

THIS RECREATIONAL SERVICES AGREEMENT made in duplicate this ____ day of December, 2023.

BETWEEN:

THE RURAL COMMUNITY OF HANWELL, a local government under and by virtue of the *Local Governance Act*, SNB 2017, c.18, located at 5 Nature Park Drive, Hanwell, New Brunswick, E3E 0G7 (hereinafter called "Hanwell")

AND

THE CITY OF FREDERICTON, a local government under and by virtue of the *Local Governance Act*, SNB 2017, c.18, located at 397 Queen Street, Fredericton, New Brunswick, E3B 1B5 (hereinafter called "Fredericton")

(each a "Party", collectively referred to as the "Parties")

WHEREAS Fredericton has recreational facilities and provides Recreational Services for the benefit of the residents of Fredericton and surrounding areas subject to established service agreements;

AND WHEREAS the residents of Hanwell are desirous of having the same access as Fredericton residents to Fredericton's recreational facilities;

AND WHEREAS Fredericton provides access to its recreational facilities to individuals who reside in Hanwell and the Ludford subdivision in Mazerolle Settlement based on the boundaries of Hanwell prior to changes that took effect January 1, 2023 pursuant to provincial local governance reform as implemented by the Province of New Brunswick;

AND WHEREAS pursuant to local governance reform Hanwell wants to extend access to Fredericton's recreation facilities to the residents of its newly amalgamated areas effective January 1, 2024 such that all residents of Hanwell are afforded the same level of access to recreational facilities and services and based on the same costs;

NOW THEREFORE in consideration of the various sums of money agreed to by the Parties to be collected based on the funding formula outlined herein from Hanwell and in exchange for the provision of recreational services and facilities by Fredericton to the residents of Hanwell, the Parties agree as follows:

SECTION 1.0 - DEFINITIONS

- 1.1 In this Agreement the following terms, in singular or plural form, according to the content, are defined as follows:
- (a) "Calendar year" means the period from the first day of January to the last day of December next following, inclusive;
 - (b) "Capital Replacement Fund" means the fund created to pay for the needed replacement of capital items that, during the term of this Agreement, are required to maintain the Complexes;
 - (c) "Complexes" means the Lady Beaverbrook Rink, the Willie O'Ree Place, the Grant-Harvey Centre; and, the York Arena;
 - (d) "Recreation Advisory Committee" means the Recreation Advisory Committee referred to under Section 5; and
 - (e) "Recreational Services" means all of the services, programing and facilities listed on Schedule A.

SECTION 2.0 – TERM AND TERMINATION

- 2.1 Fredericton shall, notwithstanding the date signed, provide access to Recreation Services as defined herein, in accordance with the terms and conditions of this Agreement, for a period of four (4) years commencing on January 1, 2024 and expiring on December 31, 2027 (the "Term"), unless terminated earlier in accordance with this Agreement.
- 2.2 Either Party may, at it's sole discretion, at no cost, terminate this Agreement without cause at any time prior to the expiration of the Term upon giving twelve (12) months prior written notice of termination to the other Party.
- 2.3 If either Party terminates this Agreement in accordance with Section 2.2, Fredericton is entitled to payment for Recreation Services provided up to and including the date of termination.

SECTION 3.0 – RESPONSIBILITIES OF HANWELL

- 3.1 Hanwell shall remit, on a quarterly basis, the amounts required to be paid to Fredericton pursuant to this Agreement.
- 3.2 Hanwell shall pay Fredericton an amount on annual basis equivalent to the amount of money that would be raised through a levy of \$0.03/\$100.00 of assessment of Hanwell's tax base (entirety of Taxing Authority 175). Calculated as: ((total residential tax base) + (total non-residential tax base multiplied by 1.5)) multiplied by \$0.03/\$100.00 of assessment.

