STAFF REPORT

Date: 22 Jan 2019

To: RDKB Board of Directors
From: Mark Daines - Manager of Facilities and Recreation
Re: Staff Report-BRD-MOFLRO-Park Land Lease

Issue Introduction
A staff report from Mark Daines, Manager of Facilities and Recreation with regards to a new lease agreement with the Ministry of Forests, Lands, Natural Resource Operations and Rural Development.

History/Background Factors
Beaver Valley Family Park, located outside of Fruitvale in Area A, is a 50 acre park/campground run by the Beaver Valley Recreation Service under the RDKB. The Park has been in existence since the early 1980’s. Amenities include full washrooms and hook ups, walking trails, disc golf course, horseshoe pits, basketball court, volleyball court, kids playground. The park is also a host to weddings, family reunions, parties and meetings.

The park operates under a lease agreement allowing for a crown land tenure with the Ministry of Forests, Lands, Natural Resource Operations and Rural Development.

Implications
The Lease runs for a 30 year term.

The rent for the term is $1.00 and there is an administration fee of $200 plus gst.

Without a new Lease agreement the park/campground would not be able to operate on the Provincial Land.

Advancement of Strategic Planning Goals
By entering into a new Lease Agreement with the Province ensures that we are responsible and pro-active in funding our services and that plans are developed to address aging infrastructure in our services to ensure sustainable services.

**Background Information Provided**
See attached Lease Agreement and Notice of Final Review.

**Alternatives**
None

**Recommendation(s)**
That the Regional District of Kootenay Boundary Board of Directors receive the new Lease Agreement from the Ministry of Forests, Lands, Natural Resource Operations and Rural Development.

**Further,** that the Regional District of Kootenay Boundary Board of Directors approve and enter into the new Lease Agreement with the Ministry of Forests, Lands, Natural Resource Operations and Rural Development.
THIS AGREEMENT is dated for reference September 15, 2017 and is made under the *Land Act*.

BETWEEN:

**HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA**, represented by the minister responsible for the *Land Act*, Parliament Buildings, Victoria, British Columbia

(the “Province”)

AND:

**REGIONAL DISTRICT OF KOOTENAY BOUNDARY**
202 843 Rossland Avenue
Trail, BC V1R 4S8

(the “Lessee”)

The parties agree as follows:

**ARTICLE 1 - INTERPRETATION**

1.1 In this Agreement,

“Agreement” means this lease;

“Commencement Date” means September 15, 2017;

“disposition” has the meaning given to it in the *Land Act* and includes a licence of occupation;

“Hazardous Substances” means any substance which is hazardous to persons, property or the environment, including without limitation

(a) waste, as that term is defined in the *Environmental Management Act*; and
(b) any other hazardous, toxic or other dangerous substance, the use, transportation or release into the environment of which, is now or from time to time prohibited, controlled or regulated under any laws or by any governmental authority, applicable to, or having jurisdiction in relation to, the Land;

“Improvements” includes anything made, constructed, erected, built, altered, repaired or added to, in, on or under the Land, and attached to it or intended to become a part of it, and also includes any clearing, excavating, digging, drilling, tunnelling, filling, grading or ditching of, in, on or under the Land;

“Land” means that part or those parts of the Crown land either described in, or shown outlined by bold line on, the schedule attached to this Agreement entitled “Legal Description Schedule” except for those parts of the land that, on the Commencement Date, consist of highways (as defined in the Transportation Act) and land covered by water;

“Management Plan” means the most recent management plan prepared by you in a form approved by us, signed and dated by the parties, and held on file by us;

“Realty Taxes” means all taxes, rates, levies, duties, charges and assessments levied or charged, at any time, by any government authority having jurisdiction which relate to the Land, the Improvements or both of them and which you are liable to pay under applicable laws;

“Rent” means the rent set out in Article 3;

“Security” means the security referred to in section 6.1 or 6.2, as replaced or supplemented in accordance with section 6.5;

“Term” means the period of time set out in section 2.2;

“we”, “us” or “our” refers to the Province alone and never refers to the combination of the Province and the Lessee: that combination is referred to as “the parties”; and

“you” or “your” refers to the Lessee.

