

Staff Report

Original signed by: City Manager Johnson

Report Date: November 3, 2020
Meeting Date: November 10, 2020 – Joint Advisory Committee
To: City Manager
From: Director of Community Services
Subject: Quesnel Youth Soccer Association Management Agreement

PURPOSE

The purpose of this report is to obtain a recommendation from the North Cariboo Joint Advisory Committee to the CRD Board of Directors and Quesnel City Council that the City and Regional District enter into a five-year license of occupation and management agreement with the Quesnel Youth Soccer Association for the management of the Soccer Complex.

SUMMARY

- The Quesnel Youth Soccer Association has managed the Soccer Complex since 2003 (outdoor fields) and 2006 (Indoor Sport Field Facility) initially under agreements with the City of Quesnel.
- A new tri-party agreement was entered into between the City, CRD and the Quesnel Youth Soccer Association effective January 1, 2016 when the management and operation of the Soccer Complex became part of the North Cariboo Recreation and Parks Service.
- That agreement will expire December 31, 2020 and so a new five year agreement has been drafted for consideration by the North Cariboo Joint Advisory Committee to become effective January 1, 2021.
- The proposed agreement is substantively similar to the previous agreement with the only notable changes being the removal of references to the potential construction of a gymnastics facility on the property and to the implementation of the Recreation Pass program during the life of the agreement since it was implemented in 2017.
- Under the terms of the agreement, QYSA is paid an annual fee for service to manage and maintain the property and they collect and retain all revenues for facility use and rentals.
- The agreement includes standard clauses related to risk management, liability, insurance, and indemnity, consistent with other City/CRD agreements.
- The agreement requires QYSA to ensure the property is available for community use.

FINANCIAL IMPLICATIONS

- The five year agreement includes a fee for service of \$76,670 in the first year of the agreement.
- Under the terms of the agreement, the annual fee for service is adjusted for inflation in subsequent years based on the annual increase in the BC Consumer Price Index.



- The agreement stipulates that the North Cariboo Recreation and Parks (NCRP) Service is responsible for major capital improvements to the facility subject to a review of funding priorities and inclusion in the NCRP capital budget at the sole discretion of the City and CRD as part of the annual budget process.

ATTACHMENTS

- Quesnel Youth Soccer Association License of Occupation and Management Agreement 2021 - 2025

RECOMMENDATION

THAT the North Cariboo Joint Advisory Committee recommend to the CRD Board of Directors and Quesnel City Council that the City and CRD enter into the attached five-year license of occupation with the Quesnel Youth Soccer Association for the management of the Soccer Complex at a cost to the North Cariboo Recreation and Parks Service of \$76,670 in 2021 with inflationary increases in each additional year of the agreement.;

AND FURTHER THAT the North Cariboo Joint Advisory Committee recommend to the CRD Board of Directors and Quesnel City Council that the appropriate signatories of the CRD and City be authorized to execute such documentation as required to complete the Agreement.

LICENCE OF OCCUPATION AND MANAGEMENT AGREEMENT

THIS AGREEMENT made the _____ day of _____ 2020.

BETWEEN:

THE CARIBOO REGIONAL DISTRICT, a regional government pursuant to the laws of the Province of British Columbia and having a business address of 180 North 3rd Avenue – Suite D, Williams Lake, British Columbia, V2G 2A4

(hereinafter called “The CRD”)

AND:

CORPORATION OF THE CITY OF QUESNEL, a municipality incorporated pursuant to the laws of the Province of British Columbia and having a business at 410 Kinchant Street, Quesnel, British Columbia, V2J 7J5,

(hereinafter called “the City”)

OF THE FIRST PART

AND:

QUESNEL YOUTH SOCCER ASSOCIATION, a provincially registered society in good standing with a current mailing address at 980 Anderson Drive, Quesnel, BC V2J 6N8,

(hereinafter called “QYSA”)

OF THE SECOND PART

WHEREAS the City is the owner of the lands designated as parkland legally described as:

Parcel Identifier: 012-323-438
Lot 2, District Lot 704, Cariboo District, Plan 13989
Except Plans 19503 and 25004

That has been developed into an indoor and outdoor sport field complex which includes various outdoor playing fields and a club house, concession, and indoor arena that features two 80’ x 180’ indoor playing fields.

