

PARK BOARD - COMMUNITY CENTRE ASSOCIATION JOINT
OPERATING AGREEMENT DRAFT 2 PROPOSED JOINT
OPERATING AGREEMENT DRAFT 2

RESPONSE FROM COMMUNITY CENTRE ASSOCIATIONS

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PARK BOARD - COMMUNITY CENTRE ASSOCIATION AGREEMENT

THIS AGREEMENT is made the ____ day of _____, 2016

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 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 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 building and other facilities and improvements located on such lands;
- E. The Association is a valuable community-based **registered society** ~~non-profit entity~~ **with an elected board of directors** that plays an important role contributing to the success of the Community Centre Network, including by delivering Programming and services which ensure a healthy, engaged and inclusive community. **In conjunction with the Park Board, the Association has operated the (insert name of community centre) since (insert date);**
- 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

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of Vancouver should have similar opportunities, regardless of gender, age, sexual orientation, ability, race, culture, faith or socio-economic status;

- G. This Agreement 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;
- H. This 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;
- I. 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 15.1;
- (b) **"Applicable Laws"** means all laws, regulations and policies of any governmental authority, including Park Board or City bylaws, which are applicable to each of the party's 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 16.2 of this Agreement;
- (e) **"Association Employees Staff"** has the meaning ascribed in Section 11.1 of this Agreement;
- (f) **"Authorized Deductions"** means deductions for amounts owing by the Association **to the City of Vancouver/ Park Board** in respect of:
 - (i) ~~03rd party provider credit, debit card or terminal transaction fees, which are 2.1% as of the Effective Date,~~ **Credit, debit card, and terminal transaction fees will be set at rate(s) no higher than the lowest rate offered by a 3rd party provider to any City or Municipality in Metro Vancouver** and will be reviewed annually;
 - (ii) recovering revenue paid to the Association in error due to processing or calculating errors which resulted in the Association receiving revenue

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which it is not entitled pursuant to this Agreement (with prior written notification);

- (iii) the Registration System subscription fee on Facility-Generated Revenue. The subscription fee is 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) “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;
- (h) “City” means the City of Vancouver, as a Municipal Corporation;
- (i) “Community Centre Fund” means a Park Board administered fund **created by that payments from** the CCAs ~~will contribute to, and~~ which will be allocated **exclusively** to achieve Public Policy goals within the Community Centre Network ~~through enhancing access to, quantity or quality of Programming and services delivered throughout the Community Centre Network~~ to the benefit of the public;
- (j) “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;
- (j+) “Consultation” means:
 - i. the Party proposing an action shall provide the other Party with a full and complete notice of the matter to be decided in sufficient form and detail to allow the responding Party to prepare its views on the matter in advance of any action;
 - ii. the proposing Party shall provide the notice to the responding Party in a reasonable period of time relative to the deadline for the decision to be made to permit the responding party to prepare its response;
 - iii. the responding Party shall have the opportunity to present its views on the matter to the proposing Party; and
 - iv. the proposing Party will give full and fair consideration of any views presented by the responding Party before making any final decision.
- (k) “Director of Recreation” means the Director of Recreation of the Park Board, and their successors or those authorized to act in their place;
- (l) “Effective Date” means April 1, 2017, which is the date that this Agreement comes into effect;
- (m) “Entire Facility” means the building and facilities commonly known as the _____ community centre, and the Lands, surrounding or adjacent parks, arenas, pools, playing fields, Park Board fitness facilities and other outdoor recreation improvements or facilities, such as tennis courts, basketball courts, skateboard parks or field houses

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within or in the vicinity of the _____ community centre and which are administered by the Park Board;

- (n) ~~“Facility-Generated Revenue” means all revenue generated by 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 made with the Association, and 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, but excludes grant, donation, fundraising, and membership fee revenue;~~
- (o) **“Facility-Generated Revenue” means revenue generated by the Association’s use of the Jointly Operated Facilities including from Programming (including at Satellite Locations), room rentals, and 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, but excludes revenue from grants, donations and bequests, fundraising, *interest and investment income, rental deposits*, membership fees, Association-operated Licensed Childcare, payments due under childcare leases made with the Association, and concessions and vending machines;**
- (n+) **“Financial Hardship” means, in relation to the Park Board / Community Centre Equity Fund , a situation where net revenue from programming is no more than five percent (5%) of all program revenue (Program Revenue - Program Expenses)/Program Revenue < 5%);**
- (p) **“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;**
- (q) **“General Manager” means the General Manager of the Park Board, and his successors or those authorized to act in his place;**
- (r) **“Jointly Operated Facilities” means the portions of the Entire Facility operated jointly by the Park Board and the Association, as more particularly shown 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;**
- (s) **“Lands” mean those lands that are commonly known as _____ and legally described as _____;**

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- (t) **“Licensed Childcare”** means regulated programs for children under the *Community Care and Assisted Living Act* (as may be amended or replaced), and which may include infant toddler daycare, pre-school programs or before or after school programs;
- (u) **“OneCard”** means the universal access card provided by the Park Board which access products are loaded onto, and which enables access to products and services at all centres within the Community Centre Network;
- (v) **“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 or field houses which are administered by the Park Board and used for Programming;
- (w) **“Park Board”** means the Vancouver Board of Parks and Recreation;
- (x) **“Park Board Employees”** means employees or contractors retained by the City to provide services to or on behalf of the Park Board;
- (y) **“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;
- (z) **“Public Policy”** means policy, priorities and objectives adopted or determined by the Park Board 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;
- (aa) **“Recreation Supervisor”** means the recreation supervisor at the Jointly Operated Facilities who is employed by the Park Board, and their successors or those authorized to act in their place;
- (bb) **“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 which may be replaced or substituted with another system at the discretion of the Park Board following meaningful Consultation with the Associations;
- (a) ~~“Retained Earnings”~~ **“Financial Reserves”** means the net assets of the Association from Facility-Generated Revenue or grant, donation, fundraising or membership fee revenue

