

DISTRICT 68 SPORTS FIELD & RECREATION SERVICES AGREEMENT

THIS AGREEMENT made this 6 day of May, 2011

BETWEEN:

REGIONAL DISTRICT OF NANAIMO
6300 Hammond Bay Rd.
Nanaimo BC
V9T 6N2
(**"Regional District"**)

OF THE FIRST PART

AND:

CITY OF NANAIMO
455 Wallace Street
Nanaimo, BC
V9R 5J6
(**"Nanaimo"**)

OF THE SECOND PART

WHEREAS:

- A. The Regional District established by Bylaw 1059 a service for pleasure, recreation and other community use known as the Southern Community Recreation Service which has as its participants the District of Lantzville and Electoral Areas A, B and C;
- B. By Agreement dated the 7th day of February, 1997 between Nanaimo and the Regional District, Nanaimo has provided access to Sports Fields (as defined herein) and recreational facilities and programs as a service to members of the general public residing within the District of Lantzville and Electoral Areas A, B and C;
- C. The Regional District wishes Nanaimo to continue providing access to Sports Fields and recreational services to members of the public residing outside of the boundaries of Nanaimo and within the boundaries of the District of Lantzville and Electoral Areas A, B and C;
- D. The Regional District and Nanaimo wish to continue to permit the Regional District to have an ongoing voice in recreation service provision through, among other things, participation by representatives of the Regional District on a Parks, Recreation and Culture Commission established by Nanaimo;

NOW THEREFORE in consideration of the premises and mutual covenants and agreements contained in this Agreement, the parties covenant and agree as follows:

1.0 DEFINITIONS

In this Agreement:

- 1.1 **“Non-shareable costs”** shall generally mean the development of a new Sports Field or Recreation Facility and/or an upgrade to an existing Sports Field or Recreation Facility costing more than \$10,000 including but not limited to the construction of facilities or improvements, or the addition, replacement, repair or extension of fences, roofs, seating, irrigation systems, wells, drainage, lighting, backstops, goalposts, time clocks or similar game display signage or sod replacement.
- 1.2 **“Commencement Date”** means January 1, 2011.
- 1.3 **“Cost of Operation and Maintenance”** means:
- (a) in relation to Sports Fields, the Net Costs for Sports Fields for the items set out in Schedule “A”;
 - (b) in relation to Nanaimo Recreation Facilities, the Net Costs for Nanaimo Recreation Facilities for the items set out in Schedule “B”;
- but does not include Non-shareable costs or debt;
- 1.4 **“Electoral Areas”** means that portion of the Regional District included within the boundaries of Electoral Areas A, B, and C;
- 1.5 **“District 68”** means that portion of the Regional District included within the boundaries of Nanaimo, Lantzville and Electoral Areas A, B, and C;
- 1.6 **“Lantzville”** means the District of Lantzville;
- 1.7 **“Nanaimo”** means the City of Nanaimo;
- 1.8 **“Nanaimo Recreation Facilities”** means:
- (a) Beban Park;
 - (b) Bowen Park;
 - (c) Nanaimo Aquatic Centre;
 - (d) Nanaimo Ice Centre.
- 1.9 **“Net Cost”** means prior year actual expenditures for the Cost of Operation and Maintenance less cost recovery from fees and charges imposed for the use of Nanaimo Recreation Facilities and Sports Fields;
- 1.10 **“Participating Areas”** means Nanaimo, Lantzville and Electoral Areas A, B, and C of the Regional District of Nanaimo;
- 1.11 **“Recreation Services”** means recreation and community services offered at Nanaimo Recreation Facilities to residents of the Regional District Areas and Lantzville;

- 1.12 “**Regional District**” means the Regional District of Nanaimo;
- 1.13 “**Regional District Areas**” means that portion of the Regional District included within the boundaries of Lantzville, Electoral Areas A, B, and C;
- 1.14 “**Sports Field**” means land developed for the playing of baseball, softball and soccer and other sport activities which is owned and operated by either Nanaimo or the Regional District Areas and includes the following:

City of Nanaimo:

- a) Beban Park;
- b) Bowen West;
- c) McGirr Park;
- d) Elaine Hamilton Park;
- e) May Bennett Park;
- f) Caledonia Park;
- g) Robins Park;
- h) Gyro Park;
- i) Harewood Park;
- j) Pleasant Valley Park;
- k) Serauxmen Sports Fields; and
- l) Comox Field.

