

WEST SHORE PARKS AND RECREATION

OPERATING, MAINTENANCE AND MANAGEMENT AGREEMENT

THIS AGREEMENT dated for reference March 1, 2025 is

BETWEEN

CITY OF LANGFORD, 877 Goldstream Road, Victoria, B.C. V9B 2X8

CITY OF COLWOOD, 3300 Wishart Road, Victoria, B.C. V9C 1R1

DISTRICT OF HIGHLANDS, 1980 Millstream Road, Victoria, B.C. V9B 6H1

DISTRICT OF METCHOSIN, 4450 Happy Valley Road, Victoria, B.C. V9C 3Z3

TOWN OF VIEW ROYAL, 45 View Royal Avenue, Victoria, B.C. V9B 1A6

(each a "**Municipality**" and collectively, the "**Municipalities**")

AND

WESTSHORE PARKS AND RECREATION SOCIETY, 1767 Island Highway, Victoria
B.C., V9B 1J1

(the "**Operator**")

WHEREAS:

- A. Section 8(2) of the *Community Charter* authorizes each Municipality to provide any service that the council considers necessary or desirable and to do this directly or through another public authority or another person or organization,
- B. Pursuant to section 8(1), each Municipality has the capacity, rights, powers and privileges of a natural person of full capacity and, accordingly, may be a member of a society under the *Societies Act* (British Columbia),
- C. The Municipalities are members of the West Shore Parks and Recreation Society (the "**Society**") and have entered into an Operating, Maintenance and Management Agreement with the Society dated July 1, 2002, as amended and extended, (the "**2002 Operating Agreement**"), pursuant to which the Society provides certain parks, recreation and community services for the Municipalities,
- D. In connection with their membership in the Society and the provision of such services the Municipalities are parties to a Members Agreement dated December 12, 2001, as amended and extended, (the "**Members Agreement**") and a Co-Owners Agreement dated March 31, 2007, as amended and extended, (the "**Co-Owners Agreement**"), and

- E. The Municipalities have entered into a West Shore Parks, Recreation and Community Services Agreement (the “**Recreation Services Agreement**”) to replace and update the arrangements set out in the Members Agreement and the Co-Owners Agreement and now wish to enter into this Agreement to replace and update the 2002 Operating Agreement.

NOW THEREFORE this Agreement witnesses that in consideration of the premises and mutual covenants herein contained and other good and valuable consideration (the receipt and sufficiency of which are acknowledged by both parties), the Municipalities and the Operator covenant and agree as follows:

Operation

1. The Operator shall, on the terms and conditions of this Agreement, operate, manage, supervise, maintain, repair and replace the lands, parks, buildings and facilities (including those held by way of lease or license as indicated in **Schedule A**) identified in **Schedule A**, as that Schedule may be amended from time to time in accordance with this Agreement, (the “**Recreation Facilities**”) as community and recreation services of the Municipalities.

Lease and Licenses

2. Where the Municipalities interest in a Recreation Facility is held by way of a lease or license, the Operator shall administer such lease or license on behalf of the Municipalities, and observe and comply with all obligations of the Municipalities under such lease or license, provided that the Operator shall not be entitled to exercise any rights of termination or renewal.

Term

3. This Agreement shall be for a term of 5 years (the “**Term**”) commencing on March 1, 2025 and expiring at midnight on February 28, 2030, unless terminated earlier pursuant to this Agreement.

Scope of Recreation Facilities

4. The Operator acknowledges and agrees that the Municipalities may from time to time:
 - (a) dispose of any of the Recreation Facilities, or any part of the Recreation Facilities;
 - (b) acquire (including by way of full acquisition or lease or license) additional lands, public open spaces (including parks and greenbelts), buildings and facilities (including pools, golf courses, outdoor playing fields, arenas, velodromes and trails) for inclusion in the Recreation Facilities;
 - (c) construct additional buildings and facilities (including pools, golf courses, outdoor playing fields, arenas, velodromes and trails) for inclusion in the Recreation Facilities; and
 - (d) construct additions to or replacements of any of the Recreation Facilities or any part of the Recreation Facilities

and upon notice from the Municipalities from time to time the Operator and the Municipalities shall amend this Agreement as necessary to update **Schedule A**.

