will be deemed to have been given on the Business Day; and
- (c) if validly transmitted by fax or email after 3:00 p.m. on a Business Day, will be deemed to have been given on the next Business Day after the date of the transmission.

12.9 Waivers

No waiver of any provision of this Agreement is binding unless it is in writing and signed by the parties to this Agreement except that any provision which does not give rights or benefits to particular parties may be waived in writing, signed only by the party who has rights under, or holds the benefit of, the provision being waived if that party promptly sends a copy of the executed waiver to the other party. No failure to exercise, and no delay in exercising, any right or remedy under this Agreement will be deemed to be a waiver of that right or remedy. No waiver of any breach of any provision of this Agreement will be deemed to be a waiver of any subsequent breach of that provision or of any similar provision.

12.10 Further Assurances

The parties will promptly execute and deliver all further documents and take all further action reasonably necessary or appropriate to give effect to the provisions and intent of this Agreement.

12.11 Submission to Jurisdiction

Each of the parties irrevocably submits to the jurisdiction of the courts of British Columbia in any action and each party to this Agreement waives, and will not assert by way of motion, as a defence, or otherwise, in any action, in any claim that:

- (a) that party is not subject to the jurisdiction of the courts of British Columbia;
- (b) the action is brought in an inconvenient forum;
- (c) the venue of action is improper; or
- (d) any subject matter of the action may not be enforced in or by the courts of British Columbia.

In any suit or action brought in another jurisdiction to obtain a judgement for the recognition or enforcement of any final judgement rendered in an action, no party to this Agreement will seek any review with respect to the merits of the underlying judgement, whether or not that party appears in or defends the action.

12.12 Remedies Preserved

The rights and remedies under this Agreement are cumulative and are in addition to and not in substitution for any other rights and remedies available at law or in equity or otherwise. Any

termination of this Agreement pursuant to Section 9 will be without prejudice to any rights or remedies available to the parties with respect to an Event of Default which has occurred and which resulted in the termination hereof. No single or partial exercise by a party of any right or remedy precludes or otherwise affects the exercise of any other right or remedy to which that party may be entitled.

12.13 No Assignment

The City will not assign any of its rights or obligations under this Agreement to any other person without the prior written consent of the Region.

12.14 Freedom of Information

The parties acknowledge, agree and consent to the disclosure of this Agreement as a matter of public record and further acknowledge and agree that applicable laws may require disclosure of information provided by one party to the other party pursuant to or in connection with this Agreement. However, the parties acknowledge and agree that information provided by one party to the other party pursuant to or in connection with this Agreement may comprise of trade secrets or scientific, technical, commercial, financial or labour relations information, supplied in confidence, disclosure of which could reasonably be expected to prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a party or result in undue loss to that or undue gain to other persons. Further, such information may include information the disclosure of which could reasonably be expected to prejudice the economic interests of the City or its competitive position or the disclosure of which could reasonably be expected to result in undue financial benefit or loss to other persons. Accordingly, except as may be required by applicable laws, the parties will keep confidential all such information and will only make such information available to the recipient party's employees, consultants, lenders and lenders' consultants as are required to have access to the same in order for the recipient party to adequately use such information for the purposes for which it was furnished.

12.15 Further Negotiation

The parties acknowledge and agree that they are entering into a long term relationship and, from time to time, opportunities and issues will arise that are not contemplated in this Agreement. The parties covenant and agree to discuss and consider these matters in the spirit of cooperation and good faith.

12.16 Ownership and Mortgaging of Lands

The Region will not transfer title to the Lands to another person, except a corporation, organization or entity held or controlled by the Region, without first requiring that other person to enter into an agreement with the City whereby that other person assumes and agrees to be bound by the provisions of this Agreement and related agreements.

12.17 Counterpart

This Agreement may be executed in counterpart, both of which together will constitute one and the same instrument, and either party may deliver its counterpart page to the other party by facsimile transmission.

IN WITNESS WHEREOF the parties have duly executed this agreement as of the day and year written below.

Authorized Signatory
CARIBOO REGIONAL DISTRICT

DATE

Corporate Officer
CARIBOO REGIONAL DISTRICT

DATE

Authorized Signatory
CITY OF WILLIAMS LAKE

DATE

Corporate Officer
CITY OF WILLIAMS LAKE

DATE

SCHEDULE A - COMPENSATION

Compensation under the terms of this agreement is as follows:

i) Operating Costs is defined as the total, without duplication, of all costs incurred for the continued management, operation, maintenance, repair, replacement, preservation, marketing, and activity programming of the Facilities.