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- (b) **“Satellite Locations”** means locations where the Association offers Programming or services but which locations are not part of the Jointly Operated Facilities and are not otherwise owned or leased by the Park Board; provided that, “satellite locations” shall not include locations that are used to offer Programming or services that are not registered for or offered through the Jointly Operated Facilities or are being provided without the assistance of the Park Board;
- (c) **“Society Act”** means the *Society Act, RSBC 1996, c. 433*, as may be amended or replaced from time to time; [Note: reference to be updated once new legislation enacted in November]
- (d) **“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 employees 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 “Group 1” costs, and as many be further detailed in Appendix C;
- (e) **“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;
- (f) **“System-wide Planning Session”** has the meaning ascribed in Section 14.2; and
- (g) **“Term”** means the term of this Agreement set out in 3.1, as may be extended or renewed pursuant to 3.2.

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 operations at the Jointly Operated Facilities and to permit the Association’s use 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.

3. TERM OF AGREEMENT

3.1 Term

This Agreement is for a Term of five (5) years, commencing on the Effective Date.

3.2 Renewal

~~The parties shall have two (2) concurrent options to renew this Agreement, each for a term of five (5) years. There shall be no further options to renew. No later than six (6) months prior to the expiry of the then-current term, either party may provide written notification to the other~~

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~~of that party's election to not renew the Agreement, for any reason, and the Agreement will automatically expire at the end of that term. Absent such notification from either party, where there is an elected renewal term remaining, the Agreement will automatically renew at the end of the then-current term.~~

~~If either party wishes amend any terms or conditions of this Agreement prior to renewal, 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 then-current term. If the parties do not agree on renegotiated terms then, without additional notice, the Agreement will expire on the renewal date unless, prior to the renewal date, the parties agree in writing to renew the Agreement in its previous form pursuant to the renewal option above.~~

~~At the end of the Term and all elected renewal terms, to a maximum of 15 years, this Agreement will terminate. If, at the end of the Term, both parties wish to continue their working relationship, then the Park Board and the Association must meet to review the Agreement and make any necessary or appropriate amendments to reflect any changes to the roles and responsibilities of the parties or to the Jointly Operated Facilities, and the parties may elect to enter into such new amended Agreement.~~

The parties shall have two (2) consecutive options to renew this Agreement UNCHANGED, each for a term of five (5) years. No later than six (6) months prior to the expiry of the then-current term, either party may provide written notification to the other party of that party's election to not renew the Agreement. The Agreement will then automatically expire at the end of that term subject to sub-clauses (a), (b) and (c). Absent such notification from either party, where there is an elected renewal term remaining, the Agreement will automatically renew at the end of the then-current term.

If either party wishes to amend any terms or conditions of this Agreement prior to renewal, that party must give the other party written notice of such request at least 6 months prior to the expiration of the then-current term.

At the end of the Term and all elected renewal terms, to a maximum of 15 years, this Agreement will terminate. At the termination of this agreement, both parties shall meet to review the expired agreement and may:

(a) agree to reinstitute the existing agreement, or

(b) agree to enter into good faith negotiations to draft and complete a new JOA, and

(c) during any period of negotiations, the existing agreement shall remain in full force and effect until a new agreement is negotiated. (3.3(moved from clause 20))

IN THE EVENT OF NON-RENEWAL OR termination PURSUANT TO CLAUSE 20 BELOW, all outstanding payments between the parties will become immediately due and payable, and subject to withholding.

4. ASSOCIATION GOVERNANCE

The Association covenants and agrees that:

- (a) it will be governed by a constitution and bylaws that comply with, and it will conduct itself at all times in accordance with, the requirements of the Society Act;
- (b) the purpose of the Association will be consistent with benefiting the local ~~and citywide~~ community and members of the public through the provision of Programming and other services ~~within the Community Centre Network~~;
- (c) it shall ~~not~~ adopt bylaws and governance procedures that are consistent with the Societies Act ~~and with the terms of this Agreement and agrees to, as necessary or appropriate, amend any conflicting bylaws to align with this Agreement~~;
- (d) as it pertains to activities carried out under this Agreement, the Association will adopt and adhere to appropriate good governance policies;
- (e) to prevent a conflict of interest, no elected City or Park Board official can sit on the Board of the Association and any Association Board member who has formally indicated a decision to run for election to the City Council or Park Board will immediately resign from the Association Board
- (f) it will comply with its policy obligations under Section 6.1.

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;
- (b) they will each perform their 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

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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 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 physical, recreational, arts, cultural, educational, social, and capacity-building programs.~~ The Park Board agrees that any new Public Policy initiatives for implementation at the Jointly Operated Facilities will not ~~expressly~~ contravene the terms **and spirit** of this Agreement, unless agreed to by the parties in advance;
- (f) staffing of **Park Board Employees** 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 Employees and volunteers;
- (h) developing the Park Board budget (operating and capital) for the Entire Facility and allocating resources as appropriate;
- (i) operating, maintaining and constructing 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
- (k) providing and being responsible for all facilities, building systems, supplies, and information technology, subject to the obligations of the Association set out in this Agreement, required to operate the Entire Facility.

5.3 Role of the Association

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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, the Association is responsible for:

- (a) developing, delivering, and staffing Programming and other Association services offered in or from the Jointly Operated Facilities;
- (b) **staffing of Association Employees at the Jointly Operated Facilities, including scheduling of staff and staff vacations, taking into consideration the operational requirements of the Jointly Operated Facilities, and directing Association Employees, volunteers and contractors, subject to the provisions of Section 11.2;**
- (c) fundraising, recruiting and recognizing volunteers, and advocating for the needs of their 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 implemented by the Park Board at the Jointly Operated Facilities **in relation to System-wide Programming;** ~~or in respect of Programming or services offered from Jointly Operated Facilities and to cooperate with the Park Board when developing an implementation plan for new Public Policy.~~
- (f) providing feedback to the Park Board on major capital projects and other 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; and~~
- (i) ensuring timely payment of all bills and invoices for amounts owed **to the Park Board** by the Association.