1.2 In this Agreement, “person” includes a corporation, partnership or party, and the personal or other legal representatives of a person to whom the context can apply according to law and wherever the singular or masculine form is used in this Agreement it will be construed as the plural or feminine or neuter form, as the case may be, and vice versa where the context or parties require.

1.3 The captions and headings contained in this Agreement are for convenience only and do not define or in any way limit the scope or intent of this Agreement.
1.4 This Agreement will be interpreted according to the laws of the Province of British Columbia.

1.5 Where there is a reference to an enactment of the Province of British Columbia or of Canada in this Agreement, that reference will include a reference to every amendment to it, every regulation made under it and any subsequent enactment of like effect and, unless otherwise indicated, all enactments referred to in this Agreement are enactments of the Province of British Columbia.

1.6 If any section of this Agreement, or any part of a section, is found to be illegal or unenforceable, that section or part of a section, as the case may be, will be considered separate and severable and the remainder of this Agreement will not be affected and this Agreement will be enforceable to the fullest extent permitted by law.

1.7 Each schedule to this Agreement is an integral part of this Agreement as if set out at length in the body of this Agreement.

1.8 This Agreement constitutes the entire agreement between the parties and no understanding or agreement, oral or otherwise, exists between the parties with respect to the subject matter of this Agreement except as expressly set out in this Agreement and this Agreement may not be modified except by subsequent agreement in writing between the parties.

1.9 Each party will, upon the request of the other, do or cause to be done all lawful acts necessary for the performance of the provisions of this Agreement.

1.10 Any liabilities or obligations of either party arising, or to be performed, before or as a result of the termination of this Agreement, and which have not been satisfied or remain unperformed at the termination of this Agreement, any indemnity and any release in our favour and any other provision which specifically states that it will survive the termination of this Agreement, shall survive and not be affected by the expiration of the Term or the termination of this Agreement.

1.11 Time is of the essence of this Agreement.

1.12 Wherever this Agreement provides that an action may be taken, a consent or approval must be obtained or a determination must be made, then you or we, as the case may be, will act reasonably in taking such action, deciding whether to provide such consent or approval or making such determination; but where this Agreement states that you or we have sole discretion to take an action, provide a consent or approval or make a determination, there will be no requirement to show reasonableness or to act reasonably in taking that action, providing that consent or approval or making that determination.

1.13 Any requirement under this Agreement for us to act reasonably shall not require us to act in a manner that is contrary to or inconsistent with any legislation, regulations, Treasury Board

STANDARD LEASE UNREGISTRABLE
directives or other enactments or any policy, directive, executive direction or other such guideline of general application.

1.14 Where this Agreement contains the forms of words contained in Column I of Schedule 4 of the Land Transfer Form Act, those words will have the same effect and be construed as if the appropriate forms of words contained in Column II of that Schedule were contained in this Agreement, unless the context requires another construction of those words.

ARTICLE 2 - GRANT AND TERM

2.1 On the terms and conditions set out in this Agreement, we grant you a lease of the Land for community facility purposes, as set out in the Management Plan.

2.2 The term of this Agreement commences on the Commencement Date and terminates on the 30th anniversary of that date, or such earlier date provided for in this Agreement. We reserve the right to terminate this Agreement in certain circumstances as expressly provided in this Agreement.

ARTICLE 3 - RENT

3.1 The Rent for the Term is $1.00, the receipt of which we acknowledge.

ARTICLE 4 - COVENANTS

4.1 You must

(a) pay, when due,

(i) the Rent to us at the address set out in Article 10,

(ii) the Realty Taxes, and

(iii) all charges for electricity, gas, water and other utilities supplied to the Land;

(b) deliver to us, immediately upon demand, receipts or other evidence of the payment of Realty Taxes and all other money required to be paid by you under this Agreement;

(c) observe, abide by and comply with

(i) all applicable laws, bylaws, orders, directions, ordinances and regulations of any
government authority having jurisdiction in any way affecting your use or occupation of the Land or the Improvements including without limitation all laws, bylaws, orders, directions, ordinances and regulations relating in any way to Hazardous Substances, the environment and human health and safety, and

(ii) the provisions of this Agreement;

(d) in respect of the use of the Land by you or by any person who enters upon or uses the Land as a result of your use of the Land under this Agreement, keep the Land and the Improvements in a safe, clean and sanitary condition satisfactory to us, and at our written request, rectify any failure to comply with such a covenant by making the Land and the Improvements safe, clean and sanitary;

