



April 5, 2017

TO: Park Board Chair and Commissioners
FROM: General Manager - Vancouver Board of Parks and Recreation
SUBJECT: CCA Proposed Joint Operating Agreement with Legal Considerations

RECOMMENDATION

- A. **THAT** the Vancouver Park Board approve the form of Joint Operating Agreement (attached as Appendix B); and
- B. **FURTHER THAT** the Vancouver Park Board authorize the General Manager of the Park Board to offer to each Community Centre Association (CCA) currently operating a community centre jointly with the Park Board to enter into a new Joint Operating Agreement, based on the form approved by the Park Board and completed for each respective CCA as indicated in the form of agreement, subject to the General Manager of the Park Board first being satisfied that:
 1. The CCA is in compliance with its financial disclosure obligations under the current Joint Operating Agreement;
 2. The CCA is not in arrears of any payments due from the CCA to the Park Board; and
 3. Any outstanding litigation between a CCA and the Park Board has been brought to an end through:
 - a. At the option of the Park Board, a Consent Dismissal Order being entered with the Court dismissing the outstanding litigation or a Notice of Discontinuance being filed with the Court discontinuing the action against the Park Board; and
 - b. A Mutual Release being executed by the Park Board and the CCA releasing all claims.

OVERVIEW

In response to direction provided at the Park Board meeting held on March 6, 2017, staff are proposing a revised Community Centre Association (CCA) Joint Operating Agreement (JOA) form that is based on the proposed JOA outlined in the [report dated February 3, 2017](#) and the amendments outlined in the [March 3, 2017 staff memo](#), along with further revisions that reflect consideration of outstanding legal issues identified by the CCAs during the 30-day review period granted by the Park Board Commissioners.

POLICY

The Vancouver Park Board has exclusive jurisdiction and control over permanent public parks in the City of Vancouver and is responsible for establishing policy objectives as they pertain to

parks and recreational facilities. Policy objectives are developed to ensure good governance of park operations and to benefit all Vancouver residents and, in some instances where appropriate, sub-groups of the public who may have particular needs through the delivery of recreational, social, cultural, educational, and other services.

As referenced in the [Community Centre Association Joint Operating Agreement report](#) presented by staff on December 12, 2016, a new JOA between the Park Board and the Community Centre Associations (CCAs) will support the four foundational principles established by the Park Board for the Community Centre Network:

1. **Equity among Community Centres:** All Vancouver citizens have access to a core set of programs that lead to healthy living and ultimately, to healthy communities.
2. **Access to a Network of Community Centres:** System that allows for a universal membership or other system to be used for all rinks, pools, fitness centres and core programs across all community centres.
3. **Access for all Citizens:** Single policy and process that respects confidentiality to ensure all residents have access to basic recreation programs and services regardless of income.
4. **Operational Sustainability and Accountability:** An operating relationship for community centres that is sustainable, accountable and transparent.

BACKGROUND

At a Special Park Board meeting held on February 9 and 16, 2017, Park Board Commissioners received a presentation from Park Board staff, with a recommendation that the General Manager be authorized to offer each CCA a new JOA, and they heard from 63 speakers, which included two presentations from CCA representatives. The Board deferred the discussion and vote on the proposed JOA to the Regular Board meeting on March 6, 2017.

On March 6, 2017, after hearing from the CCAs that there were outstanding legal issues that would prevent the CCAs from signing the proposed JOA, the Board granted a 30-day review period to consider outstanding legal issues before the final draft JOA came back to the Board for approval on April 10, 2017. Following is the full motion:

THEREFORE BE IT RESOLVED:

- A. THAT the Vancouver Park Board approve the form of Joint Operating Agreement (JOA) provided as Appendix D in the February 3, 2017 Recommendation to Commissioners entitled Community Centre Association - Proposed Joint Operating Agreement, together with the amendments proposed in the March 3, 2017 Memo to Park Board Commissioners titled CCA Joint Operating Agreement - Clarification Amendments - with such documents together to form the final draft JOA.
- B. FURTHER THAT the Vancouver Park Board grant a 30-day period to enable a session and/or sessions to take place between counsel, and representatives, for Community Centre Associations and counsel and staff for the Park Board for the purpose of reviewing and considering any outstanding legal issues in the development of the Joint Operating Agreement.
- C. THAT the final draft JOA come back to the Vancouver Park Board for approval at the scheduled April 10, 2017 Park Board meeting.

Given the direction from Park Board Commissioners, Park Board staff canvassed the CCAs for their input and developed a process for legal consideration of the JOA with CCA representatives and their legal counsel. Importantly, the process was developed to ensure full transparency and access to legal information as not all CCAs were equally represented by legal counsel or wished to be represented by legal counsel. Park Board staff adhered to the same principles that were developed for the overall consultation process, namely: one open, transparent process for all CCAs.

To this end, Park Board staff considered input from the CCAs with respect to the process and developed the [Terms of Reference](#) for two legal consideration sessions. The sessions were designed to facilitate discussion and understanding of the issues. The second session was included to validate any proposed amendments to the JOA with CCAs before they were brought forward to the Park Board Commissioners. All CCA Presidents and Directors, including their legal counsel, were invited to attend.

The outcome of the three main components of the process, including (1) written submissions, (2) an exploratory session, and (3) a review session are described in detail below.

Written Submissions

To initiate the review and consideration process, Park Board staff requested the CCAs or their legal counsel provide written submissions detailing their legal issues with the JOA. Staff received written submissions from three sources: one legal memo and blacklined JOA from Margaret Mason representing 15 CCAs, one legal memo from Dale Wilcox representing Dunbar's CCA, and one previously-submitted letter from Sunset CCA describing their position on the JOA.

Exploratory Session - March 25

The purpose of this session was to understand the CCAs' legal issues and gather detailed feedback on written submissions if necessary. All CCAs and their legal counsel were invited to attend the session.

Dunbar CCA and their legal counsel attended the exploratory session to discuss their legal position on the JOA and three additional CCA representatives attended to listen and offer their individual positions on the JOA, but did not represent their boards. Park Board staff had a productive session with the CCAs that attended and Park Board counsel continued written correspondence with Margaret Mason who represented the group of 15 CCAs. Following the session, Park Board staff reviewed and considered all information provided by the CCAs and prepared a draft list of legal issues along with a discussion and recommendations for each item.

Review Session - April 1

The purpose of the meeting was to discuss and clarify the outcome of Park Board staff and counsel exploratory session and written submissions before proposing any amendments to the Park Board Commissioners. It was an opportunity to ensure that staff/counsel had correctly understood and addressed the issues identified by the CCAs.

Park Board staff distributed a draft discussion of legal issues document and a summary of legal items document in advance of the meeting for consideration. In total, the legal review

session was attended by CCA Presidents and Directors from Dunbar, Strathcona, Thunderbird and Champlain.

DISCUSSION OF LEGAL ISSUES

As a result of the legal review and consideration process, Park Board staff and counsel received feedback on a number of issues including some that were considered more of a business or term issue as opposed to a legal issue. While a differentiation was made to ensure staff were following the direction of the Board, a detailed discussion of all issues received through this 30-day process is provided below, with a Summary of Legal Issues attached as [Appendix A](#).

1. Constitution and Bylaws

Legal Issue

The current constitution and bylaws of a CCA may not be consistent with permitting the proposed activities and expenditures under the new JOA. For example, the constitution of some CCAs set out a purpose which does not allow for providing services beyond its neighbourhood boundaries or does not allow funds to be used for any purpose other than in its own neighbourhood.

Certain governance requirements in the JOA (for example, ensuring that the bylaws are not changed or a director who runs for office steps down) are not strictly in the control of the directors of the CCA; there may be situations where members of a CCA vote to make amendments not put forward by the directors.

Discussion

Each CCA has its own constitution and bylaws, and they vary widely in scope and purpose. Under the BC [Societies Act](#), the constitution and bylaws of a Society may be amended by a special resolution of the members of the society. Most CCAs have undertaken this process on many occasions, some update bylaws or constitutions on a regular basis, and some do so less frequently. Amendments to bylaws or constitutions must be made by special resolution vote of the membership at a general meeting of the Society. The *Societies Act* requires that between 14 and 21 days' notice is given before a general meeting is held, depending on the number of members and provisions of the bylaws.

The Park Board and the City of Vancouver frequently enter into service delivery agreements with non-profit organizations. Typically, this process requires that the applicable non-profit organization meet criteria that are determined by the Park Board or City, including showing they have an appropriate purpose and bylaws. Agreements that are entered into then either prohibit the non-profit from changing their constitution or bylaws for the term of the agreement or require that any amendments not conflict with the agreement entered into.

In this case, the Park Board has a long standing relationship with the CCAs and recognizes that some CCAs carry out a scope of activities that are broader than the joint operation of the community centres, or may have a constitution that sets their purpose as being only in relation to the centre they operate. The Park Board is seeking to update how the community centres across Vancouver are managed and wish to continue the productive service delivery relationship with the CCAs. This expansion of the service delivery model

to treat the community centers as more of a network requires that the CCAs ensure they are able to carry out the terms of the updated JOA before they sign it. For some CCAs, this may mean updating their constitution or bylaws so they are satisfied that the activities and expenditures contemplated under the draft JOA are authorized by, and consistent with, the amended constitution and bylaws of the CCA. Due to recent changes in the *Societies Act*, many CCAs will likely need to update their bylaws and constitution in any event to come into [compliance with the new Act](#). For CCAs that are also registered charities, if their purpose is revised, this change will need to be submitted to and approved by the Canada Revenue Agency (CRA).

The alternative to the CCAs updating their respective constitution and bylaws, if required, is that the Park Board abandons its policy objectives for system-wide services or for the implementation of public policy, or does not enter into a new joint operating agreement with a CCA that is unable or unwilling to bring its constitution and bylaws into alignment with the new JOA.

The issue of the board of directors of a CCA not being able to bind the membership is of particular concern with organizations that have large memberships. Many non-profit organizations have small memberships or primarily non-voting memberships, which gives the board more ability and power to control the direction of the organization.

This concern has arisen in respect to several requirements set out in Section 4 of the proposed JOA, which includes requirements for the CCA to maintain a certain purpose or prohibits the CCA from changing its governance documents to a form that conflicts with the terms of the JOA. The *Societies Act* does provide a mechanism for members to suggest and vote on motions the directors do not agree with, although there is a high threshold to meet. Accordingly, directors of the CCA cannot covenant that such a change will never happen.

The sections of the JOA at issue include requirements that the Park Board has identified as being important for ensuring good governance, and for preventing the reoccurrence of some problems that currently exist in the system.

Recommendation

Staff recognize that some CCAs have purposes which do not currently contemplate the scope of activities included in the proposed JOA and as such cannot sign the JOA until their constitution and bylaws are amended by a special resolution of the membership to contemplate the activities and expenditures under the JOA. To allow each CCA time to review their constitutions and bylaws and process any changes required to enable the CCA to sign the JOA, staff recommend that the date by which the CCAs must sign the JOA be set as September 30, 2017, and that the Effective Date of the Agreement be amended to January 1, 2018.

Staff recommend the foregoing time period as some CCAs have advised that their boards do not meet during the summer months and so it would be challenging to meet a signing deadline that occurs during the summer. Staff are also aware that some CCAs may require this additional time to prepare the changes required to transition under the new *Societies Act* so that all bylaw and constitutions changes can be carried out in the same process. Legal counsel for Dunbar Community Centre has suggested that the several governance requirements in Section 4 of the proposed JOA be converted into events of default, such

that the CCA has an opportunity to attempt to rectify any governance changes that are not in compliance with the JOA. Park Board staff are satisfied that this alternative approach provides certainty around good governance and have proposed corresponding changes to put into place the suggestions by Dunbar's counsel.

Legal counsel for a group of 15 CCAs suggested that all governance obligations set out in Section 4, other than 4(e) [Conflict of interest with elected officials sitting on the Board], be deleted and that the CCA's only obligation is to comply with its bylaws and constitution and the *Societies Act*. Staff do not recommend this change.

2. Community Centre Investment Fund/Operations Fee

Legal Issue

For societies that are not registered charities under Canada's [Income Tax Act](#), the legal issue with respect to the Community Centre Investment Fund is addressed by item 1 above: ensuring the society's purpose (as set out in its constitution) allows for this payment. Part 4 of the *Societies Act* requires that a Society only distributes money or property as allowed under the *Act*, which includes "in furtherance of the purposes of the Society."

For the societies that are registered Charities under the *Income Tax Act*, some have expressed a concern with the payment to the Park Board being construed as a "gift" to an entity that is not a qualified donee and therefore that payment may not be allowed under the *Income Tax Act* rules that pertain to charitable organizations.

Secondly, CCAs have also provided non-legal suggestions regarding the name of the fund and the concerns that payments into the fund may be increased in the future.

Discussion

The Park Board has already obtained a legal opinion that the payment of the Community Centre Investment Fund/Operations Fee amount is not contrary to the rules under the *Income Tax Act* because it is a payment in consideration and falls within the scope of permitted expenditures for charitable organizations under the *Act*. However, the Park Board recognizes that some CCAs still have concerns about this issue because their legal counsel have provided conflicting advice. The fundamental assumption that underlies this conflicting advice is that the Park Board is not a qualified donee under the *Income Tax Act*. This assumption was made because the CRA website lists the City of Vancouver as a qualified donee, but does not specifically list the Vancouver Park Board.

The City of Vancouver, as a municipality, has under the *Income Tax Act* a "qualified donee" status as registered charities have and can issue official donation receipts. The City can also receive funds from registered charities. Because the Vancouver Park Board is considered an administrative arm of the City for the purposes of the *Income Tax Act*, it is also considered a qualified donee under the City of Vancouver's status. This is also the case for the Vancouver Police Board. This practice has been ongoing for many years and has been reviewed by the CRA through an audit process.

The CRA has verbally confirmed that, provided the recipient of the funds is a qualified donee, there are no issues with the payment of these funds by the CCAs to the Park

Board, regardless of whether they are construed as payments for consideration or payments as a gift.

Recommendation

With respect to non-legal issues, staff are amendable to using terminology to refer to the fund that some CCAs have suggested. Accordingly, staff recommend that the name of the Community Centre Investment Fund be changed to “Operations Fee.”

Staff also recommend that the JOA be amended to specify that payments into the fund may only be increased in excess of 2% upon renewal if approved by the Park Board Commissioners. This will provide some comfort to the CCAs that increases will only be allowed if they can be shown to be necessary and are approved by the elected officials.

Staff also recommend a minor language change in the JOA, which confirms that the Park Board is a “qualified donee”, so that CCAs that hold charitable status can have comfort that their payments are unequivocally in compliance with the *Income Tax Act*.

3. Indemnity

Legal Issue

Some CCAs have expressed concern that the indemnity provided by the City of Vancouver to the CCAs is included in a separate document and is not part of the JOA. It has been requested that the indemnity be added to the JOA and be given for the Term of the JOA.

Discussion

The concerns raised by some CCAs regarding the indemnity do not result from changes proposed under the new JOA. The existing indemnity agreements between the CCAs, the City, and the Park Board were entered into around 2001 and the Park Board has prepared the new JOA so the indemnity will continue to exist in its current form.

The indemnity that is provided by the City to the CCAs is very unique. Generally speaking, most arrangements between the Park Board or the City and a non-profit service provider include an indemnity from the non-profit in favour of the Park Board and/or the City. The provision of indemnity by the City to the CCAs is unusual and creates a risk to the City that it does not typically agree to bear. However, because the CCAs are providing a valuable service, City Council previously agreed to the current form of indemnity when it was presented prior to 2001. Any changes to terms of the indemnity must be approved by City Council.

The existing indemnity is a flexible format which allows a variety of programs and services to be indemnified, so long as they are approved by the General Manager of the Park Board. Accordingly, any new programs or services that are contemplated under the new JOA can be indemnified under the current construct.

Recommendation

Staff do not recommend any change to the JOA to address this item, but suggest that the current form of indemnity be attached as a new Appendix E to the JOA for ease of reference.

4. Employer Risks

Legal Issues

Some CCAs have requested more clarity on what employer risks are being borne by the CCAs.

Legal counsel for a group of 15 CCAs requested that the indemnity of the CCAs to the Park Board for employment issues be deleted in its entirety.

Discussion

The City has required that certain employment risks be addressed and protected against because the CCA is retaining control of CCA contractors and employees. This is different from the protection provided by the indemnity agreement above. Because some instructors or contractors are employed by several CCAs, work in Park Board/City buildings, and Park Board staff often carry-out employer functions on behalf of the CCA, there is a risk that employer liabilities will be placed on the City if they were to arise. The Park Board/City are asking the CCA to indemnify the City/Park Board only for risks that are in the CCAs control, and correspondingly, out of the City/Park Board's control. These are:

- “Breaches relating to employment or service contracts with Association Personnel or Association volunteers (for example, improper termination, discipline or human rights complaints); or
- Non-compliance with any statutory or regulatory obligations that Association has in respect of Association Personnel or volunteers (for example, completing and remitting statutory deductions or completing criminal record checks).”