Regional District of Nanaimo:

- a) Rollo McClay (EA ‘B’); and,
- b) Extension Sports Field (EA ‘C’).

Any Sports Field within Nanaimo, or the Regional District, which meets the criteria to be considered a Sports Field under Section 5.0;

- 1.15 “**Sports Field Services**” means:
- (a) operation and maintenance of Sports Fields in District 68; and
 - (b) permitting access to and use of Sports Fields by residents of the Participating Areas.
- 1.16 “**Term**” means the period of time from the Commencement Date to December 31, 2025.

2.0 INTERPRETATION

- 2.1 A reference in this Agreement to:
- (a) the singular includes the plural and the plural includes the singular, unless the context otherwise requires;
 - (b) the masculine, feminine or neuter includes a reference to the masculine, feminine or neuter, unless the context otherwise requires.
- 2.2 The headings of paragraphs, articles and sections of this Agreement are for convenience of reference only, do not form part of this Agreement and are not to be used in the interpretation of this Agreement.
- 2.3 This Agreement is to be governed and construed in accordance with the laws of the Province of British Columbia.

2.4 If any paragraph, article or section of this Agreement is declared or held invalid for any reason, the paragraph, article or section may be severed from the Agreement without affecting the validity of the remainder of the Agreement.

3.0 SERVICES

3.1 The Parties covenant and agree with each other to provide Sports Field Services during the Term of the Agreement.

3.2 Nanaimo covenants and agrees to provide Recreation Services during the Term of the Agreement.

4.0 PAYMENT

4.1 Commencing with 2011, payment to Nanaimo shall be made in accordance with the following:

(a) Cost share calculation:

Each party shall share in the Cost of Operation and Maintenance of Sports Fields and/or Recreation Services based on the percentage of use established by averaging data from the three most recent usage surveys. Surveys shall be conducted once every five (5) years with the next survey to be completed on or before October 30th, 2015, as set out in Section 6.0.

(b) Payment to Nanaimo:

Total costs reported by Nanaimo for cost sharing purposes	\$ xxxx
Less: the share calculated for Nanaimo under the formula in 4.1(a) above	\$(xxx)
Net amount payable to Nanaimo	\$ xxx

4.2 Annual Budget

(1) For the purpose of calculating annual contribution amounts under Section 4.1(b), in each year during the Term of this Agreement, Nanaimo and the Regional District respectively, shall provide to each other, on or before January 31st a statement of actual Costs of Operation and Maintenance compared to budget for the prior year ending December 31st. The costs to be shared shall consist of prior year actual costs of Nanaimo, budgeted current year Regional District costs net of any prior year surplus or deficit as reported by the Regional District for Sports Fields in the Regional District Areas.

(2) For the purposes of preparing the Regional District's financial plan, Nanaimo shall also provide to the Regional District annually along with the budget information in 4.2(1) above an estimate of the Cost of Operation and Maintenance for Sports Fields and Recreation Facilities for the subsequent five year period.

4.3 Payment Due Date

The amount payable to Nanaimo under 4.1(b) shall be remitted on or before August 2nd in each year during the Term of this Agreement.

4.4 Debt

The cost of providing the Services under this Agreement is a debt owed to the party providing the Service.

5.0 NEW SPORTS FIELDS/CITY RECREATION FACILITIES

5.1 The Participating Areas shall use best efforts to agree which Sports Fields shall be included in the inventory of Sports Fields by November 30th of each year.