(e) not commit any wilful or voluntary waste, spoil or destruction on the Land or do anything on the Land that may be or become a nuisance to an owner or occupier of land in the vicinity of the Land;

(f) use and occupy the Land only in accordance with and for the purposes set out in the Management Plan;

(g) not construct, place or affix any Improvement on or to the Land except as permitted in the Management Plan;

(h) pay all accounts and expenses as they become due for labour or services performed on, or materials supplied to, the Land except for money that you are required to hold back under the Builders Lien Act;

(i) if any claim of lien over the Land is made under the Builders Lien Act, immediately take all steps necessary to have the lien discharged, unless the claim of lien is being contested in good faith by you and you have taken the steps necessary to ensure that the claim of lien will not subject the Land or any interest of yours under this Agreement to sale or forfeiture;

(j) not cut or remove timber on or from the Land without being granted the right under the Forest Act to harvest Crown timber on the Land;

(k) take all reasonable precautions to avoid disturbing or damaging any archaeological material found on or under the Land and, upon discovering any archaeological material on or under the Land, you must immediately notify the ministry responsible for administering the Heritage Conservation Act;

(l) permit us, or our authorized representatives, to enter on the Land at any time to inspect the Land and the Improvements, including without limitation to test and remove soil,
groundwater and other materials and substances, where the inspection may be necessary
or advisable for us to determine whether or not you have complied with your
obligations under this Agreement with respect to Hazardous Substances, provided that
we take reasonable steps to minimize any disruption of your operations;

(m) indemnify and save us and our servants, employees and agents harmless against all
claims, actions, causes of action, losses, damages, costs and liabilities, including fees of
solicitors and other professional advisors, arising out of one or more of the following:

(i) any breach, violation or non-performance of a provision of this Agreement,

(ii) any conflict between your use of the Land under this Agreement and the lawful
use of the Land by any other person, and

(iii) any personal injury, bodily injury (including death) or property damage
occurring or happening on or off the Land by virtue of your entry upon, use or
occupation of the Land,

and the amount of all such losses, damages, costs and liabilities will be payable to us
immediately upon demand; and

(n) on the termination of this Agreement,

(i) peaceably quit and deliver to us possession of the Land and, subject to
paragraphs (ii) and (iii), the Improvements in a safe, clean and sanitary
condition,

(ii) within 90 days, remove from the Land any Improvement you want to remove, if
the Improvement was placed on or made to the Land by you, is in the nature of a
tenant’s fixture normally removable by tenants and is not part of a building
(other than as a tenant’s fixture) or part of the Land and you are not in default of
this Agreement,

(iii) remove from the Land any Improvement that we, in writing, direct or permit you
to remove, other than any Improvement permitted to be placed on or made to the
Land under another disposition, and

(iv) restore the surface of the Land as nearly as may reasonably be possible, to the
condition that the Land was in at the time it originally began to be used for the
purposes described in this Agreement, but if you are not directed or permitted to
remove an Improvement under paragraph (iii), this paragraph will not apply to
that part of the surface of the Land on which that Improvement is located,
and all of your right, interest and estate in the Land will be absolutely forfeited to us, and to the extent necessary, this covenant will survive the termination of this Agreement.

4.2 You will not permit any person who enters upon or uses the Land as a result of your use of the Land under this Agreement to do anything you are restricted from doing under this Article.

4.3 You must not use all or any part of the Land

(a) for the storage or disposal of any Hazardous Substances; or

(b) in any other manner whatsoever which causes or contributes to any Hazardous Substances being added or released on, to or under the Land or into the environment from the Land;

unless

(c) such storage, disposal, release or other use does not result in your breach of any other provision of this Agreement, including without limitation, your obligation to comply with all laws relating in any way to Hazardous Substances, the environment and human health and safety; and

(d) we have given our prior written approval to such storage, disposal, release or other use and for certainty any such consent operates only as a consent for the purposes of this section and does not bind, limit, or otherwise affect any other governmental authority from whom any consent, permit or approval may be required.