Payments to Operator

5. The Municipalities shall pay to the Operator an annual requisition for the provision of the Services in the amount indicated in the Financial Plan for the applicable calendar year as the (estimated operating and capital costs) minus (estimated revenues and surplus reserves). The Municipalities shall pay the annual requisition to the Operator in equal quarterly instalments on or before January 1, April 1, July 1 and September 30 of each calendar.

Annual Financial Plan

6. The Operator shall, prior to December 1 of each year, provide to the Municipalities, in writing, a 5-year draft financial plan
 - (a) Including, for the next calendar year, which includes details of any and all capital items which it recommends be replaced or repaired at the Recreation Facilities in the succeeding calendar year, together with the Operator's estimate of operating costs and revenues; and
 - (b) including the Society's proposed capital and operating expenditures and revenues for each year of the plan.
7. The Municipalities and the Operator shall work together to achieve by February 28 of each year approval by the Municipalities (in accordance with the requirements Recreation Services Agreement) of the draft 5- year financial plan submitted under the preceding section (which financial plan is, once approved or determined by the Municipalities in accordance with the Recreation Services Agreement, the "**Financial Plan**").
8. Quarterly payments of the annual requisition for a calendar year shall be based on:
 - (a) the previous year's requisition if the payment is made before the current year's Financial Plan has been approved or determined by the Municipalities; and
 - (b) the current year's requisition if the payment is made after the current year's Financial Plan has been approved.
9. Where a quarterly payment is made before the Municipalities have approved or determined the Financial Plan for that calendar year, an adjustment shall be made by the parties at the time of the first payment after such Financial Plan approval or determination.
10. Except in the case of an emergency, the Operator shall operate the Recreation Facilities in accordance with the applicable Financial Plan. In the event of an emergency, after payment of monies required to address the emergency, the Operator may apply to the Municipalities for an amendment to the Financial Plan which the Municipalities must consider, acting reasonably in all the circumstances. In the case of unforeseen, but non-urgent circumstances, the Operator may apply to the Municipalities for an amendment of the Financial Plan and when considering requests for Financial Plan amendments, the Municipalities may require the Operator to use any surplus funds which it may be

holding.

11. The Operator shall not operate at a deficit without the prior approval of the Municipalities. The parties acknowledge that the Operator maintains and shall budget for an equipment replacement fund and a contingency fund.

Collection of Taxes

12. The Operator shall charge and collect from users and occupants of the Recreation Facilities all GST (or replacement tax) payable by such users or occupants for goods or services provided to them and the Operator shall remit such GST in accordance with all applicable laws.

Payment of Costs

13. The Operator shall perform all its obligations under this Agreement at its own cost and the Operator shall pay all costs arising from the operation, supervision, maintenance, repair and management of the Recreation Facilities, including all utilities and taxes.

Rates to be Charged

14. The Operator shall charge for use of the Recreation Facilities rates established from time to time by the Operator. The Operator shall include the then current rate schedule and proposed rates as an attachment for information to each draft 5-year financial plan submitted to the Municipalities pursuant to this Agreement.

Permitted Uses

15. The Operator shall operate the Recreation Facilities such that they are used only for:

- (a) public and community recreation;
- (b) commercial retail uses in support of the public recreation uses; and
- (c) private rentals which are compatible with the other uses and which are appropriate for a public facility, provided that public and community recreation has a higher priority for bookings;
- (d) and such other uses as may be approved from time to time by the Municipalities;

subject always to compliance with all charges and encumbrances registered from time to time against title to the Recreation Facilities.

Encumbrances

16. The Operator acknowledges that the titles to the Recreation Facilities are subject to various charges and encumbrances and that the Municipalities may from time to time grant further charges and encumbrance. The Operator shall not use or permit the use of the Recreation Facilities in contravention of any of such charges and encumbrances and shall at all times comply with all

obligations of the Municipalities under such charges and encumbrances.

Programs

17. The Operator shall manage and operate all programs and shall develop and offer a comprehensive range of leisure, recreation, aquatics and fitness programs for children, youth, teens, adults, families, seniors, people with disabilities and those from diverse cultural groups.

Waivers

18. The Operator shall establish and obtain waivers in such form as would a prudent operator of the Recreation Facilities and shall include the Municipalities and their respective elected officials, officers and employees in such waivers.