Operating Costs Compensation Schedule (1.75% increase per year)					
2018 (approved)	2019	2020	2021	2022	2023
\$1,540,247	\$1,594,628	\$1,622,534	\$1,650,928	\$1,679,820	\$1,709,216
Increase	\$27,426	\$27,906	\$28,394	\$28,891	\$29,397

The above Operating Costs Compensation shall include an administration fee equivalent to three percent (3%) of gross operating expenditures to be charged by the City to the Region for delivery of the services defined under this agreement.

Operating Costs will be reimbursed to the City monthly upon receipt of an invoice from the City providing acceptable details of the expenditure.

ii) Capital Costs is defined as any new equipment, fixtures or improvements to the Facilities that are capital items as defined by the Region's Tangible Capital Assets Policy and that exceed \$5,000 per individual item;

Capital projects to be undertaken at the Facilities in the following year will be proposed by the City during the annual financial planning process and presented to the October meeting of the Central Cariboo Joint Committee prior to being presented to the Regional District Board.

Capital Costs for approved projects will be reimbursed to the City monthly upon receipt of an invoice from the City providing acceptable details of the expenditure.

iii) Extraordinary Costs is clarified in Section 3.5 and provides the ability for the City and the Region to amend this Compensation schedule in good faith due to unforeseen circumstances, which adversely affect the anticipated revenues or expenditures related to the Lands and Facilities.

SCHEDULE B – REVENUES

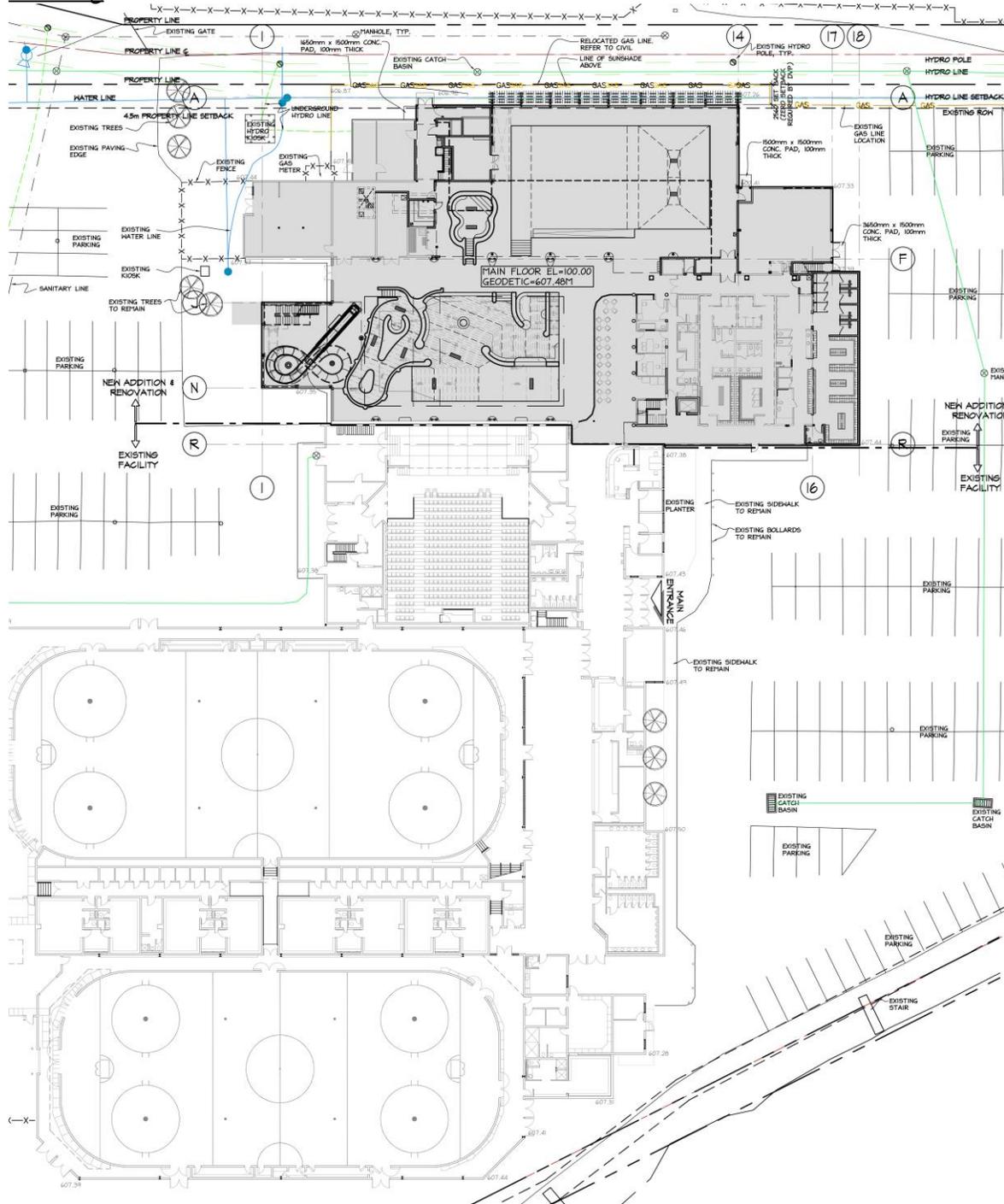
City Revenues pursuant to the Agreement terms include:

- ice rental revenues
- community activity programming revenues
- off-season rental revenues for the facility
- revenues from parking lot rentals
- public skating revenues
- concession revenues
- user pass revenues
- advertising revenues
- meeting room rental revenues
- miscellaneous facility space rentals
- User Group Space Use and Occupancy Agreements currently including, but not limited to Minor Hockey, Figure Skating, and Bluefins.
- all other usual and customary revenues from the day to day management and operation of the Facilities
- grant funding obtained from external sources pertaining directly to the operation of the Facilities
- any other future and unforeseen revenue opportunities, which may be appropriately included, at the consent of the Region

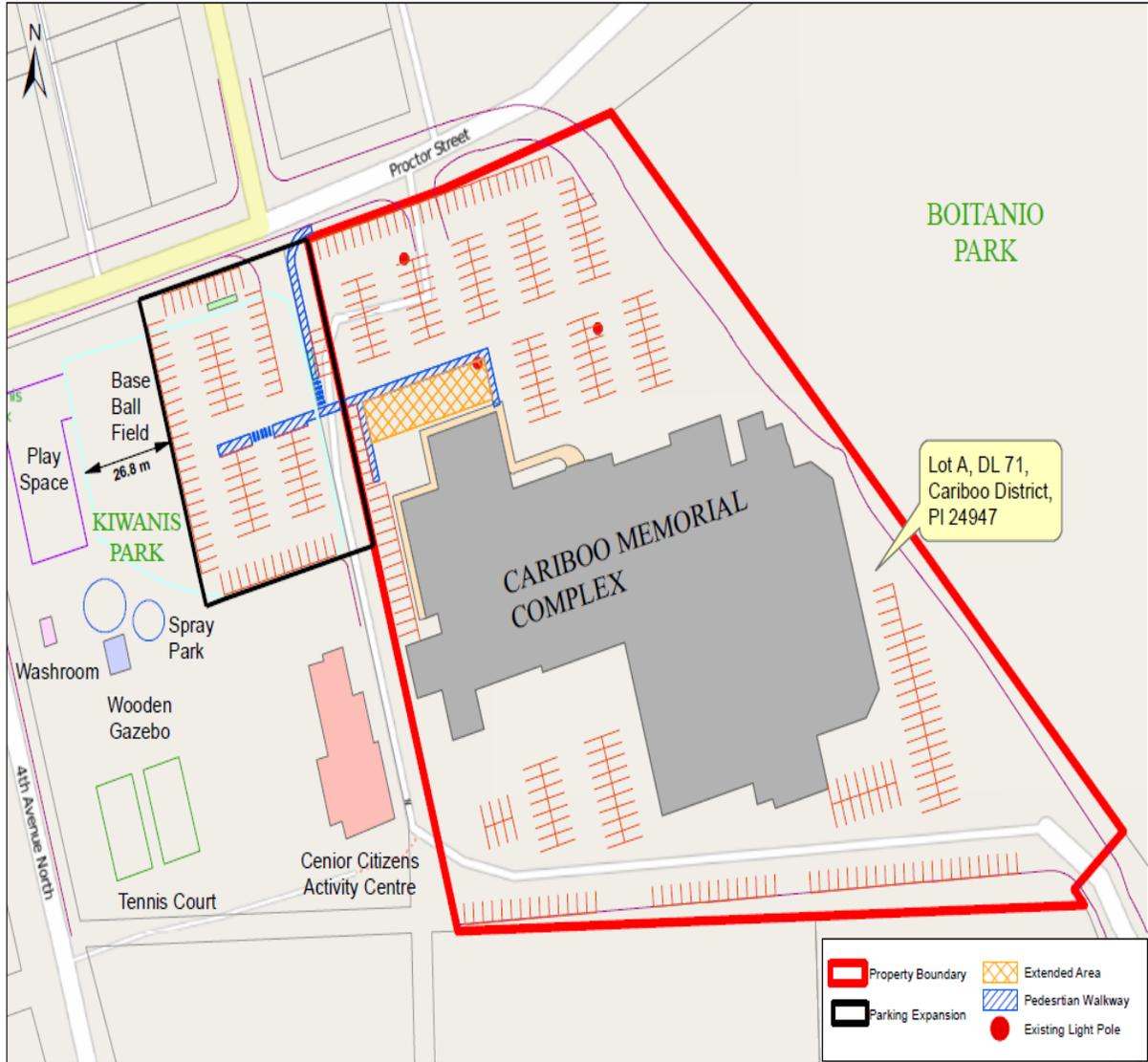
SCHEDULE C – CMRC FACILITIES AND LANDS

Building and Lands overview plan of the CMRC. The following images are not intended as a complete structural representation or legal property survey, but to provide an overview of the Building and Lands subject to this agreement.

Building



Lands



Lands - Cariboo Regional District Property

SCHEDULE D – REGION POLICIES

Rental Policy

In accordance with Section 3.2(h) of the Agreement, the Facility will be available for rent for special events, programs and other functions.

Consumption of alcoholic beverages is strictly forbidden to rental events, except where the required liquor licence has been obtained for a private or public function. Private licensed functions must receive the approval for liquor permits from the City, the R.C.M.P. and the Liquor Control Branch.

Access to the facility for preparation of an event will be clearly identified within the application.

All renters of the Facilities must carry adequate liability insurance. The City will provide the opportunity for groups to purchase insurance at the Facility through on-site access to a third party insurance program.

Fees and Charges Policy

Fees and Charges for use of the Facility are set through bylaw of the Region. There is no authority to waive these fees either by the City or the Region and it is not possible to provide exceptions to the bylaw. As an alternative, grants for assistance may be provided by the City or the Region to community groups to cover rental costs.

Purchasing Policy

The City will use the Purchasing Policy and procedures of the City of Williams Lake for capital purchases and contracts related to the Facilities, including all process for obtaining quotes and issuing and approving tenders. Prior to awarding contracts or completing major capital purchases, that will be approved by Williams Lake City Council, the City will provide notice to the Central Cariboo Joint Committee.

Disposal of Assets