4.4 Despite any other provision of this Agreement you must:

(a) on the expiry or earlier termination of this Agreement; and

(b) at any time if we request and if you are in breach of your obligations under this Agreement relating to Hazardous Substances;

promptly remove from the Land all Hazardous Substances stored, or disposed of, on the Land, or which have otherwise been added or released on, to or under the Land:

(c) by you; or

(d) as a result of the use of the Land under this Agreement; or

(e) as a result of the use of the Land under the following prior agreements: Lease No. 401126 dated for reference September 28, 1987
save and except only to the extent that we have given a prior written approval expressly
allowing specified Hazardous Substances to remain on the Land following the expiry of the
Term.

4.5 We may from time to time

(a) in the event of the expiry or earlier termination of this Agreement;

(b) as a condition of our consideration of any request for consent to an assignment of this
Agreement; or

(c) if we have a reasonable basis for believing that you are in breach of your obligations
under this Agreement relating to Hazardous Substances;

provide you with a written request to investigate the environmental condition of the Land and
upon any such request you must promptly obtain, at your cost, and provide us with, a report
from a qualified and independent professional who has been approved by us, as to the
environmental condition of the Land, the scope of which must be satisfactory to us and which
may include all such tests and investigations that such professional may consider to be
necessary or advisable to determine whether or not you have complied with your obligations
under this Agreement with respect to Hazardous Substances.

4.6 You must at our request from time to time, but not more frequently than annually, provide us
with your certificate (and if you are a corporation such certificate must be given by a senior
officer) certifying that you are in compliance with all of your obligations under this Agreement
pertaining to Hazardous Substances, and that no adverse environmental occurrences have taken
place on the Land, other than as disclosed in writing to us.

4.7 We will provide you with quiet enjoyment of the Land.

ARTICLE 5 - LIMITATIONS

5.1 You agree with us that

(a) in addition to the other reservations and exceptions expressly provided in this
Agreement this Agreement is subject to the exceptions and reservations of interests,
rights, privileges and titles referred to in section 50 of the Land Act;

(b) other persons may hold or acquire rights to use the Land in accordance with enactments
other than the Land Act or the Ministry of Lands, Parks and Housing Act, including
rights held or acquired under the Coal Act, Forest Act, Geothermal Resources Act.
Mineral Tenure Act, Petroleum and Natural Gas Act, Range Act, Water Sustainability Act or Wildlife Act (or any prior or subsequent enactment of the Province of British Columbia of like effect); such rights may exist as of the Commencement Date and may be granted or acquired subsequent to the Commencement Date and may affect your use of the Land;

(c) with your prior consent, which consent you will not unreasonably withhold, we may make other dispositions of or over the Land, or any part of it, by way of easement, right of way or statutory right of way, to any person, including a Crown agency or ministry, and, upon such consent being given you will, if required by us, execute and deliver to us such instrument as may be necessary to subordinate your rights under this Agreement to such easement, right of way or statutory right of way;

(d) for the purpose of subsection (c), you will be deemed to have reasonably withheld your consent if a disposition made under that subsection would have a material adverse impact on your use of the Land under this Agreement;

(e) you have no right to compensation from us and you release us from all claims, actions, causes of action, suits, debts and demands that you now have or may at any time in the future have against us arising out of any conflict between your use of the Land under this Agreement and any use of, or impact on the Land arising from the exercise, or operation of the interests, rights, privileges and titles described in subsections (a), (b), and (c);

(f) if a proposed disposition under subsection (c) will not have a material adverse impact on your use of the Land under this Agreement you must not require any payment, whether as compensation or any other charge, as a condition of your consent to that disposition;

(g) you will not commence or maintain proceedings under section 65 of the Land Act in respect of any interference with your use of the Land under this Agreement that arises as a result of the exercise or operation of the interests, rights, privileges and titles described in subsections (a), (b) and (c);

(h) any interference with your use of the Land under this Agreement as a result of the exercise or operation of the interests, rights, privileges and titles described in subsection (a), (b) and (c) will not constitute a breach of our covenant of quiet enjoyment and you release and discharge us from all claims for loss or damage arising directly or indirectly out of any such interference;

(i) this Agreement does not limit any right to notice, compensation or any other benefit that you may be entitled to from time to time under the enactments described in subsection (b), or any other applicable enactment;
(j) you will not remove or permit the removal of any Improvement from the Land except as expressly permitted or required under this Agreement;

(k) any interest you may have in the Improvements ceases to exist and becomes our property upon termination of this Agreement, except where an Improvement may be removed under paragraph 4.1(n)(ii) or (iii) in which case any interest you may have in that Improvement ceases to exist and becomes our property if the Improvement is not removed from the Land within the time period set out in paragraph 4.1(n)(ii) or the time period provided for in the direction or permission given under paragraph 4.1(n)(iii); and

(l) if, after the termination of this Agreement, we permit you to remain in possession of the Land and we accept money from you in respect of such possession, a tenancy from year to year will not be created by implication of law and you will be deemed to be a monthly tenant only subject to all of the provisions of this Agreement, except as to duration, in the absence of a written agreement to the contrary.