5.2 Where a new Sports Field or Recreation Facility within Nanaimo is added under this agreement the Cost of Operation and Maintenance for the first year shall be the average Cost of Operation and Maintenance for all Sports Fields or Recreation Facilities as the case may be, for the prior year. After the first year, the Cost of Operation and Maintenance shall be as reported by the Nanaimo under Section 4.2(1).

5.3 Where a new Sports Field within the Regional District Areas is added under this agreement the Cost of Operation and Maintenance for the first year shall be the average Cost of Operation and Maintenance for all Sports Fields in the Regional District Areas for the prior year. After the first year the Cost of Operation and Maintenance shall be as reported in the Regional District accounts under Section 4.2.

5.4 Where a new Recreation Facility is constructed, it shall not form part of this Agreement until a survey conducted pursuant to Section 4.1(a) is undertaken which demonstrates that 10% or more of the population from the Regional District Areas is attending public sessions at the facility.

6.0 SURVEY

6.1 The usage survey of Recreation Facilities and Sportsfields shall be:

- (a) conducted by the Regional District on or before October 31st in the years 2015, 2020 and 2025.
- (b) the survey shall collect street addresses for the purposes of identifying the participating area as follows:
 - (i) for aquatic centres the survey shall be based on drop-in public attendance, program registrations and group rentals
 - (ii) for ice arenas the survey shall be based on the addresses provided from team registrations and program registrations
 - (iii) for Sports Fields the survey shall be based on the addresses provided from team registrations
- (c) the data for aquatic centres shall be weighted as 50% from drop-in attendance, 40% from program registrations and 10% from facility rentals.
- (d) the data for arenas shall be weighted as 90% from team registrations and 10% from program registrations.

7.0 INDEMNITY

7.1 A party to this Agreement (hereinafter called the “**Supplying Party**”) that provides the Services to another party to this Agreement (herein after called the “**Receiving Party**”), shall indemnify, defend and save harmless the Receiving Party and its elected and appointed officers, employees, agents, successors and assigns from all manner of actions, causes of action, suits, debts, losses, liabilities, costs, expenses, claims and demands whatsoever (collectively “**Liability**”) arising out of any wrongful act, omission or negligence on the part of the Supplying Party, its elected or appointed officers, employees, agents, successors and assigns arising out of the Services provided under this Agreement., except to the extent of a wrongful act, or the Liability is caused by the omission in negligence of the Receiving Party.

8.0 PAYMENT RATES

8.1 The Parties acknowledge and agree that payments under Section 4.1 represent a fair and reasonable reimbursement of the costs of the Sports Field Services and Recreation Services to be provided under this Agreement.

9.0 COVENANTS OF THE PARTIES

9.1 It is a condition precedent to the obligations of the Parties under this Agreement that:

- (a) during the Term, Nanaimo shall maintain a Parks, Recreation and Culture Commission established by bylaw, with a composition, procedures, duties and powers as outlined in Schedule “C”; and
- (b) user or other rates shall not be charged, either directly or indirectly, for the use of Sports Fields or Recreation Services to residents of another Participating Area in excess of rates payable by or on terms other than those offered to residents of the Participating Area in which the Sports Fields are located or the Recreation Services are provided.

9.2 Nanaimo and the Regional District Areas shall consult with each other with respect to the planning and co-ordination of future Sports Field and Recreation Facility development.

10.0 MISCELLANEOUS

10.1 Waivers

The failure at any time of either party to enforce any of the provisions of this Agreement or to require at any time performance by the other party of any such provision shall not constitute or be construed to constitute a waiver of such provision, nor in any way to affect the validity of this Agreement or any parts thereof, or the right of either party thereafter to enforce each and every provision of this Agreement.

10.2 Statutory Powers

Nothing in this Agreement is to be interpreted as affecting or restricting the exercise by Nanaimo, Lantzville or the Regional District of any statutory power, duty or function, which may be fully exercised as if this Agreement had not been executed by the parties.

10.3 Modification

No waiver, modification or amendment of any of the provisions of this Agreement shall be binding unless it is in writing and signed by the duly authorized representatives of both parties.

