

THIS AGREEMENT dated the 11 day of January, 2019²¹

BETWEEN

COUNTY OF GRANDE PRAIRIE NO. 1

(the "County")
OF THE FIRST PART
-and-

TOWN OF SEXSMITH

(the "Town")
OF THE SECOND PART

COMMUNITY FACILITIES CAPITAL REPLACEMENT AGREEMENT

WHEREAS the County and the Town are municipal corporations pursuant to the *Municipal Government Act* (Alberta);

AND WHEREAS the County and the Town have common boundaries and are required to create an intermunicipal collaboration framework pursuant to Part 17.2 of the *Municipal Government Act*, recognising various services that beneficial to residents in both municipalities;

AND WHEREAS the County and the Town recognize the value of community facilities and services and their contribution to the quality of life for residents;

AND WHEREAS the County and the Town wish to provide for the replacement of existing community facilities with new community facilities for a similar purpose, or new community facilities for different purposes as may be identified and deemed desirable when the need to replace existing community facilities arises, on the terms and conditions set out herein;

NOW THEREFORE pursuant to Part 17.2 of the *Municipal Government Act* and in consideration of the covenants and agreements contained herein, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. DEFINITIONS AND SCHEDULES

1.1. In this Agreement, the following terms shall have the following meanings:

- a. **"Agreement"** means this Agreement and includes any Schedules hereto.
- b. **"Capital Replacement"** means replacement of an existing facility with a new facility for a similar purpose or a new facility for a different purpose as may be desired and determined when the need to replace the existing community facility arises;

- c. **“Community Facilities Referral Area”** means the area identified in Schedule A and the Hamlet of Le Glace, but not including the lands within the boundaries of the Town of Sexsmith;
- d. **“County”** means the County of Grande Prairie No. 1.
- e. **“County Council”** means the Council of the County of Grande Prairie No. 1 as elected from time to time during the Term of this Agreement.
- f. **“Community Facilities”** means a facility to be established with intent to provide space for various recreational activities and programs and/or provide community gathering space.
- g. **“Town’s Community Facilities”** means facilities established and owned and operated by the Town or a Related Entity, with the estimated replacement cost and useful life at the time of this agreement as follows:

| Facility | Estimated replacement cost | Estimated useful life remaining |
|---------------------------|----------------------------|---------------------------------|
| Curling Rink | \$4,056,208 | 20 years |
| Sexsmith Community Center | \$2,055,828 | 37 years |
| Civic Center | \$2,974,523 | 10 years |
| Arena | \$7,984,288 | 12 years |

- h. **“Related Entity”** means a non-profit corporation or society which operates a Facility or Facilities on behalf of the Town;
 - i. **“Town”** means the Town of Sexsmith.
 - j. **“Town Council”** means the Council of the Town of Sexsmith as elected from time to time during the Term of this Agreement.
 - k. **“Term”** has the meaning set forth in Section 3 of this Agreement.
- 1.2. The Schedules to this Agreement are as follows and shall form an integral part of this Agreement:

Schedule “A”
Schedule “B”

Community Facility Referral Area
Terms of Reference

2. PURPOSE AND INTENT OF AGREEMENT

- 2.1. The purpose and intent of this Agreement is to establish a framework for the County and the Town to work collaboratively and in good faith regarding the provision and funding of community facilities and services, taking into account the following principles:
- a. The provision of community facilities and services within the Town and the Community Facilities Referral Area, that are beneficial and complimentary to both the Town and the County and their respective residents and ratepayers;
 - b. The costs to construct and operate a community facility can be substantial and typically not supported through user fees alone, and;
 - c. The availability of federal and provincial grant funding for community facilities and services is subject to change based on circumstances outside of the parties' control, and;
 - d. The need for and utilization of community facilities and services is subject to change over time, which requires ongoing assessment and review;
 - e. The County desires to assist financially when the existing Town's community facilities require replacement, and;
 - f. The Town desires to have an opportunity to participate (financially or otherwise) or comment when a new community facility may be proposed within the Community Facilities Referral Area.