ARTICLE 6 - SECURITY AND INSURANCE

6.1 On the Commencement Date, you will deliver to us Security in the amount of $0.00 which will

(a) guarantee the performance of your obligations under this Agreement;

(b) be in the form required by us; and

(c) remain in effect until we certify, in writing, that you have fully performed your obligations under this Agreement.

6.2 Despite section 6.1, your obligations under that section are suspended for so long as you maintain in good standing other security acceptable to us to guarantee the performance of your obligations under this Agreement and all other dispositions held by you.

6.3 We may use the Security for the payment of any costs and expenses associated with any of your obligations under this Agreement that are not performed by you or to pay any overdue Rent and, if such event occurs, you will, within 30 days of that event, deliver further Security to us in an amount equal to the amount drawn down by us.

6.4 After we certify, in writing, that you have fully performed your obligations under this Agreement, we will return to you the Security maintained under section 6.1, less all amounts drawn down by us under section 6.3.

6.5 You acknowledge that we may, from time to time, notify you to
(a) change the form or amount of the Security; and

(b) provide and maintain another form of Security in replacement of or in addition to the Security posted by you under this Agreement;

and you will, within 60 days of receiving such notice, deliver to us written confirmation that the change has been made or the replacement or additional form of Security has been provided by you.

6.6 You must

(a) without limiting your obligations or liabilities under this Agreement, at your expense, purchase and maintain during the Term the following insurance with insurers licensed to do business in Canada:

(i) Commercial General Liability insurance in an amount of not less than $2,000,000.00 inclusive per occurrence insuring against liability for personal injury, bodily injury (including death) and property damage, including coverage for all accidents or occurrences on the Land or the Improvements. Such policy will include cross liability, liability assumed under contract, provision to provide 30 days advance notice to us of material change or cancellation, and include us as additional insured;

(b) ensure that all insurance required to be maintained by you under this Agreement is primary and does not require the sharing of any loss by any of our insurers;

(c) within 10 working days of Commencement Date of this Agreement, provide to us evidence of all required insurance in the form of a completed “Province of British Columbia Certificate of Insurance”;

(d) if the required insurance policy or policies expire or are cancelled before the end of the Term of this Agreement, provide within 10 working days of the cancellation or expiration, evidence of new or renewal policy or policies of all required insurance in the form of a completed “Province of British Columbia Certificate of Insurance”;

(e) notwithstanding subsection (c) or (d) above, if requested by us, provide to us certified copies of the required insurance policies.

6.7 We may, acting reasonably, from time to time, require you to

(a) change the amount of insurance set out in subsection 6.6(a); and
(b) provide and maintain another type or types of insurance in replacement of or in addition to the insurance previously required to be maintained by you under this Agreement;

and you will, within 60 days of receiving such notice, cause the amounts and types to be changed and deliver to us a completed “Province of British Columbia Certificate of Insurance” for all insurance then required to be maintained by you under this Agreement.

6.8 You shall provide, maintain, and pay for any additional insurance which you are required by law to carry, or which you consider necessary to insure risks not otherwise covered by the insurance specified in this Agreement in your sole discretion.

6.9 You waive all rights of recourse against us with regard to damage to your own property.

ARTICLE 7 - ASSIGNMENT

7.1 You must not sublease, assign, mortgage or transfer this Agreement, or permit any person to use or occupy the Land, without our prior written consent, which consent we may withhold.

7.2 Prior to considering a request for our consent under section 7.1, we may require you to meet certain conditions, including without limitation, that you provide us with a report as to the environmental condition of the Land as provided in section 4.5.

