

LICENCE OF OCCUPATION AND MANAGEMENT AGREEMENT

THIS AGREEMENT made in triplicate the ____ day of _____, 2019.

BETWEEN:

THE CARIBOO REGIONAL DISTRICT,
Suite D – 180 North Third Avenue,
Williams Lake, British Columbia V2G 2A4

(herein after called “the Regional District”)

AND:

CITY OF QUESNEL,
410 Kinchant Street, Quesnel,
British Columbia, V2J 7J5

(herein after called “the City”)

AND

ALEX FRASER PARK SOCIETY, a Society incorporated under the Society Act of the Province of British Columbia, having a mailing address at 200 North Star Road, Quesnel, British Columbia, V2J 5P6

(herein after called “the Society”)

WHEREAS the City of Quesnel and the Cariboo Regional District are joint owners of Alex Fraser Park (hereinafter collectively called the “Owners”);

AND WHEREAS the Regional District has the governance mandate for the North Cariboo Recreation and Parks function which includes the Alex Fraser Park (herein after called the “Park”);

AND WHEREAS the City is empowered through the operating agreement entered into with the Regional District, to maintain and operate joint owned recreation facilities including the Park;

AND WHEREAS the Regional District and the City are in agreement to contract out the management and operation of the Park to the Society;

AND WHEREAS the Society was formed to accept responsibility to manage and operate the Park as herein outlined.

AND WHEREAS the Society is aware that if the operating agreement between the Owners is cancelled or altered, that this agreement may be cancelled immediately by the Owners.

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of these premises and mutual covenants herein contained, the parties hereto covenant each with the other as follows:

THE PROPERTY:

1. The demised premises is composed of that portion of the Park outlined in heavy black on the plan attached hereto and forming part of this agreement as Schedule "A" (the Property).
2. The Society shall be allowed use and access of the Property indicated within the boundaries on Schedule "A". Use of the Arts and Recreation Centre parking lot for Society events held in the Park will be permitted provided reasonable parking allowance remains available for Arts and Recreation Centre patron parking. It is also agreed that the existing live-in tenant on the Property (herein after called "the Caretaker") shall be allowed access through the Property to his living residence and will be provided reasonable outdoor space adjacent to his residence for parking, gardening and the general enjoyment of his home.
3. The Society agrees to allow the Owners and their representatives to enter the Property to examine the condition thereof and to provide direction to the Society as the Owners consider appropriate.

GENERAL RESPONSIBILITIES:

4. The Society shall be responsible to manage, operate, maintain, and provide adequate security to the Property.
5. The Society agrees that it will maintain the Property and facilities thereon in good condition and repair to a standard acceptable to the Owners and shall keep the same in good operating condition at all times, and upon the expiration or sooner termination of this agreement, shall return the same to the Owners in good condition and repair. Reasonable wear and tear and loss or damage by fire or other casualties excepted.
6. The Society shall not violate any law or ordinance or any order, rule, regulation or requirement of any Federal, Provincial, District or Municipal Government or any appropriate Department, Commission, Board or Officer of any of them in the use and occupation of the premises, it being understood that such violation will give to the Owners the right to immediately terminate the agreement.
7. The Society agrees to pay sewer, garbage, power, heat, telephone, and all applicable fees, rates, charges and levies of any nature and kind whatsoever, properly payable with respect to its use and occupation of the Property and facilities thereon referred to herein save and except major capital asset costs for the Property as determined by the Owners in accordance with article 8 of this agreement. Direct costs relating to the mobile home occupied by the Caretaker shall be the responsibility of the Caretaker unless the Society agrees with the Caretaker to assume some portion of these costs.
8. The Owners shall be responsible for major capital asset management including replacement of buildings, major building components, mechanical and electrical systems, and drainage systems. Funding for major capital asset management will be

entirely at the discretion of the Owners and shall be subject to funding priorities and approval by the Owners through the annual NCRP budget process.