3. TERM OF AGREEMENT

- 3.1. The Term of this Agreement shall be thirty (30) years commencing on the ____ day of _____, _____.
- 3.2. The parties may review the Agreement at any time by mutual agreement. If either party refuses the other party's request to review the Agreement, or the parties agree to review the agreement but do not reach mutual consensus regarding amendments to this agreement the refusal to review or inability to reach consensus upon the review are not subject to the Dispute Resolution Section of this Agreement and the Agreement shall continue on the same terms and conditions until amended or modified in accordance with this section.

4. TOWN'S COMMUNITY FACILITIES REPLACEMENT

- 4.1. The County and the Town hereby agree to implement the joint planning process for replacing established Town's Community Facilities as listed in 1.1 g) or constructing new community facilities as may be desired and determined at the time of need to replace the established facility with intent to serve greater population within and outside of the Town boundaries.

- 4.2. The County and the Town hereby agree that the County shall contribute to the municipal share of the actual capital construction costs, net of any project specific federal or provincial grants received and other monetary and non-monetary contributions, for the Town's Community Facilities listed in 1.1 g) at the time the need to replace a facility arises, and that the County's contribution shall be lesser of the following as determined by the Joint Planning for Community Facilities Committee as described in Schedule B:
- a. fifty (50%) percent of the municipal share, or;
 - b. the percentage of the municipal share based on the actual usage by the County residents as a percentage of total users of the facility in question. For the purposes of this Section 4.2(b), the actual usage by County residents shall be determined using the average of the most recent three (3) years' data available to the parties or such information as is reasonably available to the parties at the time the determination is to be made.
- 4.3. The joint planning process shall include establishing a Joint Planning for Community Facilities Committee as described in Schedule B specific to the facility under consideration for replacement, with the intent of the Committee to:
- a. undertake needs assessments, including obtaining public input regarding the need and/or desire for new or enhanced community facilities or services, while considering the following factors:
 - i. the type and location of facility;
 - ii. identified demand and projected usage;
 - iii. availability of federal and provincial grant funding;
 - iv. private contributions;
 - v. a cost sharing formula for presentation to the Town and the County Councils, subject to section 4.2 of this agreement;
 - vi. future operating funding considerations and cost-sharing for future ongoing operations and maintenance of the new facility;
 - vii. such other matters and considerations as the Joint Council Committee determines are necessary and relevant.
 - b. the Committee is an advisory committee and shall make recommendations to the County and Town councils.
- 4.4. The amount of funding payable by the County to the Town shall be based on total costs and expenses actually and reasonably incurred by the Town with respect to the construction of a new facility in accordance with Section 4.2 herein, but shall not include any internal or administration costs or expenses of the Town.
- 4.5. The County will contribute funding for the construction of a new community facility as recommended by the Joint Planning for Community Facilities Committee subject to approval by County Council and Town Council, subject to the terms and conditions of this Agreement; provided however that nothing in Section 4 herein shall be interpreted to

require the Town to proceed with the construction of a new community facility if the Town, in its sole discretion, elects not to do so.

5. RESPONSIBILITY FOR CONTRIBUTIONS AND TRACKING FACILITY USAGE NUMBERS

- 5.1. The County and the Town shall each be solely responsible for securing their respective contributions for the replacement of community facilities pursuant to this Agreement, and may secure and obtain funding in a form and on terms and conditions determined to be reasonable and appropriate by the securing party in its sole discretion.
- 5.2. The County and the Town shall be responsible for recording their community facilities' usage numbers on ongoing basis, which shall include information regarding the number of users from hamlets within the Community Facility Referral Area during the term of this Agreement.
- 5.3. The County and the Town shall formally exchange and review the usage numbers every five years during the term of this agreement, with the first review take place no later than June, 2026, and every fifth year in June subsequently and/or this review shall be completed in conjunction of the future operating funding agreements review.