ARTICLE 8 - TERMINATION

8.1 You agree with us that

(a) if you

(i) default in the payment of any money payable by you under this Agreement, or

(ii) fail to observe, abide by and comply with the provisions of this Agreement (other than the payment of any money payable by you under this Agreement),

and your default or failure continues for 60 days after we give written notice of the default or failure to you,

(b) if, in our opinion, you fail to make diligent use of the Land for the purposes set out in this Agreement, and your failure continues for 60 days after we give written notice of the failure to you;

(c) if you
(i) become insolvent or make an assignment for the general benefit of your creditors,

(ii) commit an act which entitles a person to take action under the Bankruptcy and Insolvency Act (Canada) or a bankruptcy petition is filed or presented against you or you consent to the filing of the petition or a decree is entered by a court of competent jurisdiction adjudging you bankrupt under any law relating to bankruptcy or insolvency, or

(iii) voluntarily enter into an arrangement with your creditors;

(d) if you are a corporation,

(i) a receiver or receiver-manager is appointed to administer or carry on your business, or

(ii) an order is made, a resolution passed or a petition filed for your liquidation or winding up;

(e) if you are a society, you convert into a company in accordance with the Society Act without our prior written consent; or

(f) if this Agreement is taken in execution or attachment by any person;

this Agreement will, at our option and with or without entry, terminate, and all of your right, interest and estate in the Land will be absolutely forfeited to us.

8.2 If the condition complained of (other than the payment of any money payable by you under this Agreement) reasonably requires more time to cure than 60 days, you will be deemed to have complied with the remedying of it if you commence remedying or curing the condition within 60 days and diligently complete the same.

8.3 You agree with us that

(a) you will make no claim against us for compensation, in damages or otherwise, upon the lawful termination of this Agreement under section 8.1; and

(b) our remedies under this Article are in addition to those available to us under the Land Act.
ARTICLE 9 - DISPUTE RESOLUTION

9.1 If any dispute arises under this Agreement, the parties will make all reasonable efforts to resolve the dispute within 60 days of the dispute arising (or within such other time period agreed to by the parties) and, subject to applicable laws, provide candid and timely disclosure to each other of all relevant facts, information and documents to facilitate those efforts.

9.2 Subject to section 9.5, if a dispute under this Agreement cannot be resolved under section 9.1, we or you may refer the dispute to arbitration conducted by a sole arbitrator appointed pursuant to the Commercial Arbitration Act.

9.3 The cost of the arbitration referred to in section 9.2 will be shared equally by the parties and the arbitration will be governed by the laws of the Province of British Columbia.

9.4 The arbitration will be conducted at our offices (or the offices of our authorized representative) in Cranbrook, British Columbia, and if we or our authorized representative have no office in Cranbrook, British Columbia, then our offices (or the offices of our authorized representative) that are closest to Cranbrook, British Columbia.

9.5 A dispute under this Agreement in respect of a matter within our sole discretion cannot, unless we agree, be referred to arbitration as set out in section 9.2.

ARTICLE 10 - NOTICE

10.1 Any notice required to be given by either party to the other will be deemed to be given if mailed by prepaid registered mail in Canada or delivered to the address of the other as follows:

  to us

MINISTRY OF FORESTS, LANDS, NATURAL RESOURCE OPERATIONS AND RURAL DEVELOPMENT
1902 Theatre Road
Cranbrook, BC V1C 7G1;

  to you

REGIONAL DISTRICT OF KOOTENAY BOUNDARY
202 843 Rossland Avenue
Trail, BC V1R 4S8;

or at such other address as a party may, from time to time, direct in writing, and any such notice
will be deemed to have been received if delivered, on the day of delivery, and if mailed, 7 days after the time of mailing, except in the case of mail interruption in which case actual receipt is required.

10.2 In order to expedite the delivery of any notice required to be given by either party to the other, a concurrent facsimile copy of any notice will, where possible, be provided to the other party but nothing in this section, and specifically the lack of delivery of a facsimile copy of any notice, will affect the deemed delivery provided in section 10.1.

10.3 The delivery of all money payable to us under this Agreement will be effected by hand, courier or prepaid regular mail to the address specified above, or by any other payment procedure agreed to by the parties, such deliveries to be effective on actual receipt.