5.4 Mutual responsibility for sustainability:

The Association and PB have a mutual interest in maintaining the financial viability and sustainability of the community centre and the programs and services offered there by:

- **Promoting and developing programmes and services provided by the Association to achieve improved community engagement and participation and sustainable programming and services.**

- Ensuring that costs charged to the Association or distributions of net assets of the Association do not put at risk the financial viability of the Association.

6. POLICIES AND PROCEDURE

6.1 Corporate and Governance Policies

~~The Parties~~ will adopt and adhere to good governance ~~Association Board members~~ policies. The ~~PARTIES Association will conduct regular reviews of their Board function and compliance~~

~~The Parties~~ will also adopt and adhere to up-to-date corporate policies and standards, appropriate and commensurate with ~~the Parties'~~ roles and responsibilities under this Agreement and to the public including, without limitation, policies with respect to occupational health and safety, respectful workplace, **privacy and security, financial management**, 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 Employees 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 is party to a collective agreement for labour and employment matters. The Association acknowledges that the Park Board and Park Board Employees must comply with such laws, policies and agreements **when and where applicable, and subject to existing Association agreements.**

The Park Board will offer regular 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, 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 changes to Public Policy or new Public Policy that affect the operations of the Association pursuant to this Agreement, the Park Board shall 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~~ contravene the terms **and spirit** of this Agreement, unless agreed to by the parties in advance.

7. PROGRAMMING

7.1 Access to Programming and the Jointly Operated Facilities

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 universal access and participation. ~~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 the Association, as well as binding.

7.2 Programming Responsibilities

Subject to Sections 7.1 and 7.3, Programing 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 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) to provide and be 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;

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- (j) subject to the Park Board's involvement in System-wide Programs, evaluation of Programming in accordance with Section 7.4;
- (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 13.2(b),

unless any such responsibilities are formally delegated to the Park Board in accordance with Section 11.2.

The Park Board ~~agrees that it~~ **will 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. These programs will be based on leading practices and aimed at achieving outcomes that the Park Board has identified as priorities. The Park Board may designate up to five programs or topics each year for implementation as System-wide Programs, which programs may all be offered at each community centre in the Community Centre Network. ~~The Park Board will determine if some or all of the System-Wide Programs are appropriate for offering at the Jointly Operated Facilities. Some System-wide Programs may be offered at a community centre that serves a region of the City of Vancouver (East/West, North/South), such as in a hub-based model at the election of the Park Board.~~

The System-wide Programs for implementation at the Jointly Operated Facilities will be included in the Programming schedule for the Jointly Operated Facilities **provided that the Association is notified of the Park Board's intention to offer these programs no less than 12 weeks before the start of the session.** Each program may be offered up to once per Programming registration cycles/seasons each year, ~~and For clarity, five System-wide Programs may be offered at each community centre in the Community Centre Network and up to all five System-wide Programs may be offered during each registration for each centre.~~ **Each one of these programs will be no more than 13 hours duration in any session for a maximum total of 65 hours of programming.**

System-wide Programs will be implemented in collaboration with the Association and ~~will not~~ **be designed not to duplicate** other Programming offered by the Association at the Jointly Operated Facilities. Required qualifications for instructors offering System-wide Programs will be set by the Park Board.

The Association will be responsible for appropriate scheduling and administration of the System-wide Programs. 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 shall 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 30 days after the end of the session** ~~a reasonable period of time~~ after receipt of financial statements or records that detail the ~~annual~~ revenues, expenses

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and losses resulting from the System-wide Programs after the end of the session. If the Association incurs up-front costs equipment or supplies that are required to offer a System-wide Program, the Park Board will reimburse the Association ~~using the Community Centre Investment Fund~~. 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 ~~from the Community Centre Investment Fund~~ by the Park Board.

A regular review of outcomes associated with System-wide Programs will be undertaken by the Park Board with the assistance of 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 implement a system-wide quality control mechanism for Programming **that has been developed by and agreed to by both parties**, 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.

7.5 Park Board Indemnification

The Park Board commits to ongoing indemnification for claims for damages arising from activities provided by the Association under the current Indemnity Agreement (February 2000) as amended from time to time. It is fundamental and a condition precedent to the JOA that the indemnity for these jointly offered programming activities is in place. This indemnification continues after termination of the Agreement for all claims that arise from actions taken or events occurring before the termination.

8. ASSOCIATION MEMBERSHIP **[Delete this Section and replace with new section 8]**

~~The Park Board acknowledges that the Association, as a non-for profit society, requires active membership to ensure the governance and 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.~~

~~The Association may offer free or paid membership, at their choice. At the Association's option, the Park Board will load memberships on to a user's OneCard.~~

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

8. ASSOCIATION MEMBERSHIP

The Park Board acknowledges that the Association, as a registered society, requires active membership to ensure the governance and active involvement of the community in the Association. The parties agree that membership will not be a prerequisite for registering in a program. The parties agree that the Association may issue a free membership at the time of registration in a program offered by the Association while allowing a patron to decline such membership if the patron wishes to do so. Membership in the Association may be made available independent of program registration and the Association may charge for such membership

At the Association's option, the Park Board will load memberships on to a user's OneCard.

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 and unfettered access to its membership and user data information on request 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 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 will be given to:

- (a) Association offered Programming and services as a first priority;
- (b) use by other not-for-profit community organizations as a second priority; and
- (c) private rentals as a third priority.