(hereinafter called the “Property”)

AND WHEREAS the Property is included as part of the North Cariboo Recreation and Parks Service (“NCRP”) which is a sub-regional service of the CRD in

partnership with the City, and administered under the terms of a management agreement between the City and CRD.

AND WHEREAS the City and the CRD are desirous of contracting out the management and maintenance of the Property to the Quesnel Youth Soccer Association (“QYSA”)

AND WHEREAS QYSA has agreed to accept responsibility to manage and operate the Property as herein outlined.

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

GRANT OF LICENCE

1. The City and CRD grants to QYSA a non exclusive Licence of Occupation and Management Agreement for the Property for a term of five (5) years commencing on the 1st day of January 2021 and ending on the 31st day of December, 2025 (the “Term”).
2. Provided QYSA is not in default of this Agreement, QYSA shall have the right to renew this Agreement for a further five year term, upon giving six (6) months written notice prior to the expiry of the Term. A renewal will be granted with the same terms and conditions unless mutually agreed to otherwise by the parties and except for (a) a review of the rent for possible modifications, (b) there being no further requirement to include a renewal clause in the Licence of Occupation and Management Agreement and (c) to adjust insurance requirements to reflect changing needs and rising costs to provide adequate coverage.
3. The Licence fee for the Term shall be \$1.00 per year payable in full for the Term upon execution of this Licence of Occupation.
4. Any party to this agreement may terminate this Licence of Occupation and Management Agreement by providing six (6) months written notice to the other parties.

COVENANTS OF QYSA

5. QYSA covenants with the City and CRD:
 - a. to pay the amounts set out in Section 3;
 - b. to pay all rates, licence fees and other charges imposed on or with respect to the Property as same become due;
 - c. to use and maintain the Property and auxillary only for the purposes intended of using and maintaining soccer fields, the Indoor Sports Centre and any other auxiliary facilities on the Property;

- d. to maintain the appearance of the Property and any equipment, works and chattels thereon in a neat, clean and well-kept manner appropriate to the condition of land in the area, to the satisfaction of the City and CRD;
 - e. to ensure that no refuse, litter, garbage or loose or objectionable material accumulates in or about the Property;
 - f. to comply with all federal, provincial and municipal laws, rules, regulations and bylaws and to hold the City and CRD harmless from the consequences of its failure to do so.
6. QYSA may, to the extent it paid for same, remove its removable equipment and chattels from the Property. Any equipment and chattels purchased in whole or part by the City and/or the CRD shall not be removed unless agreed to by the City and/or the CRD. All damage to the Property occasioned by such removal shall forthwith be repaired by QYSA at its own expense.
 7. QYSA confirms that it has been advised by the City that pursuant to the *Local Government Act*, Council for the City may pass a bylaw to exempt the Property from municipal property taxes. QYSA also has been informed, however, that when the works and improvements are installed on the Property by QYSA, it is possible that the Property might be subject to assessment under the *Assessment Act* and this might lead to taxes and charges being payable over and above municipal property taxes and QYSA covenants and agrees to pay all such taxes and charges as they become due and payable.
 8. The parties agree that their mutual intention is that the Property, including the structures to be built thereon shall retain their status as being City owned property that is exempt from local property taxation. The intention is that this agreement shall not make the lands held or occupied, other than by or on behalf of the City and CRD. In the event that contrary to the intention of the parties this agreement is interpreted to make the QYSA liable to taxation as an occupier of exempt property, the parties shall then each act reasonably to review and amend the agreement to clarify and confirm the intent that this is in substance a management or operating agreement on behalf of the City and CRD.