SECTION 4.0 - RESPONSIBILITIES OF FREDERICTON

- 4.1 Fredericton shall maintain and provide access to and use of the Recreational Services listed on Schedule "A" for the Term in accordance with this Agreement.
- 4.2 Fredericton shall provide the residents of Hanwell with access to and use of the Recreational Services that is identical to that provided to the residents of Fredericton without payment of a non-resident user fee. Notwithstanding, the parties acknowledge and agree that Hanwell residents will be required to pay registration and other fees, if applicable, when they register for programming that is offered by Fredericton and/or a third-party service provider who utilizes a Fredericton recreation facility.
- 4.3 Fredericton shall continue to collect from all persons who are non-residents of Fredericton and are not residents of applicable portions of the Capital Region Rural District or a Local Government that has entered into a similar agreement with Fredericton, a user fee that is not less than those that were in effect on June 1, 2007 or are currently in effect pursuant to applicable City of Fredericton by-laws or adopted by Fredericton City Council resolution.
- 4.4 Fredericton shall maintain all records and accounts pertaining to the provision of Recreational Services, including, without restricting the foregoing, a record of the number and residency of all ice and non-ice sport users.
- 4.5 Fredericton shall, on or before October 1st, provide Hanwell on an annual basis the number of all ice and non-ice sport users that reside in Hanwell for the respective previous year, which record shall preserve the right to privacy of the users, in order that Hanwell may understand the participation rate of its residents in Recreational Services.
- 4.6 The Parties acknowledge and agree that Fredericton has the sole right, ability and discretion to add and/or remove programs and facilities that form part of Recreation Services as defined in this Agreement and listed on Schedule "A".

SECTION 5.0 – RECREATION ADVISORY COMMITTEE

- 5.1 The Parties agree that the City will maintain a Recreation Advisory Committee (the "Committee") the purpose of which is to provide advice pertaining to the Complexes such as but not limited to: accessibility to and optimal use of the Complexes; wellness promotion, active living within and through the use of the Complexes; coordination and cooperation among users of the Complexes; identification of new individual and group users and encouragement of their participation in activities and events at the Complexes, and, consideration of the evolving recreational service needs in Hanwell and Fredericton.
- 5.2 The Parties acknowledge and agree that Hanwell may appoint one (1) member to participate on the Committee.

- 5.3 The Parties acknowledge and agree that members appointed to the Committee shall abide by any terms of reference enacted by the City.

SECTION 6.0 INSURANCE AND INDEMNITY

- 6.1 Hanwell and Fredericton shall, at its own cost and expense, obtain and maintain for the Term, or Renewal Term, and for an additional period of two (2) years thereafter the following insurance coverage:

(a) Commercial General Liability

- (i) The policy shall provide a policy limit of not less than Five Million Dollars (\$5,000,000.00) per occurrence for all claims arising out of bodily injury (including death), personal injury, and damage to property of others. Such policy shall not contain any exclusion that conflict with the services required to be delivered or performed under this Agreement;
- (ii) Hanwell shall list Fredericton as an additional insured. The policy shall also contain cross liability and severability of interest; and
- (iii) Fredericton shall list Hanwell as an additional insured. The policy shall also contain cross liability and severability of interest.

(b) Automobile Liability Insurance

- (i) The policy shall provide coverage for liability arising out of the use of owned, non-owned, leased or hired automobiles or licensed vehicles. Coverage shall consist of a combined single limit of not less than Five Million Dollars (\$5,000,000.00) per occurrence.

- 6.2 Each of the aforementioned policies in Section 6.1(a) and 6.1(b) shall have policy limits not less than five million dollars (\$5,000,000.00) per claim or occurrence, aggregate limits not less than five million dollars (\$5,000,000.00) within any policy year.

- 6.3 The insurance to be maintained by Hanwell and Fredericton hereunder shall:

- (a) be issued by financially sound insurers licensed to carry on business in the Province of New Brunswick or Canada;
- (b) require the insurer to provide the named additional insured with at least thirty (30) days' prior written notice of a material change in the policy or termination or cancellation of the policy; and

- (c) provide coverage for liability arising out of property damage, loss, personal injury (including death), or any other damage resulting from any act or omission of the Parties, its officers, directors, employees, servants, and agents.
- 6.4 Prior to signing this Agreement, Hanwell and Fredericton each shall deliver to the other certificates of insurance evidencing the insurance required under this Agreement is in effect. Thereafter and throughout the Term of this Agreement, each Party shall provide the other Party any and all renewal certificates of insurance evidencing that the insurance required under this Agreement continues in effect. Each Party shall also provide a certificate of insurance upon request from the other Party.
- 6.5 Hanwell covenants to indemnify and save harmless Fredericton and its employees, agents, subcontractors and officials from and against any and all actions, suits, proceedings, costs, charges, expenses, claims, demands, matters and things whatsoever and by whomsoever made, sustained, brought or prosecuted ("Claims") which are in any manner based upon, occasioned by, attributable to or arising from anything done or suffered or omitted to be done by Hanwell or one or more of its employees, agents, contractors or subcontractors, and whether caused by the negligence of Hanwell or one or more of its employees, agents, contractors or subcontractors of any nature whatsoever and howsoever caused resulting from or relating to:
 - (a) any breach, violation or non-performance by Hanwell of any covenant or obligation of Hanwell contained in this Agreement; and
 - (b) any damage to property, either real or personal, and whether owned by Hanwell, Fredericton or others (including any member of the public) howsoever occasioned.

