

DISTRICT 69 SPORTS FIELD SERVICES AGREEMENT

THIS AGREEMENT made this 7 day of January 2011

BETWEEN:

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

OF THE FIRST PART

AND:

CITY OF PARKSVILLE
100 E. Jensen Ave.
Parksville, BC
V9P 2H3
(**"Parksville"**)

OF THE SECOND PART

AND:

TOWN OF QUALICUM BEACH
201 – 660 Primrose Street
Qualicum Beach, BC
V9K 1S7
(**"Qualicum Beach"**)

OF THE THIRD PART

W H E R E A S:

- A. Parksville, Qualicum Beach and the Regional District operate and maintain Sports Fields within their boundaries which are used by residents of Parksville, Qualicum Beach and the Regional District;
- B. The parties wish to provide continued access to Sports Fields to members of the public residing within the boundaries of Parksville, Qualicum Beach and within Electoral Areas E, F, G and H of the Regional District by way of agreement;

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

1.0 DEFINITIONS

In this Agreement:

- 1.1 **"Commencement Date"** means January 1, 2011;
- 1.2 **"Cost of Operation and Maintenance"** in relation to Sports Fields, means the Net Costs for Sports Fields for the items set out in Schedule "A", but does not include the Non-Shareable Costs

or debt;

- 1.3 **“District 69”** means that portion of the Regional District included within the boundaries of the City of Parksville, Town of Qualicum Beach, and Electoral Areas E, F, G, and H;
- 1.4 **“Electoral Areas”** means that portion of the Regional District included within the boundaries of Electoral Areas E, F, G and H;
- 1.5 **“Net Cost”** means prior year actual expenditures for the Cost of Operation and Maintenance less cost recovery from fees and charges imposed for the use of Sports Fields;
- 1.6 **“Non-shareable costs”** shall generally mean the development of a new Sports Field or Recreation Facility and/or an upgrade to an existing Sports Field or Recreation Facility costing more than \$10,000 including but not limited to the construction of facilities or improvements, or the addition, replacement, repair or extension of fences, roofs, seating, irrigation systems, wells, drainage, lighting, backstops, goalposts, time clocks or similar game display signage or sod replacement.
- 1.7 **“Parksville”** means the City of Parksville;
- 1.8 **“Participating Areas”** means Parksville, Qualicum Beach, and Electoral Areas E, F, G and H of the Regional District of Nanaimo;
- 1.9 **“Qualicum Beach”** means the Town of Qualicum Beach;
- 1.10 **“Regional District”** means the Regional District of Nanaimo;
- 1.11 **“Sports Field”** means land developed for the playing of baseball, softball and soccer and other sport activities which is owned and operated by either Parksville, Qualicum Beach or the Regional District, within Electoral Areas E, F, G or H, and includes the following:
 - (a) Springwood Park (City of Parksville);
 - (b) Parksville Community Park (City of Parksville);
 - (c) Qualicum Beach Community Park (Town of Qualicum Beach)
 - (d) Jack Bagley Field (Electoral Area E); and

any Sports Field within Parksville, Qualicum Beach or the Regional District, which meets the criteria to be considered a Sports Field under Section 5.0;

- 1.12 **“Services”** means
 - (a) operation and maintenance of Sports Fields in District 69; and
 - (b) permitting access to and use of Sports Fields by residents of the Participants to this Agreement.
- 1.13 **“Term”** means the period of time from the Commencement Date to December 31, 2025;

2.0 INTERPRETATION

- 2.1 A reference in this Agreement to:
 - (a) the singular includes the plural and the plural includes the singular, unless the context otherwise requires.

- (b) the masculine, feminine or neuter includes a reference to the masculine, feminine or neuter, unless the context otherwise requires.
- 2.2 The headings of paragraphs, articles and sections of this Agreement are for convenience of reference only, do not form part of this Agreement and are not to be used in the interpretation of this Agreement.
- 2.3 This Agreement is to be governed and construed in accordance with the laws of the Province of British Columbia.
- 2.4 If any paragraph, article or section of this Agreement is declared or held invalid for any reason, the paragraph, article or section may be severed from the Agreement without affecting the validity of the remainder of the Agreement.

3.0 SERVICES

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

4.0 PAYMENT

- 4.1 Payments to Parksville and Qualicum Beach shall be made in accordance with the following:

- (a) Cost share calculation:

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

- (b) Payment will be made by the Regional District to Parksville and Qualicum Beach as follows:

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

- 4.2 Annual Budget

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

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

4.3 Payment Due Date

Parksville, Qualicum Beach and the Regional District respectively, shall pay over to each other the amounts calculated under 4.1(b), on or before August 1st in each year during the Term of this Agreement.