Because some of these functions and responsibilities are often delegated to Park Board staff by the CCAs, the Park Board has clarified that it will take full responsibility for any liabilities that arise when those functions are delegated to the Park Board. The Park Board/City has included a reciprocal indemnity to the CCAs for this delegation of duties. Currently, most delegation by the CCAs to the Park Board occurs informally or verbally. The draft JOA requires that such delegation must be in writing and accepted by both parties, so responsibilities of each party are clear and documented.

Recommendation

Park Board staff have revised the language in Section 12 of the JOA to clarify the items for which the CCAs and the Park Board are responsible to indemnify each other. Wording has been clarified to state that the Park Board takes full responsibility for duties that are delegated to the Park Board staff.

As part of implementation of the JOA, staff will be preparing:

- (a) a summary of responsibilities and risk document to show how the risk, responsibility, and insurance obligations under the JOA apply to common scenarios for the CCAs and the Park Board (e.g., relationships with contractors and volunteers, special events, etc.); and
- (b) a delegation of responsibility form or agency agreement that will be used to record all employer responsibilities delegated to the Park Board by a CCA, as applicable.

5. Ownership

Legal Issue

Sunset Community Centre Association has continued to assert ownership rights over the community centre building. They do not agree with the statement of ownership in the JOA.

Recommendation

Staff recommend that the Park Board and City maintain the current draft language in the JOA and do not grant ownership rights of public assets to private bodies.

6. Miscellaneous issues

Legal counsel for Dunbar Community Centre provided suggested amendments to Section 4 of the proposed JOA to amend certain clauses to reflect powers of the membership vs. powers of the directors of the organization. Staff agree with the analysis provided by Dunbar's legal counsel and have incorporated the suggested amendments in the draft JOA.

Legal counsel for 15 of the CCAs has also provided revised language for consideration, but did not differentiate between legal and business issues. Where the revised language clearly addressed a legal issue or touched on another legal issue, staff have considered the language and have incorporated the following suggested amendments into the JOA:

- (a) Change from referring to "registered Society" to "society incorporated under the *Society Act*" (Recital E, Section 4);
- (b) Amendments to Section 4 so that it reads "the Association ...will conduct itself at all times in accordance with its constitution and bylaws and the requirements of the *Societies Act*";
- (c) Deleted requirements that the CCAs have audit and responsible use of funds policies (section 6.1). Staff are satisfied that sufficient transparency exists with other provisions of the JOA;
- (d) Section 6.1 was amended to specify that training sessions on good governance to be offered by the Park Board are *optional*; and
- (e) Wording change to align wording in section 12.4 with suggested wording regarding the Recreation Supervisors role in assisting CCA boards with their function.

DISCUSSION OF QUASI-LEGAL ISSUES

7. Term and Termination

Issue

Term and termination is not strictly a legal issue, but several CCAs have consistently brought up the issue of term and termination as a concern. Most CCAs have requested a single term of 15 years. Some CCAs have also expressed concern about the potential of Park Board staff requesting unreasonable changes to the JOA at each renewal period.

In addition to requesting a single term of 15 years, some CCAs have also requested more certainty with the indemnity agreement and a term that is tied to the JOA. Staff do not recommend a single 15 year term for two reasons:

1. It is important to have opportunities of review during a 15 year period; and
2. Staff cannot commit to a term of the indemnity on behalf of the City; the terms of the indemnity agreement are in the City's control.

Recommendation

As a compromise, staff recommend a change to the current term and renewal options to be as follows:

- The initial term will be 7 years, with one 8 year renewal term.
- At renewal, if either party wishes to propose changes to the body of the JOA, the process for considering changes must be established by the Park Board Commissioners, be in a public forum, and any changes to the body of the JOA will be subject to the approval of the Park Board Commissioners. If the changes are not finalized before the renewal term commences, the JOA will stay in effect until such time as the changes are finalized, or until the end of the renewal term, whichever is first.

Park Board staff have included revised language in the proposed JOA to this effect.

8. Accumulation of Funds and use of Revenue

Issue

Some CCAs object to restrictions placed on the accumulation or use of funds by a CCA, specifically as set out in Section 14.1(c).

Discussion

The wording in Section 14.1(c) ensures that funds that are generated using the Community Centre Network are used within the Network. Without this section, CCAs are free to use funds generated from the Community Centre for purposes which are outside of the Network. The JOA effectively grants CCAs a non-market licence to use the Jointly Operated Facilities on the terms and conditions set out in the JOA, and a grant in the form of services in kind. These items and services are paid for using public funds. It is critical that the Park Board can ensure that public assets are used for the best interests of the public, and that includes ensuring that funds generated by leveraging these public assets are reinvested into the system that generates them. The JOA does not place any restrictions on funds that are generated outside of the Community Centre Network.

The wording in section 14(c) is not a legal issue, it is contractual language. The requirement that the CCA ensure funds generated in the Community Centre Network are used within the Network is a contractual requirement only and does not create any conflict under the *Societies Act*. If a CCA is concerned that a current expenditure of funds does not fit within the scope of this section (for example, West End Community Centre Association's scholarship program), that exception can be addressed in the Appendices.

Recommendation

Staff recommend that Section 14(c) remain in the JOA, but agree that the first paragraph which reads "As a registered society, the Association acknowledges that its goal and

purpose is not to generate and retain large financial surpluses.” can be deleted. Park Board staff are satisfied that the proposed JOA provides for sufficient transparency into the financial management of the CCA, and also provides public accountability as to how the CCA uses their excess funds, without the inclusion of this language.

Staff have made the corresponding edits to the proposed JOA.

9. Financial Statements

Issue

Some CCAs have previously expressed concern about having to provide financial transparency to the Park Board with respect to operations that occur outside of the Community Centre. At the request of some CCAs, language in the JOA was previously amended to require CCAs prepare separate financial statements to ensure that only activities under the scope of the JOA are disclosed to the Park Board. We have now received additional feedback that some CCAs do not want the obligation to prepare a second set of financial statements, and prefer that Facility Generated Revenue and revenue generated outside of the Community Centre system are identified separately using notes to the financial statements.

Recommendation

Staff find either option acceptable and have made a corresponding change to the proposed JOA.

10. Employment Practices Liability Insurance

Issue

Dunbar’s legal counsel requested that the requirement of the CCA to secure Employment Practices Liability Coverage be amended so that the CCA is only required to *use commercially reasonable efforts* to obtain and maintain such coverage *if it can be purchased for a reasonable cost*.

Recommendation

This coverage is required to cover a variety of employer risks, not all of which can be deleted through a delegation agreement with the City. For so long as the CCA is the employer or contracting party, this insurance is required. Since this proposed change may result in that coverage not being provided, staff do not recommend this change be implemented.

MISCELLANEOUS OTHER COMMENTS

CCAs also submitted some comments that were mainly aimed at business issues. Business issue comments that were implemented because they were sufficiently related to legal issues and considered acceptable by staff were previously discussed in the preceding paragraphs. Additional comments received that were not implemented follow, with the source of each comment shown in parenthesis:

- (a) Delete the concept of “surplus revenue” (Mason);
- (b) Change membership to be opt-in or opt-out at the CCA’s choice (Mason);
- (c) Delete the concept of the community centre investment fund (Sunset);

- (d) Remove the requirement to use ActiveNet (Sunset);
- (e) Remove the right of the Park Board to audit the CCA (Sunset);
- (f) Concern about risk to CCA from offering system-wide programs (Sunset);
- (g) Dispute resolution clause is too broad and favours Park board (Sunset);
- (h) Staffing and group one payment section contains unacceptable elements (Sunset);
- (i) Amend Recital K so it does not refer to “Programming and services being offered in support of the overall goals of the Park Board and the Associations” (Mason);
- (j) Delete concept of Community Centre Investment Fund and replace it with Operations Fee paid on a scale previously proposed by WECCA (Mason);
- (k) Add clause that states that if the Park Board enters into a binding agreement with any CCA which alters any provision of the JOA, then any other CCA may require the Park Board to enter into a similar agreement with them (Mason);
- (l) Delete the requirement that the CCAs demonstrate to the community, other CCAs and the Park Board that its operations are conducted in a financially transparent and responsible manner and that the CCA practices good corporate governance (Mason);
- (m) Include a requirement that any new public policy not result in any additional expenditure by the CCAs (Mason);
- (n) Delete clause that states Park Board may use funds from the Community Center Investment Fund for the purposes of paying for costs to offer System-wide Programs for free (Mason);
- (o) Delete requirement for books of account be kept in accordance with sound financial policies and procedures (Mason);
- (p) Delete requirement for CCA to publicly report on anything other than audited financial statements (section 14.3 (d) requires more detailed reporting) (Mason);
- (q) Amend arbitration provision so that matters not subject to arbitration include policies and standards established by the Park Board or City that do not directly contradict this Agreement, instead of do not directly contradict *the express terms of this Agreement* (Mason);
- (r) Amend section 20.1 and 20.3 to remove the clause that says the Park Board may not offer new space, additions or replacement space to a CCA if the Park Board holds reasonable concerns regarding the CCA’s ability to operate the new space in a safe, professional and compliant manner (Mason);
- (s) Amend section 20.2 so that the Park Board may not remove space that is “unused by the Association for the purposes contemplated under this Agreement for a sustained period” from the scope of the Jointly Operated Facilities; and
- (t) Amend the breach section of the agreement so that “breach” no longer includes failure to comply with the Public Policy or use of funds for purposes not permitted under the JOA (Mason).

No changes were made to the JOA to reflect these comments.

As a result of the legal review and consideration, staff recommend changing the signing deadline outlined below and further amending the JOA as noted in [the linked lined copy](#).

Staff are satisfied that these changes address all legal issues brought forward by the CCAs and their legal counsel.

NEXT STEPS

Park Board staff recommend September 30, 2017 be set as a the new signing deadline to allow sufficient processing time for the CCAs that require changes to their constitution and bylaws, which will require votes by their membership. Park Board staff also recommend a new implementation date of January 1, 2018, to accommodate the extended signing deadline and to support the implementation of any operational changes at the start of a calendar year.

SUMMARY

Following the direction of the Park Board Commissioners, Park Board staff developed and carried-out a process to consider any outstanding legal issues with respect to the JOA. Staff found this a very valuable process to ensure the new JOA would not contain any barriers to enable successful adoption and implementation. The CCAs in attendance also found the sessions to be valuable and productive. As a result of the proposed amendments, staff recommend the approval of the final draft JOA attached as Appendix B to this report.

General Manager's Office
Vancouver Board of Parks and Recreation
Vancouver, BC

Prepared by:
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/rj/sw/clc

Summary of Legal Issues

The table below provides a summary of legal issues received in response to the proposed Joint Operating Agreement (JOA) including recommendations.

| Legal Issue | Recommendation |
|---|---|
| <p>1) Constitution and Bylaws</p> <p>a) Current constitution and bylaws of a CCA may not be consistent with permitting the proposed activities and expenditures under the new JOA</p> <p>b) Certain governance requirements in the JOA (for example, ensuring that the bylaws are not changed or a director who runs for office steps down) are not strictly in the control of the directors of the Association.</p> | <p>To allow CCAs time to review their constitutions or bylaws and put any amendments to the membership for vote, staff recommend that the date by which the CCAs must sign the JOA be set as September 30, 2017 and the Effective Date of the Agreement be amended to January 1, 2018.</p> <p>Governance requirements in Section 4 of the JOA be converted into events of default such that that the Association has an opportunity to attempt to rectify any governance changes that are not in compliance with the JOA.</p> |
| <p>2) Community Centre Investment Fund</p> <ul style="list-style-type: none"> • Purpose of society must allow for distribution of funds • For registered charities, concern that payment is a “gift” to an entity that is not a qualified donee. • Concerns re name of fund and increases over time. | <ul style="list-style-type: none"> • Purpose of society to align per issue 1. • Park Board is a qualified donee for the purposes of the Income Tax Act as an administrative body of the City. • Suggest change of name to “Operations Fee.” • Increases to fund during renewal term only permitted if approved by the Commissioners. |
| <p>3) Indemnity</p> <ul style="list-style-type: none"> • indemnity is a separate document • Prefer term to align with term of JOA | <ul style="list-style-type: none"> • No change to terms of indemnity. • Current form of indemnity to be attached as Appendix. • Indemnity unique - City does not usually indemnify non-profits operating in City buildings. • Indemnity is jurisdiction of the City. |
| <p>4) Employer Risks</p> <p>Clarify responsibilities of CCAs and what they are indemnifying Park Board/City for OR delete indemnity given by CCAs.</p> | <ul style="list-style-type: none"> • Have clarified responsibility of CCAs. • Have amended wording so Park Board solely responsible for all items delegated to it (not just in the event of negligence). • Deleting indemnity not possible. • Staff to prepare delegation form and summary of risks, responsibilities and insurance requirements as implementation tools. |
| <p>5) Ownership</p> <p>Claim of ownership still asserted by Sunset</p> | <p>No change.</p> |

Summary of Legal Issues

| Legal Issue | Recommendation |
|---|--|
| <p>6) Removal of directors Change language regarding removal of directors in event of conflict of interest (running for office)</p> | <p>Language amended to suggestion provided by Dunbar.</p> |
| <p>7) Term and Termination Most CCAs have requested a single term of 15 years. Some have also expressed concern about the potential of Park Board staff requesting unreasonable changes to the JOA at each renewal period.</p> | <ul style="list-style-type: none"> • Suggesting initial term of 7 years, with one 8 year renewal term. • At renewal, if either party wishes to propose changes to the body of the JOA, the process for considering changes must be established by the Park Board Commissioners, be in a public forum and any changes to the body of the JOA will be subject to the approval of the Park Board Commissioners. If the changes are not finalized before renewal, the JOA will stay in effect until the changes are finalized. |
| <p>8) Use of Revenue</p> <ul style="list-style-type: none"> • Some object to restrictions placed on the accumulation or use of funds by a CCA. • Some CCAS requested that all restrictions on how funds are used be deleted. | <ul style="list-style-type: none"> • Delete “As a registered society, the Association acknowledges that its goal and purpose is not to generate and retain large financial surpluses.” • Do not delete remainder of 14.1(c). This is a contractual requirement and does not create a conflict under the Societies Act. Ensuring funds generated using the Community Centre Network are used within the Network is a critical requirement to ensure that public assets are used for the best interests of the public. |
| <p>9) Financial Statements Concern over requirement to have separate statements for activities in vs out of the network.</p> | <p>Either separate statements or statements with revenue and expenses separated by notes are acceptable, at the CCA’s choice.</p> |
| <p>10) Employment Practices Liability Insurance Request amendment so that CCA is only required to <i>use commercially reasonable efforts</i> to obtain and maintain such coverage <i>if it can be purchased for a reasonable cost</i></p> | <ul style="list-style-type: none"> • No change. • Liability for employment risks is a key issue for the City. |

Summary of Legal Issues

Miscellaneous Requests - Changes Made

- (a) Change from referring to “registered Society” to “society incorporated under the *Societies Act*” (Recital E, Section 4).
- (b) Amendments to section 4 so that it reads “the Association ...will conduct itself at all times in accordance with its constitution and bylaws and the requirements of the *Societies Act*.”
- (c) Deleted requirements that the CCAs have audit and responsible use of funds policies (section 6.1).
- (d) Amended Section 6.1 to specify that training sessions on good governance are *optional*.
- (e) Change wording in section 12.4 regarding the Recreation Supervisors role in assisting Boards with their function.

