

**THIS RECREATIONAL SERVICES AGREEMENT** made in duplicate this \_\_\_\_ day of July, 2024.

**BETWEEN:**

**HIS MAJESTY THE KING** in Right of the **PROVINCE OF NEW BRUNSWICK**, as represented by the **Minister of Local Government**, Marysville Place, McGloin street, Fredericton, NB, E3A 5T8, (hereinafter called and referred to as the “Province”)

**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** the Province is responsible for delivering services including recreation to the residents of the Capital Regional Rural District (“CRRD”);

**AND 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 Province has requested that the City provide recreation services to a portion of the CRRD and wishes to enter into an agreement with the City for the provision of the said services;

**AND WHEREAS** Fredericton provides access to its recreational facilities to individuals who reside in portions of the former Maugerville and Noonan Local Service District(s) based on the boundaries of the local service district 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 provincial local governance reform the Province wants to extend access to Fredericton’s recreation facilities to the residents of CRRD who reside within the area shown in Schedule B of this Agreement, effective January 1, 2025, such that all residents of CRRD are afforded the same level of access to recreational facilities and services and based on the same costs as they have been

receiving pursuant to the former Recreational Services Agreement in effect between Her Majesty the Queen as represented by the Minister of Local Government for the Province of New Brunswick on behalf of participating Local Service Districts and the City of Fredericton dated March 25, 2008;

**AND WHEREAS** the Parties wish to enter into this Agreement to set out their respective obligations with respect to the provision of recreation services by Fredericton to the Province on behalf of a portion of the CRRD;

**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 the Province and in exchange for the provision of recreational services and facilities by Fredericton to a portion of the residents of CRRD, 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) "Complexes" means the Lady Beaverbrook Rink, the Willie O'Ree Place, the Grant-Harvey Centre; and, the York Arena;
  - (b) "Recreation Advisory Committee" means the Recreation Advisory Committee referred to under Section 5;
  - (c) "Recreational Services" means all of the services, programming and facilities listed on Schedule A; and
  - (d) "Service Area" means the portions of the Capital Region Rural District included in the service area boundary as shown on Schedule B and which includes portions of the former Maugerville and Noonan local service districts.

## **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 three (3) years commencing on January 1, 2025 and expiring on December 31, 2027 (the "Term"), unless terminated earlier in accordance with this Agreement.
- 2.2 Either Party may, at its 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 THE PROVINCE**

- 3.1 The Province shall remit, on a quarterly basis, the amounts required to be paid to Fredericton pursuant to this Agreement.
- 3.2 The Province 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 CRRD's tax base; calculated as: ((total residential tax base) + (total non-residential tax base multiplied by 1.5)) multiplied by \$0.03/\$100.00 of CRRD assessment base area as covered by this Agreement.

### **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 the Service Area 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 CRRD 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 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 1<sup>st</sup>, provide the Province on an annual basis the number of all ice and non-ice sport users that reside in the Service Area for the respective previous year, which record shall preserve the right to privacy of the users, in order that the Province may understand the participation rate of CRRD 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 Fredericton 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 CRRD and Fredericton.
- 5.2 The Parties acknowledge and agree that the Province 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 Fredericton committee terms of reference or code of conduct including but not limited to the Committee Code of Conduct Policy (GOV-POL-009), as amended.

## **SECTION 6.0 INSURANCE AND INDEMNITY**

- 6.1 Fredericton shall, at its own cost and expense, obtain and maintain for the 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 exclusions that conflict with the services required to be delivered or performed under this Agreement; and
    - (ii) Fredericton shall list the Province 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 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 The City shall provide a certificate of insurance evidencing the insurance required under this Agreement is in effect upon request of the Province during the Term.
- 6.5 The Parties acknowledge that the Province does not acquire or maintain commercial general liability insurance from an insurer as the Province self-insures and responds to claims accordingly.
- 6.6 The Province covenants to indemnify and save harmless the City and its employees, agents, contractors, 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 the Province or one or more of its employees, agents, contractors or subcontractors, and whether caused by the negligence of the Province 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 the Province of any covenant or obligation of the Province contained in this Agreement; and

- (b) any damage to property, either real or personal, and whether owned by the City, the Province or others (including any member of the public) howsoever occasioned.