PROPERTY DEVELOPMENT

9. The City must approve in advance all plans, work, improvements, and changes to the Property that are proposed by QYSA. Approval and supervision of work shall be coordinated through the City Director of Community Services. All work completed by QYSA must meet City standards including all applicable bylaws.

PROPERTY MAINTENANCE

10. QYSA will maintain the Property and facilities thereon in good and clean condition and repair to City and CRD standards. City and CRD standards for fields shall be as per attached Schedule A. Failure by QYSA to meet these standards or to comply with all City bylaws applicable to the Property will be sufficient cause for the City to make improvements and or repairs to the Property as the City in its sole discretion determines is necessary for the Property and

Project to meet City standards and bylaws. Costs for such work shall be deducted from the annual fee paid to QYSA by the City and CRD.

11. QYSA agrees to pay power, heat, water, sewer charges, garbage collection, telephone, and all applicable fees, rates, charges and levies of any nature and kind whatsoever applicable to the Property.
12. Snow clearance of the Property parking lot and entrance way to the Indoor Sports Centre must be provided at the expense of QYSA to allow for appropriate emergency response vehicle access and for public use of the Indoor Sports Centre.

REPORTING

13. QYSA shall provide a financial statement to the City and CRD by November 30 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 Association.
14. QYSA shall provide the City and CRD by November 30 of each year of this agreement, with an annual statistical report of public and private admissions, programs, and rentals for the Property.

SECURITY

15. QYSA shall be responsible for Property security. All damage to the Property shall be at the expense of QYSA.

RISK MANAGEMENT / INSURANCE

16. QYSA shall be responsible to determine the suitability of the Property and the facilities thereon for its intended use. This does not preclude the City and CRD from undertaking Property inspections and requiring QYSA to make good on any deficiencies identified.
17. QYSA covenants and agrees to establish and maintain a comprehensive risk management and maintenance program to ensure public safety to mitigate injury or damage occurring on the Property.
18. Throughout the term of this Licence of Occupation, QYSA shall provide and keep in force, a minimum of \$5,000,000 comprehensive general liability insurance, including Tenants Legal Liability with respect to its use of the Property during the term or any extension thereof, naming the City and CRD as an additional insured, and to provide a certificate evidencing the same, prior to the execution of this Licence of Occupation and Certificates of Insurance thereafter confirming renewal of the insurance requirement. Without limiting the generality of the foregoing, such public liability insurance shall contain provisions for cross-liability, severability of interests and that the insurer will give the City and CRD thirty (30) days prior written notice in the event of cancellation or material change.

19. The City shall obtain and maintain in force throughout the term, property damage insurance covering the loss or damage to or destruction of property belonging to the City. Assets which are not registered with the City as their belongings shall not be included. QYSA will be responsible to insure their assets.
20. QYSA shall determine what additional insurance coverage is necessary and advisable for its own protection and/or to fulfill its obligations under this Licence of Occupation to the BC Soccer Association and to any other person, business or organization that QYSA may have an association with or responsibility to.
21. QYSA shall provide a certified copy of all insurance policies to the Director of Community Services upon or before the renewal date for any existing policies that are in place.

REGULATIONS / ENVIRONMENTAL

22. QYSA shall not violate any law or ordinance or any order, rule, regulation or requirement of any federal, provincial, district or municipal government or any applicable Department, Commission or Officer of any of them in the use and occupation of the Property it being understood that such violation will give to the City and the CRD the right to immediately terminate this Licence of Occupation without penalty to the City or CRD.
23. QYSA shall take all necessary measures to keep the Property free and clear of all environmental contaminants or residue resulting from or occurring during QYSA's use of the Property and covenants and agrees to comply with all applicable environmental laws whether they be municipal, provincial or federal.