Miscellaneous Requests - Changes Not Made (most are business issues, not legal)

- (a) Delete the concept of “surplus revenue”
- (b) Change membership to be opt-in or opt-out at the Association’s choice
- (c) Delete concept of the community centre investment fund
- (d) Remove requirement to use ActiveNet
- (e) Remove the right of the Park Board to audit the Association
- (f) Concern about risk to Association from offering system-wide programs
- (g) Dispute resolution clause too broad and favours Park board
- (h) Staffing and group one payment section contains unacceptable elements
- (i) Amend Recital K to remove wording programs being offered in support of the overall goals of the Park Board and the Associations
- (j) Delete concept of Community Centre Investment Fund and replace it with Operations Fee paid on a scale previously proposed by WECCA
- (k) Add clause that states that if the Park Board enters into a binding agreement with any CCA with alters any provision of the JOA, then any other Association may require the Park Board to enter into a similar agreement with them
- (l) Delete the requirement that the CCAs demonstrate financial transparency and good corporate governance
- (m) Include a requirement that any new public policy not result in any additional expenditure by the CCAs
- (n) Delete clause that states Park Board may use funds from the Community Center Investment Fund for the purposes of paying for costs to offer System-wide Programs for free
- (o) Delete requirement for books of account be kept in accordance with sound financial policies and procedures be deleted
- (p) Delete requirement for Association to publicly report on anything other than audited financial statements (section 14.3 (d) requires more detailed reporting)
- (q) Amend arbitration provision so that matters not subject to arbitration include policies and standards established by the Park Board or City that do not directly contradict this Agreement, instead of do not directly contradict *the express terms of* this Agreement
- (r) Amend section 20.1 and 20.3 to remove the clause that says the Park Board may not offer new space, additions or replacement space to an Association if the Park Board holds reasonable concerns regarding the Association’s ability to operate the new space in a safe, professional and compliant manner
- (s) Amend section 20.2 so that the Park Board may not remove space that is “unused by the Association for the purposes contemplated under this Agreement for a sustained period” from the scope of the Jointly Operated Facilities
- (t) Amend the breach section of the agreement so that “breach” no longer includes failure to comply with the Public Policy or use of funds for purposes not permitted under the JOA

**PARK BOARD - COMMUNITY CENTRE ASSOCIATION
JOINT OPERATING AGREEMENT**

BETWEEN

THE VANCOUVER BOARD OF PARKS AND RECREATION

AND

THE [INSERT NAME] COMMUNITY CENTRE SOCIETY

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PARK BOARD - COMMUNITY CENTRE ASSOCIATION AGREEMENT

THIS AGREEMENT is made the ____ day of _____, 2017

BETWEEN:

The Vancouver Board of Parks and Recreation
2099 Beach Avenue
Vancouver, BC V6G 1Z4

(the “Park Board”)

AND:

The [insert name] Community Centre Society
[insert address]

(the “Association”)

WHEREAS:

- A. Each of Vancouver’s community centres serves as the hub of its respective neighbourhood linking residents together with resources to encourage positive health outcomes through healthy lifestyles, social connectedness and the ability to contribute to community;
- B. Community centres provide access to quality programming and services to encourage healthy lifestyles through participation in physical, recreational, cultural, educational, social and capacity-building programs for residents of the community, which are responsive to the community’s unique needs;
- C. The Park Board is an elected board of commissioners with statutory jurisdiction over Vancouver parks, including the provision of recreational programs and facilities, setting policies and allocating budget resources and the authority to organize, conduct and contract with others for recreational programs;
- D. The City of Vancouver is the sole owner of the assets which are in the possession and control of the Park Board, including designated parks and other land, the community centre buildings and other facilities and improvements located on such lands;
- E. The Association is a valuable community-based society incorporated under the Societies Act with an elected Board of Directors that plays an important role in contributing to the success of the Community Centre Network, including by delivering Programming and services which ensure a healthy, engaged and inclusive community;
- F. While the parties recognize the unique attributes of each community centre and neighbourhood, the Park Board and the Association agree that all residents of the City of Vancouver should have similar opportunities, regardless of gender, age, sexual orientation, ability, race, culture, faith or socio-economic status;

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- G. The parties agree that it is in their mutual interest to work cooperatively to ensure the successful and financially sustainable offering of Programming and services from the Jointly Operated Facilities and to improve community engagement and participation through the Jointly Operated Facilities;
- H. This Agreement replaces the previous joint operating agreement between the parties dated ____ (the “Prior JOA”). This updated operating agreement reflects the current working relationship of the parties and is entered into because both parties recognize and appreciate the skills and attributes contributed by the other to the provision of Programming and services to the community. This working relationship reflects a mutual acknowledgement and respect of the parties’ distinct roles and shared objectives;
- I. The scope of this Agreement is limited to the Jointly Operated Facilities, and any additional scope (for example, parks and fieldhouses) based on current arrangements will be addressed in the appendices; and
- J. This Agreement sets out the legal relationship between the Park Board and the Association for the operation of the Jointly Operated Facilities. It also clarifies the roles of the parties and enables the Association to provide Programming and services in the Jointly Operated Facilities in support of the overall goals of the Park Board and Association and to the benefit of the residents of the City of Vancouver.

NOW THEREFORE, in consideration of the payment of ten dollars by each party to the other, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and agreed to, the parties hereto agree as follows:

1. DEFINITIONS

- (a) “ActiveNet” has the meaning ascribed in Section 16.1;
- (b) “Applicable Laws” means all laws, regulations and governmental policies of any governmental authority, including Park Board or City by-laws, as they may be amended or replaced from time to time, and which are applicable to each of the parties’ operations in the Jointly Operated Facilities and the roles and responsibilities of each party under this Agreement;
- (c) “Association Board” means the Board of Directors of the Association;
- (d) “Association Equipment” has the meaning ascribed in Section 17.2 of this Agreement;
- (e) “Association Personnel” has the meaning ascribed in Section 12.1 of this Agreement;
- (f) “Authorized Deductions” means deductions for amounts owing by the Association in respect of:
 - (i) 3rd party provider credit, debit card or terminal transaction fees, which are 2.1% as of the Effective Date, and will be reviewed annually and adjusted, if necessary;

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- (ii) recovering revenue paid to the Association in error due to processing or calculating errors which resulted in the Association receiving revenue which it is not entitled to pursuant to this Agreement (with prior written notification);
 - (iii) any applicable Registration System subscription fee on transactions that are processed through the Registration System. The subscription fee is currently fixed at 1% for the term of the agreement (2014-2019) with Active Network Ltd.; and
 - (iv) any other deductions to be made from revenue and which are agreed to in writing by the Association;
- (g) **“Breaches”** means breaches, claims, demands, actions, and costs and expenses incurred in respect thereof;
 - (h) **“CCAs”** means, collectively, the community centre associations which work with the Park Board pursuant to joint operating agreements and provide services in respect of the Community Centre Network;
 - (i) **“City”** means the City of Vancouver, as a municipal corporation;
 - (j) **“City Networks”** means all City owned and leased, wired and wireless, information networks used for City information technology operations, including providing information technology services for the Park Board;
 - (k) **“Centrally Processed Revenue”** means all Association revenue processed through the Registration System, which includes all Facility-Generated Revenue, except for the following excluded items which are not processed through the Registration System: revenue from vending and concessions, and Licensed Childcare optionally excluded as set out in Appendix D(p);
 - (l) **“Common Spaces”** means the interior areas of the Entire Facility (such as hallways and washrooms) used in common by the parties to access and use the various rooms and spaces comprising the Jointly Operated Facilities, in accordance with the current practices of the parties and as further described in Appendix A;
 - (m) **“Community Centre Network”** means the network of community centre facilities in the City of Vancouver operated by the Park Board in conjunction with CCAs pursuant to joint operating agreements;
 - (n) **“Director of Recreation”** means the Director of Recreation of the Park Board, and their successors or those authorized to act in their place;
 - (o) **“Effective Date”** means January 1, 2018, which is the date that this Agreement comes into effect;
 - (p) **“Entire Facility”** means the Lands, the building and facilities commonly known as the _____ community centre, including the Jointly Operated Facilities, and the surrounding or adjacent parks, arenas, pools, playing fields, Park Board fitness facilities and other outdoor recreation improvements or facilities such as,

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without limitation, tennis courts, basketball courts, skateboard parks or field houses within or in the vicinity of the _____ community centre and which are administered by the Park Board;

- (q) **“Facility-Generated Revenue”** means all revenue generated by the Association with the assistance of the Park Board or through the Association’s use of the Jointly Operated Facilities, including from Programming (including at Satellite Locations), room rentals, Association-operated Licensed Childcare, payments due under childcare leases, concessions and vending machines, any Association operated fitness centre and special events held in the Jointly Operated Facilities and any other revenue identified as “facility-generated revenue” in Appendix C; however, “Facility-generated Revenue” expressly excludes grant, bequest, donation, fundraising and membership fee revenue, interest and investment income, and refunded rental deposits;
- (r) **“Fiscal Year”** means the 12 month period which is the fiscal year of the Park Board or the Association, respectively, as the context requires. The fiscal year of the Park Board commences on the first day of January in one calendar year and ends on the last day of December in the same calendar year;
- (s) **“Fixtures”** means items that are part of, or secured or affixed to the Entire Facility (such as by being attached by bolts, screws, plaster etc.), including items the removal of which would do damage or necessitate repair to the remaining components of the Lands or building, including, for example, items such as permanent reader boards, lighting, flooring and affixed carpets, basketball hoops, timing clocks and built in cabinets;
- (t) **“General Manager”** means the General Manager of the Park Board, and their successors or those authorized to act in their place;
- (u) **“Identity Management”** means the broad administrative area for information technology uses and access that deals with identifying individuals in a system (such as a country, a network, or an enterprise) and controlling the individual’s access to resources within that system by associating user rights and restrictions with the established identity;
- (v) **“Indemnity Agreement”** means the indemnity agreement between the Association, the Park Board and the City dated _____, as it may be amended or replaced from time to time, the current form of which is attached to this Agreement as Appendix E;
- (w) **“Input”** means the contribution of ideas, information or opinions by the Association to the Park Board in response to a question, issue or action proposed by the Park Board. For the purposes of this agreement, “Input” will be provided as follows:
 - (i) the Park Board will provide the Association with an outline of the matter, including additional information that could reasonably be considered relevant to that question, issue or action;

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- (ii) the Park Board will provide the Association with a reasonable period of time, depending on the nature of the matter, in which to consider the information and provide a response on the matter to the Park Board;
- (iii) the Park Board will consider any response received from the Association within such period of time before making any final decision on the matter; however, the final decision will rest with the Park Board unless this Agreement expressly states that a particular matter is to be decided otherwise;
- (x) **“IT Assets”** has the meaning ascribed in Section 16.2;
- (y) **“Jointly Operated Facilities”** means the portions of the Entire Facility operated jointly by the Park Board and the Association, as more particularly set out in Appendix A, and which, for the purposes of this Agreement, shall not include surrounding or adjacent parks, arenas, pools, playing fields, Park Board fitness facilities and other outdoor recreation improvements or facilities, including the Outdoor Areas, unless expressly identified in Appendix A;
- (z) **“Lands”** mean those lands that are commonly known as _____ and legally described as _____;
- (aa) **“Lease”** has the meaning ascribed in Section 17.1; *[to be deleted if not a leased centre]*
- (bb) **“Licensed Childcare”** means regulated programs for children under the *Community Care and Assisted Living Act, SBC 2002 c. 25* (as may be amended or replaced from time to time), and which may include infant toddler daycare, pre-school programs or before or after school programs;
- (cc) **“OneCard”** means the universal access card provided by the Park Board onto which access products are loaded, and which enables access to products and services at all centres within the Community Centre Network;
- (dd) **“Operations Fee”** means a Park Board administered fund that the CCAs will make payments to, and which will be allocated to achieve Public Policy goals and/or to increase equity across the Community Centre Network, as further described in Section 14.5;
- (ee) **“Outdoor Areas”** mean the parks surrounding or adjacent to the building known as the _____ community centre, playing fields and other outdoor recreation improvements or facilities, such as tennis courts, basketball courts, skateboard parks, plazas, playgrounds or field houses which are administered by the Park Board and used for Programming;
- (ff) **“Park Board”** means the Vancouver Board of Parks and Recreation;
- (gg) **“Park Board Personnel”** means employees or contractors retained by the City to provide services to or on behalf of the Park Board;
- (hh) **“Prior JOA”** has the meaning ascribed in Recital H;

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- (ii) **“Programming”** means the physical, recreational, cultural, educational, social and capacity-building programs and other services offered to members of the public through registered or unregistered programs administered and run in or through the Jointly Operated Facilities, including the System-wide Programs, but which, for greater certainty, does not include Licensed Childcare;
- (jj) **“Public Policy”** means policy, priorities and objectives adopted or determined by the elected Park Board Commissioners that pertain to access, operations and use of the overall recreation system, including the Community Centre Network, or which may address statutory or regulatory compliance, risk management, system-wide financial issues, sustainability goals for the recreation system, or which are aimed at ensuring better health or quality of life outcomes for the residents of the City of Vancouver;
- (kk) **“Recreation Supervisor”** means the recreation supervisor at the Jointly Operated Facilities who is employed for the Park Board, and their successors or those authorized to act in their place;
- (ll) **“Registration System”** means the common recreation and registration management system owned and operated by the City and the Park Board that is used to process, record and store information for various registration functions at or through the Jointly Operated Facilities. The registration system currently in use is ActiveNet, but it may be replaced or substituted with another system or systems from time to time, at the discretion of the Park Board;
- (mm) **“Renewal Term”** has the meaning ascribed in Section 3.2;
- (nn) **“Satellite Locations”** means locations that are not part of the Jointly Operated Facilities and are not otherwise owned or leased by the Park Board, and where the Association offers Programming or services that are registered for or offered through the Jointly Operated Facilities or are being provided with the assistance of the Park Board;
- (oo) **“Societies Act”** means the *Societies Act, SBC 2015, c.18*, as may be amended or replaced from time to time;
- (pp) **“Staffing Cost Recovery Payment”** means the amount to be paid by the Association to the Park Board for the full cost of employment of certain Park Board Personnel at the Jointly Operated Facilities who are performing work as requested by the Association to provide additional support for Programming or Association services, including the costs commonly referred to as “Group 1”;
- (qq) **“Surplus Revenue”** means the unspent revenue accumulated by the Association over time from Facility-Generated Revenue, also referred to from time to time between the parties as “retained earnings”;
- (rr) **“System-wide Programs”** means local, area-based or city-wide Programming offered within and across the Community Centre Network to provide key developmental, health, cultural or social benefits to the city-wide community or a specific sub-population of the city-wide community, and which programs are designated by the Park Board, as further described in Section 7.3;

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- (ss) “System-wide Planning Session” has the meaning ascribed in Section 15.2;
- (tt) “Term” means the term of this Agreement set out in 3.1, as may be extended or renewed pursuant to 3.2; and
- (uu) “Vending Contracts” has the meaning ascribed in Section 14.1(b).

2. LEGAL RELATIONSHIP

The Park Board and the Association are independent contracting bodies, not legal partners nor joint employers, nor are they in a landlord-tenant relationship. This Agreement is being entered into between the parties to create certainty around the roles and obligations of the parties with respect to their respective operations at the Jointly Operated Facilities and to permit the Association’s use of and operations at the Jointly Operated Facilities, including for the provision of Programming and services to the public through the Jointly Operated Facilities for the benefit of the residents of City of Vancouver. Through this Agreement, once fully executed, the Park Board is granting to the Association the rights set out herein, including the right to non-exclusive use and occupation of the Jointly Operated Facilities and use of the Common Spaces, on and subject to the terms and conditions set out in this Agreement.

3. TERM OF AGREEMENT

3.1 Term

This Agreement is for a term of seven (7) years, commencing on the Effective Date. For greater certainty, provisions for termination or adjustment of this Agreement are included in Articles 20 and 21.

3.2 Renewal

At the end of the initial term, the parties shall have one (1) option to renew this Agreement for a renewal term of eight (8) years (the “Renewal Term”). There shall be no further options to renew. No later than six (6) months prior to the expiry of the initial term, either party may provide written notification to the other of that party’s election not to renew the Agreement, for any reason, and the Agreement will automatically expire at the end of that 7 year term. Absent such written notification from either party, the Agreement will automatically renew at the end of the initial 7 year term.

If either party wishes to amend any terms or conditions of this Agreement prior to the commencement of the Renewal Term, that party must give the other party written notice of such request, including a description of the desired amendments, at least 6 months prior to the expiration of the term. The process for considering desired amendments to the body of this Agreement must be established by the Park Board Commissioners and any changes to the body of this Agreement must be approved by the Park Board Commissioners in a public forum.

If amendments are not finalized prior to the commencement of the Renewal Term, this Agreement will stay in effect un-amended until such time as the amendments are approved by the Park Board Commissioners, or until the end of the Renewal Term, whichever is first.

Desired amendments to Appendix A or Appendix C to this Agreement may be made at any time during the Term upon mutual agreement of the Park Board and the Association.

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3.3 Process at End of Agreement

At the end of the Term, including any elected Renewal Term, to a maximum of 15 years, this Agreement will terminate, together with any rights of the Association to use or occupy the Jointly Operated Facilities.

If both parties wish to continue their working relationship at the end of the Term, then the Park Board and the Association will, in good faith, meet to review their working relationship and to identify any changes to the roles and responsibilities of the parties or to the operations at the Jointly Operated Facilities. If acceptable to both parties, the parties may elect to enter into a new amended agreement reflecting such changes, which may, if appropriate, be substantially based on the form of this Agreement.

In the event of non-renewal of this Agreement or if either party elects it does not wish to continue their working relationship at the end of the Term, all outstanding payments between the parties will become immediately due and payable and subject to withholding, and the parties will work cooperatively to transition operations to the Park Board or its designate to ensure minimal disruption to the public.

4. ASSOCIATION GOVERNANCE

4.1 Governance Covenants

The Association covenants and agrees that:

- (a) it will conduct itself at all times in accordance with its constitution and by-laws and the requirements of the Societies Act;
- (b) as it pertains to activities carried out under this Agreement, the Association will adopt and adhere to appropriate good governance policies;
- (c) to prevent a conflict of interest, the Association shall request any board member who is an elected City or Park Board official, or who has formally indicated a decision to run for election to the City Council or Park Board, to take a leave from or resign from the Board pending the outcome of the election. If the board member refuses to do so, the Association agrees that it shall call a meeting of the Association's voting members to consider whether or not such board member should be removed from the board by special resolution in accordance with the Associations bylaws; and
- (d) it will comply with its policy obligations under Section 6.1.