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 need for urgent or emergency purposes. The use of space in the Jointly Operated Facilities

by the Park Board or the City shall be free of rental charge but all additional costs shall be payable to the Association by the Park Board or the City as the case may be.

The Park Board will provide the Association with as much notice as possible in the circumstances and work diligently to mitigate any negative impacts to users of the Jointly Operated Facilities. 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.

Subject to long-term agreements, the Association shall have control of room rentals in the Jointly Operated Facilities and shall set pricing for such rentals. Any long term (for periods of one year or greater) agreement for use of space in the Jointly Operated Facilities must be approved in advance by the Park Board.

The Association will have access to appropriate administrative office space in the Jointly Operated Facilities, including storage space, which may be used for the Association's files and equipment.

"In accordance with the Association's responsibility for allocating the usage space in the Jointly Operated Facilities, the Association may, at its discretion, enter into arrangements for use of space with affiliated groups or clubs that 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 thing that places an obligation on the Park Board, without the prior consent of the Park Board. All requests from an affiliated group that involve use of space outside of the Jointly Operated Facilities or any obligation on the Park Board (for example, indemnity) must be brought to the Park Board for consideration."

10. CHILDCARE

The Park Board and the Association agree that all Licensed Childcare operated in the Jointly Operated Facilities will meet the standards set by the Park Board and City and shall be in compliance with any other relevant standards and Applicable Laws, including the *Community Care and Assisted Living Act* (BC).

11. HUMAN RESOURCES

11.1 Association Employees and Volunteers

"Association Employees" means employees or contractors retained by the Association to provide services on behalf of the Association. The Association is and shall continue to be the employer or contracting party, as applicable, of all Association administrative personnel and all personnel retained for Programming delivery (the "Association Staff") and will be responsible for all associated employer and contractor related liabilities and legal obligations regarding Association Employees. The Association will retain final authority over matters related to employment or service contracts with Association Employees, 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 11.2.

The Association acknowledges and agrees that the City and Park Board will not indemnify the Association for liabilities arising in relation to the Association's relationships and obligations to **Association Employees** or Association volunteers, including statutory and regulatory liabilities. The Association agrees to obtain, maintain and pay for the insurance coverages required under Section 13.6 of this Agreement.

The Association hereby agrees to indemnify the City and the Park Board for breaches of employment or service contracts with Association **Employees** or Association volunteers, and for **reasonably foreseeable** breaches of any statutory or regulatory obligations or screening or oversight obligations related to Association **Employees** or Association volunteers (including liability, court-ordered costs, damages etc.). **The CCAs will not indemnify the City and the Park Board for the breaches caused by negligence or wilful misconduct of the Park Board or Park Board employees.** ~~excluding only those breaches — that are caused by the negligence of the Park Board or Park Board Employees.~~

The City, through the Park Board, hereby agrees to indemnify the Association for breaches of employment or service contracts with Association **Employees** or Association volunteers, and for breaches of any statutory or regulatory obligations or screening or oversight obligations related to Association Employees or Association volunteers (including liability, court-ordered costs, damages etc.) that are caused by the negligence **or wilful misconduct** of the Park Board or Park Board Employees.

11.2 Delegation of Responsibility to Park Board

Subject to the prior agreement of Park Board, the Association may delegate responsibilities related to the engagement or management of **Association Employees** or volunteers to Park Board Employees. The responsibilities and functions being delegated must be detailed in writing and confirmed by the parties by written agreement. The Park Board will accept responsibility for costs, damages or other amounts payable to the extent they are the result of negligence **or wilful misconduct** of the Park Board or Park Board Employees in the conduct of the accepted responsibilities delegated by the Association.

11.3 Park Board Employees

The Park Board/City will employ and pay for staff 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 centre. 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.

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The Association may provide an orientation to new regular full time, regular part time, and temporary full time Park Board Employees 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.

The Park Board and Park Board Employees 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.

11.4 Role of Recreation Supervisor

The Recreation Supervisor is a Park Board employee who 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;
- assist the Association as needed to ensure the successful operation of the Association Board, including by providing support on board recruitment, 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 Board, and regularly attends 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 ~~may, at their discretion,~~ **will** take reasonable direction from the Association (for example, related to Programming or service planning). Reasonable notice must be given to consider requests which may impact unionized staff or operations of the Jointly Operated Facilities (for example, concerns regarding hours or duties of staff).

11.5 Hiring Decisions

The Association will ~~have input into~~ **be consulted in relation to** the selection of key Park Board personnel, **including proposed lateral transfers** at the Jointly Operated Facilities, including, **but not limited to**, the Recreation Supervisor, community centre Recreation Programmer, and Youth Worker. **Consultation, in the context of hiring decisions**, will additionally 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 Jointly Operated Facilities and community needs to accompany the job description and posting for a Recreation Supervisor position. The full and final authority on staffing decisions (including hiring selection and work assignments) will rest with the Park Board.

11.6 Feedback and Issue Management

The Association and the Park Board will each ensure their **employees** staff, contractors, 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 ~~on an annual basis~~ **when the Association deems it necessary and no less than once each year**. The Association may also share feedback on other Park Board staff (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 **employees** staff, contractors or 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 17.

12. RENOVATIONS AND MAINTENANCE

12.1 Renovations, Upgrades and Maintenance of Jointly Operated Facilities

The Association acknowledges that its purpose is not to carry out renovations, upgrades or maintenance to the Jointly Operated Facilities, and that all renovations and upgrades are the responsibility of and must be carried out by the Park Board, unless the Park Board provides the Association with express approval to carry out work. All approvals for work must be obtained in advance and on a project by project basis.

