

**SOUTH CARIBOO RECREATION  
MANAGEMENT AGREEMENT**

**BETWEEN:**

**CARIBOO REGIONAL DISTRICT**

**AND:**

**100 MILE DEVELOPMENT CORPORATION**

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THIS MANAGEMENT AGREEMENT made as of the 1st day of April, 2024.

BETWEEN:

**CARIBOO REGIONAL DISTRICT**

(the “Region”)

AND:

**100 MILE DEVELOPMENT CORPORATION**

(the “Manager”)

WHEREAS:

- A. The Region has adopted South Cariboo Recreation Services Amendment Bylaw 4837 (2013) to provide for recreation facilities and the delivery of specified recreation and leisure programming services in the south Cariboo.
- B. The Region may under terms of its Letters Patent pursuant to Section 176 of the Local Government Act make agreements for the management, maintenance, and operation of recreation properties owned by the Region and for the delivery of related activity programming.
- C. The Manager is engaged in the business of managing facilities for the purpose of delivering recreation and leisure services including ice rinks, sports fields, multi-purpose trails and other similar assets, as well as related activity programming.
- D. The Region wishes to engage the services of the Manager to manage the Land and Facilities and provide recreation and leisure activity programming to a high quality of customer service in a manner responsive to community needs on behalf of the Region.
- E. The Region is the owner of the Lands and Facilities as shown collectively in Schedule B: Lands and hereinafter called the “Lands and Facilities”;
- F. The Region and the Manager wish to establish the terms and conditions under which the Manager will manage the Lands and Facilities in the south 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 Recreation Management Agreement:

- (a) **“Building”** means, collectively, the buildings comprising the ice rink, curling rink, ball fields, outdoor washrooms and any other structure existing or to be constructed on the Lands as shown in Schedule B;
- (b) **“Business Day”** means a day other than a Saturday, Sunday or statutory holiday in British Columbia;
- (c) **“Capital Costs”** means any new equipment, fixtures or improvements to the Facilities that are capital items as defined by the Region’s Tangible Capital Assets Policy and that exceed \$5000 per individual item;
- (d) **“Commencement Date”** means April 1, 2024;
- (e) **“Committee”** means the South Cariboo Joint Committee composed of the Directors for Electoral Areas G, H and L and the Mayor and Council of the District of 100 Mile House;
- (f) **“Compensation”** means the subsidy payable by the Region to the Manager in each year of the Term as defined in Schedule A for Facility operations and leisure activity programming.
- (g) **“Compliance Costs”** means any capital costs required to bring the Facilities into compliance with changes in applicable laws and standards;
- (h) **“Complex Assets”** means the assets that make up the Facilities and the fixtures, furnishing and equipment provided by the Region;
- (i) **“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 Manager, or any one employed or retained by the Manager), 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;
- (j) **“Environmental Laws”** means all laws from time to time relating to protection of the environment and health and safety of the workplace, including all common law and the *Canadian Environmental Protection Act* (Canada), the *Transportation of Dangerous Goods Act* (Canada), the *Fisheries Act* (Canada), the *Workers Compensation Act* (British Columbia), the *Waste Management Act* (British Columbia) and all rules, regulations, policies and criteria promulgated thereunder from time to time;

- (k) **“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;
- (l) **“Facilities”** means the Building, including the Complex Assets, furnishings, supplies and equipment therein, landscaping, parking and servicing constructed and installed on the Lands;
- (m) **“GAAP”** means generally accepted accounting principles in Canada from time to time;
- (n) **“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;
- (o) **“Lands”** means those certain lands described in Schedule B;
- (p) **“Major Maintenance Costs”** means costs for repair or replacement of the Facilities where the costs exceed \$5,000 per individual replacement or repair cost item and the replacement or repair requirement is not a result of poor maintenance on the part of the Manager;
- (q) **“Manage”** means to manage, operate, market, maintain and keep safe and secure and includes without limitation responsibility for the day-to-day management, marketing and operation of the Facilities and all other activities required to manage, operate, market, maintain and keep safe and secure the Facilities in accordance with Prudent Management Practice;
- (r) **“Management Fee”** means the fixed fee paid by the Region to the Manager in each year of the Term as set out in Schedule A
- (s) **“Meeting Room”** means the meeting room situated in the Facilities as shown in Schedule B;
- (t) **“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 Management Agreement;
- (u) **“Off-Season”** means the period between April 1 to July 31 in each year of the Term;
- (v) **“Operating Costs”** means the total, without duplication, of all costs incurred for the continued management, marketing, operation, maintenance, repair, replacement and preservation 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; excluding works at the ball fields which are under a separate agreement;
- (3) wages and compensation paid for employees or agents of the Manager 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 management, marketing, operation, maintenance, repair, replacement or preservation of the Facilities;
- (4) service contracts with independent contractors in respect of the management, marketing, operation, maintenance, repair, replacement or preservation 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 Manager from time to time pursuant to this Management Agreement including payment of premiums and deductibles as necessary;
- (7) supplying communication services, electricity, water, sewer, natural gas and any other fuel and utility services to the Facilities including utilities for the curling rink, the specific cost of which for the months from October to March is reimbursed separately by the Region;
- (8) legal and accounting costs incurred by the Manager 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 Management of the Facilities including, without limitation, Social Service tax, Goods and Services Tax on the Costs and other taxes and assessments, both general and special, ordinary and extraordinary and foreseen or unforeseen levied, imposed, rated, charged or assessed by Statutory Authorities;
- (10) costs of promoting and advertising the Facilities including its programs and services;
- (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 Manager in order to Manage the Facilities;