The Park Board acknowledges and agrees that the Association is a society incorporated under the Societies Act and is bound by the terms of the Societies Act and, notwithstanding any terms of this Agreement, the Park Board will not require the Association to act in any way or commit any act, including the spending of money, that will result in the Association being in breach of the Societies Act.

The Park Board further acknowledges and agrees that the Association may now, or at some time in the future, hold charitable status under the Income Tax Act. Notwithstanding any

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terms of this Agreement, the Park Board will not require the Association to act in any way or commit any act, including the spending of money, which will result in the Association being in breach of its obligations as a charitable organization under the Income Tax Act.

If, at any time, it is determined that a section or requirement of this Agreement will result in a breach of the Societies Act or the Income Tax Act, including as a result of a future amendment or revision to the Societies Act or Income Tax Act, the parties will agree on an alternative course of action that is in compliance with the Act and meets the intent of the applicable section or requirement of this Agreement. If the parties cannot agree whether a section or requirement of this Agreement will result in a breach of the Societies Act or on an alternative course of action, then the matter shall be referred to dispute resolution in accordance with Section 18.1, and then to arbitration pursuant to Section 18.2 if still unresolved. If the dispute is referred to arbitration, then the parties shall select an arbitrator who has experience with the Societies Act to determine if the section or requirement of this Agreement in question is a breach of the Societies Act.

4.2 Governance Defaults

To ensure that the use of the Jointly Operated Facilities by the Association for the purposes set out in this Agreement continues to be carried out in the best interests of the public, the parties agree that, if:

- (e) the purpose of the Association is amended so that, at any time, it includes include the carrying on of a business for profit or gain;
- (f) the Association makes an application to become a "member-funded society" pursuant to the Societies Act without the prior written approval of the Park Board;
- (g) the purpose of the Association is amended so that it is no longer consistent with benefiting the local and city-wide community and members of the public through the provision of Programming and other services within the Community Centre Network; or
- (h) the Association adopts bylaws and governance procedures that conflict with the terms of this Agreement or do not permit the Association to carry out its roles and responsibilities under this Agreement,

then it shall be considered a default of the Association under this Agreement and the Dispute Resolution Process set out in Section 18.1 of this Agreement shall apply.

5. GENERAL OBLIGATIONS AND ROLES OF THE PARTIES

5.1 Mutual Obligations

In addition to the more specific obligations of the parties set out in this Agreement, the Park Board and the Association agree that:

- (a) in all dealings with each other, they will each communicate respectfully and act in a manner that reflects a mutual acknowledgement and respect of the parties' distinct roles and shared objectives;

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- (b) they will each perform their legal and contractual obligations honestly and in good faith; and
- (c) they will each comply with all Applicable Laws and will, when appropriate, obtain all necessary permits and licenses as may be required by Applicable Laws.

5.2 Role of the Park Board

The Park Board is an elected board of commissioners with exclusive jurisdiction, possession and control of Vancouver's parks and the authority to organize, conduct and contract with others for recreational programs of all kinds in parks and such other locations as may be approved by the Park Board, pursuant to the provisions of the *Vancouver Charter*, SBC 1953, c.55 and as otherwise authorized by City Council. The Park Board is responsible for:

- (a) development and implementation of Public Policy;
- (b) stewardship of City park lands and facilities;
- (c) stewardship of capital and operating funds allocated by City Council for parks and recreation services; and
- (d) contracting with other parties, including the CCAs, to deliver recreational programs on behalf of the Park Board in accordance with the terms of this Agreement.

In addition to the other responsibilities set out in this Agreement, with respect to operations at the Jointly Operated Facilities the Park Board is more specifically responsible for:

- (e) determining priorities and objectives for implementation of Public Policy at the Jointly Operated Facilities, which includes Public Policy relating to recreation, arts, culture and social programs. The Park Board agrees that any new Public Policy initiatives for implementation at the Jointly Operated Facilities will not expressly contradict the terms of this Agreement, unless agreed to by the parties in advance;
- (f) the staffing of Park Board Personnel at the Jointly Operated Facilities, including scheduling of staff and staff vacations, taking into consideration the budget allocated by the Park Board and operational requirements of the Jointly Operated Facilities;
- (g) directing Park Board Personnel and volunteers;
- (h) developing the Park Board budget (operating and capital) for the Entire Facility and allocating resources as appropriate, taking into consideration any Input provided by the Association in accordance with Section 5.3(f);
- (i) operating, maintaining and constructing improvements or repairs to the Entire Facility in accordance with the Park Board budget;
- (j) undertaking any capital improvements or renovations to, expansion of, or the construction of new facilities at the Entire Facility, and reconstruction and/or relocation of the Entire Facility if the Entire Facility is rebuilt, in the sole discretion of the Park Board; and

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- (k) providing and being responsible for all facilities, building systems, supplies, and IT Assets required to operate the Entire Facility, subject to the obligations of the Association set out in this Agreement.

5.3 Role of the Association

The Association is an independent society which is governed by the Societies Act and the Association's constitution and bylaws. In addition to the other responsibilities set out in this Agreement, with respect to its operations at or from the Jointly Operated Facilities, the Association is responsible for:

- (a) developing, delivering, and staffing Programming and other Association services offered in or from the Jointly Operated Facilities;
- (b) the staffing and directing of Association Personnel and volunteers at the Jointly Operated Facilities, including the scheduling of personnel and volunteers and scheduling of vacations taking into consideration the operational requirements of the Jointly Operated Facilities, subject to the provisions of Section 12.2;
- (c) fundraising, recruiting and recognizing volunteers, and advocating for the needs of its community, including with respect to services and facilities;
- (d) engaging with the community and promoting recreation, cultural, social and educational involvement within the community;
- (e) complying with Public Policy determined by the Park Board for implementation at the Jointly Operated Facilities or in respect of Programming or services offered from Jointly Operated Facilities, and cooperating with the Park Board when developing an implementation plan for new Public Policy;
- (f) providing Input to the Park Board on major capital projects and other major initiatives relating to the Jointly Operated Facilities and Outdoor Areas;
- (g) if applicable, the administration, delivery and staffing of any existing Licensed Childcare;
- (h) demonstrating to the community, other CCAs, and the Park Board that its operations are conducted in a financially transparent and responsible manner and that the Association practices good corporate governance, as further described in Section 6.1; and
- (i) ensuring timely payment of all bills and invoices for amounts owed by the Association to the Park Board.

For greater certainty, this Agreement is not intended to restrict or limit the Association from conducting other activities which are outside the scope of this Agreement, including community advocacy.

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6. POLICIES AND PROCEDURE

6.1 Corporate and Governance Policies

The Association will adopt and adhere to good governance policies, including policies that address conflict of interest, and succession planning for Association Board members. The Association will conduct regular reviews of its Association Board function and compliance.

The Association will also adopt and adhere to up-to-date corporate policies and standards, appropriate and commensurate with the Association's roles and responsibilities under this Agreement and to the public including, without limitation, policies with respect to occupational health and safety, respectful workplace, risk management and human resources management.

For the purposes of carrying out its roles and responsibilities under this Agreement, the Park Board and Park Board Personnel will adhere to Park Board and City corporate policies and processes, including financial, risk management, information security risk management, privacy and security and conflict of interest, as may be amended from time to time.

The City and the Park Board are subject to certain laws, and have policies in place, that are applicable to the operation of the Entire Facility, such as procurement policies, and the City and the Park Board are party to a collective agreement for labour and employment matters. The Association acknowledges that the Park Board and Park Board Personnel must comply with such laws, policies and agreements, when and where appropriate.

The Park Board will offer optional training sessions for the CCAs on elements of good governance, or other topics as may be agreed to by the Park Board and the CCAs from time to time.

6.2 Changes to Public Policy

The Association acknowledges and agrees that the Park Board is responsible for the development and implementation of Public Policy as it pertains to the Community Centre Network and that Public Policy may be updated or amended from time to time to address, among other things, statutory or regulatory changes, risk management, financial constraints or to ensure better health or quality of life outcomes for the residents of the City of Vancouver.

If Public Policy is changed, amended, revised or updated during the Term of this Agreement or if new Public Policy is developed and planned for implementation then, prior to implementing any amendments to Public Policy or new Public Policy that affect the operations of the Association pursuant to this Agreement, the Park Board will clearly explain the context and rationale for the new or amended Public Policy, review any potential impacts to the CCAs and the Community Centre Network and plan for implementation of any changes with Input from the affected CCAs. The Park Board will develop an implementation plan that minimizes disruption or financial impact to the CCAs, to the extent reasonably possible. The Park Board agrees that any new Public Policy initiatives for implementation at the Jointly Operated Facilities will not expressly contradict the terms of this Agreement, unless agreed to by the parties in advance.

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7. PROGRAMMING

7.1 Access to Programming and the Jointly Operated Facilities

The Association acknowledges that the scope of Public Policy includes policy regarding access to the Jointly Operated Facilities and Programming or services offered from the Jointly Operated Facilities. Access policy may address issues such as reducing barriers to participation, universal access, leveraging the capacity of the Community Centre Network, and such other matters that the Park Board deems to be of public importance from time to time. The current policy with respect to access is attached to this Agreement as Appendix B, and the Association agrees that this policy is acceptable to and binding upon the Association.

7.2 Programming Responsibilities

Subject to Sections 7.1 and 7.3, Programming is the responsibility of the Association, including scheduling, fees, quality control and evaluation. The Association may use Outdoor Areas or other areas of the Entire Facility outside of the Jointly Operated Facilities for the purposes of Programming or special events in accordance with the Park Board permitting process, or with the prior written approval of the Park Board.

The Association's responsibilities for Programming include, without limitation:

- (a) development of the Programming list and schedule;
- (b) production and circulation of promotional materials such as the Programming brochure;
- (c) hiring and contracting with instructors/contractors to deliver Programming, including the System-wide Programs;
- (d) oversight and management of instructors/contractors who are delivering Programming;
- (e) providing and being responsible for adequate supplies to operate Programming;
- (f) oversight, screening and management of any volunteers involved with delivery of Programming and Association services and events;
- (g) assessment of credentials and compliance with any statutory obligations when recruiting instructors, contractors or volunteers;
- (h) ensuring Programming is offered safely with proper risk-management and in a safe, inclusive environment;
- (i) management of Programming-related risks and issues;
- (j) subject to the Park Board's involvement in System-wide Programs, evaluation of Programming in accordance with Section 7.4; and
- (k) the purchase, maintenance, repair and replacement of minor capital equipment and any specialized equipment used or required for Programming or other Association operations (such as fitness centres or Licensed Childcare), as further detailed in Section 14.2(b),

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unless any such responsibilities are formally delegated to the Park Board in accordance with Section 12.2.

The Park Board shall provide the Association with available resources, such as demographic information, reports, and best practice information, to support the Association's Programming responsibilities.

7.3 System-wide Programs

System-wide Programs are standardized programs to be offered across the Community Centre Network. System-wide Programs will be designated by the Park Board and implemented in collaboration with the Association. These programs will be based on leading practices and aimed at achieving outcomes that the Park Board has identified as priorities. The Association acknowledges and agrees that System-wide Programs may be offered at the Jointly Operated Facilities in accordance with the following practices:

- (a) the Park Board may designate up to five programs each year as System-wide Programs, which programs may be offered at each community centre in the Community Centre Network;
- (b) the Park Board programming staff will determine if some or all of the System-Wide Programs are appropriate for offering at the Jointly Operated Facilities;
- (c) the Association will be responsible for appropriate scheduling and administration of the System-wide Programs and will include the System-wide Programs in the Programming schedule for the Jointly Operated Facilities;
- (d) System-wide Programs are not intended to duplicate other Programming offered by the Association at the Jointly Operated Facilities, and in cases where the System-wide Programming is similar to Programming offered by the Association, the Association's Programming may remain in place, at the option of the Association;
- (e) required qualifications for instructors offering System-wide Programs will be set by the Park Board;
- (f) where possible, the Park Board will provide the Association with sufficient notice of which System-wide Programs are selected for offering at the Jointly Operated Facilities for a particular Programming registration cycle to allow the System-wide Programs to be scheduled and implemented through the normal Programming committee process;
- (g) up to all five System-wide Programs may be offered during each Programming registration cycle/season; and
- (h) the parties agree that the Park Board may determine it is more appropriate to offer some System-wide Programs at a community centre that serves a region of the City of Vancouver (eg. East/West, North/South), such as in a hub-based model; and
- (i) the offering of System-wide Programs to the public will not commence prior to the beginning of the second year of the Term.

The Park Board acknowledges that the Association will not be required to incur additional costs to fund the System-wide Program and the Park Board agrees that, on an annual basis, it will

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reimburse the Association for any out-of-pocket costs incurred by the Association to run the System-wide Programs which are not offset by revenue from the System-wide Programs. The Park Board will reimburse the Association within a reasonable period of time after receipt of financial statements or records that detail the annual revenues, expenses and losses resulting from the System-wide Programs. If the Association incurs up-front costs for equipment or supplies that are required to offer a System-wide Program, the Park Board will reimburse the Association within a reasonable period of time after receipt of the invoices detailing the out-of-pocket costs incurred by the Association for equipment or supplies. If the Park Board determines that a System-wide Program should be offered free of charge, the costs to run the System-wide Program will be paid for by the Park Board, and the Park Board may use funds collected through the Operations Fee for such purpose.

The Park Board will undertake a regular review of outcomes associated with System-wide Programs in collaboration with the CCAs. The Park Board may decide to replace a System-wide Program from time to time, including if such program underperforms or becomes redundant.

7.4 Quality Control and Evaluation

The parties will work together to implement a system-wide quality control mechanism for Programming and the Association will review Programming using the results from the quality-control system and on an as-needed basis.

The Park Board and Association will meet to review System-wide Programs at regular intervals.

8. ASSOCIATION MEMBERSHIP

The Park Board acknowledges that the Association, as a registered society, requires active membership for governance purposes and to ensure active involvement of the community in the Association; however, the parties agree that membership in a CCA is not a pre-requisite and will not be required for the public to access, register for or participate in any Programming or services provided by the Association at or from the Jointly Operated Facilities. All users may register for any Programming or other Association service offered at or from the Jointly Operated Facilities without being a member of a CCA.

At the election of the Association, membership in the Association will be offered to patrons of the Jointly Operated Facilities when registering for Programming or services. The Association may offer free or paid membership at its discretion, but acknowledges and agrees that membership must be elected by a patron on an opt-in basis. At the Association's option, the Park Board will load memberships on to a user's OneCard. Optional membership in the Association may be made available independent of registration for Programming or services at the Jointly Operated Facilities and the Association may charge for such membership, at its discretion.

The Association agrees that membership in the Association will not provide discounts or priority registration for room rental, Programming or other uses of the Jointly Operated Facilities.

The Association will have direct access to membership and user data information for the Jointly Operated Facilities (including Programming registration information and other data the Park Board collects through the Registration System regarding users of the Jointly Operated Facilities or Satellite Locations) for the purposes of marketing, planning, Association Board governance (including voting) and grant applications. The use and distribution of all such data

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by the Association must be in compliance with Applicable Laws (and specifically, all privacy and anti-spam legislation).

9. USE ALLOCATION FOR JOINTLY OPERATED FACILITIES

The Association will have responsibility for allocating the use of Jointly Operated Facilities for the purpose of providing Programming and services. The Association agrees that, at the time of booking, priority in the allocation of space in the Jointly Operated Facilities will be given to:

- (a) Association offered Programming and services as a first priority;
- (b) use by not-for-profit community organizations for the purposes of physical, recreational, cultural, educational, social and capacity-building programs as a second priority;
- (c) use by other not-for-profit community organizations for purposes other than recreation, culture or arts as a third priority; and
- (d) private rentals as a fourth priority.

Notwithstanding the above priority allocation, from time to time, the Park Board may require first priority short term, reasonable use of space within the Jointly Operated Facilities for Park Board or City civic priorities such as special events (e.g., municipal, provincial and federal elections, major sporting or cultural events) or short term use for urgent or emergency purposes. The use of space in the Jointly Operated Facilities by the Park Board or the City will be free of charge, but the Park Board or City will be required to pay for additional out-of-pocket expenses incurred by the Association in respect of such usage.

The Park Board will provide the Association with as much notice as reasonably possible in the circumstances of any such use of space by the Park Board or the City within the Jointly Operated Facilities. The Park Board will work diligently to mitigate any negative impacts to users of the Jointly Operated Facilities resulting from such use. Where possible, the Park Board will assist the Association to locate alternative space to accommodate any Programming or events that may be displaced as a result of the Park Board or City's use. For greater certainty, the Park Board and City will not be required to compensate the Association for lost opportunity or revenue as a result of such usage, unless agreed to by the parties in advance.

