

**FACILITIES OPERATIONAL COST-SHARING AGREEMENT**

THIS AGREEMENT MADE THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, A.D. 2021.

BETWEEN:

**CITY OF LACOMBE**

(the "City")

OF THE FIRST PART

- and –

**LACOMBE COUNTY**

("the County")

OF THE SECOND PART

WHEREAS the City and County support serving the collective needs of their residents based on the principles of reasonableness and fairness;

AND WHEREAS the City and County embrace a cooperative culture that encourages innovative approaches to funding and delivering municipal services, including recognition of the value of shared facilities;

AND WHEREAS the City owns and operates several facilities for the benefit of both City and County residents;

AND WHEREAS while it is acknowledged that these facilities require operational support from the City and County, it is expected that the users and the community will also contribute to the operation of the facilities through fees, fundraising, and volunteer assistance;

AND WHEREAS the City and County are desirous of entering into an agreement with respect to the sharing of operational costs of City facilities;

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the premises, covenants and agreements herein contained, the Parties hereto agree as follows:

**1. General**

- (a) The County shall provide operational support for City facilities and services as outlined in Schedule "A".

- (b) County operational support shall cover operating costs related to the delivery of recreational services. Capital Costs, reserve contributions, and borrowing and/or debenture payments are not eligible costs for the purpose of calculating operational support.
- (c) For greater clarity, Capital Costs means costs associated with the expansion, upgrading or intensification of use of Facilities having a value of \$5,000 or more. Capital funding requests shall be considered under the County's recreational capital funding policies.
- (d) Notwithstanding the funding calculations in Schedule "A", the Parties agree to consider adjustments to the County's annual operational support when a variance in the net operating deficit of 30% or greater is realized at any of the facilities due to a disruption of facility services caused by an Act of God, fire, flood, pandemic, etc.
- (e) As a condition of providing operational support County residents shall be granted the same access and pay the same facility user/program registration fees as City residents.
- (f) County operational support shall be provided by July 30<sup>th</sup> of each year.

## **2. Community Groups – Facility Capital and Operating Funding Requests**

The City and County acknowledge that community groups play an integral role in the construction and operation of facilities for benefit of residents of both municipalities and the region.

To ensure consistency in the information being provided to the City and County the following process shall be used when considering proposals from community groups for projects having a total capital cost of greater than \$500,000 and/or an annual operating cost of greater than \$75,000:

1. A joint public meeting of the City and County Councils will be held for the purpose of receiving the community group's presentation and request.
2. Following this meeting, the City and County Councils will meet separately to discuss the request either publicly or in-camera. The Chief Administrative Officer (CAO) of each municipality will ensure that the CAO of the other municipality is advised of the date in which the respective Councils will be meeting to discuss the request. No formal resolutions regarding the community group request should be made by either Council at their respective meetings.
3. Once the City and County have deliberated separately, a second joint City and County public meeting will be held for the purpose of discussing the community group request and developing a recommendation on the request to be presented to the respective Councils. Though ideally each Council's decision on the recommendation should align with the other's, the independent decision-making

authority of each Council must not be compromised. Although not concurrent, the decision of each Council should be well informed by fulsome discussion with the other Council.

**3. Term**

This Agreement shall commence on the date of signing and shall continue in force until terminated pursuant to Section 4 of this Agreement.

**4. Termination**

This Agreement shall be terminated:

- (a) upon mutual consent of both Parties; or
- (b) on December 31<sup>st</sup> of any year provided that one years' written notice to that effect has been given by one Party to the other Party.

**5. Rights on Termination**

Without restricting any other remedy which one Party may have against the other Party, if the one Party terminates this Agreement pursuant to Section 4 of this Agreement, such termination will in no way restrict the other remedies which one Party may have against the other Party.

**6. Review**

The Parties agree to review this Agreement in five years from the date of signing, and every five years thereafter, to determine if the County's operational support of City facilities is appropriate by taking into account the operational deficit of the subject facilities and population changes in the City and County.

**7. Amendments**

Amendments to this Agreement, including changes to Schedule "A", may be necessary from time to time and may be initiated by either Party in writing and shall be agreed upon by both Parties.

**8. Indemnity**

The City shall indemnify and hold harmless the County, its employees, elected officials, and agents from any and all claims, actions and costs whatsoever, excluding mediation and/or arbitration costs, that may arise directly or indirectly out of any act or omission of the County, its employees, elected officials and agents in the performance or non-

performance of this Agreement.