- (12) but excluding (a) any costs incurred by the Manager in relation to the development, interpretation or enforcement of 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 manager and operator.
- (w) **“Operating Deficit Subsidy Target”** means the estimated operational deficit for the Facilities, being expected Operating Costs minus Revenues, to be reimbursed by the Region to the Manager in each year of the Term as set out in Schedule A.
- (x) **“Permit”** means any authorization, licence, approval or consent issued pursuant to any Environmental Laws;
- (y) **“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 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;
- (z) **“Public Programs”** means skating sessions or other activities normally associated with an ice rink facility and an off-season recreational facility which are open to the public and for groups, organizations and programs approved by the Region as set out in Schedule C including, without limitation and by way of illustration, skating instruction and recreational hockey instruction programs, figure skating, minor hockey leagues and adult hockey programs and leagues, community events and a broad range of leisure activity programs, trade shows, exhibitions, concerts, conferences, as well as other suitable off-season activities;
- (aa) **“Public Purposes”** means the management, operation, maintenance and promotion of a publicly-constructed ice skating and recreational facility on Region land being managed by persons other than the Region so as to provide ice programs, leisure activities and community events for the Region and its residents in a manner which reduces the risk of operational deficits to the Region;
- (bb) **“Public Uses”** means an ice skating and multipurpose recreational centre and property open to and accessible by the public throughout the Season, and during the Off-Season on the terms set out in this Agreement, and the use thereof upon payment of applicable administration and registration fees for recreational purposes;

- (cc) **“Region’s Costs”** means Capital Costs, Compliance Costs and Major Maintenance Costs;
- (dd) **“Replacement and Repair Costs”** means costs of repair and replacement of the recreation centre assets where the cost does not exceed \$5,000 per individual replacement or repair cost item;
- (ee) **“Revenue”** means revenue from sources shown in Schedule E as Manager Revenue but excluding revenue from sources shown in Schedule E as Region Revenue;
- (ff) **“Season”** means the period between August 1 and March 31 in each year of the Term;
- (gg) **“Sign”** means any device, notice or medium, including its structure and other components erected or installed on the Lands or in or on the Facilities which is used or capable of being used to attract attention for advertising, information or identification purposes;
- (hh) **“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;
- (ii) **“Term”** means the term commencing on the Commencement Date and expiring on March 31, 2029; and
- (jj) **“User Fees”** means fees set from time to time in accordance with the procedure detailed herein for public use of the Facilities.

## **1.2 Headings and Table of Contents**

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

## **1.3 Section References**

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

## **1.4 Statutory References**

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

## **1.5 Number and Gender**

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

## **1.6 Time of Day**

Unless otherwise specified, references to time of day or date mean the local time or date in the District of 100 Mile House, British Columbia.

## **1.7 Business Day**

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

## **1.8 Use of the Word “Including”**

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

## **1.9 Currency**

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

## **1.10 Accounting Terms**

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

## **1.11 Governing Law**

This Management Agreement and each of the documents contemplated by or delivered under or in connection with this Management 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 Management Agreement.

## **1.12 Severability**

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

- (a) the legality, validity or enforceability of the remaining provisions of this Management Agreement, or

- (b) the legality, validity or enforceability of that provision in any other jurisdiction;

except that if:

- (c) on the reasonable construction of this Management Agreement as a whole, the applicability of the other provisions presumes the validity and enforceability of the particular provision, the other provisions will be deemed also to be invalid or unenforceable, and
- (d) as a result of the determination by a court of competent jurisdiction that any part of this Management Agreement is unenforceable or invalid and, as a result of this Section 1.12, the basic intentions of the parties in this Management Agreement are entirely frustrated, the parties will use all reasonable efforts to amend, supplement or otherwise vary this Management Agreement to confirm their mutual intention in entering into this Management Agreement.

### **1.13 Time of Essence**

Time is of the essence of this Management Agreement.

### **1.14 Schedules**

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

<u>Schedule</u>	<u>Description</u>
A	Compensation
B	Lands
C	Ice Programs, Community Events and Leisure Activities
D	Agreements
E	Revenues
F	Region Policies

## **2. APPOINTMENT OF MANAGER**

### **2.1 Appointment of the Manager**

Subject to the terms and conditions of this Management Agreement, the Region hereby appoints, approves, and authorizes the 100 Mile Development Corporation to Manage the Facilities for the Term in accordance with the terms and conditions of this Management Agreement.

### **2.2 Acceptance by the Manager**

The 100 Mile Development Corporation hereby accepts the appointment to Manage the Facilities for the Term in accordance with the terms and conditions of this Management Agreement.

### **2.3 No Interest in Lands or Facilities**

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

### **2.4 Application of Revenue**

The Manager will, by December 31 of each year of the Term, account for and apply all Revenue generated or received in the preceding year as follows:

- (a) Firstly, to payment of Operating Costs and Capital Costs; and
- (b) Secondly, to payment of any surplus to the Region.

Without limiting the generality of the foregoing the Manager 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 Manager in the fulfillment of its duties, obligations and covenants under this Agreement or any other agreement between the Manager and the Region in respect of the Facilities even if Operating Costs exceed Revenue.

## **3. DUTIES, OBLIGATIONS AND COVENANTS OF THE MANAGER**

### **3.1 General**

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

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

### **3.2 Duty and Obligation to Operate**

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

- (a) Manage the Facilities on a year-round basis to accommodate the Public Purposes and Public Uses and establish suitable recreation programming, community

events and leisure activities for the benefit of the Region and its residents. The Manager acknowledges and agrees that the continued operation of the Facilities in accordance with the Public Purposes and Public Uses is of the utmost importance to the Region;

- (b) Manage the Facilities to a standard of performance equal to or greater than facilities of a comparable nature and purpose;
- (c) Manage the Facilities to ensure that the Facilities are made available for use by, and not utilized in direct competition with, annual public events, tournaments or other special events;
- (d) Manage the Facilities in accordance with any agreements in existence, as set out in Schedule E, between the Region and user groups in the community with respect to the use of the Facilities;
- (e) Manage the Facilities to make them available to user groups in accordance with the ice programs, community events and leisure activities set out in Schedule C. The Manager may alter the use and activity schedule either (i) with the consent of all affected user groups, or (ii) with the prior approval of the Region.
- (f) Manage the Facilities substantially in accordance with the provisions of this Management Agreement and other relevant agreements entered into between the Manager and the Region in respect of the Facilities, the decisions and determinations and orders of any arbitrator pursuant to this Management Agreement, the directions of the Region that are not inconsistent with the foregoing and Prudent Management Practice and otherwise to the standard of Prudent Management Practice. The Manager will exercise that standard of care and diligence that is consistent with Prudent Management Practice and that it exercises with respect to other facilities which it owns, operates and manages;
- (g) diligently encourage, promote and carry on in the Facilities the type of activities contemplated by the Public Purposes and Public Uses throughout the Season and the Off-Season;
- (h) issue annual Recreation Access Cards to residents within the recreation service area, and to users outside the service area, in accordance with the Region's policies;
- (i) perform its obligations itself or through such reputable and competent agents or independent contractors as it may engage from time to time;
- (j) 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 F 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;

