

**NORTH CARIBOO RECREATION AND PARKS
MANAGEMENT AGREEMENT**

BETWEEN:

CARIBOO REGIONAL DISTRICT

AND:

CITY OF QUESNEL

THIS MANAGEMENT AGREEMENT made as of the ____ day of _____, 2018.

BETWEEN:

CARIBOO REGIONAL DISTRICT

(the “Region”)

AND:

CITY OF QUESNEL

(the “City”)

WHEREAS:

- A. The Region has adopted North Cariboo Recreation and Parks Services Bylaw 3900 (2004) and subsequent amendments thereto, to provide recreation facilities and for the delivery of specified recreation and leisure services in the north 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 or jointly owned by the Region and recreation properties held by other public institutions and for the delivery of related activity programming.
- C. The City is engaged in the delivery of parks and recreation services including the management of ice rinks, swimming pools, sports fields, multi-purpose trails and other similar assets, related activity programming and administering agreements for recreation services with other public institutions and non-profit groups.
- D. The Region wishes to engage the services of the City to manage the Land and Facilities, provide recreation and leisure activity programming to a high quality of customer service and administer agreements for recreation services with other public institutions and non-profit groups in a manner responsive to community needs on behalf of the Region.
- E. The Region and the City wish to establish the terms and conditions under which the City will manage the delivery of North Cariboo Recreation and Parks services in the north 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 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 Management Agreement:

- (a) **“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 Canadian Institute of Chartered Accountants and that exceed \$5000 per individual item;
- (b) **“Compensation”** means the subsidy required for recreation and leisure services payable by the Region to the City in each year of the Term as defined in Schedule A;
- (c) **“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.
- (d) **“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;
- (e) **“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 *Environmental Management Act* (British Columbia) and all rules, regulations, policies and criteria promulgated thereunder from time to time;

- (f) “**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;
- (g) “**Facilities**” means the buildings and properties jointly-owned by the City and the Region commonly known as the Arts and Recreation Centre, West Fraser Centre, and Arena 2, including furnishings, fixtures, supplies and equipment therein, landscaping, parking and servicing constructed and installed on the Lands as shown in Schedule B;
- (h) “**GAAP**” means generally accepted accounting principles in Canada as amended from time to time;
- (i) “**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
- (j) “**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 programs all other activities required to manage, operate, market, maintain and keep safe and secure the Facilities in accordance with Prudent Management Practice;
- (k) “**North Cariboo Joint Planning Committee (JPC)**” means a committee composed of the Electoral Area Directors for areas A, B, C, and I of the Cariboo Regional District and the seven members of Quesnel City Council.
- (l) “**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;
- (m) “**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) 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, Harmonized Sales 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.
- (n) **“Permit”** means any authorization, licence, approval or consent issued pursuant to any Environmental Laws;

- (o) **“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, and recreation Facilities 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;
- (p) **“Public Programs”** means activities normally associated with an ice rink, swimming pool, fitness gym, arts centre, and multi-purpose facility which are open to the public and for groups, organizations and programs, including arts, recreation, and fitness programs that may be offered by the City in school facilities, City parks, and other locations outside the Facilities;
- (q) **“Rec Pass”** means a pass that is sold to people who do not live within the North Cariboo Recreation and Parks Taxation area or that is provided at no cost to residents with proof that they live within the taxation area, in order to register in any organized sport or leisure program that utilizes any NCRP recreation property and to avoid paying a higher admission or rental fee to use these facilities.
- (r) **“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;
- (s) **“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;
- (t) **“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

The division of this Agreement into Sections and the insertion of headings 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 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.

1.7 Currency

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

1.8 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.

1.9 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.

1.10 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 the legality, validity or enforceability of the remaining provisions of this Agreement.

1.11 Schedules

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

<u>Schedule</u>	<u>Description</u>
A	Reimbursement and Taxation Subsidy Targets
B	North Cariboo Recreation and Parks Facilities and Lands
C	Agreements
D	Applicable Policies

2. THE NORTH CARIBOO RECREATION AND PARKS SERVICE

2.1 Service Establishment Bylaw

North Cariboo Recreation and Parks is a service of the Region provided in partnership with the City. The Region adopted North Cariboo Recreation and Parks Services Bylaw 3900 (2004) and subsequent amendments thereto, to provide recreation facilities and for the delivery of specified recreation and leisure services in the North Cariboo.