Notwithstanding, any other provision in this Agreement to the contrary, the Province 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 the City or the negligence or willful act or omission of the City.

- 6.7 Fredericton covenants to indemnify and save harmless the Province and its employees, agents, contractors, 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 the City or one or more of its employees, agents, contractors or subcontractors, and whether caused by the negligence of the City 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 the City contained in this Agreement; and
- (b) any damage to property, either real or personal, and whether owned by Fredericton, the Province 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 the Province or the negligence or willful act or omission of the Province.

## **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 the Province 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 the Province 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 information or 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 the Province unless such waiver is in writing and signed by the Province. The waiver by the Province 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 the Province:**

Department of Environment &  
Local Government  
Marysville Place, PO Box 6000  
Fredericton, NB E3B 5H1  
Attention: Environment & Local  
Government Manager  
(Rural District Unit – Capital Regional  
Rural District Regional Office)  
e-mail: [ronald.gaudet@gnb.ca](mailto:ronald.gaudet@gnb.ca)

**To Fredericton:**

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

**IN WITNESS WHEREOF** the Parties have caused this Agreement to be executed by their duly authorized representatives on the day and year first hereinabove written.

**SIGNED, SEALED AND DELIVERED** )  
in the presence of: )

**HIS MAJESTY THE KING IN RIGHT  
OF THE PROVINCE OF NEW  
BRUNSWICK**, as represented by the  
**MINISTER OF LOCAL GOVERNMENT**

\_\_\_\_\_  
Honourable Glen Savoie  
Minister of Local Government

**THE CITY OF FREDERICTON**

\_\_\_\_\_  
Kate Rogers  
Mayor

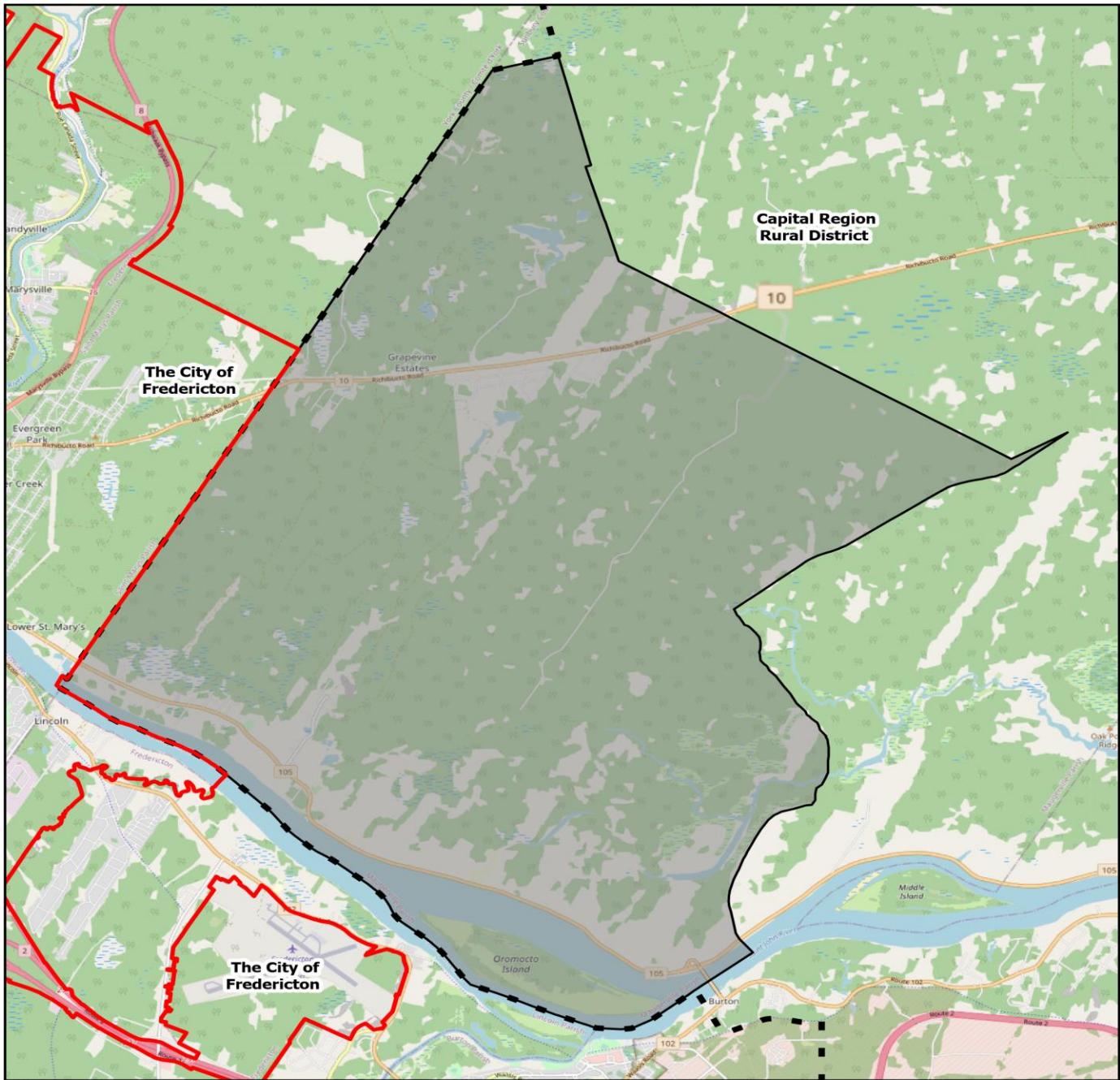
\_\_\_\_\_  
Jennifer Lawson  
City Clerk