6. USE OF FUNDING REQUIREMENTS

- 6.1. The Town shall use all funding received pursuant to this Agreement solely for the purpose for which it is intended and designated pursuant to this Agreement, taking into account the purpose and intent of this Agreement.

7. COMMUNITY FACILITIES REFERRALS

- 7.1. The Town and the County hereby agree that the County shall notify the Town if the County is planning to replace or construct a new community facility within the Community Facilities Referral Area, Schedule A. The written notification shall be given to the Town during the initial planning stages of the new facility and the Town shall be given an opportunity to participate financially or otherwise if the facility is deemed complimentary to the Town's services and facilities or beneficial to the Town's residents.
- 7.2. The Town shall respond in writing within thirty (30) calendar days of receiving the new community facility notice from the County of their interest to participate.
- 7.3. The Town's decision to participate shall be a trigger for the joint planning process as described in this agreement.
- 7.4. The Joint Community Facility Planning Committee established at that time shall make recommendations to the Town and the County Councils on all matters, but not limited to as described in 4.3, and including possible joint ownership of the new facility.

- 7.5. If the County becomes aware of a new community facility initiative by a non-profit group operating within the Community Facilities Referral Area, or the Town becomes aware of a new community facility initiative by a non-profit group operating within the Town boundaries, the County or the Town respectively shall notify the other party as early as reasonably possible. Notification under Section 7.5 is for information purposes.

8. CHANGES TO FEDERAL AND/OR PROVINCIAL LEGISLATION AND COLLECTION OF LINEAR PROPERTY TAXES

- 8.1 In the event that a change in Federal or Provincial Legislation has significant impact on the County's ability to fulfill its obligations under this Agreement, the Town and the County hereby agree to open this Agreement for review and negotiations upon the County's request, including reviewing the cost-sharing formula described in Section 4. For the purposes of this provision "significant impact" means a 10% decrease in the County's assessment base from the immediately preceding assessment year, or inability to collect in excess of 40% of municipal taxes from designated industrial (linear) properties in any year during the term of this Agreement by December 31 in the year of the tax levy.
- 8.2 In the event that a change in Federal or Provincial Legislation has significant impact on the Town's ability to fulfill its obligations under this Agreement, the Town and the County hereby agree to open this Agreement for review and negotiations upon the Town's request, including reviewing the cost-sharing formula described in Section 4. For the purposes of this provision "significant impact" means a 10% decrease in the Town's assessment base from the immediately preceding assessment year.
- 8.3 A request for review by either party pursuant to this Section 8 shall not relieve either party of their obligations, including payment obligations, pursuant this Agreement during the period of the review and negotiations. If the parties are unable to reach an agreement following a review of the Agreement and negotiations pursuant to this Section 8, either party may refer the matter to dispute resolution in accordance with Section 10 of this Agreement.

9. INSURANCE AND INDEMNITY

- 9.1. The Town shall keep in force during the Term of this Agreement insurance policies as appropriate for any prudent business for all its community facilities or capital work to be undertaken by the Town from time to time.
- 9.2. The Town shall at all times indemnify and save harmless the County, its officers, elected officials, employees and agents from and against any and all liabilities, claims, demands, losses, costs, charges, expenses (including without limiting the generality of the foregoing, all legal fees and disbursements on a solicitor and own client basis and any amount paid to settle any actions or satisfy any judgments), actions and other proceedings made, brought against, suffered by or imposed on the County, its officers, elected officials, employees and agents in respect of anything arising from the operation of the

Town's Community Facilities or for any reason whatsoever, or in respect of any loss, damage or injury (including injury resulting in death) to any person or property (including, without restricting the generality of the foregoing, employees, invitees, contractors, agents and property of the County) directly or indirectly arising out of, resulting from or sustained by reason of the operation of the Facilities or construction of new or replacement community facilities.

9.3. In no circumstances whatsoever shall either party be liable to the other for any consequential, indirect or special damages arising for or in any way related to this Agreement.