2.2 Governance

North Cariboo Recreation and Parks is a service of the Region and governance authority for the North Cariboo Recreation and Parks Service rests with the Cariboo Regional District Board (the Board). The Board receives recommendations from the North Cariboo Joint Planning Committee which is a Committee consisting of the four (4) Northern Directors (Electoral Areas A, B, C and D) of the Region and the seven (7) members of City Council.

The Parkland, Bouchie Lake, and Barlow Creek Recreation Commissions were established by Bylaws 4271, 4272, and 4273 by the Region. These Commissions were established to manage specific lands and buildings to ensure that these properties can be enjoyed by the public for the purposes of recreation and other community activities. These Commissions have limited delegated authority defined in their establishment bylaws.

The North Cariboo Joint Planning Committee (JPC) has no delegated authority and no legal standing. The JPC makes recommendations to the Board on policy matters related to the North Cariboo Recreation and Parks Service.

2.3 Lands and Facilities

The City and Region jointly own the following lands and facilities that are included in, and are part of, the North Cariboo Recreation and Parks Service: the Quesnel and District Arts and Recreation Centre, the West Fraser Centre and Arena 2, West Fraser Timber Park, Alex Fraser Park, and Pioneer Park on Dragon Lake.

The City exclusively owns land and facilities including the Soccer Complex, Lebourdais Park and the Riverfront Trail that are included in and funded as, a part of, the North Cariboo Recreation and Parks Service.

Additionally, the Region exclusively owns the following lands and facilities that are also included in and funded as, a part of the North Cariboo Recreation and Parks Service: Bouchie Lake Community Centre and Grounds and Barlow Creek Community Centre and Grounds.

The Region has an authority interest in Crown land and improvements known as the Parkland Community Area or Costas Cove on Ten Mile Lake that is also included in, and is part of, the North Cariboo Recreation and Parks Service.

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

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

It is recognized by both the City and the Region that new facilities may be constructed during the term of this agreement and that these facilities may be owned exclusively by the Region or the City or jointly owned by the City and Region. This agreement will be amended as required to reflect any new acquisition of property or new construction of facilities. Appropriate funding for consulting and contracting resources to undertake major projects will be included in the capital budget to ensure effective delivery of the construction process.

3. APPOINTMENT OF MANAGER

3.1 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 Delivery of North Cariboo Recreation and Parks Services for the Term in accordance with the terms and conditions of this Agreement. As the Manager of the Service the City is responsible to directly manage and maintain the Quesnel and District Arts and Recreation Centre, the West Fraser Centre and Arena 2. As the Manager of the Service, the City will also provide leisure programming and organize arts and recreation events for the benefit of the community. The City will also support various community organizations and Commissions providing recreation services on behalf of the Region and the City. These organizations include the Bouchie Lake Recreation Commission, the Barlow Creek Recreation Commission, the Parkland Recreation Commission, the Quesnel River Archers (Pioneer Park) the Alex Fraser Park Society, and the Quesnel Youth Soccer Association.

3.2 Acceptance by the City

The City hereby accepts the appointment to Manage the Delivery of North Cariboo Recreation and Parks Services for the Term in accordance with the terms and conditions of this Agreement.

4. DUTIES, OBLIGATIONS AND COVENANTS OF THE MANAGER

4.1 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) Manage the Facilities and deliver programs and services in the manner of a prudent owner and in accordance with the annual business plan approved by the Cariboo Regional District for the North Cariboo Recreation and Parks Service.
- (b) Manage the Facilities and provide programs and services to a standard of performance equal to or greater than facilities, programs and services of a comparable nature and purpose. The practices, methods and acts of the City in the capacity of Manager of the Service shall be to a standard generally accepted at the relevant time by responsible and reputable Local Government Recreation Departments in British Columbia managing swimming pools, arenas, community centres, and similar recreation facilities and providing similar community services. This standard shall apply to all 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 including those related to public availability and access, safety, cost and business conduct.
- (c) Manage the Facilities in a lawful and orderly manner in full compliance with all applicable federal, provincial, municipal and other laws, bylaws (including appropriate bylaws of the Region and City), regulations and statutes;
- (d) Perform its obligations itself or through such reputable and competent agents or independent contractors as it may engage from time to time;
- (e) Provide sufficient, experienced and qualified supervision and security for the operation of the facilities and management of the Service using its best skill and attention at all times. The City shall be responsible for all aspects of managing its workforce including hiring and firing employees, collective bargaining, and administering payroll. The City will advise the Region as soon as reasonably possible of any job action or pending job action that may impact the delivery of North Cariboo Recreation and Parks services and/or the operation of facilities.
- (f) Establish reasonable rules for the safe use of the Quesnel and District Arts and Recreation Centre and West Fraser Centre and Arena 2 by members of the public using these facilities which are similar to the rules in effect for other private or public ice rink, swimming pool and recreation facilities in British Columbia.
- (g) Enforce the User Group Insurance Policy, as noted appendix D, to applicable groups renting the Quesnel and District Arts and Recreation Centre and West Fraser Centre and Arena 2