Equipment

19. The Capital Regional District transferred to the Operator ownership of the equipment and other property used in the operation of the Recreation Facilities (the "**Equipment**") for use by the Operator in providing the services to the Municipalities under this Agreement.
20. The Operator shall inspect, maintain, repair and replace, as necessary, the Equipment and in such a manner as to ensure its safe use by the public using the Recreation Facilities.
21. The Operator may, when it considers it necessary for the operation of the Recreation Facilities, purchase other equipment, supplies and personal property, all of which shall be considered part of the Equipment.
22. The Operator is responsible for insuring the Equipment as would a prudent owner of such Equipment, and shall provide copies of such insurance to the Municipalities upon request from time to time.
23. The Operator acknowledges that at the expiry or earlier termination of this Agreement, ownership of all Equipment shall be transferred to and vest in the Municipalities, at no cost to the Municipalities, and the Equipment must be delivered to the Municipalities in good repair and condition, subject only to reasonable wear and tear. The Operator shall execute such further documents as may necessary to evidence the foregoing transfer to the Municipalities

Maintenance and Repairs

24. The Operator shall maintain and repair the Recreation Facilities, including its buildings, structures, improvements and outdoor areas, in a good, clean, sanitary and litter-free condition.

Financial Records

25. The Operator shall keep books of account, receipts, records, vouchers, cheques, papers and documents according to Generally Accepted Accounting Principles and Public Sector Accounting Board Standards, and in a manner acceptable to the Municipalities.
26. The Operator shall provide to the Municipalities audited annual financial statements for the

Recreation Facilities for the previous year by April 15 of each year.

27. The Municipalities and its auditors may, upon request, have access to the books of account, records, vouchers, cheques, papers and documents of and which may relate to the operations of the Recreation Facilities.

Gambling

28. The Operator shall ensure that gambling is conducted at the Recreation Facilities only in accordance with all applicable laws (including municipal bylaws).

Consumption of Alcohol

29. The Operator shall ensure alcohol is consumed at the Recreation Facilities only in accordance with applicable laws (including municipal bylaws).

Employees

30. The Operator shall employ and provide the services of such staff and personnel as are necessary to promptly and efficiently carry out the duties and responsibilities of the Operator. The Operator is the employer of such staff and personnel and the Municipalities are not engaging such staff and personnel as employees or agents for the Municipalities.
31. The Operator shall be solely responsible for any and all remuneration and benefits payable to its employees, and all payments and deductions required to be made by any enactment, including those for Canada Pension Plan, Employment Insurance, Workers' Compensation or Income Tax.

Workers' Compensation

32. The Operator shall, in performing its obligations under this Agreement, comply with the *Workers Compensation Act* (British Columbia) and all regulations and orders from time to time in force thereunder, including the Occupational Health and Safety Regulations, and, upon request from the Municipalities, provide evidence of any required registration under that Act and evidence of compliance with any requirement under that Act to make any payments or pay assessments. In addition, the Operator shall be the "prime contractor" for the Recreation Facilities under the *Workers Compensation Act* (British Columbia) and fulfill all of the "prime contractor's" obligations under that Act, including by ensuring that the activities of any employers, workers and other persons on the Recreation Facilities relating to occupational health and safety are coordinated and by doing everything that is reasonably possible to establish and maintain a process that shall ensure compliance with that Act and regulations thereunder, including the Occupational Health and Safety Regulations.

Liens

33. The Operator must not permit any builders liens in respect of any improvements, work or other activities undertaken by or for the Operator to be registered against title to any of the Recreation Facilities and shall promptly cause any such liens to be discharged from title.

Reports

34. The Operator shall provide the Municipalities with a comprehensive annual report prior to each June 30 in any year, all in a form acceptable to the Municipalities summarizing the activities at the Recreation Facilities in the previous year.

Indemnity

35. The Operator agrees to save harmless, release and indemnify the Municipalities against and from all fines, suits, claims, liabilities, damages, costs, expenses, demands and actions of any kind or nature whatsoever for which the Municipalities may become liable, suffer or incur by reason of or related to or arising from:
- (a) any breach, violation, default or non-performance by the Operator of any provision of this Agreement;
 - (b) any wrongful act, omission or negligence of the Operator or its members, directors, officers, employees, agents, contractors, subcontractors or others for whom it is responsible;
 - (c) any death, bodily injury, property damage, property loss, economic loss or other loss or harm suffered by any person, including the Municipalities, on or in relation to the Recreation Facilities.

In this section, references to the Municipalities include their elected officials, officers, employees, agents, contractors and others. This indemnity survives the expiry or earlier termination of this Agreement.