ARTICLE 11 - MISCELLANEOUS

11.1 No provision of this Agreement will be considered to have been waived unless the waiver is in writing, and a waiver of a breach of a provision of this Agreement will not be construed as or constitute a waiver of any further or other breach of the same or any other provision of this Agreement, and a consent or approval to any act requiring consent or approval will not waive or render unnecessary the requirement to obtain consent or approval to any subsequent same or similar act.

11.2 No remedy conferred upon or reserved to us under this Agreement is exclusive of any other remedy in this Agreement or provided by law, but that remedy will be in addition to all other remedies in this Agreement or then existing at law, in equity or by statute.

11.3 The grant of a sublease, assignment or transfer of this Agreement does not release you from your obligation to observe and perform all the provisions of this Agreement on your part to be observed and performed unless we specifically release you from such obligation in our consent to the sublease, assignment or transfer of this Agreement.

11.4 This Agreement extends to, is binding upon and enures to the benefit of the parties, their heirs, executors, administrators, successors and permitted assigns.

11.5 If, due to a strike, lockout, labour dispute, act of God, inability to obtain labour or materials, law, ordinance, rule, regulation or order of a competent governmental authority, enemy or hostile action, civil commotion, fire or other casualty or any condition or cause beyond your reasonable control, other than normal weather conditions, you are delayed in performing any of your obligations under this Agreement, the time for the performance of that obligation will be extended by a period of time equal to the period of time of the delay so long as

(a) you give notice to us within 30 days of the commencement of the delay setting forth the
nature of the delay and an estimated time frame for the performance of your obligation; and

(b) you diligently attempt to remove the delay.

11.6 You acknowledge and agree with us that

(a) this Agreement has been granted to you on the basis that you accept the Land on an “as is” basis;

(b) without limitation we have not made, and you have not relied upon, any representation or warranty from us as to

(i) the suitability of the Land for any particular use, including the use permitted by this Agreement;

(ii) the condition of the Land (including surface and groundwater), environmental or otherwise, including the presence of or absence of any toxic, hazardous, dangerous or potentially dangerous substances on or under the Land and the current and past uses of the Land and any surrounding land and whether or not the Land is susceptible to erosion or flooding;

(iii) the general condition and state of all utilities or other systems on or under the Land or which serve the Land;

(iv) the zoning of the Land and the bylaws of any government authority which relate to the development, use and occupation of the Land; and

(v) the application of any federal or provincial enactment or law to the Land;

(c) you have been afforded a reasonable opportunity to inspect the Land or to carry out such other audits, investigations, tests and surveys as you consider necessary to investigate those matters set out in subsection (b) to your satisfaction before entering into this Agreement;

(d) you waive, to the extent permitted by law, the requirement if any, for us to provide you with a “site profile” under the Environmental Management Act or any regulations made under that act;

(e) we are under no obligation, express or implied, to provide financial assistance or to contribute toward the cost of servicing, creating or developing the Land or the Improvements and you are solely responsible for all costs and expenses associated with your use of the Land and the Improvements for the purposes set out in this Agreement.
and

(f) we are under no obligation to provide access or services to the Land or to maintain or improve existing access roads.

11.7 You agree with us that nothing in this Agreement constitutes you as our agent, joint venturer or partner or gives you any authority or power to bind us in any way.

11.8 This Agreement does not override or affect any powers, privileges or immunities to which you are entitled under any enactment of the Province of British Columbia.

The parties have executed this Agreement as of the date of reference of this Agreement.

SIGNED on behalf of HER MAJESTY
THE QUEEN IN RIGHT OF THE
PROVINCE OF BRITISH COLUMBIA
by the minister responsible for the Land Act
or the minister's authorized representative

Minister responsible for the Land Act
or the minister's authorized representative

SIGNED on behalf of REGIONAL DISTRICT OF KOOTENAY BOUNDARY
By its authorized signatories

Authorized Signatory

Authorized Signatory

STANDARD LEASE UNREGISTRABLE
Parcel A, Sublot 13, District Lot 1236, Kootenay District, Plan 14266

Parcel B Reference Plan 86449:1 of Sublot 30 Plan X:67

Sublot 25 Plan X:67n

Sublot 30 Plan X:67m

Lot Plan 6861

Total Area: 15.331 ha

0307970
15.331 hectares

BCGS Mapsheet(s): 82F.031
NOTICE OF FINAL REVIEW

January 8, 2019

Regional District Of Kootenay Boundary
202 843 Rossland Avenue
Trail, BC V1R 4S8

Attention: Mark Daines

Dear Mark Daines:

Re: Your Application for a Tenure over Crown Land

The review of your application for a lease for community facility purposes over:

Parcel A, Sublot 13, District Lot 1236, Kootenay District, Plan 14266, more particularly shown on the Legal Description Schedule and containing 15.34 hectares, more or less

(the "Land") has reached the stage where we anticipate making our final decision once the various matters described in this letter have been completed.