The County shall indemnify and hold harmless the City, its employees, elected officials, and agents from any and all claims, actions and costs whatsoever, excluding mediation and/or arbitration costs, that may arise directly or indirectly out of any act or omission of the City, its employees, elected officials and agents in the performance or non-performance of this Agreement.

The indemnifications set forth above shall survive the expiration of the Term or the Termination of this Agreement for whatever cause.

## **9. Dispute Resolution**

If any dispute arises between the Parties with respect to any of the provisions of this Agreement, which cannot be resolved by mutual Agreement between the Chief Administrative Officers of the City and County within 30 days of receipt of notice of the matter in dispute, then such dispute shall be referred to two elected officials of each the City and County who shall meet to discuss and attempt to resolve the matter in dispute.

In the event the dispute cannot be resolved by the two elected officials the City and County within 30 days of the matter in dispute being referred to them, then such dispute shall be determined by arbitration in accordance with the following terms and conditions:

- (a) the Parties shall agree upon a single arbitrator (the "Arbitrator") and in the event that the Parties are unable to agree upon the Arbitrator, the matter shall be referred to the Court of Queen's Bench of Alberta for the appointment of the Arbitrator;
- (b) the decision of the Arbitrator shall be binding upon the Parties;
- (c) the cost of each arbitration shall be borne by the Party against which the award is made by the Arbitrator, unless the Arbitrator decides otherwise;
- (d) the Arbitrator shall not alter, amend, or otherwise change the terms and conditions of this Agreement;
- (e) except as modified herein, the provisions of the *Arbitration Act*, RSA 1980, c. A-43, as amended from time to time, shall apply to any arbitration conducted pursuant to this Agreement; and
- (f) notwithstanding any provision contained herein to the contrary, if any dispute which has been submitted to the Arbitrator has not been determined by the Arbitrator within forty-five (45) days of receipt of the notice to arbitrate, either Party at any time thereafter, but prior to a determination being made by the Arbitrator, shall have the right of recourse to the Court of Alberta having jurisdiction for the determination of the dispute, and upon the commencement of any action for such

purpose the jurisdiction of the Arbitrator with respect of such dispute shall cease.

Notwithstanding Section 9 of this Agreement, upon mutual consent of the Parties, the Parties may utilize the Alberta Municipal Affairs Mediation Services program to assist in resolving any dispute arising from any provision of this Agreement.

**10. Force Majeure**

If the Parties fail to meet their respective obligations hereunder within the respective time prescribed, and such failure is directly caused or materially contributed to by Force Majeure, such failure shall be deemed not to be a breach of the obligations of such Party, provided that, in such event, such Party shall use its commercially reasonable efforts to put itself in a position to carry out its obligations hereunder as soon as reasonably possible, to the extent that it is within its power.

**11. Unenforceability**

If any portion of this Agreement is deemed to be illegal or invalid, then that portion of the Agreement shall be deemed to be severed from the remainder of the Agreement, and the remainder of the Agreement shall be enforceable.

**12. Entire Agreement**

This Agreement constitutes the entire Agreement between the Parties relating to the subject matter and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, of the Parties and there are no general or specific warranties, representations or other agreements by or among the Parties in connection with the entering into of this Agreement or the subject matter except as specifically set forth herein.

**13. Freedom of Information and Protection of Privacy**

The City and County acknowledge that the Freedom of Information and Protection of Privacy Act applies to all information generated, collected, or provided under this Agreement, and will comply with its provisions.

**14. Notices**

Any notice under this Agreement shall be deemed to be given to the other Party if:

- (a) delivered personally;
- (b) mailed by regular mail to the address of the Party to whom it is intended for; or
- (c) by sending a facsimile transmission.

A notice or other document sent by post shall be deemed to be sent at the time when the same was deposited in a post office or public letter box, and any notice mailed shall be deemed to have been received on the fourth (4th) day after the date it is postmarked. A notice or other document sent by fax transmission or by any other like method by which a written or recorded message may be sent shall be deemed to be delivered at the time when the same was transmitted by the sender.

if to the City:                   **CITY OF LACOMBE**  
5432 – 56 Avenue  
Lacombe, AB T4L 1E9  
Email: [cao@lacombe.ca](mailto:cao@lacombe.ca)

if to the County:               **LACOMBE COUNTY**  
RR 3  
Lacombe, AB T4L 2N3  
Email: [info@lacombecounty.com](mailto:info@lacombecounty.com)

**15. Assignment**

This Agreement shall not be assignable by the City to any other person, firm, or corporation without the prior written consent of the County.