Insurance

36. The Operator shall, throughout the term of this Agreement, obtain and maintain, with a deductible and otherwise in a form acceptable to the Municipalities, with an insurance company licensed to carry on business in the Province of British Columbia, a policy or policies of comprehensive general liability and property insurance in amounts satisfactory to the Municipalities from time to time, providing the following coverage and protecting the Operator and the Municipalities against all claims arising out of:
- (a) death or injury to persons;
 - (b) damage to, or loss of, or loss of use of any property;
 - (c) damage to, or loss of, the Recreation Facilities;
 - (d) non-owned automobile insurance;
 - (e) contingent employer's liability;
 - (f) personal injury;
 - (g) incidental malpractice;

(h) wrongful eviction;

(i) cross liability.

37. Every policy of insurance will:

(a) name the Municipalities as additional named insureds;

(b) state that the policy applies to each insured in the same manner and to the same extent as if a separate policy had been issued to each insured; and

(c) contain a subrogation waiver.

38. The Operator shall insure those Recreation Facilities which it holds under lease or license, to full replacement value.

39. A certified copy of each policy of insurance shall be provided to the Municipalities prior to the commencement of this Agreement, and promptly thereafter on renewal or amendment of the policy, and shall contain a clause that states that the policy will not be cancelled or materially changed without at least thirty (30) days written notice to the Municipalities.

Termination

40. The Municipalities may, at their option, terminate this Agreement by giving notice of immediate termination to the Operator:

(a) in the event of bankruptcy or insolvency or the taking of any proceedings for protection for creditors or the taking of any proceedings toward dissolution or winding up of the Operator or if demand for payment is made upon the Operator by its bank or a foreclosure action is commenced against the Operator by its bank; or

(b) if the Operator fails to abide by any promise of the Operator in this Agreement and fails to rectify the default within 30 days of written notice from the Municipalities requiring rectification of the default.

Condition of Recreation Facilities

41. At the expiry or earlier termination of this Agreement, the Operator shall ensure that the Recreation Facilities, including all buildings, structures, improvements and grounds are clean, uncontaminated, and in good condition, reasonable wear and tear excepted.

Transfer of Information

42. At the expiry or earlier termination of this Agreement, the Operator shall provide the Municipalities with all information relating to the Recreation Facilities, in both paper and electronic form, and the Operator shall ensure that the Municipalities have the option, if they wish, to take an assignment of the Operator's computer software programs relating to the Recreation Facilities.

Status as Society

43. The Operator will abide by its Constitution, Bylaws and other society requirements and will hold annual meetings and file annual reports and other documents to be filed with the Registrar of Companies.

No Joint Ventureship

44. Nothing in this Agreement makes the Municipalities and the Operator joint venturers or partners.

No Landlord -Tenant

45. Nothing in this Agreement makes the Operator the tenant of the Municipalities and no relationship of landlord-tenant is created.

Agency

46. The Operator is the agent of the Municipalities for the purposes of operating and managing the Recreation Facilities, but the Operator has no authority to bind the Municipalities.

Independent Contractor

47. In all respects, the Operator is an independent contractor which is entitled to use its own methods provided the result is the operation and management of the Recreation Facilities according to this Agreement. The Operator shall, on every contract other than a facility rental or use agreement, inform the other party that it is entering into the contract on its own behalf and not on behalf of the Municipalities.

Notices

48. Any notices required or permitted to be given under this Agreement shall be in writing and may be delivered by hand, sent by facsimile transmission or forwarded by first-class prepaid registered mail to the addresses set forth on the first page or such other address as may from time to time be notified in writing by the parties.

49. If the Operator gives notice to the Municipalities, that notice must be marked to the attention of the Corporate Officer's of each of them.

50. Any notice delivered or sent by hand or by facsimile transmission shall be deemed to be given and received at the time of sending. Any notice mailed shall be deemed to have been given and received on the expiration of 3 days after it is posted, provided that if there shall be between the time of mailing and the actual receipt of the notice a mail strike, slow down or other labour dispute which might affect the delivery of such notice by the mails, then such notice shall only be effective once delivered.

Compliance with Laws

51. The Operator shall comply with all laws, regulations, bylaws, orders and other requirements

applicable to its operations and the Recreation Facilities.