- (k) develop a program of evaluation through customer surveys to ensure compliance with customer service expectations;
- (l) Manage the Facilities in a lawful and orderly manner in full compliance with all applicable federal, provincial, municipal and other laws, bylaws (including bylaws of the Cariboo Regional District and District of 100 Mile House), regulations and statutes;
- (m) Manage the Facilities in an orderly and lawful manner and so that no act or thing whatsoever may be done, permitted or omitted to be done upon the Facilities which may be or may become a nuisance, damage, or unlawful disturbance to the Region, or to the owners or occupiers of any neighbouring properties;
- (n) provide at the Manager's sole cost and expense, sufficient, experienced and qualified management, supervision and security for the year-round operation of the Facilities using its best skill and attention at all times. At the Region's reasonable request, the Manager will, subject to compliance with applicable collective agreements, if any, and the orders of applicable Statutory Authorities, remove from the Facilities any employee, agent or independent contractor of the Manager who becomes unsatisfactory to the Region. In order to ensure that conditions of labour harmony and patron safety prevail, the Manager will:
  - (1) subject to compliance with applicable collective agreements and the orders of applicable Statutory Authorities, remove any or all of its staff at the Facilities when requested by the Region, acting reasonably, to do so; and
  - (2) in the event of any strike, walkout or other labour dispute directly or indirectly involving the Manager that, in the opinion of the Region, may adversely affect the Region or any of its activities the Region may and the Manager will after being notified by the Region, seek such orders or relief as may be required to prevent the continuance of the strike, walkout or other labour dispute from adversely affecting the Region or any of its activities. Any reasonable costs incurred by the Region, including lawyers' fees and litigation costs, in the pursuit of such orders or relief will be paid by the Manager forthwith upon demand by the Region
- (o) not do or suffer or permit to be done any act, activity or thing which may render void or voidable, or which may conflict with the requirements of any policy or policies of insurance in respect of the Lands and Facilities of which the Manager is aware;
- (p) not do or suffer or permit to be done any act, activity or thing to encumber the Lands. Without limiting the generality of the foregoing the Manager will keep the Lands free of any builder's liens relating to the Facilities which relate to the

actions of the Manager or any party for which the Manager is responsible at law. In the event that any such lien or a claim is filed in regard to work done or labour or material supplied to the Lands in connection with the Facilities or so claimed or alleged, the Manager will discharge same within fifteen (15) days after request made by the Region to the Manager. The Manager will indemnify and save harmless the Region from and against all costs, damages, expenses, actual lawyers' costs and fees arising from or relating to any such builder's liens filed or registered against the Lands or made or claimed against the Region in connection with the Facilities;

- (q) not release, compromise, assign or transfer any claim, right or benefit of the Region;
- (r) undertake all banking activities required, including but not limited to;
  - (1) establish a bank account for the handling of all financial transactions. It is understood that this account is available for the benefit of the Facility. Any use of funds for any purposes other than transactions for the Facility would be a breach of trust under this agreement;
  - (2) handle all banking necessary for the due performance of the accounting and administrative functions under the provisions of this agreement and for the receipt and disbursement of all monies pertaining to the operations and the maintenance of the Facility required to be attended to in accordance with sound management practices;
  - (3) provide cash flow projections to the Region that will identify funding requirements for the facility and communicate any instances where the balance in the account will not meet obligations to pay for Operating Costs;
  - (4) pay all Operating Costs, Capital Costs and Repair and Maintenance Costs incurred in respect of the Facilities as same fall due irrespective of whether there is sufficient Revenue available to pay the costs;
  - (5) account for and apply all Revenue generated or received as per section 2.4
- (s) make the Meeting Room available for use a minimum of eight (8) evenings a month by the Region and the Lion's Club at no charge throughout the Term, in accordance with any fixed schedule provided by the Region or on reasonable notice from the Region, the Region having regard to other scheduled or proposed rentals;
- (t) establish and enforce reasonable rules for the safe use of the Facilities by members of the public which are similar to the rules in effect for other private or public ice rink and recreation facilities in the Cariboo area. The Manager will, from time to time, amend the rules in keeping with any reasonable changes made to rules at other facilities or at the reasonable request of the Region;

- (u) require, as a condition of use, that any group or league wishing to use the Facilities provide proof of liability insurance in an amount satisfactory to the Region and, if proof is not provided, require such group or league to purchase liability insurance from a supplier to be provided by the Region;
- (v) provide the Region's manager with keys to the Facilities;
- (w) attend meetings of the Committee monthly and as requested throughout the Term to provide information and seek the input of the Committee on the composition and scheduling of programs and the general operation of the Facilities and consider the Committee's input in the Manager's subsequent management decisions;
- (x) not erect, install, or suffer or permit to be erected or installed any Sign in or on the Facilities, except Signs which are similar to Signs permitted, erected and installed in ice rink and multi-purpose facilities in British Columbia, without the prior written permission of the Region. The Manager may install signs during the Term bearing the Manager's corporate name and/or logo and provide equal and similar opportunity for the corporate name and/or logo of the Region or joint branding as may approved by both parties;
- (y) provide, maintain and replace as necessary those fixtures, furnishings and equipment for the Facilities to the extent that the work falls within the Repair and Replacement Costs; and
- (z) enter into and administer any third-party sign rental agreements in existence as at the Commencement Date and that may be entered into throughout the Term, including as required the installation, repair or replacement of signs.
- (aa) enter into and administer any third party use and occupancy or lease agreements for the Facilities in existence as at the Commencement Date and that may be entered into throughout the Term; and
- (bb) develop and effectively promote a broad range of leisure activities and community events for the public as described generally in Schedule C
- (cc) liaise with user groups of the Lumberman's Park and Robinson Park ball fields to coordinate scheduling for league play and community use. In the performance of this obligation, the Manager will be required to work closely and communicate directly with the ball field maintenance contractor to be identified by the Region.
- (dd) work cooperatively with the Region to identify and take action on opportunities to reduce energy and water consumption at the Facilities in recognition that the Region is a signatory to the provincial Climate Action Charter.