Subject to long-term agreements for periods of one year or greater, the Association will have control of room rentals in the Jointly Operated Facilities and will set pricing for such rentals. Any long-term agreement (for periods of one year or greater) for use of space in the Jointly Operated Facilities must be approved in writing and in advance by the Park Board. Any long-term agreements approved after the Effective Date will be noted in Appendix C, as it is updated from time to time.

The Association will have access to reasonable office space in the Jointly Operated Facilities for administrative use, including storage space, which may be used for storing the Association's files and equipment. Requests by the Association for new or additional office or storage space will be subject to the availability of suitable space.

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10. CHILDCARE

The Association will ensure that all Licensed Childcare operated in the Jointly Operated Facilities will meet the standards set by the Park Board and City and will be in compliance with any other relevant standards and Applicable Laws, including the *Community Care and Assisted Living Act* (BC), as it may be amended or replaced from time to time.

11. AFFILIATED GROUPS

In accordance with the Association's responsibility for allocating the usage of space in the Jointly Operated Facilities, the Association may, at its discretion, enter into arrangements for use of space with other community groups or clubs focused on recreation, culture or arts and which wish to operate out of the Jointly Operated Facilities. The Association acknowledges and agrees that it may not grant rights to use space that is located outside of the Jointly Operated Facilities or commit to any arrangement that places an obligation on the Park Board, without the prior written consent of the Park Board. All requests from a club or group that involve use of space outside of the Jointly Operated Facilities or which may place any obligation on the Park Board (for example, indemnity) must be brought to the Park Board for consideration. Any arrangements entered into by the Association with an affiliated group are subject to the terms and conditions of this Agreement and may not contradict or conflict with this Agreement.

12. HUMAN RESOURCES

12.1 Association Personnel and Volunteers

The Association is and shall continue to be the employer or contracting party, as applicable, of all personnel retained by the Association to provide services on behalf of the Association, including for Programming delivery (collectively, the "**Association Personnel**"). The Association is and will continue to be responsible for all associated employer and contractor related liabilities and legal obligations regarding Association Personnel. The Association will retain final authority over matters related to employment or service contracts with Association Personnel, including conditions of work, remuneration, evaluation, direction and termination.

The Association will be responsible for all volunteers engaged to support Association activities, and will be responsible for all related liabilities and obligations, including appropriate screening and oversight (e.g., obtaining criminal record checks, checking references, and interviewing potential volunteers), unless formally delegated to the Park Board in accordance with Section 12.2.

The Association acknowledges and agrees that the City and Park Board will not indemnify the Association for liabilities or Breaches arising in relation to the Association's relationships and obligations to Association Personnel or Association volunteers, including statutory and regulatory liabilities. The Association agrees to obtain, maintain and pay for the insurance coverages required under Section 14.6 of this Agreement.

The Association hereby agrees to indemnify the City and the Park Board for:

- (a) Breaches relating to employment or service contracts with Association Personnel or Association volunteers (for example, improper termination or human rights complaints);
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- (b) non-compliance with any statutory or regulatory obligations that Association has in respect of Association Personnel or volunteers (for example, completing and remitting statutory deductions or completing criminal record checks),

unless such obligations are delegated by the Association to the Park Board and accepted by the Park Board in accordance with Section 12.2, or are otherwise caused by the negligence or willful misconduct of the Park Board or Park Board Personnel.

12.2 Delegation of Responsibility to Park Board

Subject to the prior agreement of Park Board, the Association may delegate responsibilities or functions related to the engagement or management of Association Personnel or volunteers to Park Board Personnel. The responsibilities and functions being delegated must be detailed in writing and confirmed by the parties in writing.

To the extent that such obligations are properly delegated to and accepted by the Park Board in accordance with this Section 12.2, or are caused by the negligence or willful misconduct of the Park Board or Park Board Personnel, then the City, through the Park Board, hereby agrees to indemnify the Association for:

- (a) Breaches relating to employment or service contracts with Association Personnel or Association volunteers;
- (b) Non-compliance with any statutory or regulatory obligations with respect to Association Personnel; or
- (c) Breaches that occur as a result of the Park Board failing to properly carry out oversight obligations related to Association Personnel or Association volunteers.

12.3 Park Board Personnel

The Park Board/City will employ and pay for Park Board Personnel required and assigned to operate and maintain the Jointly Operated Facilities, subject to the Association's obligations to pay the Staffing Cost Recovery Payment. The Association and the Park Board will develop a process to review staffing levels at the Jointly Operated Facilities to consider the unique requirements of the Jointly Operated Facilities. The final authority for staffing decisions resides with the Park Board. The Park Board and CCAs will also review staffing across the Community Centre Network on a system-wide basis to identify any gaps or inequities in staffing and consider options to address identified issues.

The Association may provide an orientation to new regular full time, regular part time, and temporary full time Park Board Personnel with information on Association operations, policies and roles.

The Park Board will notify the Association of staff vacancies for Park Board employed regular full time, regular part time, and temporary full time positions. In the event of staff vacancies, the Park Board will develop a plan for interim coverage and permanent recruitment and share the plan with the Association.

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The Association acknowledges that the Park Board and Park Board Personnel are subject to collective agreements and individual employment contracts, City policies, and applicable legislation. The Park Board will share the relevant collective agreements and policies with the Association.

12.4 Role of Recreation Supervisor

The Recreation Supervisor is Park Board Personnel and is accountable to the Park Board. The Recreation Supervisor is the management representative of the Park Board at the Jointly Operated Facilities and the local contact for the Association with respect to matters under this Agreement. Among other responsibilities as may be determined by the Park Board from time to time, the role of the Recreation Supervisor is to:

- provide official oversight for the Jointly Operated Facilities;
- provide support to the Association Board to assist with the delivery of Programming and services offered at or through the Jointly Operated Facilities;
- on request, assist the Association by providing support on board recruitment, director retention, training and governance;
- work with the Association on the planning, delivery, evaluation and administration of all Programming and Association services offered at or through the Jointly Operated Facilities;
- maintain effective communication with the Association President and Association Board, and regularly attend Association Board meetings (excluding *in camera* meetings); and
- perform other duties which may be necessary to address the unique needs of the Jointly Operated Facilities, provided such additional duties are approved by the Director of Recreation.

The Recreation Supervisor will work cooperatively with and on behalf of the Association to support the Association with delivery of its services and Programming at or through the Jointly Operated Facilities. For requests which may impact unionized staff or operations of the Jointly Operated Facilities (for example, concerns regarding hours or duties of staff), the Association must give reasonable advanced notice to the Recreation Supervisor to consider any such request.

12.5 Hiring Decisions

The Association will have Input into the selection of key Park Board Personnel at the Jointly Operated Facilities, including the community centre recreation programmer, youth worker and new hires to fill the Recreation Supervisor position. Input will also include the opportunity to participate in interviews with shortlisted candidates and to make recommendations for consideration by the Park Board. The Association may provide a description of the unique attributes, needs and nature of the Jointly Operated Facilities and the neighbourhood being served to accompany the job description and posting for a Recreation Supervisor position. For lateral transfers of a Recreation Supervisor, the Park Board will engage in discussions with the Association and consider the views of the Association on the proposed transfer.

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The Park Board will take into account the unique attributes, needs and nature of the Jointly Operated Facilities and the neighbourhood being served, when considering the qualifications, knowledge and skills of the Recreation Supervisor selected for the Jointly Operated Facilities. The full and final authority on staffing decisions (including hiring selection and work assignments) will rest with the Park Board.

12.6 Feedback and Issue Management

The Association and the Park Board will each ensure its respective Personnel and volunteers conduct themselves in a professional and respectful manner and in compliance with all Applicable Laws.

The Park Board and the Association agree that communications between the parties and Input given by one party to the other regarding day-to-day operations at the Jointly Operated Facilities will be constructive, respectful and aimed at supporting the best provision of services to the community.

The Park Board will provide the Association with the opportunity to provide feedback on the performance of the Recreation Supervisor when deemed necessary by the Association and on an annual basis. The Association may also share feedback on other Park Board Personnel (other than the Recreation Supervisor) with the Recreation Supervisor at any time.

If either party has concerns with the conduct of the other party's respective Personnel and volunteers, they may bring issues to the attention of the Recreation Supervisor or the Association President, as applicable, at any time. Unresolved matters may be escalated by either party in accordance with the dispute resolution process outlined in Section 18.

13. RENOVATIONS AND MAINTENANCE

13.1 Renovations, Upgrades and Maintenance of Jointly Operated Facilities

The Association acknowledges that its purpose is not to carry out upgrades (including renovations), maintenance or repair to the Jointly Operated Facilities or Common Spaces, and that all upgrades, maintenance or repair are the responsibility of and will be carried out by the Park Board, unless the Park Board, in its sole discretion, provides the Association with express written approval to carry out work. All approvals for work must be requested in advance and will be considered on a project by project basis.

The Park Board, through the City, has conducted building condition assessments for assets under the control of the Park Board, including the Entire Facility, which assessment reports are updated periodically and on a scheduled basis. Maintenance, repair, replacement and upgrade plans developed for buildings, including the Entire Facility, are based on the outcome of the building condition assessments, service delivery needs, priorities for health and safety, state of repair of the buildings and availability of resources.

The Association may provide suggestions to the Recreation Supervisor, with a copy to the Director of Recreation, for consideration by the Park Board regarding what maintenance, repair or upgrades may be the most beneficial to the Jointly Operated Facilities and community and to suggest priorities for maintenance, repair or upgrades to the Jointly Operated Facility or Common Spaces. The Park Board will use reasonable efforts to engage the Association as a

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stakeholder when making decisions about priorities for maintenance, repair or upgrades to the Jointly Operated Facility or Common Spaces. The parties will agree on a more detailed process through which the Association may provide suggestions.

When determining the annual priorities for maintenance, repair and upgrades of the Jointly Operated Facilities and Common Spaces, the Park Board will consider any suggestions provided by the Association to the Recreation Supervisor. The Association acknowledges that the Park Board makes decisions regarding priorities for repair, maintenance and building upgrades on a system-wide basis considering, without limitation, health and safety, state of repair and the availability of resources, and the final decision with respect to all maintenance, repair and upgrade work for the Jointly Operated Facility and Common Spaces will rest with the Park Board.

The Park Board will share with the Association the list of annual priorities and anticipated maintenance, repair and upgrade work to be carried out for the Jointly Operated Facilities and Common Spaces. The Park Board will work with the Association to determine appropriate scheduling of the planned work and to manage any impacts of the work in order to minimize disruption to the public.

If the Association wishes to promote projects, enhancements or improvements to the Jointly Operated Facilities, Common Spaces or Outdoor Areas which are not within the scope of the annual repair, maintenance and upgrade plans for the Entire Facility, the Park Board will work with the Association to facilitate the optional enhancement projects, considering availability of resources and system-wide priorities; however, the Association acknowledges that the final decision regarding such optional projects or enhancements rests with the Park Board. If the Park Board approves of the optional project or enhancement, the Park Board will use reasonable efforts to facilitate any such project, and if the Association is concerned that the Park Board is not using reasonable efforts, then they may escalate the matter to the Director of Recreation. If the Association is still unsatisfied after discussions with the Director of Recreation and both parties using reasonable efforts to resolve the matter at that level, the Association may further escalate the matter to the General Manager of the Park Board and subsequently, to the Park Board Commissioners.

If standards for Licensed Childcare change such that maintenance or renovations are required to the Jointly Operated Facilities for existing Licensed Childcare facilities to meet the updated standards, the Association will identify the required maintenance, upgrade or renovation required and provide a list of required work to the Park Board for final review and approval. The parties will share in the cost of the required work and a cost-sharing arrangement shall be negotiated and agreed upon for the required work. Any disagreement on the cost-sharing agreement will be resolved in accordance with Section 18. Once the cost-sharing arrangement is agreed to, the Park Board will be responsible to carry out the work within a reasonable period of time, or such shorter period of time as is required by the licensing authority for the *Community Care and Assisted Living Act*, SBC 2002 c. 25 to ensure on-going compliance of the Licensed Childcare facility with Applicable Laws.

13.2 Maintenance of Other Assets

With respect to equipment, appliances and other assets used in the Jointly Operated Facilities or Common Spaces that are not expressly identified as the responsibility of the Association or the Park Board elsewhere in this Agreement (such as in Sections 13.3, 14.2(b) and 16.2), those equipment, appliances or other assets (such as kitchen appliances, furniture, Programming

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equipment etc.) will be maintained and repaired in accordance with the current practices of the parties, and at that parties cost, regardless of whether the particular piece of equipment, appliance or other asset is determined to be Association Equipment or is owned by the Park Board. For all new equipment, appliances and assets purchased after the Effective Date, the parties will agree on maintenance, repair and cost responsibilities in writing before the asset is purchased and installed. In the absence of agreement, the owner of the asset will be responsible to carry out and pay for all maintenance and repair.

13.3 Planning for Surrounding Areas

When planning for parks and recreational amenities in the vicinity of the Jointly Operated Facilities, the Park Board agrees that it will use reasonable efforts to engage with the Association as a stakeholder, where appropriate, and seek its feedback.

13.4 Art Installations and Murals

All art installation and murals proposed for the Jointly Operated Facilities, Common Spaces or Outdoor Areas require the prior written approval of the Park Board. If an art installation or mural is purchased or commissioned by the Association, the Association will be responsible for the upkeep and maintenance (including all costs) of the art installation or mural and the eventual removal of the art installation or mural (including all costs), if and when required by the Park Board. The Association may request, on a case by case basis, a relaxation of these requirements if they cause financial hardship. All relaxations must be requested prior to the purchasing or commissioning of the art installation or mural.

13.5 Vehicles

All vehicles owned by the Park Board or the Association used in connection with the provision of Programming or services from the Jointly Operated Facilities must be maintained by Park Board fleet management and in accordance with Park Board standards. All maintenance and repair costs will be the responsibility of the owner of the vehicle. Any costs that will be responsibility of the Association will be discussed in advance and consented to by the Association before they are incurred.

14. FINANCE

14.1 Revenue

(a) Revenues and Cash Flow

The Association will receive the following revenue: (i) all Facility-Generated Revenue; (ii) all Association membership fee revenue; and (iii) all grant, bequest, fundraising or donation funds directed to the Association.

Unless otherwise agreed to by the parties, all Centrally Processed Revenue will be collected by the Park Board using the Registration System. The sources of revenue included in "Centrally Processed Revenue" may be amended by the parties from time to time and any amendments will be noted in Appendix C, as updated from time to time. Authorized Deductions will be deducted from the Centrally Processed Revenue, and any other revenue that the Association elects to have processed through the Registration System (for example, membership or donation revenue), before it is paid to the Association. The Park Board will pay all Centrally

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Processed Revenue, less Authorized Deductions, to the Association on a bi-weekly basis, unless otherwise agreed to by the parties. Authorized Deductions will be processed on the same schedule as the payment schedule. The Park Board will provide the Association with a bi-weekly payment report which include an itemized list of all deductions. The Park Board will not withhold payment of any Centrally Processed Revenue collected through the Registration System, other than for Authorized Deductions, without the Association's prior written consent.

(b) Vending Machine Revenue

The Association acknowledges that the Park Board may enter into vending and supplier contracts (“**Vending Contracts**”) for vending machines or food and beverage distribution rights that apply to the Community Centre Network (such as the current contract between the Park Board and the Coca-Cola Bottling Company dated December 1, 2006). The Park Board agrees that any revenue from vending machines located in the Jointly Operated Facilities which are under a system-wide Vending Contract and received by the Park Board may be shared by the Association and the Park Board at a percentage split agreed upon by the parties. The Association further acknowledges and agrees that Vending Contracts may contain exclusivity clauses which prohibit the sale of competitor's products in the Jointly Operated Facilities and Common Spaces. If the Park Board enters into a Vending Contract which contains an exclusivity clause, the Park Board will share the exclusivity clause with the Association. The Association agrees it shall abide by the terms of any exclusivity clause in the Vending Contract, and shall require its Personnel or those with whom it contracts to do the same. The Association is also permitted to independently operate vending machines in the Jointly Operated Facilities provided they do not violate the terms of any such exclusivity clause. Revenue from any vending machines in the Jointly Operated Facilities that are under contract with the Association (and not part of Vending Contracts) shall be for the benefit of the Association. Subject to the following, vending machines located outside the Jointly Operated Facilities are solely controlled by the Park Board and revenue shall be for the benefit of the Park Board. Any vending in Common Spaces will be considered on a case by case basis.

Any additional financial issues specific to the Association or the Jointly Operated Facilities are addressed in Appendix C to this Agreement.

(c) Use of Revenue

All Facility-Generated Revenue or other revenue generated through the use of the Jointly Operated Facilities, Common Spaces or with the assistance of the Park Board or Park Board Personnel that is received by the Association will be used by the Association to directly benefit the public through the provision of Programming and services at or from the Jointly Operated Facilities, the acquisition of equipment, minor capital and supplies used for the provision of such Programming and services, or for the payment of expenses incurred in respect of the Association's operations pursuant to this Agreement, unless otherwise agreed to by the Park Board.