USE AND ACCESS

24. The Property shall remain available for public access throughout the year. Use of the soccer fields may be restricted by QYSA to (a) allow for turf repair and regeneration, (b) to book the fields for organized play and (c) to prevent overuse and excessive damage to the fields. General passive and unorganized play is to be allowed in the park providing the aforementioned conditions are satisfied. The Indoor Sports Centre shall be made available to the public for rental in compliance with clause #28 of this Licence of Occupation. This clause is not intended to prevent QYSA from taking reasonable steps to protect the Property from vandalism and damage in general.
25. QYSA agrees to allow the City and CRD and their representatives to enter any part of the Property including the Indoor Sports Centre to examine the condition thereof and to make such recommendations to QYSA that may be required in order to comply with all federal, provincial, district and municipal government regulations. Where measures corrective or otherwise are required by the City and CRD, QYSA must comply with all such requests made by the City and CRD and must do so within the time frames established within this Licence of Occupation.

SUBLETTING USE OF PARK

26. QYSA shall not assign, sublet or part with possession of the Property without prior written consent of the City and CRD. Consent may be arbitrarily withheld.
27. A concessionaire may be contracted by QYSA to offer food, beverages and other services providing that all regulations established by the City and other regulatory agencies are upheld.

FEES AND CHARGES

28. QYSA may establish fees, charges and rental rates for the use of the soccer fields and for any use of the Indoor Sports Centre. All fees and charges shall be reasonable and fairly applied. Community use of the Property is to be encouraged. QYSA is responsible to ensure that rental organizations have adequate insurance coverage for the activities they conduct on the Property and that appropriate risk management measures are put into place by those organizations.
29. QYSA shall administer the Recreation Pass program as established in the CRD North Cariboo Recreation and Parks Fees and Charges Bylaw, ensuring that participants hold a Recreation Pass for programs where required and/or pay a differential fee where applicable if participants or renters live outside the North Cariboo Recreation and Parks taxation boundaries.
30. QYSA shall retain for its' own purposes all revenues, donations and fund raising receipts charged or procured through their operation.
31. QYSA shall charge general sales tax and any other provincial or federal tax as required to any individual or group where it applies and shall make payment of all such taxes collected to the applicable level of government as required by legislation.

QYSA TO REMAIN IN GOOD STANDING AS A SOCIETY

32. QYSA must remain an incorporated society in good standing with the Province of British Columbia. Should the QYSA cease to exist as a society and/or should QYSA no longer be able or be willing to carry out its duty of maintaining the Property and/or of providing a community soccer program for whatever reason, then this Licence of Occupation shall be terminated immediately and all fixed assets developed on the Property shall revert to the City. The City and the CRD, without obligation to QYSA, shall have full power and authority to determine how and for what purposes the Property and facilities developed thereon will be used for. This does not preclude the City and CRD from contracting another organization to carry out this function.

ARBITRATION

33. In the case of any dispute between the parties during the term of the agreement, each party shall be entitled to give to the other party notice of such dispute and demand arbitration and after giving notice and demand, the parties shall meet to determine an arbitrator acceptable to the 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 so decided by arbitration alone and not by recourse to any court by action at law. The cost of such arbitration shall be apportioned between the parties hereto as the arbitrators may decide.

FINANCIAL PARTNERSHIP

Capital Costs

34. The City and CRD through NCRP shall be responsible for major capital maintenance and replacement of major building components such as those related to the building structure, mechanical and heating systems, and electrical systems, including, but not limited to, replacement of boilers, HVAC systems, and the artificial turf

35. Funding for major capital maintenance and replacement will be entirely at the discretion of the City and CRD through the NCRP Service and shall be subject to funding priorities and approval by the City and CRD through the annual NCRP budget process.

Operational Costs

36. QYSA shall pay for all operational and maintenance costs to the Property including but not limited to utility, field maintenance, parking lot maintenance, trails, all plant material, signage, the Indoor Sports Centre and for facilities and fixtures that may be added to the Property.