### **3.3 Duty To Repair and Maintain**

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

- (a) assume sole responsibility for the condition, maintenance, repair and replacement of the Facilities to the extent that repair and replacement fall within Replacement and Repair Costs. The Manager acknowledges that the Region will not be obliged to repair, maintain, replace or alter the Facilities or any part thereof or to supply any services or utilities to the Facilities beyond those normally supplied by a regional district or municipality to a facility similar to the Facilities;
- (b) repair, maintain and keep the Facilities in a state of good repair to the same extent and in the same manner as a prudent owner would, to the extent that such work falls within the Replacement and Repair Costs, except only for reasonable wear that does not materially affect the foundations or structure of the Facilities, so that at all times throughout the Term and upon the termination of this Management Agreement the Facilities remain a fully operating and functioning recreational facility. Without limiting the generality of the foregoing the Manager will, utilizing available insurance proceeds if and where applicable, repair, maintain and keep in a state of good repair and maintenance all of the Facilities including all appurtenances, equipment, fixtures, sidewalks, yards, heating, air conditioning and refrigeration equipment, water and sewer mains and connections and plumbing, electrical and gas pipes and conduits in, upon, or about the Facilities, to the same extent and in the same manner as a prudent and careful owner would do, and whether such repair and maintenance is interior or exterior, structural or non-structural, ordinary or extraordinary, foreseen or unforeseen, to the extent that such work falls within the Replacement and Repair Costs. All repairs will be in all respects to a standard at least substantially equal in quality of material and workmanship to the original work and material in the Facilities and will meet the lawful requirements of all Statutory Authorities;
- (c) except where required by emergency, not incur Major Maintenance Costs without first obtaining the Region's written approval;
- (d) not do, suffer or permit to be done any work, replacements, alterations or improvements to the Facilities which, in the Region's opinion acting reasonably, may weaken or endanger the structure or adversely affect the condition or operation of the Facilities or diminish the value thereof;
- (e) where in the opinion of the Manager 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 for inclusion in the facility capital plan. The Manager will procure capital items by obtaining quotes and proposals from suppliers as required by District of 100 Mile House purchasing policies, unless otherwise directed by the Region.

- (f) without limiting the generality of this Section 3.3, promptly upon Notice by the Region, make and do all repairs and maintenance which the Manager is obliged to make and do pursuant to this Management Agreement. If the Manager does not complete such work within thirty (30) days of being given said Notice or where such work, because of its nature, would require more than thirty (30) days to complete the Manager has not, within fifteen (15) days of being given said Notice, commenced such work and thereafter promptly, effectively and continuously proceeded with the work to completion, the Region will be entitled, in addition to any other remedies available to the Region, to make and do such repairs and maintenance at the sole cost and expense of the Manager and to deduct the cost of the work from any monies due and owing to the Manager by the Region as part of the Compensation obligations.

### **3.4 User Fees**

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

The Manager may from time to time establish User Fees for specific leisure activities and classes, which may not be contained within the Region's fees and charges bylaw.

### **3.5 Duty to Account and Report**

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

- (a) provide the Region, forty-five (45) days prior to the conclusion of each year of the Term, a detailed annual operating plan for the upcoming year that identifies significant events and activities planned for the Facilities as well as Revenues, Operating Costs and the Operating Deficit Subsidy Target in such a form and detail as may reasonably be required by the Region;
- (b) provide the Region, within ninety (90) days of the conclusion of each year of the Term, a full report on the usage of the Facilities for the previous year in such form and detail as may reasonably be required by the Region;

- (c) keep or cause to be kept true and accurate records and accounts in accordance with GAAP regarding the management and operation of the Facilities and keep these available for inspection by the Region during regular business hours;
- (d) permit the Region, at all reasonable times, at the Region's own cost and expense, to inspect and obtain copies of all records and accounts relating to repairs, replacements, alterations or improvements to the Facilities; and
- (e) turn over to the Region, forthwith upon the expiration or termination of this Management Agreement, copies of all records and accounts in respect of repairs, replacements, alterations or improvements throughout the Term and financial records for each year of the Term with respect to the operation of the Facilities. This obligation will survive any expiration or termination of this Management Agreement.

### **3.6 Environmental Obligations**

In addition to the other covenants and obligations to be performed by the Manager hereunder, the Manager 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 Manager's obligations under Section 3.6(b) forthwith notify the Region of the occurrence of any of the following and provide the Region with copies of all relevant documentation in connection therewith:
  - (1) a release of a Hazardous Substance in or about the Facilities, except in strict compliance with Environmental Laws and any applicable Permits;
  - (2) the receipt by the Manager of an Environmental Notice; or
  - (3) the receipt by the Manager 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 Manager receives information that Hazardous Substances, which have been brought onto or released at or from the Lands by the Manager 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 Manager or those for whom it is in law responsible, take all necessary action, at the cost of the Manager, 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 Manager under this Management 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 Manager of any of the covenants contained in this Section 3.6;
  - (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 Manager 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 Manager 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 Manager 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 Management Agreement.

Notwithstanding anything contained in this Section 3.6 to the contrary, the Manager will not be responsible for the remediation of Hazardous Substances migrating into, onto or under the Lands and Facilities from adjacent lands.

#### **4. RESERVATIONS TO REGION**

##### **4.1 Use by the Region**

The Region may, on reasonable notice to the Manager, obtain use of the Facilities for any special purpose the Region may require. Non-profit rate rental costs incurred for such use of the Facilities will be paid by the Region. The Manager may obtain special use of the Facilities for its own purposes and non-profit rate rental costs incurred for such use will be paid by the Manager.