9.4. Sections 9.2 and 9.3 herein shall survive the expiry or termination of this Agreement, howsoever it occurs.

10. DISPUTE RESOLUTION

10.1. Any claim, dispute or other matter in question between the County and the Town arising under or in any way pertaining to this Agreement (a "Dispute") shall be resolved as follows:

a. Negotiation

- i. The Chief Administrative Officers for the County and the Town shall meet within two (2) weeks of the date on which written notice of the Dispute was provided to discuss the Dispute, and attempt to resolve the dispute through good faith consultations and discussions (the "CAO Meeting"); \
- ii. If the Dispute cannot be resolved by a CAO Meeting, the Chief Administrative Officers (CAO) and Chief Elected Official (CEO) for each of the County and the Town shall meet within two (2) weeks of the CAO Meeting, for the purpose of formulating a recommendation to their respective Councils regarding a resolution to the Dispute (the "CAO/ CEO Meeting");
- iii. The recommendation referred to in subsection (ii) herein shall be presented to the respective Councils for approval within one (1) month of the date of the CAO/CEO Meeting.
- iv. The time periods to in subsection (a) herein, may be modified by agreement of the parties. It is the intent of the parties that each party's CAO and CEO make his/her best efforts to personally attend the CAO meeting and/or CAO/CEO Meeting referred to in subsection (ii) herein, however the parties acknowledge and agree that in the event a party's CAO or CEO is temporarily unavailable that the CAO or CEO may designate a member of administration or council to attend on his/her behalf.

b. Mediation

- i. If the Dispute cannot be resolved through the process set out in Section 10.1(a) herein, then the parties must appoint a mediator to attempt to resolve the dispute by mediation.
- ii. The initiating party must provide the mediator with an outline of the dispute and any agreed statement of facts.
- iii. The parties must give the mediator access to all records, documents and information that the mediator may reasonably request.
- iv. The parties must meet with the mediator at such reasonable times as may be required and must, through the intervention of the mediator, negotiate in good faith to resolve their dispute.
- v. All proceedings involving a mediator are without prejudice, and, unless the parties agree otherwise, the cost of the mediator must be shared equally between the parties.

10.2. If the Dispute cannot be resolved through the process set out in Section 10.1(b) herein, then the Dispute shall be resolved by arbitration in accordance with Part 17.2 of the *Municipal Government Act*.

10.3. If the Dispute cannot be resolved through the process set out in Section 10.1(b) herein, and is not subject to arbitration pursuant to Part 17.2 of the *Municipal Government Act*, the Dispute shall be resolved by arbitration before a single arbitrator agreed upon by the parties or, in default of such agreement, before a single arbitrator appointed by a court in accordance with the *Arbitration Act* (Alberta). The arbitration shall be conducted in accordance with the *Arbitration Act* (Alberta) and the decision of the arbitrator shall be final and binding on the parties.

11. **GENERAL PROVISIONS**

11.1. All notices required or permitted under this Agreement shall be in writing and (a) delivered personally, (b) sent by recognized express mail or courier service, with delivery receipt requested, (c) sent by facsimile transmission with telephonic confirmation, or (d) sent by e-mail to the parties to this Agreement as follows:

County of Grande Prairie No. 1
Attention: Chief Administrative Officer
10001 - 84 Avenue
Clairmont, AB T0H 0W0
Facsimile: 780-539-9880
Email: _____

Town of Sexsmith

Attention: Chief Administrative Officer

Box 420, 9927 - 100 Street

Sexsmith, AB T0H 3C0

Facsimile: 780-568-2200

Email: _____

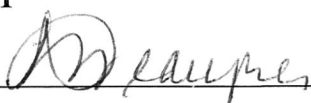
This Agreement constitutes the entire Agreement between the parties hereto with respect to the matters provided for herein and cancels and supersedes any prior understandings, agreements, negotiations and discussions between the parties except as stated in this Agreement. There are no representations, warranties, terms, conditions, undertakings or collateral agreements or understandings, express or implied, between the parties hereto other than is expressly set forth in this Agreement. This Agreement may not be amended or modified in any respect except by written instrument executed by each of the parties hereto.