4.4 Debt

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

5.0 NEW SPORTS FIELDS

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

- 5.2 Where a new Sports Field within a municipality is added under this agreement the Cost of Operation and Maintenance for the first year shall be the average Cost of Operation and Maintenance for all Parksville and Qualicum Beach Sports Fields for the prior year. After the first year the Cost of Operation and Maintenance shall be as reported in the municipal accounts under Section 4.2.

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

6.0 SURVEY

- 6.1 The usage survey of Sportsfields shall be:

- (a) conducted by the Regional District on or before October 31st in the years 2015, 2020 and 2025.
- (b) the survey shall collect street addresses from team registrations for the purposes of identifying the participating area.

7.0 INDEMNITY

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

8.0 PAYMENT RATES

- 8.1 The Parties acknowledge and agree that payment under Section 4.1 represents a fair and reasonable reimbursement of the costs of the Services to be provided under this Agreement.

9.0 COVENANTS OF THE PARTIES

- 9.1 It is a condition precedent to the obligations of the Parties under this Agreement that user or other rates not be charged, either directly or indirectly, for the use of the Sports Fields to residents of Parksville, Qualicum Beach or Electoral Areas in excess of rates payable by or on terms other than those offered to residents of Parksville, Qualicum Beach or the Regional District.
- 9.2 Parksville, Qualicum Beach and the Regional District shall consult with each other with respect to the planning and coordination of future Sports Field development.

10.0 MISCELLANEOUS

10.1 Waivers

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

10.2 Statutory Powers

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

10.3 Modification

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

10.4 Assignment

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

10.5 Survival

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

10.6 Notice

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

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

City of Parksville
100 E. Jensen Ave.
Parksville, BC V9P 2H3
Attention: Director of Administrative Services

Town of Qualicum Beach
201 – 660 Primrose
Qualicum Beach, BC
V9K 1S7
Attention: Corporate Administrator

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

10.7 Independent Contractor

Where a party to this Agreement (hereinafter called the “**Supplying Party**”) provides Sports Field Services to another party to this Agreement (herein after called the “**Receiving Party**”), the Supplying Party shall be deemed to be an independent contractor and not the agent of the Receiving Party. Any and all agents, servants or employees of the Supplying Party or other persons, while engaged in the performance of any work or services required to be performed by one of the Supplying Parties under this Agreement, shall not be considered employees of the Receiving Party and any and all claims that may or might arise on behalf of the Supplying Party, their agents, servants or employees as a consequence of any act or omission on behalf of the Supplying Party, its agents, servants, employees or other person, shall not be the obligation or responsibility of the Receiving Party. The Receiving Party, their agents, servants or employees, respectively, shall be entitled to none of the rights, privileges or benefits of employees of the Supplying Party except as otherwise may be stated in this Agreement.

10.8 Entire Agreement

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

10.9 Arbitration

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

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

The Corporate Seal of the
REGIONAL DISTRICT OF NANAIMO
 was hereto affixed in the presence of
 of its authorized signatories.

(seal)

Chair

Sr. Mgr., Corporate Administration


	Initial	Date
Content (Mgr)	DB	Dec. 29/10
Approved (GM) (AGM)	DB	Dec. 29/10
Legal Form (SMCA)	mg	1/01
Authority (CAC)	GW	Jan 11/11

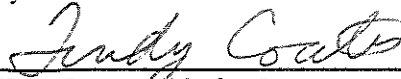
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Mayor

Officer Responsible for Corporate Administration

The Corporate Seal of the
TOWN OF QUALICUM BEACH
was hereto affixed in the presence of
its authorized signatories:


Mayor


Officer Responsible for Corporate
Administration

(seal)

SCHEDULE "A"

Cost of Maintenance and Operation

Labour - includes wages and benefits;

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

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

Field Houses - means cleaning, supplies, lighting, heating and similar operating costs for change rooms and washroom facilities at each park

Water - means costs related to the irrigation of Sports Fields including operation and maintenance of wells and in ground irrigation systems

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

Fleet Maintenance - means the cost of repairing and maintaining vehicles used by parks staff, which is reasonably attributable to operation and maintenance of Sports Fields;

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

Garbage Collection - means collection of litter from Sports Fields;

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

- salaries of parks maintenance administrative staff
- staff training
- staff meetings
- costs related to operation of parks works yard
- other miscellaneous minor costs incidental to the Parks and Recreation Service.

Costs of Sports Field Operation and Maintenance do not include Capital Costs as defined herein.