##### **4.2 Signs and Banners**

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

#### **5. COMPENSATION AND RENTALS**

##### **5.1 Compensation**

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

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

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

##### **5.2 Extraordinary Costs**

In the event that extraordinary cost increases occur in any year of the Term, where such costs are not within the reasonable control of the Manager and cannot be offset by increases in User Fees in accordance with Section 3.4 or from other Revenues, the parties agree to negotiate an amendment to the Operating Deficit Subsidy Targets in good faith and in accordance with Section 11.

##### **5.3 Space Rentals**

Subject to any space rental or use and occupancy agreements already in place, the Manager may enter into space rental agreements in the Building to bona fide arm's length third parties for uses

consistent with the operation of the Facilities as a public recreation facility. Prior written notification to the Region is required for all space rental agreements and the Manager agrees not to enter into an agreement if the Region is not supportive. Regular, short term Facility rentals and ice use are considered separate, expected business operations and not applicable to this section. The Manager will administer all approved space rental agreements on behalf of the Region. Income generated by approved agreements will be treated as Revenue and the costs of administering approved agreements will be treated as part of the Operating Costs. The applicable revenue from any pre-paid agreement that exceeds one year in term will be annualized for the purpose of calculating Revenue in each year of the Term.

#### **5.4 Compliance with Rules**

The Manager may, acting reasonably:

- (a) expel from the Facilities any person causing damage to the Facilities during the Public Programs or materially failing to comply with the rules and regulations prescribed for the Facilities;
- (b) require damage deposits from user groups where there is a likelihood that such groups may cause damage to the Facilities; and
- (c) pursue and seek compensation from any individual, group or organization which damages the Facilities.

### **6. DAMAGE OR DESTRUCTION**

#### **6.1 Damage or Destruction of the Facilities**

If the Facilities are at any time damaged or destroyed (including smoke damage), as a result of fire or other hazard or casualty against which the Region is insured, then and so often as such event occurs the Management 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 Management Agreement, will commence diligently to reconstruct, rebuild or repair the Facilities.

#### **6.2 Abatement Period**

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

#### **6.3 Repair**

Where the Region repairs, reconstructs or rebuilds the Facilities or any part or parts thereof, the Region may use plans and specifications and working drawings other than those used in the

original construction of the Facilities in order to repair, reconstruct or rebuild the Facilities in a form similar to that which existed prior to the damage or destruction.

## **7. LIABILITY AND INDEMNIFICATION**

### **7.1 Non-liability of Region**

The Region will not be liable or responsible in any way for any loss or injury that may be sustained by the Manager or any loss or injury sustained by any employee, agent or independent contractor of the Manager or any other person who may be upon the Facilities, or for any loss of or damage or injury to property belonging to or in the possession of the Manager or any employee, agent or independent contractor of the Manager 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 Manager under this Management Agreement or otherwise, the Manager 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 Manager of any obligation contained in this Management Agreement to be observed or performed by the Manager;
- (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 willful 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 Manager, 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 Manager where the Region is without fault, then the Manager 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 Manager 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 Management Agreement.

### **7.3 Indemnification of Manager**

The Region will indemnify and save harmless the Manager, 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 Manager 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 Management 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 willful misconduct of the Manager, its employees or such other persons engaged by the Manager; and
- (c) any wrongful act or neglect of the Region, its officers, employees, agents or independent contractors, in or about the Facilities.

Should the Manager be made a party to any litigation commenced by or against the Region where the Manager is without fault, then the Region will protect, indemnify and hold the Manager harmless and will promptly pay all costs, expenses and legal fees (on a solicitor and own client basis) incurred or paid by the manager in connection with such litigation upon demand.

### **7.4 Survival of Indemnification**

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

## **8. INSURANCE**

### **8.1 Manager Insurance**

The Manager will obtain general comprehensive liability insurance including legal and employer's liability and contractual liability to cover the responsibilities assumed under this Management Agreement generally and specifically under Sections 3.6(g), so long as such insurance coverage is available to the Manager on commercially reasonable terms and containing the following terms and conditions:

- (a) providing for the minimum combined single limit of not less than \$8,000,000 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 of the Manager 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 Manager will obtain from the insurers under such policies, undertakings to notify the Region in writing prior to any cancellation or amendment thereof. The Manager agrees that if the Manager fails to take out or keep in force such insurance, the Region will have the right to do so and to pay the premium therefor and deduct that amount from any monies due and owing to the Manager by the Region. The Manager 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 Manager 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 Manager, 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 Manager and against those for whom the Manager is at law responsible; and
- (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 Region of reasonably similar facilities.

## **9. TERM**

### **9.1 Term**

This Management Agreement will commence as of the Commencement Date and continue in full force and effect until April 1, 2029, unless earlier terminated pursuant to the terms of this Agreement. To provide adequate time for the discussion of renewal terms, the Management Agreement will remain in effect beyond the termination date during active negotiations as referred to in Section 9.2. If negotiations become inactive through the lack of engagement from either party, the Agreement may be terminated upon ninety (90) days’ Notice from either party.

## **9.2 Future Agreement**

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

## **10. TERMINATION AND EXPIRATION**

### **10.1 Termination and Expiration**

This Management Agreement will terminate:

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

### **10.2 No Further Claim**

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

- (a) the Manager 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 Manager including capital and operating costs incurred by the Manager in respect of the Facilities; and
  - (2) any consequential damages sustained by the Manager; and
- (b) the Region will not be obligated to compensate the Manager in any manner whatsoever.