- (h) Manage the facilities, programs and services in accordance with any agreements in existence, as set out in Schedule C. Enter into and administer any third party use and occupancy or lease agreements in existence as at the commencement date of this agreement and that may be entered into throughout the term; and
- (i) City staff will meet with and provide administrative support to NCJPC as required throughout the Term.

4.2 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) The City as Manager of the Service shall repair, maintain and keep the Arts and Recreation Centre and Arenas in a state of good repair to the same extent and in the same manner as a prudent owner would, to the extent that funding for such work is provided for in the budget approved by the Region, 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 fully operating and functioning for its intended purpose. Without limiting the generality of the foregoing the City will, within the approved budget and 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. 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;
- (b) 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;
- (c) 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 and the City are signatories to the provincial Climate Action Charter.

4.3 Financial Requirements and 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) Provide administration of the NCRP operating and capital budgets including revenue and expenditures, and other related management and operating agreements for the North Cariboo Recreation and Parks Service,. Regularly report on revenues and expenditures to JPC and immediately notify the Region of unexpected expenditures or revenue shortfalls that may result in a higher than budgeted subsidy and take prompt action to minimize any budget over-runs.
- (b) 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 or from other revenues, the City and Region agree to negotiate an amendment to Schedule A which may include service reductions, a transfer of funds from capital reserves, or a combination of each.
- (c) Provide the Region, within thirty (30) days of the conclusion of each year of the term, i) the final invoice for reimbursement 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;
- (d) Keep or cause to be kept true and accurate records and accounts in accordance with generally accepted accounting procedures regarding the management and operation of the Arts and Recreation Centre and Arenas and other facilities included in the operating or capital budgets and keep these available for inspection by the Region during regular business hours;
- (e) 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 facilities;
- (f) 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 Management of the Service. This obligation will survive any expiration or termination of this Agreement.
- (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) City staff will recommend to the JPC fees and charges for rentals and admissions to the facilities including the Rec Pass program, and for related services. The City will enforce the Fees and Charges Bylaw as approved by the Board. It is understood that the City and CRD must each pay to rent the Facilities and that no free rentals of the facilities will be provided except where the rental is related to a joint City/CRD event, program, or initiative. Rental rates charged to the City or CRD when applicable shall be the non-profit rate as provided for in the fees and charges bylaw.

4.4 Support Provided for other Recreation Properties:

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

- (a) Provide advice to the Bouchie Lake, Barlow Creek, and Parkland Recreation Commissions, Alex Fraser Park Society, Quesnel Youth Soccer Association and Quesnel River Archers when requested by these groups. Advice shall include, but not be limited to, answering questions regarding the administration of policies and procedures, the implementation of risk management programs, or the process to obtain the necessary approvals from the Region to undertake a new initiative.
- (b) Administer the financial requests of these groups; reviewing their budget submissions and funding requisitions and submitting the same to the Region.
- (c) Coordinate an annual meeting of these groups to improve communication, provide education and advice regarding the management of the properties they are responsible for, and provide training and education regarding Region Policies.
- (d) Provide Asset Management planning services and coordinate major maintenance and approved capital projects at the Bouchie Lake Community Centre property, and the Barlow Creek Hall and adjacent Ranger ballpark.

4.5 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 4.5 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 4.5;
 - (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 4.5 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.

5. REIMBURSEMENT

5.1 Business and Financial Plans

City staff will work with Region staff to prepare the annual North Cariboo Recreation and Parks business, capital and financial plans for review and input from the JPC prior to approval by the CRD Board.

This agreement is intended, in part, to provide financial stability to the delivery of recreation services in the north Cariboo and as such both parties agree that the taxation subsidy target for the function Operating Budget shall increase by 1.5% annually as shown in Schedule A. The City will charge a fee of \$170,000 per year also to be increased by 1.5% annually, to account for administrative costs to the City for managing the NCRP Service, including but not limited to human resources and payroll, accounts payable and receivable, and purchasing.