Disposal of Complex Assets must be coordinated with the Chief Financial Officer of the Region. If the City wishes to dispose of Complex Assets, it shall notify the Region with the description, estimated value and if the asset will be replaced. In turn, the Chief Financial Officer will notify the City of the appropriate method of disposal, including by way of public notice or auction.

Display of Public Art

The Lands and Facilities are important public spaces and may be utilized for appropriate artistic and cultural displays. Prior to the installation of permanent or temporary displays, the City will notify the Region and the Central Cariboo Joint Committee. Displays must be of a form, character and theme consistent with recreational use of the Facilities by families with a priority given to displays that are educational in nature.

Recreation Access Passes

The City will manage the sale of Recreation Access Passes and ensure compliance with the Region's policy on this matter.

All users of the Facilities must possess a valid Recreation Access Pass to enrol in leisure activity programs at reduced rates and participate in organized leagues, associations and clubs using the ice rink and swimming pool. A Recreation Access Pass is required to pay a reduced rate for drop-in activities, such as public swimming, skating or the fitness centre. Out-of-town visitors are not required to have a pass to participate in tournaments or events.

Policy Objectives:

To ensure that residents within the areas which contribute to the Facilities through taxation are afforded an opportunity to utilize the facility and are not required to subsidize participation by residents from non-contributing areas.

Annual Recreation Passes:

All persons living within the contributing taxation area may obtain at no charge their Recreation Access Passes at the Facility during regular business hours with proper identification (i.e. BC Driver's License) and proof of residence in the form of either a property tax/assessment notice or a utility bill showing the property address.

Persons living outside of the taxation area must pay the required current fee to be issued a pass. The fee charged for Recreation Access Passes is set through bylaw by the Region.

Where a family recreation pass is purchased, each member of the family shall be identified and issued an individual Recreation Pass. Only children under legal guardianship may qualify as family members for the purpose of pass issuance.

Passes are valid from June 1st in any year to May 31st of the following calendar year. The full cost to purchase a pass will be charged for the complete year or any portion thereof.

Non-Compliance:

Penalties may be levied against organizations that fail to provide proof that Recreation Access Passes are held by all registered participants.