### **10.3 Default**

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

- (a) subject to Sections 10.3(b) and (c), if the Manager is in breach of any term, provision or obligation under Sections 3.2(j) or (o) hereunder and such breach has not been cured within ten (10) days of being given Notice specifying the breach;
- (b) subject to Section 10.3(c), if the Manager is in breach of any term, provision or obligation under Sections 3.2(j) or (o) and such breach because of its nature would reasonably require more than ten (10) days to cure and the Manager has not within five (5) days of being given Notice specifying the breach commenced curing the breach and thereafter promptly, effectively and continuously proceeds with the curing of the breach to completion;
- (c) if an arbitration under Section 11 is commenced with respect to a breach under Section 3.2(h) or (m) alleged in a Notice from the Region, and within ten (10) days of the determination by the arbitrator that the Manager is in breach of a term, provision or obligation under Section 3.2(j) or (o), the breach has not been cured or where such because of its nature would reasonably require more than ten (10) days to cure, the Manager has not, within five (5) days of the determination by the arbitrator commenced curing the breach and thereafter promptly, effectively and continuously proceeds with the curing of the breach to completion;
- (d) subject to Sections 10.3(e) and (f), if the Manager is in breach of any term, provision or obligation hereunder other than those set out in Sections 3.2(j) and (o) hereunder and such breach has not been cured within sixty (60) days of being given Notice specifying the breach;
- (e) subject to Section 10.3(f), if the Manager is in breach of any term, provision or obligation hereunder other than those set out in Sections 3.2(j) and (o) hereunder and such breach because of its nature would reasonably require more than sixty (60) days to cure and the Manager has not within thirty (30) days of being given Notice specifying the breach commenced curing the breach and thereafter promptly, effectively and continuously proceeds with the curing of the breach to completion;
- (f) if an arbitration under Section 11 is commenced with respect to a breach alleged in a Notice from the Region, other than a breach under Section 3.2(j) or (o) hereunder, and within thirty (30) days of the determination by the arbitrator that the Manager is in breach of a term, provision or obligation hereunder the breach has not been cured or where such breach because of its nature would reasonably require more than thirty (30) days to cure, the Manager has not, within fifteen (15) days of the determination by the arbitrator commenced curing the breach and thereafter promptly, effectively and continuously, proceeds with the curing of the breach to completion.

#### **10.4 Rights Upon Default**

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

### **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 Management Agreement. Each party will advise the other party in writing of the name, telephone number and email address 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 Manager with respect to this Agreement then, within seven (7) days of Notice from one party to the other, or such time as agreed to by both parties, the representatives of the parties will participate in good faith negotiations in order to resolve and settle the dispute. In the event that such representatives are unable to resolve the dispute within fourteen (14) days of the first written Notice, or such other time period agreed to by both parties, each party will appoint a senior representative that has not been previously involved in the matter in dispute, to attempt to resolve the dispute.

#### **11.3 Arbitration**

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

- (a) within fourteen (14) days of written notice from one party to the other of the intention to arbitrate, each party shall appoint an arms-length representative, ("Appointment Agents") who will, pursuant to this Agreement be given the authority to meet and agree upon the selection and appointment of a single arbitrator; and
- (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. Each party will bear its own costs of the arbitration, including all costs of its Appointment Agent, regardless of the arbitrator's decision.

## **12. GENERAL TERMS**

### **12.1 Region's Powers Unimpaired**

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

### **12.2 No Amendment**

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

### **12.3 Fixtures**

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

### **12.4 Labour Dispute**

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

### **12.5 Competition**

Nothing in this Management Agreement will prevent either party from owning and operating ice skating or other recreational facilities even if those facilities compete with the Facilities.

### **12.6 Force Majeure**

Notwithstanding anything to the contrary contained in this Management 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 Management 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 Management Agreement except any payment obligation will be deemed to be subject to an Event of Force Majeure.

## **12.7 Enurement**

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

## **12.8 Notice**

Each Notice to a party must be given in writing. A Notice may be given by delivery to an individual 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, B.C. V2G 2A4  
Attention: Manager of Community Services  
Email: [dcampbell@cariboord.ca](mailto:dcampbell@cariboord.ca)  
Phone: (250) 392-3351

if to the Manager:

Name: 100 Mile Development Corporation  
Address: #1-385 Birch Ave., 100 Mile House, BC V0K 2E0  
Attention: Corporate Officer  
Email: [tboulanger@100milehouse.com](mailto:tboulanger@100milehouse.com)  
Phone: (250) 395-2434

or to any other address or email or individual that the party designates. Any Notice:

- (a) if validly delivered, will be deemed to have been given when delivered;
- (b) if validly transmitted by email before 3:00 p.m. on a Business Day, will be deemed to have been given on the Business Day; and

## **12.9 Waivers**

No waiver of any provision of this Management Agreement is binding unless it is in writing by the parties to this Management Agreement except that any provision which does not give rights or benefits to particular parties may be waived in writing 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 Management Agreement will be deemed to be a waiver of that right or remedy. No waiver of any breach of any provision of this Management Agreement will be deemed to be a waiver of any subsequent breach of that provision or of any similar provision.

#### **12.10 Further Assurances**

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

#### **12.11 Submission to Jurisdiction**

Each of the parties irrevocably submits to the jurisdiction of the courts of British Columbia in any action and each party to this Management 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 Management Agreement will seek any review with respect to the merits of the underlying judgement, whether or not that party appears in or defends the action.

#### **12.12 Remedies Preserved**

The rights and remedies under this Management 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 Management 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.

#### **12.13 No Assignment**

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

#### **12.14 Freedom of Information**

The parties acknowledge, agree and consent to the disclosure of this Management 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 Management Agreement. However, the parties acknowledge and agree that information provided by one party to the other party pursuant to or in connection with this

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

#### **12.15 Further Negotiation**

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

#### **12.16 Region Ownership and Mortgaging of Lands**

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

#### **12.17 Counterpart**

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

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

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Manager of Corporate Services  
**CARIBOO REGIONAL DISTRICT**

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Date

---

Print Name

---

Authorized Signatory  
**100 MILE DEVELOPMENT CORPORATION**

---

Date

---

Print Name

---

Title

## SCHEDULE A - COMPENSATION

Compensation under the terms of this agreement is as follows:

The Region accepts the operating risk for the Facilities and as such will reimburse to the Manager the actual net value of Operating Costs minus Revenues. To encourage continued cost-effective operation of the Facility for the Term of this Management Agreement, Operating Deficit Subsidy Targets are set for the Facilities as follows:

Operating Deficit Subsidy Target schedule					
2023 (previous)	2024	2025	2026	2027	2028-29
\$186,037	\$210,000	\$214,000	\$200,000	\$200,000	\$200,000
Increase	\$23,963	\$4,000	(-\$14,000)	0	0
percentage	13%	2%	(-6.5%)	0	0

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

In addition to the above Operating Costs reimbursement, an administration fee of \$70,000 plus applicable taxes per year will be charged by the Manager to the Region to support delivery of the services defined under this agreement.