The Park Board also acknowledges that the Association may use reasonable and appropriate amounts of Facility-Generated Revenue to cover necessary expenses (for example, rent payments or janitorial costs) and minor maintenance at the existing Satellite Locations used for Programming.

14.2 Expenses

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(a) Park Board Expenses

Except for expenses that are the responsibility of the Association under this Agreement, the Park Board is responsible for all costs and expenses associated with the operation, maintenance, repair and any upgrade of the Jointly Operated Facilities and Common Spaces, including the following costs and expenses:

- (i) the wages, salaries and benefits of Park Board Personnel required and assigned to operate and maintain the Jointly Operated Facilities;
- (ii) assessment, upgrade, operation, maintenance and repair of the Jointly Operated Facilities building, Common Spaces and Outdoor Areas and related building systems (such as mechanical, electrical, structural), including the building envelope and core infrastructure (such as roof, walls, foundation, paint and standard flooring and lighting), subject to funding allocated and approved by the Park Board;
- (iii) subject to arrangements made in accordance with Section 13.2, the upkeep, maintenance, repair and replacement of equipment in the Jointly Operated Facilities and Common Spaces that is not Association Equipment;
- (iv) utilities, waste/recycling removal, access control systems, security and janitorial services for the Jointly Operated Facilities and Common Spaces; and
- (v) all other equipment required to operate the Jointly Operated Facilities, such as computers and point-of-sale equipment.

(b) Association Expenses

The Association shall be responsible for the following costs and expenses, except to the extent that the Park Board agrees to be responsible for any such costs in writing:

- (i) all costs and expenses incurred to operate or administer the Association;
- (ii) all costs and expenses incurred to purchase, maintain, operate and replace computers and equipment purchased by the Association for its own use;
- (iii) all costs and expenses incurred to maintain and repair any Association-owned vehicles;
- (iv) all costs and expenses associated with the provision of Programming or Association services offered at or from the Jointly Operated Facilities, including without limitation, expenses associated with Association Personnel, and equipment, supplies and promotional materials for Programming;
- (v) all costs and expenses incurred to purchase, maintain, repair or replace any specialized equipment (such as ballet bars, fitness centre flooring or mirrors) used to offer Programming, to equip and operate Association run fitness centres or Licensed Childcare operated by the Association or under a rental agreement with the Association, or for any other service for which the Association receives the revenue, and provided always that all work involving repairs or alterations must be in accordance with Section 13.1;

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- (vi) the purchase, maintenance, repair and replacement of minor capital equipment (such as pottery kilns and woodworking shops) used for Programming or other Association operations, unless the parties agree in writing that the Park Board will pay for or maintain any such equipment in accordance with Section 13.2, and provided always that all work involving repairs or alterations must be in accordance with Section 13.1;
- (vii) subject to arrangements made in accordance with Sections 13.2 or 13.3, the supply, upkeep, maintenance and replacement of Association Equipment, including any art installations or murals purchased or commissioned by the Association;
- (viii) all costs and expenses in respect of any Satellite Locations, including any costs of renting, leasing, maintaining or repairing any Satellite Location;
- (ix) the Staffing Cost Recovery Payments, in accordance with Section 14.2(c);
- (x) costs to maintain the insurance required under Section 14.6;
- (xi) the Authorized Deductions; and
- (xii) any other costs incurred by the Association that are not in respect of the Association's roles and responsibilities under this Agreement.

The Park Board may estimate components of Authorized Deductions if they do not align with the payment schedule agreed upon by the parties, with a reconciliation of Authorized Deductions to be provided by the Park Board to the Association at a minimum of once annually. The Park Board shall provide notice to the Association for any anticipated or actual increases to the Authorized Deductions with as much notice as reasonably possible in the circumstances.

(c) **Staffing Cost Recovery Payment**

The Association acknowledges and agrees that it is responsible for the payment of the Staffing Cost Recovery Payment.

The Park Board shall obtain the Association's approval for the Staffing Cost Recovery Payment costs and the positions to be covered on an annual basis in alignment with the Park Board annual budgeting cycle, including any salary or wage increases negotiated under the collective agreement annually, and the Association will advise the Park Board of its decision to approve or not approve the costs within 60 days of such request for approval from the Park Board. The Association acknowledges that, if it chooses to not approve all or any portion of the Staffing Cost Recovery Payment costs, the Park Board has the right to adjust staffing levels to reflect the lack of funding, up to and including elimination of the position that was formerly covered by the Staffing Cost Recovery Payment.

Once approved by the Association, the Association acknowledges it is responsible to pay the full actual costs of the Staffing Cost Recovery Payment for the full year, or portion thereof, as applicable. The Park Board will invoice the Association for the costs on a quarterly basis, unless otherwise agreed to by the parties, and the Association agrees to pay the Park Board the amount of the Staffing Cost Recovery Payment in full within 30 days of delivery of the invoice by the Park Board. Association challenges of the amounts billed for Staffing Cost Recovery Payments will be handled in accordance with the dispute resolution process set out in Section 18.

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14.3 Budgets and Records

(a) Operating Budget

The Association will, on an annual basis, prior to the end of a Fiscal Year, develop all budgets required for the Association's operations, roles and responsibilities at or from the Jointly Operated Facilities for the Association's upcoming Fiscal Year, including its estimated Operations Fee payment. The Association will share its budgets with the Park Board prior to the beginning of the Association's upcoming Fiscal Year. If requested by the Association and agreed to by the Park Board, Park Board staff and/or the Recreation Supervisor will support the Association in the creation of these budgets.

The Park Board will, on an annual basis, develop an operating and capital budget for the Community Centre Network. The Park Board's budget shall be subject to approval of the Park Board Commissioners. Park Board staff will review the operating budget of each facility in the Community Centre Network and, in its sole discretion, reserves the right to make adjustments to increase or decrease the operating budget for all or any part of the Community Centre Network, including by increasing or decreasing the budget for the Jointly Operated Facilities.

The Park Board, to the best of its ability, will provide a copy of the annual operating budget for the Jointly Operated Facilities to the Association. The list of maintenance, repair and upgrade items prioritized for the Jointly Operated Facilities and Common Spaces for that given year's annual budget in accordance with Section 13.1 will be included. The Association acknowledges that some amounts in the Park Board budget are centrally budgeted for and will not be broken out on a facility by facility basis.

The Association acknowledges and agrees that the Park Board budget, including allocations to operating and capital resources for the Jointly Operated Facilities, Common Spaces and the Community Centre Network, are in the sole discretion of the Park Board.

(b) Capital Budgets

The Park Board will develop, for recommendation to City Council, annual capital budgets and future forecasting plans, such as longer term capital plans and capital outlook plans for the Community Centre Network or specific to the Jointly Operated Facilities. The Park Board will seek and consider Input from the Association when determining priorities for capital investment in the Jointly Operated Facilities.

The Park Board and the CCAs shall discuss priorities for capital investment in the Community Centre Network, including renewals and replacements of specific community centre facilities, in the System-Wide Planning Sessions, or in such other meetings as the parties may agree to.

The Association acknowledges and agrees that all final decisions regarding capital budgets and expenses are in the sole discretion of the Park Board.

(c) Record Keeping

The Association will establish and maintain books of account relating to its activities at or from the Jointly Operated Facilities (including at Satellite Locations or as otherwise contemplated by this Agreement) in accordance with sound financial policies and procedures.

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If the Association conducts activities that are outside the scope of this Agreement, the Association will either: (1) maintain separate records regarding the other income, expenses, operations or business of the Association, or (2) ensure all financial statements and books of account include notes to separately identify all revenue and expenses relating to the Association's activities at or for the Jointly Operated Facilities.

(d) Financial Statements

The Association will provide audited financial statements for each Fiscal Year within the earlier of: (i) one week after the audited Financial Statements have been presented to the membership of the Association at its Annual General Meeting, or (ii) within 180 days of the completion of the Association's Fiscal Year. The Association will post audited financial statements in a prominent location on the Association's website. The Association will also publicly report on Facility-Generated Revenue, grants, donations, bequests, and fundraising and membership fee revenue, savings, statement of Surplus Revenue, expenditures, expenditures of Surplus Revenue, transfers to foundations or other organizations and revenue generated in respect of Licensed Childcare that is processed outside of the Registration System, either by including these items in the audited financial statements or by preparing a separate report to be posted on the Association's website together with the audited financial statements.

Within 30 days of a request by the Park Board, the Association shall provide to the Park Board an accounting of the Association's income, expenditures and account balances for the last Fiscal Year, or such other period of time as specified in the request.

Notwithstanding the foregoing, the Park Board may audit the Association's books, financial records and accounts regarding operations at the Jointly Operated Facilities upon request at any time and with reasonable notice.

(e) Surplus Revenue

Prior to the end of the first year of the Term, the Association will develop a plan to spend its Surplus Revenue and will update that plan on an annual basis to reflect amounts actually spent in the past year, use of funds, the current balance of Surplus Revenue and any revised plans for future spending of the Surplus Revenue. The Association will make its plan publically available and will post its plan and all updates online in a prominent location on the Association's website. As part of this plan, the Park Board acknowledges and agrees that the Association may allocate up to a total of 3 months operating costs, or \$300,000, whichever is greater, as an operating contingency that may be retained by the Association and carried forward (on a non-cumulative basis). Any funds allocated as operating contingency are subject to the terms of Section 14.1(c). The Association will use its best efforts to execute on its plan and shall make expenditures of Surplus Revenue in accordance with the plan, as it is updated from time to time. Subject to the foregoing, the Association agrees that Surplus Revenue may only be spent on physical improvements to or capital projects within the Community Centre Network or for the direct provision of Programming or services to the public at or from the Jointly Operated Facilities.

The Association acknowledges and agrees that the buildings and Fixtures comprising the Entire Facility are and will continue to be owned by the City and Park Board, notwithstanding any contribution of funds (including Surplus Revenue and grant revenue) by the Association.

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14.4 Grants

The Association may, at their discretion, apply for grants from third parties or the City for initiatives. If the grant application is in respect of an activity or program that will be conducted at or from the Jointly Operated Facilities, the grant application, administration, and oversight must be done in collaboration with the Recreation Supervisor and with support of Park Board staff. All new programs and/or capital projects at or through the Jointly Operated Facilities, including those funded by grants, require the prior review and written approval of the Park Board for indemnity purposes pursuant to the Indemnity Agreement.

Where required, Park Board staff will receive training in evaluation methods and grant writing in order to provide support to the Association for grant applications.

If the Park Board receives information about grant programs offered by other government bodies, it will provide that information to the Association to support the Association's initiatives.

All grant revenue will be paid to the Association without any deduction by the Park Board or as otherwise expressly agreed to by the parties in advance, unless grant revenue is processed through the Registration System, in which case the grant revenue will be subject to Authorized Deductions.

14.5 Operations Fee

(a) Payment of Operation Fee

The Association will provide an annual Operations Fee payment in an amount equivalent to a percentage of the Association's gross prior year Facility-Generated Revenue and any gross revenue generated in respect of Licensed Childcare that is processed outside of the Registration System. These payments are not a gift and are being made as a commitment by the Association to the principle of equity in the Community Centre Network and as partial consideration for the rights being granted by the Park Board to the Association under this Agreement. The Park Board is considered a qualified donee for the purposes of the Income Tax Act as an administrative arm of the City of Vancouver. Notwithstanding the foregoing, the Association will not be required to make any Operations Fee payment in respect of revenue generated from Programming and services at Satellite Locations offered independently by the Association without the involvement or assistance of the Park Board or Park Board Personnel.

The Association will pay its annual payment to the Park Board within 3 months of the end of the Association's Fiscal Year. The percentage applicable for each year of the Term shall be as set out in the following table:

| Year of Term | Percentage of Gross Revenue for Payment |
|--------------|--|
| 1 | 0% |
| 2 | 1% |
| 3-7 | 2% each year |
| Renewal Term | 2%, or such greater amount as may be approved by the Park Board Commissioners in a public process. |

The purpose of the Operations Fee payment is to facilitate reinvestment in the Community Centre Network to achieve the Public Policy goals of the Park Board and/or increase equity

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across the Community Centre Network. Operations Fee payments will not be used to finance capital projects or provide supplemental funds to the budget of the Park Board.

In situations of financial hardship, the Association may request that the Park Board permit a partial or total exemption from that year's Operations Fee payment. The Park Board will have the right to review the Association's books of account and other related financial information to assess claims of financial hardship. For the purposes of this Section, "financial hardship" shall mean when an Association has encountered unforeseen circumstances which have strained the Association's financial capacity such that the Operations Fee payment will:

- (i) result in the Association being unable to pay its normal and reasonable operating expenses and compromise the ability of the Association to provide Programming and services at the Jointly Operated Facilities; or
 - (ii) otherwise reasonably be seen to create a threat to the viability of the Association.
- (b) **Allocation of Operations Fee**

The Operations Fee payments will be held by the Park Board and the funds will be allocated exclusively to achieve Public Policy goals within the Community Centre Network, including by enhancing access to, quantity and/or quality of Programming and services delivered throughout the Community Centre Network or to increase equity across the Community Centre Network.

The Park Board will consider any Input provided by the CCAs regarding the use of the Operations Fee funds, but in all instances the Park Board will retain decision-making authority.

The Park Board will prepare an annual report describing the use and allocation of the Operations Fee funds and related outcomes, and will make the report public.

14.6 Insurance

The Association, at its sole cost and expense, will ensure all Association directors and officers maintain director and officers' liability insurance, including coverage for employer liability where available, and shall provide proof to the City or Park Board upon request.

The Association agrees to obtain, maintain and pay for, for the entire duration of the Term, Employment Practices Liability coverage, with the City and Park Board as additional named insureds, and provide evidence of this coverage to the Park Board. Insurance coverage must be appropriate to the circumstances and acceptable to the Park Board and/or City, acting reasonably. If the requirements for insurance coverage change during the Term, the City and/or Park Board will provide reasonable notice to the Association of the amended insurance coverage requirements, and the Association shall ensure its coverage meets the amended requirements, as applicable.

14.7 Miscellaneous Operations

Subject to any written agreement between the parties, any and all parking revenue collected at the Entire Facility shall be for the sole benefit of the Park Board.

The revenue from any new commercial operation or concession at the Jointly Operated Facilities shall be allocated to the Park Board; however, the Park Board will discuss the new

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arrangement with the Association to consider a different allocation of revenue on a case by case basis. The revenue allocation for all commercial operations and concessions existing as of the Effective Date shall be in accordance with the practices detailed in Appendix C.

15. COMMUNICATIONS AND PLANNING

15.1 Communications Between Parties

All communications between the parties shall be respectful and constructive and will be in line with the parties' acknowledgement and respect of their distinct roles and shared objectives.

The Park Board and Association shall maintain regular communications regarding the operation of the Jointly Operated Facilities, provision of Programming and the roles and responsibilities of each party under this Agreement, including through regular meetings between Park Board staff and the Association. In addition to regular meetings, the parties will participate in the System-wide Planning Sessions described below.

The Park Board will advise the Association in a reasonable timeframe of any plans, including building repair or maintenance projects, which may impact the use of or access to the Jointly Operated Facilities. Except in the case of an emergency, the Park Board will provide reasonable advance notice in writing to the Association when such a disruption is likely. The Park Board will use reasonable efforts to minimize the adverse effects of any such plans.

15.2 System-wide Planning and Communication Sessions

To facilitate system-wide planning, communication and outcomes measurement across the Community Centre Network the Park Board and representation from all CCAs will meet a minimum of twice annually (each, a "**System-wide Planning Session**"). The System-wide Planning Sessions will be scheduled by the Park Board and the Park Board will use reasonable efforts to select dates that work for the greatest number of CCA representatives. The Park Board will give a minimum of 30 days' notice of a date that is selected for a planning session. If a director of a CCA is not able to attend, they will select a suitable delegate to attend the applicable System-wide Planning Session.

The System-wide Planning Sessions will be used to review or develop proposed Park Board policies that affect the Community Centre Network, share research and demographic information conducted by any of the parties that is relevant to the Community Centre Network, review or conduct capital planning, hold governance training sessions, discuss and consider any desired changes to this Agreement prior to the Renewal Term, and address any other topics that are of interest to the CCAs or the Park Board. Topics for discussion may be proposed by the Park Board or any of the CCAs. The System-wide Planning Sessions will be focused on topics that are applicable system-wide to the Community Centre Network. Issues that are specific to a particular facility (e.g., facility maintenance and upgrades, marketing and communication plans, and staff training) are not appropriate for discussion at the System-wide Planning Sessions and will be addressed locally with the respective Recreation Supervisor and respective individual Association, as is currently the practice.

The System-wide Planning Sessions are not intended to replace Park Board participation in other regular meetings with the Association.

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System-wide Planning Sessions may be held more than twice annually if agreed to by the Park Board and the majority of the CCAs.