**16. GST Exclusive**

All amounts payable by the county to the City hereunder will be exclusive of any Goods and Services Tax (“GST”), and the County will, in addition to the amounts payable hereunder, pay to the City all amounts of GST applicable thereon.

**17. Enurement**

This Agreement shall be binding upon the Parties and their successors.

**18. Governing Law and Submission to Jurisdiction**

This Agreement shall be governed by and construed in accordance with the laws of the Province of Alberta and the Parties hereby submit to the jurisdiction of the Courts in the Province of Alberta.

IN WITNESS WHEREOF the Parties have set their seals and hands of their duly authorized signing officers in that behalf on the day and year first above written.

**CITY OF LACOMBE**

**LACOMBE COUNTY**

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Reeve

\_\_\_\_\_  
Chief Administrative Officer

\_\_\_\_\_  
County Manager

**SCHEDULE "A"**

1. The following City of Lacombe facilities are deemed eligible for Lacombe County annual operating support:

- a. Cemetery
- b. Lacombe Memorial Centre
- c. Kinsmen Aquatic Centre and Spray Park
- d. Arenas 1 and 2
- e. Ball Diamonds
- f. Soccer Fields
- g. Skateboard Park and
- h. Lacombe Public Library

2. Annual Operational Support:

- a. 2020 operational support shall be \$688,136 representing the average annual County support for 2016 to 2019.
- b. 2021 and future year's support shall be determined using the following calculations:

Let X = Inflation Adjustment

Let Y = Population Ratio Adjustment

Let Z = Facility Deficit Adjustment

The inflation adjustment is applied every year.

The Population Ratio Adjustment and Facility Deficit Adjustment are applied only in those years in which federal census data is released, excluding 2022. Assuming the next release of federal census data occurs in 2022, and continues every 5 years thereafter, the calculation schedule is as follows:

$$2021 \text{ Transfer} = (2020 \text{ Transfer}) * X$$

$$2022 \text{ Transfer} = (2021 \text{ Transfer}) * X$$

$$2023 \text{ Transfer} = 2022 \text{ (Transfer)} * X$$

$$2024 \text{ Transfer} = 2023 \text{ (Transfer)} * X$$

$$2025 \text{ Transfer} = 2024 \text{ (Transfer)} * X$$

$$2026 \text{ Transfer} = 2025 \text{ (Transfer)} * X$$

$$2027 \text{ Transfer} = 2026 \text{ (Transfer)} * Y * Z$$

... repeating on a presumed 5-year rotation thereafter

### **Inflation Adjustment**

The Inflation Adjustment is applied every year other than those in which federal census population data is released and is intended to account for the increasing costs of goods and services in Alberta.

Let X = Inflation Adjustment

$$X = 1 + CPIA$$

Where CPIA = The Consumer Price Index for Alberta on a June 30 year-over-year basis

### **Population Ratio Adjustment**

The Population Ratio Adjustment is applied in each year in which federal census population data is released and is intended to account for the changing populations in the City and County.

Let Y = Population Ratio Adjustment

$$Y = 1 + \left[ \left( \frac{County_{POP2}}{County_{POP2} + City_{POP2}} \right) - \left( \frac{County_{POP1}}{County_{POP1} + City_{POP1}} \right) \right]$$

Where:

County<sub>POP1</sub> = Lacombe County Population, in the year of the federal census

County<sub>POP2</sub> = Lacombe County Population, in the year of the release of the federal census population data

City<sub>POP1</sub> = City of Lacombe Population, in the year of federal census

City<sub>POP2</sub> = City of Lacombe Population, in the year of the release of the federal census population data

### **Facility Deficit Adjustment**

The Facility Deficit Adjustment is applied in each year in which federal census data is released, excluding 2022, and is intended to account for possible variances in facility deficits over time. The Facility Deficit Adjustment is to be applied to all of the facilities collectively.

Let Z = Facility Deficit Adjustment

$$Z = 1 + \left( \frac{Deficit_2 - Deficit_1}{Deficit_1} \right)$$

Deficit<sub>1</sub> = Facility Operating Deficit in the year of the release of the prior federal census population data

Deficit<sub>2</sub> = Facility Operating Deficit in the year of the release of the most recent federal census population data