37. The City and CRD shall provide, through the NCRP Service, shall provide a fee for service to QYSA for the maintenance and management of the Property. This fee for service shall be provided in two equal installments to be paid out by April 30th and July 15th of each year. Should QYSA fail to provide the required level of maintenance, the City and CRD may withhold a part or all of that payment to be determined in relation to the level of maintenance deficiency that has occurred.

38. The fee for service noted in clause #36 and #37 to be paid to QYSA shall be \$76,670 for the fiscal year 2021 (January 1 – December 31). The fee for service will be adjusted annually starting in 2022 based on the increase in the Consumer Price Index (CPI) for British Columbia when compared from September to September of the previous year. Should the CPI decrease, the fee for service shall remain the same as the previous year.

INDEMNITY

39. QYSA shall at all times indemnify and save harmless the City and CRD, its elected officials, officers, employees, agents, and invitees from and against any

and all claims, demands, losses, costs, charges, expenses, actions, and other proceedings (including those in connection with workers' compensation or any similar or successor arrangement) made, brought against, suffered by or imposed on the City or its property, or the CRD, in respect of any failure by QYSA to fulfill any of its obligations under this agreement or for any reason whatsoever or in respect of any loss, damage or injury (including injury resulting in death): to any person or property (including, without restricting the generality of the foregoing, employees, contractors, agents and property of the City and CRD) directly or indirectly arising out of, resulting from or sustained by reason of the occupation or use of the Property, or any operation in connection therewith or any equipment, works, fixtures or chattels thereon, including the Works, to any person while on the Property or adjoining lands of the City in the course of that person's entry on to or exit from the Property.

40. The City and/or CRD shall not be liable, directly or indirectly, for any personal injuries that may be suffered or sustained by any person who may be on the Property or for any loss of or damage or injury to property belonging to QYSA or any other person unless such injury, loss or damage is due to the City and/or CRD's negligence or default or the negligence or default of those for whom the City and/or CRD is in law responsible.

DEFAULT

41. If QYSA defaults in performing any of its obligations under this agreement, the City and CRD shall give written notice to QYSA of such default giving QYSA sixty (60) days to remedy such default. Defaults that compromise public safety must be remedied immediately. Defaults that may result in penalties, charges, fines or other adversities as could be imposed by other governing authorities must be remedied within the timeframe set by the City/CRD in order to avoid any such penalties that could be applied. Failure by QYSA to comply shall result in the discretion of the City/CRD, in immediate termination of the Licence hereunder. The Works installed by QYSA on the Property shall not be removed by QYSA on termination and all right, title and interest in and to them shall be vested absolutely in the City.

NOTICE

42. Any notice required to be given to the City and CRD under the terms of this agreement shall be sufficiently given if delivered to the City and CRD or mailed by prepaid registered mail addressed to it at the address set out on Page 1 of this agreement. Any notice required to be given to QYSA under the terms of this agreement shall be sufficiently given if delivered to QYSA or mailed by prepaid registered mail addressed to QYSA at the address set out on Page 1 of this agreement or at such other address as QYSA may in writing designate. In either case, such notice shall be deemed to have been received on the date of its delivery or in the case of mailing, five business days after it is delivered to the post office.

ENUREMENT

43. This agreement shall enure to the benefit of, and be binding upon the parties and their respective successors and (where permitted) assigns.

44. Wherever the singular or the masculine are used in the agreement, the same shall be deemed to include the plural or the feminine or the body politic or corporate; and further, shall include the heirs, executors, administrators, successors and assigns of the respective parties hereto.

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

CORPORATION OF THE CITY OF QUESNEL

by its authorized signatories:

MAYOR

DATE

CITY MANAGER

DATE

CARIBOO REGIONAL DISTRICT

by its authorized signatories:

CHAIR

DATE

CHIEF ADMINISTRATIVE OFFICER

DATE

QUESNEL YOUTH SOCCER ASSOCIATION

by its authorized signatories:

DATE

DATE