Notwithstanding, any other provision in this Agreement to the contrary, Hanwell shall have no obligation to provide indemnification in respect of "Claims" to the extent the same arise as a result of a breach of this Agreement by or on behalf of Fredericton or the negligence or willful act or omission of Fredericton.

- 6.6 Fredericton covenants to indemnify and save harmless Hanwell and its employees, agents, subcontractors and officials from and against any and all actions, suits, proceedings, costs, charges, expenses, claims, demands, matters and things whatsoever and by whomsoever made, sustained, brought or prosecuted ("Claims") which are in any manner based upon, occasioned by, attributable to or arising from anything done or suffered or omitted to be done by Fredericton or one or more of its employees, agents, contractors or subcontractors, and whether caused by the negligence of Fredericton or one or more of its employees, agents,

contractors or subcontractors of any nature whatsoever and howsoever caused resulting from or relating to:

- (a) any breach, violation or non-performance by Fredericton of any covenant or obligation of Fredericton contained in this Agreement; and
- (b) any damage to property, either real or personal, and whether owned by Hanwell, Fredericton or others (including any member of the public) howsoever occasioned.

Notwithstanding, any other provision of this Agreement to the contrary, Fredericton shall have no obligation to provide indemnification in respect of "Claims" to the extent the same arise as a result of a breach of this Agreement by or on behalf of Hanwell or the negligence or willful act or omission of Hanwell.

SECTION 7.0 GENERAL

- 7.1 **Sections, Headings and Interpretation:** The division of this Agreement into sections and the insertion of headings are for convenience of reference only and do not affect its interpretation. Except where the context requires otherwise, references to the terms "herein," "hereof," "hereunder" and similar expressions refer to this Agreement as a whole, and not to any specific section or schedule.
- 7.2 **Time of the Essence:** Time shall be of the essence in this Agreement.
- 7.3 **Currency:** All dollar amounts referred to in this Agreement are Canadian dollars.
- 7.4 **Severability / Partial Invalidity:** If any term or provision of this Agreement is held by a court of competent jurisdiction to be illegal, invalid or unenforceable, it shall be deemed to be severed from this Agreement, and the remaining provisions or terms and conditions shall nevertheless remain in full force and effect and continue to be binding on the Parties.
- 7.5 **Agreement and Amendments:** This Agreement constitutes the entire agreement and understanding between Hanwell and Fredericton with respect to the provision of Recreation Services, and supersedes all prior negotiations, communications and other agreements, whether written or oral, relating to the subject matter hereof. There are no undertakings, representations or promises, express or implied, other than those contained in this Agreement. This Agreement may be amended only by written agreement duly executed by the Parties which shall become supplemental to and form part of this Agreement. Any amendment or modification to this Agreement shall have no force or effect unless it is in writing and signed by duly authorized representatives of each of Hanwell and Fredericton.

The following documents form part of this Agreement:

- (a) this Agreement; and

(b) the attached Schedules.

The Parties also acknowledge and agree that any service fee changes under Section 3.0 of this Agreement shall be included in a written amending agreement duly signed by the authorized representatives of each Party.