16. INFORMATION AND BUSINESS SYSTEMS, TECHNOLOGY & TELECOMMUNICATIONS

16.1 Registration System

The Association acknowledges and agrees that a common recreation and registration management system which is designated, owned and operated by the City/Park Board will be exclusively used for all administrative functions at or related to the Jointly Operated Facilities and that no other system may be used for those functions. Administrative functions include processing, recording and storing all Programming, registration and rental information, preparing instructor contracts, processing and recording all payments for Centrally Processed Revenue, customer account inquiries and providing front desk and customer service. Payment in all forms will be processed through the Registration System. The Registration System may also be used to process donations, Association memberships, fundraising revenue, bequests and/or grants at the election of the Association. All transaction processed using the Registration System will be subject to Authorized Deductions.

The Registration System will be used to generate reports that detail all funds received, payment information, registration statistics, and provide information for measuring program performance. The reports will be generated on a schedule agreed to by the parties and will be made available to both the Association and the Park Board. The Association will also have direct access to other information from the Registration System relating to Association programs/services and membership. The Park Board will conduct regular reviews of the Registration System for accuracy.

As required, the Park Board will meet with the Association to resolve non-technical issues regarding the Registration System and will provide or seek technical support as required.

At the election of the Association, the Park Board will work with the Association to develop and implement a new process to secure rental and damage deposits so that deposits may be secured with a credit card or cheque on file and not be processed through the Registration System such that transaction fees are avoided for refundable deposits.

The Registration System in use as of the Effective Date is “Activenet”, a recreation management software provided by by Active Network Ltd. (“ActiveNet”). The Park Board and the CCAs have agreed to more specific details regarding the use of Activenet, which are detailed in Appendix D to this Agreement.

16.2 Ownership of Systems

All information technology software, business systems, hardware, data, wireless hardware and software, information technology infrastructure, and telecommunications equipment installed or utilized in the Entire Facility with connection to City Networks (collectively, the “IT Assets”) will be owned, supplied, managed, maintained and repaired by the City on behalf of the Park Board.

If the Association wishes to install any Association-owned software on City or Park Board computers, it must first obtain the prior written approval of the Park Board and, if such software will connect to the City Network, the prior approval of the City IT department.

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The Association may purchase its own computer equipment, provided that the Association equipment is not connected to the City Networks or other internet service, except for City public wifi, or used for any business function associated with the Jointly Operated Facilities, and all uses must comply with the terms of this Agreement. The Association will be responsible for all maintenance, repair and replacement of its own equipment.

16.3 Security Systems

All existing or future surveillance systems, security systems and security monitoring will be the sole responsibility of the Park Board. The Association may not install any surveillance, security or monitoring systems or technology in the Jointly Operated Facilities or Common Spaces.

16.4 Management of Data

Both parties acknowledge the unique nature of their relationship and operations at the Jointly Operated Facilities and commit to the cooperative and proper joint management of data and personal information obtained through the operations contemplated by this Agreement. The parties acknowledge and agree that all data and other personal information collected in the course of their operations at or from the Jointly Operated Facilities or otherwise administered using IT Assets will be managed in compliance with all Applicable Laws and will only be used for the original intent for which it was collected.

16.5 Use of Business Systems and Information Technology

The parties use of the IT Assets, including the Registration System, will be subject to the following conditions:

- (a) **Applicable Laws:** Usage of all IT Assets must be in compliance with Applicable Laws including, for greater certainty, all privacy legislation and the *Freedom of Information and Protection of Privacy Act* (FOIPPA), RSBC 1996 c. 165, as such laws may be amended or replaced from time to time;
- (b) **Security:** Usage of all IT Assets will be in accordance with City information technology security policies and standards;
- (c) **PCI:** All IT Assets will be maintained in compliance with the current Payment Card Industry (PCI) standards, as applicable;
- (d) **Access Rights:** Network and software access will be granted in accordance with City information technology Identity Management, network access, and applications access policies and standards; and
- (e) **Hardware:** Usage of information technology hardware will be in accordance with City information technology “acceptable use” policy,

as all such policies and standards may be amended or replaced from time to time.

17. OWNERSHIP OF COMMUNITY CENTRE ASSETS

17.1 Community Centre Facility

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The Association acknowledges and agrees that the City is the sole owner of the Entire Facility, including the Jointly Operated Facilities. The City is also the sole owner of all other improvements and Fixtures, unless otherwise agreed to by the parties in writing. Jurisdiction for managing the Entire Facility resides with the Vancouver Park Board. The Association acknowledges and agrees that it has no interest, right or title in the Entire Facility and, except for the rights expressly granted to the Association under this Agreement for the Term, it has no independent license, lease or other right to occupy the Entire Facility, now or in the future, whether written or implied.

The Association further acknowledges and agrees that no licence, lease or other right to occupy all or any portion of the Entire Facility will arise or has arisen by virtue of the Association's occupation or operations at all or any part of the Entire Facility, including the Jointly Operated Facilities, or by the past or future conduct of the parties and that any past or future funds contributed by the Association towards the Jointly Operated Facilities or any other infrastructure comprising the Entire Facility, including towards the base building, building additions, capital infrastructure or improvements to the Lands, do not give rise to any interest, right or title in all or any portion of the Entire Facility in favour of the Association. All rights of the Association for the use of or access to the Jointly Operated Facilities and Common Spaces arise solely under this Agreement.

Other than items that are agreed to be Association Equipment, all items that are purchased by the Association for the Jointly Operated Facilities or Common Spaces shall be for the benefit of the Entire Facility and are being contributed as an unconditional and irrevocable donation to the Park Board and the City for the purposes of enhancing the Entire Facility. The Association will remain as the owner of all the Association Equipment, as such inventory is updated from time to time.

[FOR LEASED CENTRES ONLY -THE FOLLOWING PARAGRAPH WILL BE INCLUDED IN THE JOA INSTEAD OF THE FOREGOING]

The Association acknowledges and agrees that the Park Board is the sole lessee of the Entire Facility, including the Jointly Operated Facilities pursuant to the lease dated ____, between ____ and ____ (the "Lease"). Ownership of the Entire Facility is in accordance with the Lease and the Park Board is the sole beneficiary of any ownership and lease rights pursuant to the Lease. To the extent permitted under the Lease, the Park Board/City is also the sole owner of all other improvements and Fixtures, unless otherwise agreed to by the parties in writing. Jurisdiction for managing the Entire Facility resides with the Vancouver Park Board. The Association acknowledges and agrees that it has no interest, right or title in all or any portion of the Entire Facility or the Lease and, except for the rights expressly granted to the Association under this Agreement for the Term, it has no licenses, leases or other right to occupy the Jointly Operated Facilities, now or in the future, whether written or implied.

The Association further acknowledges and agrees that no licence, lease, sub-lease or other right to occupy all or any portion of the Entire Facility will arise or has arisen by virtue of the Association's occupation or operations at all or any part of the Entire Facility, including Jointly Operated Facilities, or by the past or future conduct of the parties and that any past or future funds contributed by the Association towards the Jointly Operated Facilities or any other infrastructure comprising the Entire Facility, including towards the base building, building additions, capital infrastructure or improvements to the Lands, do not give rise to any interest, right or title in all or any portion of the Entire Facility or the Lease in favour of the Association. All rights of the Association for the use of or access to the Jointly Operated Facilities and Common Spaces arise solely under this Agreement.

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Other than items that are agreed to be Association Equipment, all items that are purchased by the Association for the Jointly Operated Facilities or Common Spaces are for the benefit of the Entire Facility and are being contributed as an unconditional and irrevocable donation for the purposes of enhancing the Entire Facility, and the ownership of such items will be determined by the Park Board in accordance with the Lease. The Association will remain as the owner of all the Association Equipment, as such inventory is updated from time to time.

17.2 Equipment and Assets

The Park Board acknowledges and agrees that the Association is the owner of personal property other than Fixtures and easily removable equipment that were donated to the Association or purchased 100% by the Association using funds at its disposal or which were directed to the Association, unless the parties have agreed otherwise in writing (“Association Equipment”). The Park Board and the Association will create and maintain an up to date inventory of Association Equipment, and any changes, additions or deletions to the inventory must be agreed to by the Association and the Park Board. Disagreements on the ownership of an item will be resolved using the dispute resolution process set out in Section 18.

Other than Association Equipment, equipment leased by the Association, and any equipment or assets of an affiliated group, 3rd party contractor or arms-length leasing party, as of the Effective Date, the parties agree that all property and equipment located in or at the Entire Facility is owned by the Park Board and/or the City.

18. DISPUTE RESOLUTION

18.1 Dispute Resolution Process

It is the belief of both parties that issues should be ideally resolved constructively at the local community centre level. All disputes between the Association and the Park Board must first be discussed by the Recreation Supervisor and/or the Manager of the Jointly Operated Facilities and Association representatives who will attempt to resolve the dispute in a respectful and constructive manner.

If disputes cannot be resolved at the local level within fifteen (15) business days of the matter first being raised in writing or in person, or such longer period of time as agreed to by the parties, then either party may refer the dispute to the Director of Recreation and the Association representative for further discussion and attempt at a resolution.

If the dispute is not resolved by the Director of Recreation and Association representatives within another fifteen (15) business days of when the issue was raised to the Director of Recreation, or such longer period of time as agreed to by the parties, then either party may refer the dispute to the General Manager of the Park Board for further discussion and the parties will attempt to resolve the dispute. If a dispute is referred to the General Manager, the Association and Park Board management staff must each submit a written summary of the dispute to the General Manager, including all relevant facts and any applicable policies, prior to the dispute being reviewed.

If discussions between the Park Board and Association do not resolve the dispute within thirty (30) business days of the General Manager’s receipt of the written summaries of the matter, or such longer period of time as agreed to by the parties, then:

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- A. for matters subject to arbitration, the dispute may be resolved by binding arbitration at the election of either of the parties, pursuant to Section 18.2. If agreed to by the parties, the parties may also decide to refer any arbitral issues to mediation or another form of dispute resolution before pursuing arbitration; and
- B. for matters not subject to arbitration, the dispute may be referred to the Park Board Commissioners for further consideration and a final decision. The Park Board Commissioners will render a decision within 2 months of the dispute being referred and receipt of the written summaries of the matter.

The parties agree that the following matters are not subject to arbitration:

- (a) matters under the sole jurisdiction of the Park Board, including:
 - (i) policies and standards established by the Park Board or the City, including Public Policy, provided such policies and standards do not directly contradict the express terms of this Agreement; and
 - (ii) allocation of Park Board budgets and resources;
- (b) compliance with Applicable Laws and corporate policies; and
- (c) the ownership of the Entire Facility, including the Jointly Operated Facilities.

For greater certainty, the Park Board and the Association agree that the implementation of Public Policy initiatives at the Jointly Operated Facilities will be carried out pursuant to Section 6.2 of this Agreement, and any disputes regarding implementation matters will be subject to arbitration.

18.2 Arbitration

All disputes subject to arbitration under this Agreement, including disputes concerning the interpretation of this Agreement and accounting and payment disputes, may, at the election of either of the parties, be referred to and finally resolved by binding arbitration. Matters to be resolved by arbitration will be subject to arbitration in accordance with the *Arbitration Act*, R.S.B.C. 1996, c. 55. Unless the parties otherwise agree in writing, the dispute will be referred to and finally resolved by arbitration administered by the British Columbia International Commercial Arbitration Centre, pursuant to its Rules for the conduct of domestic commercial arbitrations. The place of arbitration shall be Vancouver, BC. The arbitration will be conducted before a single arbitrator and shall be final resolution for the matter being referred. The administrative fees for the arbitration and the arbitrator's fees and expenses (collectively, the "Arbitration Fees") will be split equally between the Park Board and Association but the ultimate allocation of Arbitration Fees between the parties will be determined by the arbitrator in apportioning costs between the parties at the conclusion of the arbitration.

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19. BRAND AND BRAND PROTECTION

The parties acknowledge that they are cooperating to provide valuable services to the public, and that the reputation and public image of both the Park Board and the Association is important to both parties. To ensure the integrity of this Agreement, the parties agree to respect each other's brand and public image and to communicate about each other in a constructive and respectful way in all public materials or forums.

Programming materials (such as the program brochure for the Jointly Operated Facilities) and all signage at the Jointly Operated Facilities will be co-branded and feature the logos of both the Park Board and the Association.

20. CHANGES TO JOINTLY OPERATED FACILITIES

20.1 Additions to Entire Facility

If additions or renovations adding space are made to the Entire Facility, and the new space is to be used for purposes consistent with the scope and offerings of the existing Programming provided by the Association, then this Agreement will be amended as required to include the new space within the scope of the Jointly Operated Facilities. Notwithstanding the foregoing, if the Association is or has been in sustained breach of this Agreement or if the Park Board holds reasonable concerns regarding the Association's ability to operate the new space in a safe, professional and compliant manner, then the new space will not be automatically included in the scope of Jointly Operated Facilities and the Park Board may elect to operate the new space itself or with the assistance or another partner organization.

If, at any time during the Term, including during any Renewal Term, other major changes are made to the Jointly Operated Facilities or Common Spaces, such as the addition of significant new facilities (such as a café or concession), or additions or renovations adding space that is to be used for purposes that are not consistent with the the scope and offerings of the Association's existing Programming or services, then the parties will negotiate an amendment to this Agreement to clarify the roles and responsibilities of the parties with respect to the new facilities. The final decision with respect to any new facilities or space will rest with the Park Board.

20.2 Reduction in Jointly Operated Facilities

If, during the Term, any space in the Jointly Operated Facilities needs to be closed for reasons of safety (for example, removal of asbestos) or is unused by the Association for the purposes contemplated under this Agreement for a sustained period, then such space may be removed from the scope of the Jointly Operated Facilities, as identified in Appendix A. If a portion of the Jointly Operated Facilities are closed for reasons of safety and are subsequently renovated or repaired such that they are able to be safely used again, then such space will be added back to the scope of the Jointly Operated Facilities.

20.3 Replacement of Jointly Operated Facilities

If, during the Term, the Jointly Operated Facilities are to be closed and directly replaced with another facility, and the new facility is to be used for purposes consistent with the scope and offerings of the existing Programming provided by the Association, then this Agreement will be amended to contemplate any changes to the operations at the new facility and the Term shall

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continue unaffected. Prior to the closure of the Jointly Operated Facilities, the Park Board and Association will discuss the arrangements for the new or replacement facility and enter into a modification to this Agreement to addresses any changes to the facilities or the operating arrangements. If the Jointly Operated Facilities are closed prior to the replacement facility being opened, then the Term shall be extended for a period of time equivalent to the number of days between the closure of the Jointly Operated Facilities and the opening of the new facility.

Notwithstanding the foregoing, if the Association is or has been in sustained breach of this Agreement or if the Park Board holds reasonable concerns regarding the Association's ability to operate all or any component of the replacement facility space in a safe, professional and compliant manner, then the Park Board may elect to terminate this Agreement and not extend this Agreement to all or any portion of the replacement facility.

20.4 Closure of Jointly Operated Facilities

If, during the Term, the Jointly Operated Facilities are closed *[or the Lease is terminated]* then this Agreement will terminate and any remaining term shall expire.

[If the facility is leased by the Park Board, the following section 20.5 is to be included]

20.5 Renewal and Termination of Lease

The Association acknowledges that the Jointly Operated Facilities are leased by the Park Board from _____ pursuant to the Lease and that, if the Lease is terminated this Agreement will terminate, and any remaining Term of this Agreement shall expire, on the day that is one day prior to the date that the Lease is to terminate. The Association further acknowledges and agrees that the Park Board has no obligation to renew the Lease, extend the term of the Lease or enter into a new lease for the Jointly Operated Facilities (or replacement facilities) and that, if maintaining the Lease becomes financially unfeasible for the Park Board, the Park Board may terminate the Lease in accordance with the provisions of the Lease.

21. TERMINATION OR NON-RENEWAL

21.1 Breach by Association and Park Board's Right to Terminate

In addition to the Park Board's rights of termination or non-renewal set out in Sections 3.2, 20.3, 20.4 *and 20.5*, the Park Board may terminate this Agreement with a minimum of 90 days prior written notice in the event of a sustained, material, un-remedied breach of this Agreement by the Association; provided that, the right to terminate will be subject to the following:

- (a) the termination notice must specify the breach in reasonable detail;
- (b) the Association will have a cure period of 60 days to remedy the breach, except in the case of emergency, in which case a shorter cure period may be specified. In the event of emergency, the Park Board may take reasonable action to cure the breach on behalf of the Association at the expiry of the notice period, or sooner as may be specified in the notice of breach;

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- (c) the Association must make reasonable and diligent efforts to resolve the breach in a manner satisfactory to the Park Board in a timely manner;
- (d) If the Association does not satisfactorily remedy the breach in the cure period, the notice to terminate will be deemed effective and the Agreement will automatically terminate at the end of the 90 day notice period; provided that, if more than 60 days is required to remedy the breach (using reasonable resources and acting diligently), then the Association will not be considered to be in breach after 60 days (except in the case of emergency) if, immediately after receiving the notice of breach, the Association commenced the remedy of the breach, immediately notifies the Park Board of the steps it will take to remedy the breach, and has proceeded to diligently and continuously remedy the breach so that the breach is cured as soon as reasonably possible; and
- (e) If the Association fails to continuously and diligently work towards resolving the breach, the Park Board may terminate this Agreement with no further notice required.