9. The Society shall be responsible to set fees, charges, and rental rates, establish hours of operation, and administer same as it relates to the Property.
10. The Society agrees to allow reasonable public freedom of access into the Property at no charge excepting those times when special events are held and gate admission fees are charged for entry to these events.
11. The Society shall not cause nor permit any act or thing to be done on the Property which is, or would constitute a nuisance to the owners or occupiers of any lands or premises adjoining the Property, or in the vicinity of the Property, or to the public in general and shall indemnify and save harmless the City and the Regional District from any liability therefor.

FINANCIAL:

12. The Society shall retain for its own purposes all revenues, donations and fund raising receipts charged or procured by the Society.
13. The Society shall charge appropriate Provincial or Federal tax as required to any individual or group where it applies. The Society shall apply generally accepted accounting practices to record and make payment of all such taxes collected to the applicable level of government as required by Legislation.
14. The Owners shall provide to the Society, through the North Cariboo Recreation and Parks budget subject to annual approval by the Cariboo Regional District, seventy thousand dollars (\$70,000) in annual operating funds. Amendments to the annual operating subsidy may be considered by the Regional District as part of the annual budget process if received in writing and supported by documentation, by July 31st of the previous year. The City on behalf of the Owners shall provide payment in the form of two equal installments with the first payment on or before April 30, and the final payment on or before July 31 of each year of this agreement (subject to receipt of 15, 16 & 17).
15. The City shall reimburse the Society for the cost of their liability and director insurance after submission of paid receipts and certified copies of all insurance policies.
16. The Society must submit an annual operating budget to the Owners no later than August 31 of each year of this agreement. The fiscal year for the Society shall be January 1 to December 31 of each year. Requests for capital improvements may be submitted for consideration by the Owners and may be funded in whole, or in part, by the Owners subject to budget approval by the Cariboo Regional District.
17. The Society shall provide a financial statement to the City by March 31 in each year of this agreement. Such statement of revenue and expenditures is to be in accordance with generally accepted accounting principles and signed by the treasurer of the Society. When requested by the City, the Society shall provide a copy of all accounts receivable and payable.

18. The Society shall set their own fees and provide a schedule of all fees and charges to the City by March 31 of each year of this agreement. The schedule must be consistent with any North Cariboo Recreation and Parks fees and charges bylaw requirements including but not limited to, requirements for residential and non-residential recreation passes by users of the Park.

EXISTING AGREEMENTS:

19. The Society acknowledges that this agreement shall in no way negate any other agreements in place on the date of execution between the Owners and any other party. Such agreements, whether written or verbal, shall continue in full force and effect. Such agreements shall include but not be limited to, the right-of-way granted to B.C. Rail for the placement of the microwave reflector, and the right-of-way granted to Inland Gas for a pipe line that runs through the Property, and any other similar agreements pertaining to all other underground and overhead services on the Property.
20. The Society shall ensure that where a Caretaker is permitted to set up residency on the Property a duly signed agreement shall be in place between the Society and the Caretaker regarding the conditions of employment and residency. The Society shall provide the Owners with a copy of such agreements.
21. The Society shall not assign, sublet or part with possession of the Property without consent of the Owners unless otherwise provided for in this agreement. Renting of the facilities of the Property to third parties for functions of a short-term nature is permissible.

RESIDENT CARETAKER

22. The Society shall be permitted to have a resident caretaker on site that would be responsible for Park Security. At the discretion of the Society the Caretaker may also be responsible for other duties such as maintenance and as a Park Host. Supervision of the Caretaker is the responsibility of the Society.
23. All costs associated with the resident Caretaker such as utility costs and snow clearance shall be the responsibility of the resident Caretaker or the Society if the Society should agree to take on this expense on behalf of the Caretaker.
24. Any improvement, construction or alteration to the Property by or for the Caretaker must first be approved in advance by the City.
25. In the event that this Licence of Occupation is canceled or not renewed, the resident Caretaker at the discretion of the Owners may be required to move off the Property. The Owners shall not be responsible for any expenses resulting from such termination and relocation providing the Caretaker has been given six months' notice.
26. The Owners reserve the right to order the owner of the residency to remove the residency from the Park with less than six months' notice and at no cost to the Owners, if in the opinion of the Owners, the owner of the residency is in violation of a Federal, Provincial or Municipal regulation or ordinance. A written order to comply by the City must first be issued to the owner of the residency outlining the violation, the remedy that is required for compliance and the time period for which the owner of the residency has to undertake the remedy.