- 7.6 **Right to Information/Protection of Privacy:** The Parties acknowledge, agree and understand they are subject to the *Right to Information and Protection of Privacy Act* (SNB 2009, c. R-10.6), as amended, (“RTIPPA”) and as such, disclosure and confidentiality obligations are governed thereunder. In addition, upon receipt of a request for disclosure under the RTIPPA, the Parties shall advise one another prior to the release of any documentation.
- 7.7 **Waiver:** No term or provision of this Agreement, and no breach of this Agreement by Fredericton, shall be deemed to be waived or excused by Hanwell unless such waiver is in writing and signed by Hanwell. The waiver by Hanwell of any breach of a term or provision of this Agreement shall not be or be deemed to be a waiver of any continuing or subsequent breach by Fredericton of the same or any other term or provision of this Agreement.
- 7.8 **Disputes:** If a dispute arises between the Parties relating to this Agreement, or the subject matter hereof, the Parties agree that they shall each make all reasonable efforts to resolve any such dispute on a timely basis through amicable negotiations. Disputes shall promptly be referred by each Party to their respective senior management representatives who have the authority to resolve and settle any such disputes on their behalf. In the event that such representatives cannot resolve the dispute within ten (10) days or such longer period as the Parties may agree in writing, either Party may elect, upon giving prior written notice to the other Party, to resolve the matter through mediation or arbitration by a mutually acceptable mediator or arbitrator in accordance with the *Arbitration Act*, SNB, 2014, c. 100, as amended, or litigation proceedings in the courts of the Province of New Brunswick. Notwithstanding the foregoing, nothing in this Section 7.8 shall prevent the Parties from exercising its rights of termination set out under this Agreement in the circumstances described therein. It is further agreed by the Parties that they shall pay their own costs of any mediation, arbitration or litigation.
- The time limits referred to in this Section 7.8 may be abridged or extended by mutual agreement of the Parties.
- 7.9 **Successors and Assigns:** This Agreement shall ensure to the benefit of and be binding and enforceable by the Parties and where the context permits, their respective successors and permitted assigns. Neither Party may assign any of its rights or obligations hereunder.
- 7.10 **Notices:** Any notice to be given under this Agreement by the Parties shall be in writing and delivered by hand, by email transmission or by registered mail, to the other Party at the address and to the attention of the contact individual indicated below:

To Hanwell:

5 Nature Park Drive
 Hanwell, NB E3E 0G7
Attention: the Clerk
 clerk@hanwell.nb.ca

To Fredericton:

397 Queen Street
 Fredericton, NB E3B 1B5
Attention: City Clerk
 cityclerk@fredericton.ca

A notice shall be deemed to be duly given and received upon delivery, if delivered by hand; upon receipt of the email transmission, if the transmission is received by the intended recipient prior to the recipient's close of business (and otherwise on the next business day of the recipient); or three (3) business days after posting, if sent by registered mail with a return receipt. Either Party may change its address or contact for receipt of notices, provided that such Party gives notice thereof in accordance with this Section 7.10 and confirms the effective date of the change in such notice.

- 7.11 **Counterparts:** This Agreement may be signed by the Parties in one or more counterparts (in original or electronic form), each of which when signed and delivered will be deemed an original, but all of which together will constitute one and the same instrument; however, this Agreement will be of no force or effect until executed by both Parties. Executed signature pages delivered by facsimile or electronic mail will be deemed for all purposes to be original counterparts of this Agreement.
- 7.12 **Further Assurances:** The Parties agree to execute and deliver all such further documents and instruments and do or cause to be done all such acts and things, as either Party may reasonably consider necessary to evidence the intent and meaning of this Agreement.
- 7.13 **Words in the Singular:** Where the context so requires in this Agreement, words in the singular include the plural and vice versa.
- 7.14 **Contra Proferentem Rule Not Applicable:** Should any provision of this Agreement require judicial interpretation, mediation or arbitration, it is agreed that the court, mediator or arbitrator interpreting or construing the same shall not apply a presumption that the terms thereof shall be more strictly construed against one Party by reason of the rule of construction that a document is to be construed more strictly against the Party who itself or through its agent prepared the same, it is agreed that both Parties, directly or through their agents, have participated in the preparation hereof.
- 7.15 **Costs:** It is acknowledged that each Party shall pay his own fees, costs, charges and expenses of and incidental to the preparation of this Agreement or incurred in connection with carrying out its obligations under this Agreement.
- 7.16 **Governing Law:** The Parties acknowledge and agree this Agreement shall be

governed by, construed, interpreted and enforced in accordance with the laws of the Province of New Brunswick and any federal laws of Canada applicable therein. The Parties submit to the exclusive jurisdiction of the courts of the Province of New Brunswick, that is, any claim or dispute with respect to or in relation to this Agreement shall be determined by a court of competent jurisdiction within the Province of New Brunswick.