5.2 Reimbursement

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, reimburse 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;

5.3 Application of Revenue

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

- (a) firstly to payment of Operational 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 Costs exceed Revenue.

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.

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 comprehensive general liability insurance including legal and employer's liability and contractual liability to cover the responsibilities assumed under this Agreement, 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 \$15,000,000 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 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 have a term of five years and will commence as of January 1, 2019 and continue in full force and effect until December 31, 2023 unless earlier terminated pursuant to the terms of this Agreement.

10. TERMINATION, EXPIRATION AND SUCCESSION

10.1 Succession

- (a) This agreement will remain in effect after its expiration date to facilitate ongoing negotiations for successful renewal except where a Notice of Termination is given under article 10.3.

10.2 No Further Claim

The City covenants and agrees that, upon termination 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 Termination

- (a) Either party may terminate this agreement upon providing one (1) year's notice to the other party.

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 and telephone 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. The representatives of each party may engage senior representatives of the party or elected representatives as necessary in order to resolve the issue, which may include referral of the matter to the JPC.

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 Powers Unimpaired

Nothing contained or implied herein shall derogate from the obligations of the City or Region or prejudice or affect the City or 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 or City under all public and private statutes, bylaws, orders and regulations.

12.2 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 North Cariboo Recreation and Parks Service and the Region and remain with the Facilities as part thereof upon the expiration or earlier termination of this Agreement.

12.3 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.

12.4 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.

12.5 Enurement

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

12.6 Notice

Each Notice to a party must be given in writing. A Notice may be given by delivery to an individual 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 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.ca)

if to the City:

Name: City of Quesnel
 Address: 410 Kinchant Street Quesnel, BC, V2J 7J5
 Attention: Director of Community Services (jnorburn@quesnel.ca)

or to any other address, 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 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 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.

12.7 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.

12.8 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.

12.9 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, 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.

12.10 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 10 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.

12.11 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.

12.12 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 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. 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.

12.13 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.

12.14 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.

- Signatures follow -

IN WITNESS WHEREOF, the Region and the City have executed this Agreement on the date first above written.

THE CARIBOO REGIONAL DISTRICT

Authorized Signatory

Authorized Signatory

THE CITY OF QUESNEL

Authorized Signatory

Authorized Signatory

SCHEDULE A – REIMBURSEMENT AND TAXATION SUBSIDY TARGETS

Reimbursement under the terms of this agreement is as follows:

i) Operating Costs is defined as the total, without duplication, of net costs (expenditure less revenue) incurred for the continued management, operation, maintenance, repair, replacement, preservation, marketing, and activity programming undertaken by the City as Manager of the Service for the Facilities.

Target Subsidy for Operating Costs Reimbursement Schedule (1.5% increase per year)						
approved baseline 2018	\$2137,005					
Year		2019	2020	2021	2022	2023
Total Net Subsidy						
Annual Increase		1.50%	1.50%	1.50%	1.50%	1.5%
\$ Increase						

In addition to Reimbursement for the above Operating Costs, an administrative fee of \$170,000 per year, to be increased by 1.5% annually, will be payable to the City to account for costs to the City for managing the NCRP Service, including but not limited to human resources and payroll, accounts payable and receivable, and purchasing.

A contribution from the Region to the City for maintenance of the River Front Trail, West Fraser Timber Park and Lebourdais Park is not included in the above Reimbursement but may be negotiated separately as part of the annual financial planning and/or Memorandum of Understanding on joint local government services for the north Cariboo.

The cost of contribution agreements with groups managing NCRP recreation facilities other than the City, such as the Quesnel Youth Soccer Association, School District 28 and Alex Fraser Park Society, are not included in the above Reimbursement but may be negotiated separately and agreed to as part of the annual financial planning process.

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

ii) Extraordinary Circumstances: The City and the Region may amend this Reimbursement Schedule in good faith due to unforeseen circumstances, including higher than expected expenditures or the unexpected loss of revenues.

iii) Capital Costs is defined as any new equipment, fixtures or improvements to the Facilities that are capital items as defined by the Canadian Institute of Chartered Accountants and that exceed \$5000 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 JPC prior to receipt by 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.

SCHEDULE B –FACILTIES AND LANDS

Building and Lands overview plans of the Arts and Recreation Centre, West Fraser Centre and Arena 2. 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.