- 11.2. Each provision of this Agreement is hereby declared to be separate, severable and distinct. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, the remainder of this Agreement shall not be affected thereby and shall be applied and construed as if such invalid, illegal or unenforceable provision had been omitted unless such provision or provisions are so material that its or their invalidity, illegality or unenforceability would materially change the terms and conditions contemplated hereby so as to make them unreasonable and contrary to the intentions of the parties.
- 11.3. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original and all of which together shall constitute one and the same agreement.
- 11.4. This Agreement may not be assigned by any of the parties hereto without the prior written consent of the other parties hereto, which may be withheld by either party in its sole and unfettered discretion.
- 11.5. This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, successors, including any successor by reason of amalgamation of any party, administrators and permitted assigns.

IN WITNESS WHEREOF the parties have executed this Agreement as of the date hereinabove written.

**COUNTY OF GRANDE PRAIRIE
NO. 1**

Per: _____



TOWN OF SEXSMITH

Per: _____



Per: 

Per: Rachel Wuechener

SCHEDULE "A"

COMMUNITY FACILITY REFERRAL AREA

#2



SCHEDULE “B”

TERMS OF REFERENCE

The Committee shall be known as the Joint Planning for Community Facilities Committee (the “Committee”). The establishment of the Committee shall be initiated upon the Town’s request to replace a facility as specified in the Agreement or to participate in the establishment of a new community facility within the Community Facilities Referral Area.

Purpose:

The purpose of the Committee is to conduct needs assessments and provide recommendations to County and Town Council in accordance with the Community Facilities Replacement Agreement, signed _____2020.

Committee Structure:

Voting Members:

The Committee shall consist of eight (8) members, appointed as follows:

- a. Two (2) members of County Council plus one (1) alternative and two (2) public-at-large members, for a total of four (4) members, appointed by resolution of County Council, and;
- b. Two (2) members of Town Council plus one (1) alternative and two (2) public-at-large members, for a total of four (4) members, appointed by resolution of Town Council.
- c. The Committee shall appoint a Chair and Vice Chair at its first meeting.

Administrative Resources (non-voting):

CAOs or designates, and other personnel as may be required from time to time.

The Town shall be responsible to provide administrative resources for the Committee meetings.

Quorum:

A majority of the members of the Committee shall constitute a quorum.

Term:

Committee members shall be appointed for the term as may be necessary to fulfill its purpose and general responsibilities. In the event of a vacancy by death, resignation or from any other cause except the expiration of the term of the appointment, such vacancy shall be filled by an appointment by the respective Council as soon as possible.

Authority:

The Committee is an advisory committee; the members shall report and make recommendations to their respective Councils.

Meeting Schedule:

The Committee shall meet as required to fulfill its general responsibilities.

General Responsibilities:

The Committee shall make recommendations to the County Council and Town Council and undertake needs assessments, including obtaining public input regarding the need and/or desire for new or enhanced community facilities or services, while considering the following factors:

- i. the type and location of facility;
- ii. identified demand and projected usage;
- iii. availability of federal and provincial grant funding;
- iv. private contributions;
- v. a cost sharing formula to the Town and the County Councils, subject to s. 4.2 of the Community Facilities Replacement Agreement;
- vi. future operating funding considerations and cost-sharing for future ongoing operations and maintenance of the new facility;
- vii. such other matters and considerations as the Joint Council Committee determines are necessary and relevant.

Financial Resources:

Each Council shall be responsible for providing compensation (honorariums, travel expenses, etc.) to members appointed to the Committee by the Council, as established by their respective municipal bylaws/policies.

Any funds required to conduct public consultation process or other studies directly related to fulfilling the Committee's general responsibilities shall be shared equally between the County and the Town on a 50/50 basis provided however that any costs or expense shall be approved by concurrent resolutions of County Council and Town Council before the commencement of any process or other study requiring funds.

Amending the Terms of Reference:

These Terms of Reference may be amended by concurrent resolutions of County Council and Town Council without the requirement for an amendment to the Agreement.