10.4 Assignment

No assignment of this Agreement shall be made by either party without the written consent of the other. A party's consent to assign will not release or relieve the party from its obligations to perform all the terms, covenants and conditions that this Agreement requires a party to perform and the party requesting the assignment shall pay the other party's reasonable costs incurred in connection with the party's request for consent.

10.5 Survival

The articles, sections, subsections and paragraphs providing for the limitation of, waiver of, or protection against liability of the parties hereto shall survive termination, cancellation or expiration of this Agreement.

10.6 Notice

All notices and demands required or permitted to be given hereunder shall be in writing and may be delivered personally, sent by facsimile or may be mailed by first class, prepaid registered mail to the addresses set forth below. Any notice delivered or sent by facsimile shall be deemed to have been given and received at the time of delivery. Any notice mailed as aforesaid shall be deemed to have been given and received on the expiration of 5 business days after it was posted, addressed as follows:

Regional District of Nanaimo
6300 Hammond Bay Road
Nanaimo, BC V9T 6N2
Attention: General Manager, Recreation and Parks Services

City of Nanaimo
455 Wallace Street
Nanaimo, BC V9R 5J6
Attention: City Clerk

or to such other address or addresses as may from time to time be provided in writing by the parties hereto. If there shall be, between the time of mailing and the actual receipt of a notice, a mail strike, slow down or other labour dispute which might affect the delivery of that notice by the mails, then the notice shall only be affected if actually received by the person to whom it was mailed.

10.7 Independent Contractor

Where a party to this Agreement (hereinafter called the "**Supplying Party**") provides Sports Field Services to another party to this Agreement (herein after called the "**Receiving Party**"), the Supplying Party shall be deemed to be an independent contractor and not the agent of the Receiving Party. Any and all agents, servants or employees of the Supplying Party or other persons, while engaged in the performance of any work or services required to be performed by one of the under this Agreement, shall not be considered employees of the Receiving Party and any and all claims that may or might arise on behalf of the Supplying Party, their agents, servants or employees as a

consequence of any act or omission on behalf of the Supplying Party, its agents, servants, employees or other person, shall not be the obligation or responsibility of the Receiving Party. The Receiving Party, their agents, servants or employees, respectively, shall be entitled to none of the rights, privileges or benefits of employees of the Supplying Party except as otherwise may be stated in this Agreement.

10.8 Entire Agreement

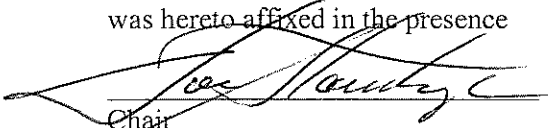
This Agreement shall constitute the entire agreement between the parties and shall supersede all prior written or unwritten negotiations, understandings and agreements.

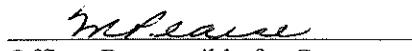
10.9 Arbitration

All disputes arising out of or in connection with this Agreement, or in respect of any defined legal relationship associated therewith or derived therefrom, may at the instance of either party, be referred to a Court of competent jurisdiction or to arbitration by delivery of a Notice of Arbitration in writing. If the parties cannot agree on a choice of arbitrator then each party may appoint an arbitrator and the two arbitrators so appointed must appoint a third arbitrator failing which the third arbitrator must be appointed by a Judge of the Supreme Court of British Columbia. Arbitration will be governed by the Commercial Arbitration Act (British Columbia). The place of arbitration shall be Nanaimo, British Columbia, Canada and the costs shall be borne equally by the parties.