If the Association disagrees that the action or event specified in the notice constitutes a material breach of the Agreement, the Association may invoke the dispute resolution mechanism. If the alleged breach is of a serious nature, in the reasonable opinion of the Park Board, the Park Board may elect to expedite the dispute resolution mechanism and refer the dispute directly to the Park Board General Manager or arbitration, if applicable.

For the purposes of this Agreement, “material breach” of the Association shall include failure of the Association to comply with Public Policy, breach of Applicable Laws, fraudulent conduct, misappropriation of funds, financial wrongdoing or criminal activity on the part of the Association, an unresolved default under section 4.2, breach of section 14.1(c), sustained failure of the Association to provide financial information required under this Agreement, discrimination or human rights violations on the part of the Association, or any conduct by the Association which is directed against the public interest.

In the event of termination of this Agreement, all outstanding payments between the parties will become immediately due and payable and subject to withholding, and the parties will work cooperatively to transition operations to the Park Board or its designate to ensure minimal disruption to the public.

21.2 Breach by Park Board and Association’s Right to Terminate

In addition to the Association’s rights of non-renewal set out in Section 3.2, the Association may terminate this Agreement with a minimum of 90 days prior written notice in the event of a sustained breach of this Agreement by the Park Board.

If the Association considers the Park Board to be in breach of this Agreement at any time, the Association must provide a notice to specify the breach in reasonable detail. The Park Board will use reasonable and diligent efforts to resolve any breach of this Agreement in a timely manner. If the Park Board does not satisfactorily remedy the breach within 60 days, the Association may terminate this Agreement at the end of the notice period for termination (if notice of termination was provided) or may refer the matter to dispute resolution for further discussion and attempted resolution. In the event of termination of this Agreement, all outstanding payments between the parties will become immediately due and payable and subject to withholding, and the parties will work cooperatively to transition operations to ensure minimal disruption to the public.

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22. NOTICES

Any notice, approval or request required or permitted to be given under this Agreement shall be in writing and may be given by delivering such notice, approval or request to a representative of the party for whom it is intended or by mailing such notice, approval or request by prepaid registered mail from any post office in British Columbia:

(a) to the Park Board:

Board of Parks and Recreation
2099 Beach Avenue
Vancouver, British Columbia
V6G 1Z4
Email: _____

Attention: General Manager

(b) to the Association:

[Insert contact details]

Attention: President

or at such other address as the parties may from time to time advise by notice in writing. Any such notice, approval or request shall be deemed to have been received on the date of delivery of such notice, approval or request or, on the third business day next following the date of such mailing if mailed as aforesaid, provided that if mailed should there be, between mailing and the actual receipt of such notice, approval or request, a mail strike, slowdown or other labour dispute which might affect the delivery of such notice, approval or request, such notice, approval or request shall only be effective if actually delivered.

23. TERMINATION OF PRIOR JOA

The Association and the Park Board hereby acknowledge and agree that this Agreement replaces the Prior JOA, and the Prior JOA is hereby terminated with effect on the Effective Date, and shall be of no force and effect from and after the Effective Date.

24. MISCELLANEOUS

24.1 Governing Laws

This Agreement, regardless of where executed or performed, will be governed by and construed in accordance with the laws of the Province of British Columbia.

24.2 Enurement

This Agreement shall enure to the benefit of and be binding upon the Park Board and the Association and their respective successors and permitted assigns.

24.3 Severability

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All the obligations and covenants contained in this Agreement are severable, so that if any one or more of the obligations or covenants are held by or declared by a court of competent jurisdiction to be void or unenforceable, the balance of the obligations and covenants shall remain and be binding.

24.4 Non-Derogation

Nothing contained or implied in this Agreement will derogate from the obligations of the Association under any other agreement with the City or the Park Board or, prejudice or affect the City or Park Board's rights, powers, duties or obligations in the exercise of its functions pursuant to the *Vancouver Charter* as amended from time to time and the rights, powers, duties and obligations of the City and Park Board under all public and private statutes, by-laws, orders and regulations, which may be as fully and effectively exercised in relation to the Jointly Operated Facilities as if this Agreement had not been executed and delivered by the Association and the Park Board.

24.5 Time of the Essence

Time shall be of the essence of this Agreement.

24.6 Captions

The captions and headings throughout this Agreement are for convenience and reference only and the words and phrases contained therein shall in no way be held or deemed to define, limit, describe, explain, modify, amplify or add to the interpretation, construction or meaning of any provision of or the scope or intent of this Agreement nor in any way affect this Agreement.

24.7 Interpretation

Words importing the singular will include the plural and vice versa, and words importing gender will include the masculine, feminine and neutral genders.

24.8 Waiver

The parties acknowledges and agrees that no failure by either party to exercise and no delay in exercising any right or powers of enforcement under this Agreement by either party shall operate as a waiver thereof. The remedies herein provided shall be cumulative and not exclusive of any other remedies provided by law or equity.

24.9 Entire Agreement

This Agreement constitutes the entire agreement and understanding between the parties hereto with respect to the subject matter hereof, and supersedes all previous communications, representations and agreements, whether oral or written, with respect to the subject matter hereof. All amendments to this Agreement must be made in writing and signed by both parties. For greater certainty, the parties agree that the Appendices to this Agreement may be adjusted by the parties at any time, upon mutual agreement, as practices or operations of the parties may change over time. The parties further acknowledge and agree that the Indemnity Agreement continues to be in full force and effect, subject to the terms and conditions of that agreement, and has not been modified in any way by this Agreement.

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24.10 Assignment

The Association shall not assign its rights or obligations hereunder without the prior written consent of the Park Board, which consent may be withheld in the sole discretion of the Park Board.

24.11 Independent Legal Advice

Each of the parties acknowledge that they have been advised to obtain and have been afforded sufficient opportunity to obtain independent legal advice prior to entering into this Agreement.

24.12 Collective Agreements

The Association acknowledges and agrees that nothing in this Agreement supersedes any duties and responsibilities of the Park Board or the City under any and all collective agreements with trade unions certified to represent employees of the Park Board/City.

24.13 City as Public Body

The parties to this Agreement each acknowledge that the City is subject to the provisions of the *Freedom of Information and Protection of Privacy Act* (British Columbia), as the same may be amended or superseded from time to time ("FOIPPA") and that as a public body under FOIPPA, the City may be requested to disclose confidential information provided to it by the Association and other CCAs, including budgets and records of revenue and expenses. The Association agrees that any such disclosure by the City will not constitute a breach of the City's obligations hereunder.

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24.14 Permanent Public Park

Notwithstanding anything contained in this Agreement, if the Jointly Operated Facilities are part of a permanent public park within the meaning of section 490 of the *Vancouver Charter*, S.B.C. 1953, C. 55, as amended, and ceases to be part of such a permanent public park pursuant to section 488 of the *Vancouver Charter*, then this Agreement and the licence granted hereunder will be terminable at the option of the Park Board but all obligations of the Association up to the date of any such termination will survive such termination. Upon termination pursuant to this Section, at the option of the Association and subject to any required approval of Vancouver City Council or the Park Board, the Park Board shall enter into a separate licence agreement with the Association on the same terms and conditions of this Agreement for the remaining balance of the Term.

TO EVIDENCE THIS AGREEMENT the authorized signatories of each of the parties have executed this Agreement to be effective as of the Effective Date.

CITY OF VANCOUVER as represented by its
BOARD OF PARKS AND RECREATION
by its authorized signatory:

Signature

Print Name and Title

[ASSOCIATION]
by its authorized signatories:

Signature

Print Name and Title

Signature

Print Name and Title

Approved by resolution of the Board of Parks and Recreation on <📅 insert date>.

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APPENDIX A

Jointly Operated Facilities

[List of rooms/ areas included in the Jointly Operated Facilities to be inserted]

Common Spaces will continue to be used jointly by the parties in accordance with current practices.

The Park Board and the Association acknowledge and agree that, from time to time, Common Spaces such as hallways may be used for registration, ticket sales, informal recreation activity, special events, informal meeting and socialization areas and program participant assembly. Furthermore, these Common Spaces may host art displays, art sales and performance installations, provided they do not interfere with the accessibility, safety and proper functioning of the Entire Facility. Common Spaces frequently host showcases, commemoration plaques and art installations including secure display cases such as award cases and art display cases. Common Spaces can host vending machines, seasonal displays, community bulletin boards, marketing materials and brochure racks. The definition of “Common Spaces” does not preclude that space from being programmed or booked in some circumstances, if appropriate.

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APPENDIX B

Access Policy

Policy for public access to the Jointly Operated Facilities is set by the Park Board. The current policy, which may be amended or updated from time to time through the Term of this Agreement at the discretion of the Park Board, is set out below.

OneCard

- OneCards issued from the Jointly Operated Facilities will be co-branded with the Park Board logo and Association logo and all access and use products (i.e. Flexipass, LAP, etc.) will be loaded on to a user's OneCard.

Flexipass

- The Association will accept Flexipasses loaded onto the OneCard at the Association - run fitness centre.
- The Park Board will provide a share of Flexipass revenue to the CCA as per the reimbursement rates provided in Appendix 1 attached. The reimbursement rates will be reviewed in the first year of the joint operating agreement.
- The Association may continue to sell their own products (eg. fitness centre cards), but will not require their products to be used.

Leisure Access Program

- The Association will accept the Leisure Access Program ("LAP") passes (for fitness and all Programming) loaded onto OneCards of residents approved by the Park Board.
- The Park Board will accept LAP for swimming, skating and fitness programs and other Park Board services, as determined by the Park Board.
- The current LAP subsidy consists of:
 - 50% off the daily Park Board drop-in fee for all fitness centres and 50% off the adult Flexipass rate for all fitness centres; and
 - 50% off the Programming rate for one program per person, per season, per centre so long as a program's minimum registration is met;
- The LAP does not apply to private lessons, special events, or Licensed Childcare.
- The LAP does not preclude other subsidy programs.
- The Park Board agrees to financially compensate the Association for any registration in excess of the current LAP subsidy listed above.

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Reimbursement to CCA for Flexipass Use at CCA-Run Fitness Centre

The Park Board collects the revenue when a pass is purchased. Each time the card is used at a CCA-run fitness centre, the below amounts will be reimbursed to the applicable CCA, notwithstanding any discounts that the Park Board may have applied to the purchase of the Flexipass.

| ADULT | 10 visit | 1 month | 3 months | 12 months |
|--|-----------------|----------------|-----------------|------------------|
| Adult Prices as per Vancouver.ca May 2016 | \$46.86 | \$45.28 | \$120.05 | \$382.67 |
| Cost per use assuming pass used every day | | \$1.51 | \$1.33 | \$1.05 |
| Cost per use assuming pass used every other day | | \$3.02 | \$2.67 | \$2.10 |
| Cost per use assuming pass used every other three days | | \$4.53 | \$4.00 | \$3.15 |
| Reimbursement amount per use (average) | \$4.69 | \$3.02 | \$2.67 | \$2.10 |

| YOUTH | 10 visit | 1 month | 3 months | 12 months |
|--|-----------------|----------------|-----------------|------------------|
| Youth Prices as per Vancouver.ca (May 2016) | \$33.52 | \$31.70 | \$84.05 | \$267.86 |
| Cost per use assuming pass used every day | | \$1.06 | \$0.93 | \$0.73 |
| Cost per use assuming pass used every other day | | \$2.11 | \$1.87 | \$1.47 |
| Cost per use assuming pass used every other three days | | \$3.17 | \$2.80 | \$ 2.20 |
| Reimbursement amount per use (average) | \$3.35 | \$2.11 | \$1.87 | \$1.47 |

| SENIOR | 10 visit | 1 month | 3 months | 12 months |
|--|-----------------|----------------|-----------------|------------------|
| Senior Prices as per Vancouver.ca (May 2016) | \$33.52 | \$31.70 | \$84.05 | \$267.86 |
| Cost per use assuming pass used every day | | \$1.06 | \$0.93 | \$0.73 |
| Cost per use assuming pass used every other day | | \$2.11 | \$1.87 | \$1.47 |
| Cost per use assuming pass used every other three days | | \$3.17 | \$2.80 | \$2.20 |
| Reimbursement amount per use (average) | \$3.35 | \$2.11 | \$1.87 | \$1.47 |

- The methodology used for calculating the “cost per use” above is as follows:
 - (1) divide the price of the pass by the number of days (30 days/month, 90 days/3 months, 365 days per year), then
 - (2) multiply the result by the assumed frequency of use (daily, every other day, every three days).
- The “reimbursement amount per use (average)” is an average of the three cost per use calculations above.
- The reimbursement amounts will increase as the price of the pass increases using the associated calculations as outlined above.

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- If there is a new pass offered (i.e., 2 month, 2 years, etc.) the above formula will apply.

CCAs operating a CCA run fitness centre retain the right to continue to sell passes to access their site specific fitness centre. Prices of these passes will continue to be set by the CCA.

Park Board agrees to the following:

- Reimbursement rates for LAC usage are at a 50% discount from the above rates.
- Reimbursement rates and the above transactional fees will apply exclusively to CCA-run fitness centres.
- Association-run fitness centre usage passes will not be called Flexipasses.
- Reimbursement and usage reporting is conducted on a quarterly basis by the Park Board.

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APPENDIX C

Issues and Financial Matters Specific to Association

[to be inserted]

APPENDIX D

Operational Details for ActiveNet

The parties agree the ActiveNet will be used at the Jointly Operated Facilities in accordance with the following practices:

- (a) ActiveNet will be used at the Jointly Operated Facilities for administrative functions, including to process, record, and store registration information for Programming, to process and record payments of Centrally Processed Revenue, customer account inquiries, and front desk and customer service administration. The functions and modules currently processed through ActiveNet (and previously processed through the Safari system) will continue to be processed through ActiveNet, consistent with the existing practices of the parties;
- (b) the City/Park Board will collect Centrally Processed Revenue on behalf of the Association through ActiveNet;
- (c) payment in all forms (cheques, cash, credit, debit) for Programming, services, rentals, childcare, memberships and any other activity provided by the Associations and administered with the support of Park Board or City staff will continue to be processed through ActiveNet, as is currently the case;
- (d) the Park Board/City will remit the Centrally Processed Revenue to the Association, subject only to Authorized Deductions, on the current bi-weekly schedule of payments unless a different schedule of payments is agreed to by the parties;
- (e) except for the Authorized Deductions, the Park Board/City will not withhold payment of any Centrally Processed Revenue to the Association through ActiveNet for any reason without the Association's written consent;
- (f) within the limits of ActiveNet functionality, the City/Park Board will provide to or make available to the Association timely ActiveNet reports on Centrally Processed Revenue, payments, deductions, refunds, and taxes by providing ActiveNet logins and training to Association and/or by scheduling reports to be automatically sent to Association;
- (g) the Association will meet with the Park Board and/or City to resolve non-technical issues within 15 business days of a request by the Park Board;
- (h) the City/Park Board meet with the Association within 15 business days of a request by the CCAs to resolve non-technical issues and make changes to resolve the issues raised by the CCAs or any of them, unless the Park Board and/or City provides written reasons as to why the requested change is not practically feasible;
- (i) the Park Board/City will continue to provide technical support to the Association for ActiveNet and work with ActiveNet to ensure technical support is available to resolve any issues;

- (j) the parties will meet and provide regular and ongoing feedback to each other on how ActiveNet is working, reporting needs, financial and bookkeeping needs, and other topics;
- (k) either party will meet and review the payment schedule for Centrally Processed Revenue within a reasonable period of time, if requested by the other party;
- (l) all receipts generated through ActiveNet will bear the name of the Association and the Park Board in equal prominence, except for debit and credit card slips, which bear the name of the account and the name of the Jointly Operated Facilities;
- (m) individuals registering for or purchasing Programming through ActiveNet in person or online will be able to, in person and online, purchase a membership in the Association offering the Programming; and
- (n) The insufficient fund (“NSF”) fees, if any, currently charged by Association will be maintained. The City/Park Board will collect and retain those fees, except in instances where a particular NSF fee has been waived by an Association. Each Association may waive an NSF fee on a case by case basis according to the financial needs of the individual incurring the NSF fee.
- (o) The Park Board and the City agree that any limitations of ActiveNet shall not constitute grounds for the Park Board or the City to interfere with the current Association practices for determining and implementing fees to be charged to patrons for Programming, services, rentals, childcare, memberships, and any other activity provided by the Association; and
- (p) The City and Park Board agree that, if the Association wishes to explore the option of no longer using ActiveNet for childcare administration, the City and/or Park Board will meet with the Association to discuss the implications of the Association no longer administering childcare payments and childcare registration in ActiveNet.

APPENDIX E
Indemnity Agreement

[to be attached]