Net Operating Costs will be reimbursed to the Manager quarterly upon receipt of an invoice from the Manager providing acceptable details of the expenditure.

A contribution from the Region to the District of 100 Mile House for maintenance and improvements to the 100 Mile and District Soccer Fields and the Marten Exeter Hall and Lodge Complex is not included in the above Compensation but may be negotiated separately as part of the annual financial planning on joint local government services for the south Cariboo.

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

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

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

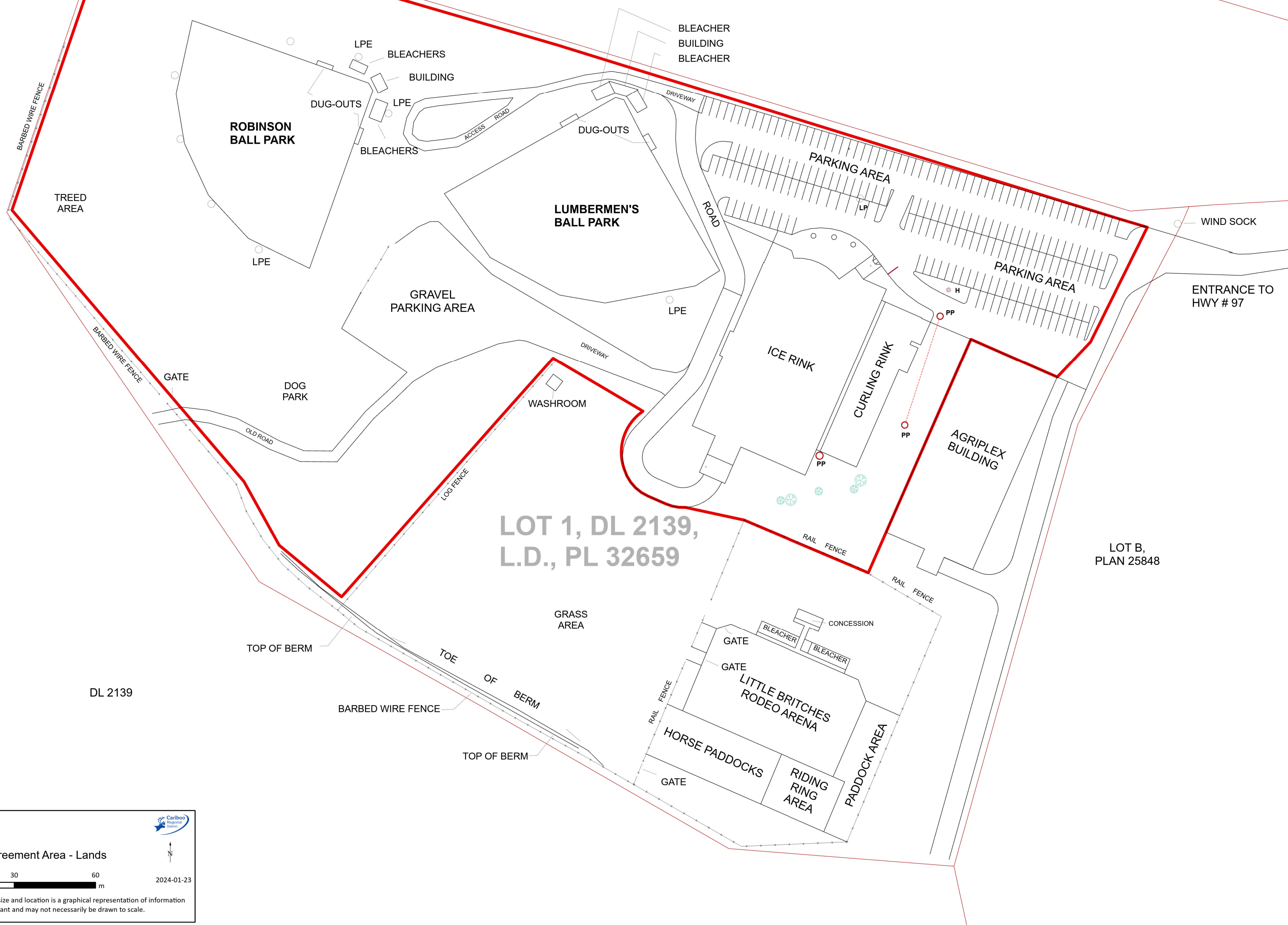
**iii) Extraordinary Costs** is clarified in Section 5.2 and provides the ability for the Manager and the Region to amend this Compensation schedule in good faith due to unforeseen circumstances, which adversely affect the anticipated revenues or expenditures related to the Lands and Facilities.

### **Potential for Additional Buildings and Facilities**

It is hereby understood that the Region intends to make additional investments in new recreation assets, including Buildings and Facilities, that may fall within the scope of this management agreement. If these new assets are included in the scope of this agreement, thus creating additional revenues and expenses, the parties agree to amend Schedule A as necessary.

**SOUTH CARIBOO RECREATION MANAGEMENT AGREEMENT  
SCHEDULE 'B' - LANDS**


LOT 1,  
PLAN 30110



**LOT 1, DL 2139,  
L.D., PL 32659**

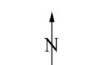
LOT B,  
PLAN 25848

**Legend**

 Agreement Area - Lands

0 15 30 60 m

Disclaimer: Structure size and location is a graphical representation of information provided by the applicant and may not necessarily be drawn to scale.