Authority

52. The Operator represents and warrants to the Municipalities that it has the authority to enter into this Agreement and carry out its transactions and all necessary resolutions and procedural formalities have been completed and the persons executing this Agreement on its behalf are duly authorized to do so.

Amendments

53. No amendments to this Agreement shall be valid unless evidenced by written agreement executed by the Municipalities and the Operator.

Assignment

54. This Agreement shall not be assignable by the Operator.

Subcontracting

55. The Operator shall not subcontract the performance of any of its obligations under this Agreement, except with the prior written consent of the Municipalities.

Enurement

56. This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors.

Time of the Essence

57. Time is of the essence respecting this Agreement.

Further Assurances

58. The parties hereto shall execute and do all such further deeds, acts, things and assurances that may be reasonably required to carry out the intent of this Agreement.

Entire Agreement

59. This Agreement is the entire agreement among the parties and neither the Municipalities nor the Operator has given or made representations, warranties, guarantees, promises, covenants or agreements to the other except those expressed in writing in this Agreement, and no amendment of this Agreement, is valid or binding unless in writing and executed by the parties.

Interpretation

60. In this Agreement:

- (a) reference to the singular includes a reference to the plural, and vice versa, unless the

context requires otherwise;

- (b) article and section headings have been inserted for ease of reference only and are not to be used in interpreting this Agreement;
- (c) reference to a particular numbered section or article, or to a particular lettered Schedule, is a reference to the correspondingly numbered or lettered article, section or Schedule of this Agreement;
- (d) if a word or expression is defined in this Agreement, other parts of speech and grammatical forms of the same word or expression have corresponding meanings;
- (e) reference to any enactment includes any regulations, orders or directives made under the authority of that enactment;
- (f) reference to any enactment is a reference to that enactment as consolidated, revised, amended, re-enacted or replaced, unless otherwise expressly provided;
- (g) the provisions of s. 25 of the Interpretation Act with respect to the calculation of time apply;
- (h) all provisions are to be interpreted as always speaking;
- (i) reference to a "party" is a reference to a party to this Agreement and to their respective successors, assigns, trustees, administrators and receivers;
- (j) reference to a "day", "month", "quarter" or "year" is a reference to a calendar day, calendar month, calendar quarter or calendar year, as the case may be, unless otherwise expressly provided.; and
- (k) where the word "including" is followed by a list, the contents of the list are not intended to circumscribe the generality of the expression preceding the word "including".

IN WITNESS WHEREOF the parties hereto have executed this Agreement on the dates written below.

WEST SHORE PARKS AND RECREATION SOCIETY

By its authorized signatories)

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_____)
Name)

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Name)

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Date)

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CITY OF COLWOOD

By its authorized signatories)

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Name)

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Name)

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Date)

DISTRICT OF HIGHLANDS

By its authorized signatories)

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Date)

CITY OF LANGFORD

By its authorized signatories)

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Date)

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DISTRICT OF METCHOSIN

By its authorized signatories)

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Date)

TOWN OF VIEW ROYAL

By its authorized signatories)

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Name)

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Date)

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Schedule A

Facilities

Colwood Location 1767 Island Highway

Indoor facilities:

JDF Recreation Center
JDF Ice Arena
Indoor Sports Complex previously Curling facility
Swimming Pool
Weight Room and Fitness Studio
Childcare Centre

Kinsmen Fieldhouse
Senior's Activity Centre Hall
The Q Centre Arena
Clubhouse (Lawn Bowling Area)
Kids Cottage

Outdoor Facilities:

Golf Course
Tennis Courts
Playing Fields
Ball Diamonds
Lawn Bowling Greens
Velodrome
Jogging Track
Lacrosse Court
BMX Track
Beach Volleyball Courts
Basketball Courts
Rotary Picnic Shelter
Concessions
3 Playgrounds
Thrifty Foods Skatepark

Leased to others:

WildPlay

Langford Location 2805 Carlow Road (held by way of lease of a portion of Centennial Park from City of Langford to the Society, and modular building located on that land, owned by the Society):

Centennial Centre for Arts, Culture & Community

Lands

1767 Island Highway, Victoria, B.C. and legally described as:

PID: 028-002-997

Lot A, Section 1 and 104, Esquimalt District, Plan EPP2923

Licenses of adjacent lands dated January 24, 1977 and May 4, 1984 from Her Majesty the Queen in Right of Canada, represented by the Minister of National Defence