The Association may make suggestions for consideration by the Park Board regarding what renovations or maintenance may be the most beneficial to the Jointly Operated Facilities and community and to suggest priorities for maintenance and renovations. The Association may

provide these suggestions to the ~~Recreation Supervisor~~ **Park Board** on an annual basis. The parties will agree on a more detailed process through which the Association may provide this feedback. The final decision with respect to any changes, renovations, or maintenance to the Jointly Operated Facilities will rest with the Park Board **after full Consultation with the Association.**

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 standards, the Association will identify the required maintenance or upgrade 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 17. Once the cost-sharing arrangement is agreed to, the Park Board will be responsible to carry out the work **in a timely manner, if possible within ten working days.**

12.2 Maintenance of Other Assets

With respect to equipment, appliances and other assets used in the Jointly Operated Facilities that are not expressly identified as the responsibility of the Association or the Park Board elsewhere in this agreement (such as in Sections 12.3, 13.2(b) and 15.2), those equipment, appliances or other assets (such as kitchen appliances, minor capital 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. **Repairs may be undertaken by the Association at the Association's discretion and expense as long as such repairs are done in compliance with applicable codes and standards and that such repairs do not change the structure of the building.** For all new equipment, appliances and assets purchased after the Effective Date, the parties will agree on the maintenance and repair obligations and shall document those responsibilities before the asset is purchased and installed. In the absence of agreement, the responsibility for maintenance and repair will fall to the owner of the asset.

12.3 Art Installations and Murals

All art installation and murals proposed for the Jointly Operated Facilities or Outdoor Areas require the prior 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 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.

12.4 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 in accordance with Park Board standards. All maintenance and repair costs shall be the responsibility of the owner of the vehicle.

13. FINANCE

13.1 Revenue

(a) Revenues and Cash Flow

~~The Association will receive all Facility-Generated Revenue subject to Authorized Deductions. In addition, the Association will receive all membership fee revenue and grant or donation funds directed to the Association. The Association acknowledges that grant, donation, or membership fee revenue administered through the Registration System will be subject to Authorized Deductions. Grant, donation or membership fee revenue that is not administered through the Registration System will not be subject to Authorized Deductions.~~

The Association will receive all Facility-Generated Revenue subject to Authorized Deductions. In addition, the Association will receive all revenue from membership fees, grants, donations and bequests directed to the Association, Association-operated child care, interest and investment income due to the Association, Association-run concession and vending machines, and payments due under childcare leases made with the Association. The Association acknowledges that grant, donation, child care, senior centre operations and membership fee revenue administered through the Registration System will be subject to Authorized Deductions. Rental deposits, however recorded, grant, donation and bequest, interest and investment, membership fee, fundraising, Association-operated child care, concession and vending machine revenue that is not administered through the Registration System will not be subject to Authorized Deductions.

All Facility-Generated Revenue will be collected by the Park Board using the Registration System. Authorized Deductions will be deducted from the Facility-Generated Revenue before it is paid to the Association. The Park Board will pay all Facility-Generated 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 includes deductions. The Park Board will not withhold payment of any Facility-Generated Revenue collected through the Registration System, other than Authorized Deductions, without the Association's prior written consent.

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

(b) Use of Revenue

~~As a not-for-profit, the Association acknowledges that its goal and purpose is not to generate and retain large financial surpluses, but is rather to reinvest any surplus funds it generates into the community.~~

The Park Board acknowledges that the Association's goals and purposes are to provide 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 that are responsive to the community's unique needs.

All Facility-Generated Revenue or other revenue generated through the use of the Jointly Operated Facilities ~~or with the assistance of Park Board or Park Board employees~~ that is received by the Association **will be used by the Association to achieve its stated goals and purposes.** ~~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 as of the Effective Date.~~

13.2 Expenses

(a) Park Board Expenses

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

- (i) Park Board Employees required and assigned to operate and maintain the Jointly Operated Facilities;
- (ii) assessment, maintenance and repair of the Jointly Operated Facilities building 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 12.2, the upkeep, maintenance and replacement of equipment in the Jointly Operated Facilities that is not Association Equipment;
- (iv) utilities, waste/recycling removal, access control systems, security and janitorial services for the Jointly Operated Facilities; 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:

- (i) all costs and expenses incurred to operate or administer the Association;

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- (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 Employees, 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;
- (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 12.2, and provided always that all work involving repairs or alterations to the Jointly Operated Facilities must be approved and carried out by the Park Board, unless otherwise agreed to by the parties;
- (vii) subject to arrangements made in accordance with Sections 12.2 or 12.3, the supply, upkeep, maintenance and replacement of Association Equipment, including any art installations or murals purchased or commissioned by the Association;
- (viii) the Staffing Cost Recovery Payments;
- (ix) costs to maintain the insurance required under Section 13.6;
- (x) the Authorized Deductions **specified in 1(f)**; and
- (xi) any other costs incurred by the Association that are not in respect of the Association's roles and responsibilities under this Agreement.

~~Estimates may be made for 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 to the Association at a minimum of once annually. The Park Board agrees that it 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 ~~commits to seeking~~ **must obtain** the Association's approval for "Group 1" costs **and the positions to be covered** on an annual basis in alignment with the Park Board annual budgeting cycle, including any increases negotiated under the collective agreement annually.