Arial view site plans are included for the Arts and Recreation Centre, West Fraser Centre and Arena 2, Alex Fraser Park, Bouchie Lake Community Centre including the Claymine Trails, Barlow Creek Hall and ballfields, Kosta's Cove at Parkland, West Fraser Timber Park the Soccer Complex and Pioneer Park on Dragon Lake.

SCHEDULE C - AGREEMENTS

Facility Agreements

1. Alex Fraser Park Society Licence of Occupation (January 2014 – December 2018)
2. Quesnel River Archers Management Agreement for Pioneer Park (January 2014 - – September 1, 2018)
3. School District #28 Joint Use Agreement for facilities
4. Quesnel Youth Soccer Association for management and operation of the Soccer fields and indoor turf complex. (2015-2020)
5. Kangaroos Agreement (annual)
6. Parkland School Use and Occupancy Licence with School District 28 (January 2017 – December 2021)

SCHEDULE D – APPLICABLE POLICIES

The following are abbreviated, explanatory versions of applicable policies related to services under this agreement intended only to confirm the purpose of each. Full versions of each policy will be required for implementation.

Fees and Charges Bylaw

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 resolution of 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.

The Fees and Charges Bylaw shall include policies related to the Rec Pass program. The City shall administer the Rec Pass program as part of this agreement.

Disposal of Assets Policy

All assets that are part of the NCRP service and that are jointly owned by the City and Region shall be disposed of by the City in an appropriate manner when replacement is necessary. The proceeds from the sale of these items will be credited to the NCRP budget.

NCRP Purchasing Policy

City Staff adhere to the purchasing policy of the City of Quesnel for all purchases related to the North Cariboo Recreation and Parks function for purchases up to the threshold levels that require Council approval.

If tenders/proposals for such items are within the approved budget, approval shall be provided by the City Manager for the City of Quesnel and the CAO for the Cariboo Regional District, or their designates.

The City Manager and/or the CRD CAO, at their discretion, may determine that a contract award is of such a nature that it should be referred to the JPC for their approval.

Tenders/proposals that exceed the approved budget must be approved by the Joint Planning Committee and then be ratified by the CRD Board.

NCRP Insurance Policy

For risk management purposes the City shall ensure that organized groups renting space in the Arts and Recreation Centre and Arenas have third party liability insurance of at least \$2 million, listing both the City and CRD as additional insured.

Additional Recreation Services Policy

The priority criteria and process for consideration of new recreation services to be included in the NCRP function has been established. To ensure the continuation of a strong volunteer base and preserve independent sports, arts and agriculture groups, which have their own funding sources

to support the broad fabric of community active living, requests for new services are compared to a defined list of priority characteristics that increase the appropriateness of an activity or facility to be included and funded as a part of the NCRP function.

Capital Expenditures Policy

To ensure that taxpayer contributions to the North Cariboo Recreation and Parks Service (NCRP) are allocated as effectively and efficiently as possible and to ensure that local taxpayer funding provided for NCRP capital expenditures has been leveraged whenever possible to maximize potential funding from other sources and minimize local taxpayer contributions, all CRD appointed Commissions and non-profit organizations who manage NCRP properties shall be required to:

1. Demonstrate that they have actively sought and have been unable to obtain grant funding from other sources
2. Demonstrate that they have successfully secured funding from other sources and/or have secured significant in-kind contributions to a capital project

Before the Joint Planning Committee will consider allocating full or partial funding required for any NCRP capital project.

Unanticipated Expenditures Policy

The City, recreation commissions and non-profit organizations managing North Cariboo Recreation and Parks facilities are expected to operate within approved budgets. Unanticipated expenditures are expected to be absorbed within approved budgets by reprioritizing major maintenance and/or capital works.

Only in extenuating circumstances will amendments to budgets be considered and only after options to absorb unanticipated expenditures has been pursued.

City of Quesnel Living Wage Policy

The City of Quesnel Living Wage policy applies to North Cariboo Recreation and Parks function properties owned in whole or in-part by the City. The policy ensures that contractors, sub-contractors and employees providing services meet wage standards set by the Living Wage for Families Campaign.

West Fraser Centre Banner and Memorabilia Policy

To foster civic pride and celebrate the success of a local sport team who wins a provincial or better championship, while at the same time ensuring that the esthetic appeal of the West Fraser Centre is maintained for the community-at-large to enjoy, championship banners will only be displayed in the West Fraser Centre under defined circumstances.

Healthy Food and Beverage Policy

This policy directs that food and beverage services available at NCRP facilities must provide healthy choices for consumers.