27. The Owners accept no liability for any damage or loss for property under the ownership or care of the Caretaker that does not belong to the Owners nor do the Owners accept any responsibility for action that may be taken against the Caretaker and his associates while serving in the Park on behalf of the Society. The Caretaker shall be responsible to provide all of his own insurance requirements relating to public liability and property damage losses. The owner of the residence shall be responsible for insuring the residence for any damage or loss.

RISK MANAGEMENT / INSURANCE:

28. The Society agrees that it is the sole responsibility of the Society to determine the suitability of the property for its intended use and occupancy. The Owners strongly recommend that the Society adopt a comprehensive risk management and maintenance program.
29. Throughout the term of this agreement, the Society shall provide and keep in force for the benefit of the Owners, \$5,000,000.00 insurance in respect of any injury or death of any one person or property damage, and that insurance policy shall contain a requirement that the insurer notify the Owners in writing with 30 days advance notice of any intention to cancel the policy.
30. The Regional District shall supply fire insurance with respect to the structures that are owned by the Owners. The Society shall be responsible to obtain contents insurance for all the furnishing, equipment and supplies owned by the Society.
31. The Society is responsible to inform all user groups and their affiliate members that they are responsible for their own insurance including but not limited to coverage for livestock, equipment, supplies and where applicable, for the comprehensive public liability insurance to protect their own interests.
32. The Society shall indemnify and save harmless the Owners from and against any or all damage, expenses, losses or costs incurred by the Owners as a result of any claim, suit or action of any kind whatsoever arising out of or in relation to the activity, neglect or omission of the Society, its agents, servants, employees, invitees or groups renting the Property or due to or arising out of any breach by the Society of any provision of this agreement and the Society shall pay to the Owners any or all of such damages, expenses, losses or costs incurred by the Owners upon demand, and should the Society fail to pay as aforesaid, the Owners, in addition to any other right it may have, may terminate this agreement, without prejudice to its rights to seek the recovery of such damages, expenses, losses or costs.
33. It shall be the sole responsibility of the Society to determine what additional insurance coverage is necessary and advisable for its own protection and/or to fulfill its obligations under this agreement.
34. The Society shall provide a certified copy of all insurance policies requested by the City when they are renewed.

MAINTENANCE:

35. The Society shall not make, or permit to be made, any capital improvements, replacements, alterations, or additions to any structures on the property without first obtaining the written approval of the City. The Society shall not construct fencing, cut down any trees, or otherwise make significant alterations to the Property without first obtaining written approval of the City. Such permission shall not be unreasonably withheld.
36. Snow clearance on the Property including snow clearance to maintain access to fire hydrants shall be the responsibility of the Society.
37. The Society is responsible to ensure that the facilities are maintained in safe operating conditions for the general public and for all customers utilizing the park for activities. This includes but is not limited to, maintaining fire safety standards and facility and equipment standards.

LIVESTOCK:

38. The Society shall be permitted to keep, or have kept, livestock on the Property. Such approval is conditional upon the Society providing adequate fencing and security for the livestock, keeping all holding pens, barns and associated facilities clean at all times and ensuring that the livestock are properly treated, fed, watered, sheltered and maintained.

EMERGENCY ANIMAL SHELTER:

39. In the event that the City and/or CRD issues an Evacuation Order or an Evacuation Alert due to wildfire or other emergency, or that the City becomes a host community for evacuees from other jurisdictions, it is understood that portions of the Park may be used for an animal shelter and as a base of operations for the Pet Safe Coalition or other volunteer organization(s) that provide services to care for animals in the event of an emergency.
40. The Society agrees to work with the Owners to accommodate the needs of the Pet Safe Coalition or other volunteer organization(s) that are providing services on behalf of the City or CRD to evacuees and their animals. It is understood that the size and duration of emergency events vary significantly and that each emergency response will vary depending upon the circumstances. The City and CRD agree to work with the Society to minimize the impact the animal shelter will have on the regular operations of the Society and events scheduled in the Park.