~~The Association acknowledges that, if it chooses to not approve the Group 1 costs, the Park Board will reduce such staffing levels at the Jointly Operated Facilities accordingly.~~

Once approved by the Association, the Association acknowledges it is responsible to pay the full actual costs of Group 1 employment for the full year **or the portion thereof that the facility is jointly operated**. 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. **Association challenges of the amounts billed for Staffing Cost Recovery will be handled in accordance with the Dispute Resolution Process (17.1).**

13.3 Budgets and Records

(a) Operating Budget

The Association will, on an annual basis, 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. The Association will share its budgets with the Park Board prior to the beginning of each of the Association's 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. **At least thirty (30) days prior to the finalization of its operating budget for the Jointly Operated Facilities, Park Board will seek input from the Association regarding its annual list of maintenance priorities for the Jointly Operated Facilities. Maintenance/minor capital items as defined under Park Board's operating budget are those with a value up to \$250,000. The Park Board will provide the Association with an opportunity to provide meaningful input prior to the approval and public release of the Park Board's annual operating budget.** The Park Board's budget shall be subject to approval of the Park Board. 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 **reasonable** adjustments to increase or decrease the **Park Board's** operating budget for all or any part of the Community Centre Network, including by increasing or decreasing the budget for the Jointly Operated Facilities with **the approval of the Park Board. Park Board agrees that it will not reduce staffing levels, operating hours or other key components of the operating budget for a Jointly Operated Facilities without prior Consultation with the Association.**

The PB acknowledges and agrees that any adjustments to its operating budget for the Jointly Operated Facilities will not require the Association to utilize its Financial Reserves.

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. It is recognized 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

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allocations to operations, capital other resources for the Jointly Operated Facilities 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 budgets, 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 ~~separate~~ books of account relating to the Jointly Operated Facilities in accordance with sound financial policies and **procedures as described in Generally Accepted Accounting Principles (Canada)**.

~~If the Association conducts activities outside the Jointly Operated Facilities, the Association will maintain records of its income and expenses related to the Jointly Operated Facilities and the Association's performance of its roles and responsibilities under this Agreement separately from records regarding other operations or business conducted by the Association.~~

(d) Financial Statements

The Association will provide audited financial statements for each fiscal year **shortly after they have been presented to the membership at the Annual General Meeting**, usually within **180 days** of the completion of the fiscal year. The Association will post **its** audited financial statements **in a prominent location at the Jointly Operated Facility and/or on the Association's website**. The statements will ~~include reporting on any Facility-Generated Revenue, including savings, expenditures, expenditures of Retained Earnings, transfers to foundations or other organizations and revenue generated in respect of Licensed Childcare that is processed outside of the Registration System~~ **be prepared in accordance with Generally Accepted Accounting Principles (Canada)**.

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

~~Within 30 days of a request by the Park Board, the Association shall provide to the Park Board an accounting of all expenditures made by the Association for the last Fiscal Year, or such other period of time as specified in the request.~~

(e) ~~Retained Earnings~~ **[Delete this Section and replace with new section 13.3 (e)]**

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~~Prior to the end of the first year of the Term, the Association will develop a plan to spend its Retained Earnings within the first 5 year Term of this Agreement, unless another time period is agreed to by the parties, and the Association will share its plan with the Park Board. If applicable, the Association shall update its plan on an annual basis and will share any revised plans with the Park Board. The Association will use its best efforts to execute on the plan and shall make expenditures of Retained Earnings in accordance with the plan, as it is updated from time to time. The Association agrees that Retained Earnings 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 Retained Earnings) by the Association.~~

13. 3. e. FINANCIAL RESERVES

Prior to the end of the first year of the Term, the Association will develop a plan to manage its Financial Reserves, and the Association will share its plan with the Park Board. If applicable, the Association shall update its plan on an annual basis and will share any revised plans with the Park Board. The Association will use its best efforts to execute on the plan as it is updated from time to time. The Association agrees that Financial Reserves will be managed in a manner consistent with the provisions of the Societies Act.

13.4 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 approval of the Park Board.

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 unless it is processed through the Registration System or as otherwise expressly agreed to by the parties in advance.

13.5 Community Centre Fund

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(a) ~~Contribution~~ Payments to the Community Centre Investment Fund

The Association will provide an annual ~~contribution~~ **payment** to the Community Centre Investment Fund. ~~The purpose of the Community Centre Investment Fund is to facilitate reinvestment in the Community Centre Network to achieve the Public Policy goals of the Park Board and increase equity across the Community Centre Network.~~

~~The annual contribution for an Association will be equivalent to two percent (2%) of the Association's prior year Facility-Generated Revenue and any revenue generated in respect of Licensed Childcare that is processed outside of the Registration System, and shall be paid to the Park Board within 3 month of the end of the Association's Fiscal Year.~~

The annual contribution for the Association will be calculated on the following sliding scale formula based on the Association's prior fiscal year Facility-Generated Revenue and revenue from Association-run concession and vending machines, and shall be paid to the Park Board within 3 month of the end of the Association's Fiscal Year:

<u>Gross Revenue</u>	<u>Payment</u>
\$0 to \$500,000	\$ 5,000
\$501,000 to \$750,000	\$ 7,500
\$750,000 to \$1,000,000	\$10,000
\$1,000,001 to \$1,250,000	\$12,500
\$1,250,001 to \$1,500,000	\$15,000
\$1,500,000 +	\$20,000*
plus the applicable surcharge of 10% applied to any net profit in excess of \$20,000 reported in the audited financial statements.	

- (i) In situations of financial hardship, the Association may request that the Park Board permit a partial or total exemption from that year's ~~contribution~~ **payment** to the Community Centre Investment Fund.
- (ii) **The Association and the Park Board agree that the Financial Reserves of the Association will not be utilized to pay the Association's annual contribution obligation to the Fund.**

(b) Allocation of Community Centre Fund

The **Community Centre Fund** 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 or quality of Programming and services delivered throughout the Community Centre Network.~~

The Park Board will consider any input provided by the CCAs regarding the use of the Community Centre Investment Fund, but in all instances the Park Board will retain decision-making authority.

The Fund is not to be used to finance capital projects or provide supplemental funds to the budget of the Vancouver Park Board (VPB).

Proceeds from the Fund may be used to assist any CCA that experiences financial hardship in the course of its business of providing services to its community. In addition, CCAs may apply to the Fund for assistance in subsidizing programs for patrons that require such, and, that they can demonstrate is needed in their community.

The Park Board will prepare an annual report describing the use and allocation of the Community Centre Investment Fund and related outcomes, and will make the report public.