2024-01-23

## SCHEDULE C – ICE PROGRAMS, LEISURE ACTIVITIES, AND COMMUNITY EVENTS

### ICE SCHEDULE

<b>MONDAY-THURSDAY</b>			
- Youth	6:00 am - 8:00 am		
- Programs and Schools	9:00 am – 11:45 am		
- Public Hockey/Skating	12 noon - 1:00 pm		
- Programs and Schools	1:15 pm – 3:00 pm		
- Youth	3:30 pm - 9:00 pm		
- Adult	9:15 pm– 10:30 pm -		
<b>FRIDAY (regular)</b>		<b>FRIDAY (tournament)</b>	
- Youth	6:00 am - 8:00 am	- Youth	6:00 am - 8:00 am
- Public Skating/Hockey	12 noon - 1:00 pm	- Public Skating/Hockey	12 noon - 1:00 pm
- Youth	3:30 pm - 9:45 pm	- Youth	3:15 pm – 5:45 pm
- Adult	10:00 pm – 11:15 pm	- Adult Tournament	6:00 pm – 11:15 pm
<b>SATURDAY (regular)</b>		<b>SATURDAY (tournament)</b>	
- Youth	6:00 am - 8:15 pm		earlier if required
- Adult	8:30 pm – 11:00 pm	- Adult Tournament	6:00 am - 8:15 pm
		- Adult	8:30 pm – 11:00 pm
<b>SUNDAY (regular)</b>		<b>SUNDAY (tournament)</b>	
- Youth	7:00 am – 1:00 pm		earlier if required
- Public Skating	1:15 pm - 2:45 pm	- Adult Tournament	6:00 am - 3:45 pm
- Adult	3:00 pm – 10:15 pm	- Public Skating	4:00 pm – 5:00 pm
		- Youth	5:15 pm - 10:00 pm

Current policy gives priority to youth times until 9:00 pm on weekdays, Saturday until 8:15 pm and until 3:45 pm on Sunday, except on weekends when adult tournaments are held. Currently there are four (4) approved annual adult tournaments.

The 100 Mile Wranglers Junior B Hockey Club currently utilizes Minor Hockey time (designated as Youth Time) for games. Subject to the continued support of Minor Hockey for this usage, these games will be accommodated in order to maintain the viability of the team in a provincial league. On host weekends, the Wranglers may hold a Friday or Saturday night game and/or a Sunday afternoon game in addition to its weekly practice time slots.

The School District joint use agreement permits use of the facility during regular school hours at no charge. Programs are scheduled to maximize opportunities for bookings that may be received for which regular rental rates would apply.

Efforts will be made to maximize public programs to promote access to the facility by a broad

group of ice users. Sunday public skating opportunities will be maintained except in extenuating circumstances. Weekday opportunities for public lunch hour activities will be promoted and conducted to the extent possible.

Adult tournaments will not commence until 6:00 pm Friday and will not go later than 4:00 pm Sunday without concurrence from the youth user groups. Tournaments will go later on Friday or start earlier on Saturday or Sunday in order to accommodate required games, within the allotted time frames.

### LEISURE ACTIVITIES AND COMMUNITY EVENTS

The Manager will produce semi-annual Activities Guide and the listed activities and events only represent a baseline and it is expected that an additional broad range of items will be developed and promoted by the Manager throughout the Term.

## **SCHEDULE D – AGREEMENTS**

Existing agreements (and applies to subsequent renewals thereof)

1. Joint Use Agreement between the Region, District of 100 Mile House, School District #27 and Thompson Rivers University (Jan 2023 – Dec 2026)
2. 100 Mile House Wranglers Junior B Hockey Club Use and Occupancy Agreement (April 2022- March 2027)
3. 100 Mile House Curling Club Operating Agreement (April 2024-March 2029)
4. 100 Mile House Curling Club Occupancy Agreement (April 2024-March 2029)

## **SCHEDULE E – REVENUES**

### **Manager Revenues**

- ice rental revenues;
- ball fields use revenues
- community activity programming revenues;
- off-season rental revenues for the arena facility;
- off-season rental revenues for the curling rink facility;
- revenues from parking lot rentals;
- public skating revenues;
- concession revenues;
- user pass revenues;
- advertising revenues (unless divested to a third party under a licence agreement);
- meeting room rental revenues (except as provided in Section 3.2(s) of this Agreement;
- Minor Hockey Office space rental;
- Figure Skating Office space rental;
- miscellaneous facility space rentals in accordance with Section 5.4;
- all other usual and customary revenues from the day-to-day management and operation of the Facilities, excepting those revenues accruing to the Curling Club during its tenancy of the curling rink as stipulated in the Operating and Occupancy Agreements between the Club and the Region.

### **Region Revenues**

- Curling Club licence fees payable under the Operating Agreement between the Curling Club and the Region.
- Revenues from sale of third party liability insurance to rental groups

## **SCHEDULE F – REGION POLICIES**

### **Rental Policy**

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

Consumption of alcoholic beverages is strictly forbidden to rental events, except where the required liquor licence has been obtained for a private or public function. Private licensed functions must receive the approval for liquor permits from the District of 100 Mile House, the R.C.M.P. and the Liquor Control Branch.

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

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

### **Fees and Charges Policy**

Fees and Charges for use of the Facility are set through bylaw of the Region. There is no authority to waive these fees either by the Manager 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 Manager or the Region to community groups to cover rental costs.

### **Purchasing Policy**

The Manager will use the purchasing policy and procedures of the District of 100 Mile House for capital purchases and contracts related to the Facilities, including all process for obtaining quotes and issuing and approving proposals and tenders. Prior to awarding contracts or completing major capital purchases, that will be approved by 100 Mile District Council, the Manager will provide sufficient advance notice to the South Joint Committee.

### **Disposal of Assets**

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

### **Recreation Access Passes**

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

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

All users of the Facilities must possess a valid Recreation Access Pass to enrol in leisure activity programs at reduced rates and participate in organized leagues, associations and clubs using the

ice rink, curling rink, ball fields and soccer fields or any other facilities that may be identified in the Region's Fees and Charges Bylaw. A Recreation Pass is required to pay a reduced rate for drop-in activities, such as public skating. Out-of-town visitors are not required to have a pass to participate in tournaments or events.

**Overnight Parking**

Overnight parking is allowed at the South Cariboo Recreation Centre by registered event participants and spectators with camper units and RVs during summer events. The cost for this benefit is to be included in the rental of the ball fields and/or the parking lot space.