REPORTING:

41. The Society shall provide a complete list of member groups and Society Board members with email addresses, mailing addresses and contact phone numbers by April 30 of each year of this agreement.
42. Failure to provide financial reports, insurance requirements, and other information required by this agreement, may result in the withholding of payment to the Society until such information is provided.
43. The Society shall present a written annual report outlining their business plan, operations and finances to the City by August 31, annually

TERM OF THE AGREEMENT:

44. The term of this agreement shall be from January 1, 2019 – December 31, 2023.
45. In the event that the Society voluntarily winds up its affairs or disbands, becomes bankrupt, or fails to meet the requirements of a society as provided for by the Societies Act then this agreement shall immediately become null and void.
46. The Owners or the Society may terminate this Licence of Occupation by providing twelve (12) months' written notice to the other party without penalty or sooner if other provisions of this agreement relating to termination apply.
47. Upon termination of this agreement, all buildings and fixtures affixed to or erected on the Property shall become the sole property of the Owners. In the event that this agreement is terminated prior to year end, funding provided to the Society in accordance with this agreement shall be prorated accordingly. Advance funding provided to the Society may be required to be reimbursed if the agreement is terminated mid-year.
48. This agreement will remain in effect after its expiration date on a month to month basis under the same terms and conditions to facilitate ongoing negotiations for successful renewal except where notice of termination is given under article 44.

ARBITRATION:

49. In the case of a dispute between the Owners and the Society during the term of this agreement, either party shall be entitled to give to the other party notice of such dispute and demand arbitration. After giving such notice and demand, the two parties shall meet to determine an arbitrator acceptable to both parties. The decision of the arbitrator so appointed shall be final and binding upon the parties hereto who covenant one with the other that their disputes shall be do decided by arbitration alone and not by recourse to any court action at law. The cost of such arbitration shall be appointed between the parties hereto as the arbitrator may decide.

NO PARTNERSHIP OR JOINT VENTURE:

50. Nothing contained in this Agreement shall be deemed or construed by the parties, nor by any third party, as creating the relationship of principal and agent or partnership or of joint venture between the parties or as giving the Society any power or authority to bind the Owners in any way.

NOTICE:

51. Any notice required or contemplated by any provision of this agreement shall be deemed sufficiently given if made in writing and enclosed in a sealed envelope and either given by one party or his solicitor or agent directly to the other or
 - (a) in the case of notice to the Society, addressed to 200 North Star Road, Quesnel, B.C., V2J 5P6;

- (b) in the case of notice to the Owners, addressed to 410 Kinchant Street, Quesnel, B.C., V2J 7J5.

MISCELLANEOUS:

52. The headings appearing in this Agreement have been inserted for reference and as a matter of convenience and in no way define, limit or enlarge the scope of any provision of the Agreement.
53. In this Agreement, wherever the singular or masculine is used, it shall be construed as if the plural or feminine or body corporate as the case may be, had been used where the context of the parties hereto so require.
54. This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, successors and assigns

IN WITNESS WHEREOF the parties hereto have hereunto set their respective hands as of the day and year first above written.

CARIBOO REGIONAL DISTRICT

Name _____

Title _____

Date: _____

Name _____

Title _____

Date: _____

CITY OF QUESNEL

Name _____

Title _____

Date: _____

Name _____

Title _____

Date: _____

ALEX FRASER PARK SOCIETY

Name _____

Title _____

Date: _____

Name _____

Title _____

Date: _____

ALEX FRASER PARK SOCIETY BOUNDARY



- ✕ - Fence & Society Boundary
- Gasline
- Water Main
- Sanitary Main

Scale: 1:2,400
 Kilometers
 0.025 0 0.025
 UTM Nad 83 Zone 10N



City of Quesnel
 Development Services Department
 08/26/2013