13.6 Insurance

The Association, at its sole cost and expense, will ensure all 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 an additional named insured, 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 the coverage meets the amended requirements, as applicable. The Park Board and City of Vancouver will continue to provide indemnification for claims for damages arising from activities provided by the Association as described in the existing Indemnity Agreement dated February 2000.

13.7 Miscellaneous Operations

Subject to any written agreement between the parties, any and all parking revenue collected at the Jointly Operated Facilities or 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 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 current practices detailed in Appendix C.

14.1(b) *"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 will be shared by the Association and the Park Board at a percentage split to be agreed upon by the Park Board and the Association. 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. 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, and the Association agrees it shall abide by the terms of any exclusivity clause in the Vending Contract upon the expiration of any existing vending contract that Association may have.

~~14.1 (c) The Association is also permitted to independently operate vending machines in the Jointly Operated Facilities provided they do not violate the terms of any Vending Contract. Revenue from any vending machines in the Jointly Operated Facilities that are under contract with the Association (and not part of Vending Contracts) is for the benefit of the Association. Any vending machines located outside the Jointly Operated Facilities are solely controlled by the Park Board and revenue is for the benefit of the Park Board."~~

14. COMMUNICATIONS AND PLANNING

14.1 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, **no less than six (6) months**, 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 agrees to use reasonable efforts to minimize the adverse effects of any such plans.

14.2 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, 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 Recreation Supervisor and 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.

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

15. INFORMATION AND BUSINESS SYSTEMS, TECHNOLOGY & TELECOMMUNICATIONS

15.1 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 the Jointly Operated Facilities administration and that no other system may be used for those functions. Administrative functions include processing, record and storing all Programming, registration and rental information, preparation of instructor contracts, to process and recording all payments for Facility-Generated Revenue, customer account inquiries and 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 and/or grants at the election of the Association.

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 **free and unfettered** access to ~~other~~ **all** 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.

15.2 Ownership of Systems

All information technology software, business systems, hardware, data, wireless hardware and software, and telecommunications equipment installed or utilized in the Jointly Operated Facilities with connection to City networks 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 or information technology on City or Park Board computers, it must first obtain the approval of the Park Board.

The Association may purchase its own computer equipment, provided that the Association equipment may not be connected to the City or Park Board networks 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.

15.3 Security Systems

All surveillance systems, security systems and security monitoring shall 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.

15.4 Use of Business Systems and Information Technology

The Associations' use of the City/Park Board equipment referenced above, shall be subject to the following conditions:

- (a) Security: Usage of all information technology assets will be in accordance with City information technology security policies and standards;
- (b) PCI: All information technology software, hardware and infrastructure will be maintained in compliance with the current Payment Card Industry (PCI) standards;
- (c) Access Rights: Network and software access will be granted in accordance with City information technology identify management, network access, and applications access policies and standards; and
- (d) 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.

16. OWNERSHIP OF COMMUNITY CENTRE ASSETS

16.1 Community Centre Facility

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 items which are affixed to the Entire Facility (for example, permanent

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reader boards), unless otherwise agreed to by the parties in writing. Jurisdiction for managing the Entire Facility resides with the Vancouver Park Board **subject to the terms of this Agreement**. ~~The Association acknowledges and agrees that it has no interest, right or title in the Entire Facility and, for the Term, it has no licenses, leases 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 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 are 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 shall remain as the owner of all the Association Equipment, as such inventory is updated from time to time.

[FOR LEASED CENTRES ONLY - USE THE FOLLOWING 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 items which are affixed to all or any portion of the Entire Facility (for example, permanent reader boards), 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 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 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 shall be determined by the Park Board in accordance with the Lease. The Association shall remain as the owner of all the Association Equipment, as such inventory is updated from time to time.

16.2 Equipment and Assets

The Park Board acknowledges and agrees that the Association is the owner of chattels and easily removable equipment that were purchased **by the Association with any funds at its disposal or were donated to the Association** (“Association Equipment”), unless the parties have agreed otherwise in writing. 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 shall be resolved using the Dispute Resolution process set out in Section 17.

Other than Association Equipment, *or any equipment or assets that ~~were purchased by and~~ are solely owned by 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.

17. DISPUTE RESOLUTION

17.1 Dispute Resolution Process [NOTE: Numbering in this section is duplicated]

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, then either party may refer the dispute to the Director of Recreation and the Association representative for further discussion and 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, 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.

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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, then **the parties may decide to refer the issues to mediation or another form of dispute resolution before pursuing arbitration. If the parties are not satisfied, then**

- (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 17.2
- (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.

(c) If the parties cannot agree on the applicability of arbitration to a particular issue, that decision will be subject to arbitration

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

- (a) matters are 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; **changes to Public Policy will be subject to dispute resolution/arbitration only insofar as they contradict the terms and spirit of this Agreement without prior agreement of the Associations.**
 - (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 **except for the rights granted to the Association under this Agreement,"**

The right of access to the courts is an option at the election of either party for those matters that are not subject to binding arbitration. For those matters subject to arbitration, either party has the right of access to the courts for judicial review.

17.2 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 shall 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 shall 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”) shall be split equally between the Park Board and Association but the ultimate allocation of Arbitration Fees between the parties shall be determined by the arbitrator in apportioning costs between the parties at the conclusion of the arbitration.

18. 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.

19. CHANGES TO JOINTLY OPERATED FACILITIES

19.1 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 complaint 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 of another partner organization.~~

If, at any time during the Term or any renewal term, other major changes are made to the Jointly Operated Facilities, such as the addition of significant new facilities (such as a café or concession) in the Jointly Operated Facilities, 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 shall 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 the new facilities or space shall rest with the Park Board.