This is to replace Lease No. 401126.

1. Deadline for Completion of Requirements

We ask that you complete the requirements described below by March 8, 2019.

Please complete the Response to Notice of Final Review page attached, indicating whether you will or will not proceed with the application and sign and return that page to us for our records.

2. Requirements

Signing and Return of Tenure Documents
You must sign and deliver to us one copy of the lease document which is enclosed with this letter. You are responsible for ensuring that this is properly completed including, if applicable, obtaining any appropriate corporate authorizations and having any Land Title Act form C or D witnessed by a solicitor, notary or commissioner.

Monies Payable

You must deliver to us the following amounts:

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Replacement Application Fee</td>
<td>$200.00</td>
</tr>
<tr>
<td>GST Total</td>
<td>$10.00</td>
</tr>
<tr>
<td>Total Fees Payable</td>
<td>$210.00</td>
</tr>
</tbody>
</table>

* denotes GST payable

Your cheque or money order must be payable to the Minister of Finance and be delivered to 1902 Theatre Road Cranbrook, BC V1C 7G1. Please quote our file number when sending us your payment.

Insurance

The Regional District of Kootenay Boundary is a subscriber to the Municipal Insurance Association of British Columbia in which the Province has been added as an additional insured.

Additional Requirements

Please sign the Management Plan cover sheet attached to the front of your Management Plan and return them to us. We will return a copy of the signed cover sheet and approved Management Plan upon finalization of your documents.

3. Process following completion of Requirements

If the requirements set out above are completed within the required time we expect to make our decision and advise you of that decision within 30 days.

Please note however that this letter does not constitute an offer by us and we reserve all our rights in connection with the decision making process, including, if appropriate, to disallow your application, to extend the decision making process and to establish additional requirements not set out in this letter.

Upon decision to issue the lease to you we will sign and return one copy of the lease to you.
4. Acknowledgments of the Applicant

You represent, acknowledge and agree that:

(a) Your application for a Crown land tenure cannot be transferred to another person.

(b) This Letter does not obligate us to issue the lease to you and does not give you any right to use or occupy the Land for any purpose.

(c) You are responsible for, and encouraged to seek, your own legal advice with respect to:

   (i) any laws, bylaws, orders, directions, ordinances and regulations associated with your use of the Land,

   (ii) the terms and conditions set out in this Letter, and

   (iii) the terms and conditions of, and your rights and obligations that will arise under, the lease.

(d) You are responsible for the costs and expenses incurred by you in pursuing your application, including any cost you incur in connection with satisfying the requirements set out in this letter.

(e) If you sign and return the lease to us that will constitute your offer to us to enter into the lease.

Freedom of Information

Personal information is collected under the Land Act for the purpose of administering Crown land. Information on your application, and if issued, your tenure, will become part of the Crown Land Registry, from which information is routinely made available to the public under Freedom of Information and Protection of Privacy legislation.

Yours truly,

Kathy Pasqua

Authorized Representative
Response to Notice of Final Review

File No. 0307970

Ministry of Forests, Lands, Natural Resource Operations and Rural Development
1902 Theatre Road
Cranbrook, BC V1C 7G1

Dear Kathy Pasqua:

Re: Application for lease

☐ I/We wish to proceed to obtain a lease in accordance with the letter dated January 8, 2019 from the Ministry of Forests, Lands, Natural Resource Operations and Rural Development and enclose all copies of the lease which I/We have signed.

☐ I/We do not wish to proceed to obtain a lease in accordance with the letter dated January 8, 2019 from the Ministry of Forests, Lands, Natural Resource Operations and Rural Development.

DATED the __ of ______________, ______.

___________________________________________________________
Applicant's signature/Applicant's representative's signature  
Applicant's signature/Applicant's representative's signature

___________________________________________________________
Print name of person signing  
Print name of person signing