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

The Corporate Seal of the
REGIONAL DISTRICT OF NANAIMO
was hereto affixed in the presence

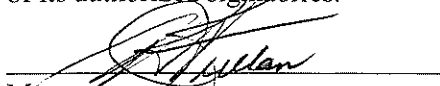

Chair

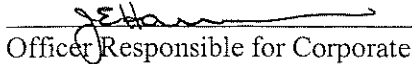

Officer Responsible for Corporate
Administration

of its authorized signatories:)

	Initial	Date
Content (Mgr)	DB	APRIL 20, 2011
Approved (GM)	[Signature]	APRIL 21, 2011
Legal Form (SMCA)	MLP	29/04
Authority (CAO)	[Signature]	May 5/11

The Corporate Seal of the
CITY OF NANAIMO
was hereto affixed in the presence
of its authorized signatories:


Mayor
John Ruttan, Mayor


Officer Responsible for Corporate
Administration
Joan Harrison
Manager of Legislative Services

SCHEDULE "A"

Costs of Sports Field Operation and Maintenance

Labour - includes wages and benefits;

Equipment - means all equipment involved in the maintenance or operation of Sports Fields, including lawnmowers and vehicles and includes costs of operating plus an amount for depreciation calculated in accordance with standard municipal accounting practices;

Materials - means all materials required to maintain and operate Sports Fields, including grass seed and fertilizer;

Field Houses - means change room and washroom facilities at each park and includes facility costs (cleaning, supplies, lighting, heating, etc.)

Water - means costs related to the irrigation of Sports Fields;

Electricity - for the operation of field lights at Sports Fields which are illuminated;

Fleet Maintenance - means the cost of repairing and maintaining vehicles used by parks staff at the facilities, which is reasonably attributable to operation and maintenance of Sports Fields, including depreciation calculated in accordance with standard municipal accounting practices;

Vandalism - means annual costs for removing the effects of vandalism or repairing vandalized property;

Garbage Collection - means collection of litter from Sports Fields;

Departmental Overhead - means the following administrative costs attributable to Sports Fields operation and maintenance:

- salaries of parks maintenance administrative staff
- staff training
- staff meetings
- costs related to operation of parks works yard
- other miscellaneous costs incidental to Sports Fields (e.g. photocopying, office supplies, office equipment rental, advertising, bank charges, etc.)

Costs attributed to Sports Field Operation and Maintenance do not include the construction of structures or improvements.

SCHEDULE "B"

Beban Park, Bowen Park, Nanaimo Aquatic Centre and Nanaimo Ice Centre Costs of Operation and Maintenance

Facilities – means all buildings, structures, swimming pools, arenas, play fields, etc. located at Bowen Park, Beban Park or the Nanaimo Aquatic Centre.

Labour – includes wages and benefits;

Equipment – means all equipment involved in the maintenance or operation of the Facilities, including lawnmowers and vehicles and includes costs of operating plus an amount for depreciation calculated in accordance with Nanaimo's usual accounting practices;

Materials – means all materials required to maintain and operate the Facilities;

Utilities – means all utility costs required to operate the Facilities including, but not limited to: telephones, water fees, sewer fees, electricity, gas and oil.

Building Maintenance – means all costs that are required to maintain the Facilities in good operating condition, e.g. painting, flooring, HVAC, plumbing and electrical repairs, security, janitorial supplies;

Fleet Maintenance – means the cost of repairing and maintaining vehicles used by parks staff at the facilities, which is reasonably attributable to operation and maintenance of Nanaimo Recreation Facilities, including depreciation calculated in accordance with Nanaimo's usual accounting practices;

Vandalism – means costs for removing the effects of vandalism or repairing vandalized property;

Garbage Collection – means collection of garbage from the Facilities;

Program Costs – means those costs incurred for the provision of recreational programs to the public at the Facilities. Costs may include contract staff and recreation supplies.

Departmental Overhead – means the following administrative costs of the Parks and Recreation Service of the City of Nanaimo attributable to the operation and maintenance of the Facilities;

- Salaries of parks and recreation administrative staff
- Staff training
- Staff meetings
- Costs related to the operation of the parks works yard
- Other miscellaneous costs incidental to the Nanaimo Recreation Facilities Service (e.g. photocopying, office supplies, office equipment rental, advertising, bank charges, etc.)

Costs of Sports Field Operation and Maintenance do not include construction of structures or improvements.