- 7.17 **Force Majeure:** The Parties hereto shall not be responsible for any failure or delay in the performance of any obligations hereunder caused by acts of God, flood, fire, explosion, war, public enemy, terrorism, blockade, civil commotion, pandemic, epidemic, stop-work order, injunction, labour strikes or disputes, slowdowns, picketing, boycotts or other causes beyond their reasonable control, each of which will be considered a force majeure event excluding a non-performing Parties lack of or insufficient financial resources to discharge its duties or obligations hereunder.
- 7.18 **Special Circumstances:** The inability on the part of Fredericton to provide the contracted Recreation Services under this Agreement for reasons beyond its control shall not create any financial or legal liability on the part of Fredericton and any related officer, official, employee, volunteer or agent thereof.
- 7.19 **Survival:** Any provision of this Agreement which expressly or by implication from its nature is intended to survive the termination or completion of the Agreement will continue in full force and effect after any termination, expiry or completion of the Agreement. More specifically, neither the expiry nor the earlier termination of this Agreement shall relieve or be deemed to relieve, a Party from any duties, obligations or liabilities hereunder that accrued prior to such expiration or termination, including but not limited to those duties and obligations set out in Section 2 (Term and Termination) and Section 6 (Insurance and Indemnity).
- 7.20 **Other:** The Parties acknowledge and agree that they have had the opportunity to seek and obtain independent legal advice or to have this Agreement reviewed by their respective legal counsel prior to signing this Agreement.

**REMAINDER OF PAGE INTENTIONALLY LEFT BLANK
PARTIES TO SIGN ON THE FOLLOWING PAGE**

SCHEDULE A RECREATIONAL SERVICES

The Recreational Services which Hanwell have access to and may use under this Agreement are those provided by Fredericton such as but not limited to:

- (a) equipped playgrounds;
- (b) trails or trail systems;
- (c) wading pools;
- (d) swimming pools (indoor and outdoor);
- (e) tennis courts;
- (f) dog parks;
- (g) youth centres;
- (h) skateboard parks;
- (i) senior centres;
- (j) community lodge facilities;
- (k) sports fields (e.g. soccer and cricket);
- (l) baseball and softball fields;
- (m) outdoor basketball courts;
- (n) indoor ice rinks comprising the Lady Beaverbrook Rink, the Willie O'Ree Place, the Grant•Harvey Centre; and, the York Arena (the Complexes);
- (o) outdoor ice rink locations;
- (p) outdoor sand volleyball courts;
- (q) cross country ski or winter walking trails; and,
- (r) splash pads.

PROVINCE OF NEW BRUNSWICK

COUNTY OF YORK

AFFIDAVIT OF CORPORATE EXECUTION

I, Sherri Johnston, of the Rural Community of Hanwell, in the County of York and Province of New Brunswick, **MAKE OATH AND SAY AS FOLLOWS:**

1. I am the Clerk of the Rural Community of Hanwell, one of the parties named in the foregoing instrument and as such I have personal knowledge of the matters herein deposed to.
2. The seal affixed to the foregoing instrument purporting to be the seal of the Rural Community of Hanwell is the Corporate Seal of the Rural Community of Hanwell and was so affixed by order of the Council.
3. The signature "Dave Morrison" subscribed to the foregoing instrument is the signature of Dave Morrison, the Mayor of the Rural Community of Hanwell, and the signature "Sherri Johnston" subscribed thereto is my signature.
4. The Mayor and the Clerk are the officers of the Rural Community of Hanwell duly authorized to execute the foregoing instrument.

SWORN TO BEFORE ME at the)
Rural Community of Hanwell, in)
the County of York and Province)
of New Brunswick, this ____, day)
of December, 2023.)

_____)
A Commissioner of Oaths)
Being a Solicitor)

_____)
Sherri Johnston

PROVINCE OF NEW BRUNSWICK

COUNTY OF YORK

AFFIDAVIT OF CORPORATE EXECUTION

I, Jennifer Lawson, of the City of Fredericton, in the County of York and Province of New Brunswick, **MAKE OATH AND SAY AS FOLLOWS:**

1. I am the City Clerk of the City of Fredericton, one of the parties named in the foregoing instrument and as such I have personal knowledge of the matters herein deposed to.
2. The seal affixed to the foregoing instrument purporting to be the seal of the City of Fredericton is the Corporate Seal of the City of Fredericton and was so affixed by order of the City Council.
3. The signature "Kate Rogers" subscribed to the foregoing instrument is the signature of Kate Rogers, the Mayor of the City of Fredericton, and the signature "Jennifer Lawson" subscribed thereto is my signature.
4. The Mayor and City Clerk are the officers of the City of Fredericton duly authorized to execute the foregoing instrument.

SWORN TO BEFORE ME at the)
City of Fredericton, in the)
County of York and Province of)
New Brunswick, this ____, day)
of January, 2024.)
)
)
_____)
A Commissioner of Oaths)
Being a Solicitor)

Jennifer Lawson