19.2 Reduction in Jointly Operated Facilities [\[This Section should be deleted\]](#)

~~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 shall be removed from the scope of the “jointly operated facilities” identified in Appendix A.~~

19.3 Closure or Replacement of Jointly Operated Facilities

If, during the Term, the Jointly Operated Facilities are closed, reconstructed or relocated, this Agreement **shall be amended** ~~will terminate and any remaining Term shall expire~~. The Park Board, Association, and any other affected CCA shall discuss the new arrangements, if any, and, if mutually agreeable, enter into a new joint operating agreement **to address** any changes to the facilities or the operating arrangements.

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

19.4 Renewal and Termination of Lease

19.4 Renewal and Termination of Lease

For those centres operating out of leased land/facilities, please see Appendix ____.

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 shall 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.

20. TERMINATION OF AGREEMENT

NOTWITHSTANDING CLAUSE 3.1 ABOVE, THE AGREEMENT MAY BE TERMINATED DURING THE LIFE OF THE AGREEMENT

In the event of a sustained, material, un-remedied breach of this Agreement by either party, with no satisfactory steps taken to resolve the breach in a timely manner, the non-defaulting party may, at any time during the Term, elect to terminate this Agreement Under the Following Conditions:

- a. with 90 days prior written notice.
- b. The termination notice must specify the breach in reasonable detail and
- c. the defaulting party shall 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.
- d. In the event of emergency, the non-defaulting party may take reasonable action to cure the breach on behalf of the defaulting period at the expiry of the notice period. If the defaulting party does not satisfactorily remedy the breach in the cure period, the notice to terminate shall be deemed effective and the Agreement will automatically terminate at the end of the 90 day notice period.
- e. If more than 60 days is required to remedy the breach (using reasonable resources and acting diligently), then the defaulting party 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 defaulting party commenced to diligently and continuously remedy the

breach so that the breach is cured as soon as reasonably possible. If the defaulting party fails to continuously and diligently work towards resolving the breach, the non-defaulting party may terminate this Agreement with no further notice required.

INVOKING DISPUTE RESOLUTION

- a. If the defaulting party disagrees that the action or event specified in the notice constitutes a material breach of the Agreement, the defaulting party may invoke the dispute resolution mechanism.
- b. If the alleged breach is of a serious nature, either party 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” shall include failure to comply with Applicable Laws, fraudulent conduct, misappropriation of funds, financial wrongdoing or criminal activity, use of funds for purposes not permitted under this Agreement, sustained failure of the parties to provide financial information required under this Agreement, discrimination or human rights violations or any other conduct by the parties which is directed against the public interest.

At termination, all outstanding payments between the parties will become immediately due and payable, and subject to withholding.

~~In the event of a sustained, material, un-remedied breach of this Agreement by either party, with no satisfactory steps taken to resolve the breach in a timely manner, the non-defaulting party may, at any time during the Term, elect to terminate this Agreement with 90 days prior written notice. The termination notice must specify the breach in reasonable detail and the defaulting party shall 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 non-defaulting party may take reasonable action to cure the breach on behalf of the defaulting period at the expiry of the notice period. If the defaulting party does not satisfactorily remedy the breach in the cure period, the notice to terminate shall be deemed effective and the Agreement will automatically terminate at the end of the 90 day notice period. If more than 60 days is required to remedy the breach (using reasonable resources and acting diligently), then the defaulting party 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 defaulting commenced to diligently and continuously remedy the breach so that the breach is cured as soon as reasonably possible. If the defaulting party fails to continuously and diligently work towards resolving the breach, the non-defaulting party may terminate this Agreement with no further notice required.~~

~~If the defaulting party disagrees that the action or event specified in the notice constitutes a material breach of the Agreement, the defaulting party may invoke the dispute resolution mechanism. If the alleged breach is of a serious nature, 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” shall include failure of the Association either party to comply with Public Policy, breach of Applicable Laws, fraudulent conduct,~~

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~~misappropriate of funds, financial wrongdoing or criminal activity on the part of the Association, use of funds for purposes not permitted under this Agreement, sustained failure of the Association either party to provide financial information required under this Agreement, discrimination or human rights violations on the part of the Association or any other conduct by either party the Association which is directed against the public interest.~~

~~If, during the Term or any renewal term, the Jointly Operated Facilities are closed, demolished, reconstructed or relocated [or the Lease is terminated], this Agreement will terminate and any remaining Term shall expire.~~

~~At termination, all outstanding payments between the parties will become immediately due and payable, and subject to withholding.~~

21. NOTICES

Notice to the Park Board will be given by delivering written notice by mail, courier or e-mail to the attention of the General Manager at:

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

Email: _____

Notice to the Association will be given by delivering written notice by mail, courier or e-mail to the attention of the President at:

[Insert contact details]

22. MISCELLANEOUS

22.1 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.

22.2 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.

22.3 Severability

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.

22.4 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, bylaws, 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.

22.5 Time of the Essence

Time shall be of the essence of this Agreement.

22.6 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.

22.7 Interpretation

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

22.8 Waiver

The Association acknowledges and agrees that no failure by the Park Board to exercise and no delay in exercising any right or powers of enforcement under this Agreement 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.

22.9 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.

22.10 Assignment

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

22.11 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.

22.12 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 or City.

22.13 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.

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>.

APPENDIX A Plan of Jointly Operated Facilities

[Plan to be inserted showing all buildings/areas included in the Jointly Operated Facilities.]

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 above.

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

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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 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

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- (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.
- 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 CCARun 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

PROGRAMMING IN THE PARKS to be part of Appendices SEE NEW SECTION 7.2

3october Anita Romaniuk

[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 Facility-Generated 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) shall continue to be processed through ActiveNet, consistent with the existing practices of the parties;
- (b) the City/Park Board will collect Facility-Generated 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 Facility-Generated 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 Facility-Generated 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 Facility-Generated 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 requested change has been demonstrated by the City and/or the Park Board to not be 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 Facility-Generated 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.