## SCHEDULE A RECREATIONAL SERVICES

The Recreational Services which the CRRD Service Area 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.


# SCHEDULE B SERVICE AREA

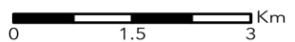


**Capital Region Rural District  
Recreational Service Agreement Area**

<ul style="list-style-type: none"> <li><span style="display: inline-block; width: 15px; height: 10px; background-color: grey; border: 1px solid black; margin-right: 5px;"></span> RECREATIONAL SERVICE AGREEMENT AREA</li> <li><span style="display: inline-block; width: 15px; height: 10px; border: 2px solid red; margin-right: 5px;"></span> THE CITY OF FREDERICTON</li> <li><span style="display: inline-block; width: 15px; height: 10px; border-top: 1px dashed black; border-bottom: 1px dashed black; margin-right: 5px;"></span> CAPITAL REGION RURAL DISTRICT</li> </ul>	<p>Compiled by Community Planning November 2023</p>
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ArcGISProProjects\Service Agreements - Fire and Rec





**PROVINCE OF NEW BRUNSWICK**

**COUNTY OF YORK**

**AFFIDAVIT OF SUBSCRIBING WITNESS**

I, \_\_\_\_\_, of the City of Fredericton, in the County of York and Province of New Brunswick, MAKE OATH AND SAY:

1. THAT I am an \_\_\_\_\_ (e.g. Executive Secretary) with the Department of Local Government, and have a personal knowledge of the matter and things herein deposed to.
  
2. THAT the within Instrument was executed by the Honourable Glen Savoie, Minister of Local Government of the Province of New Brunswick; that the signature of Glen Savoie set and subscribed to the said Instrument as that of the Minister of Local Government is the signature of the said Glen Savoie and was subscribed thereto in my presence.

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

\_\_\_\_\_

or  
My Commission expires on \_\_\_\_\_)

**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 July, 2024. )  
)  
)  
\_\_\_\_\_)  
A Commissioner of Oaths )  
Being a Solicitor )

\_\_\_\_\_  
Jennifer Lawson