

**IN THE MATTER of an Arbitration pursuant to Part 17.2, Division 2 of  
The Municipal Government Act, RSA 2000, c. M-26**

BETWEEN:

**BRAZEAU COUNTY**

- and -

**THE TOWN OF DRAYTON VALLEY**

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**Award with respect to Intermunicipal Collaboration Framework**

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## **I. INTRODUCTION AND BACKGROUND**

1. This is the arbitration Award of Robert G. McBean QC in an arbitration between the Town of Drayton Valley (the "Town") and Brazeau County (the "County") pursuant to part 17.2 of the *Municipal Government Act* (the "Act") with respect to the establishment of an Intermunicipal Collaboration Framework (a "Framework" or the "ICF").

### **Legislative Framework**

2. Part 17.2 of the *Act* mandates that all municipalities, including the Town and the County, establish a Framework for the following purposes:

- (a) to provide for the integrated and strategic planning, delivery and funding of intermunicipal services,
- (b) to steward scarce resources efficiently in providing local services, and
- (c) to ensure municipalities contribute funding to services that benefit their residents.

(s.708.27 of *Act*)

3. The Town and the County were unable to agree on a Framework and accordingly the matter was mandated for arbitration pursuant to s. 708.35(1) of the *Act*.

4. As the Town and the County also did not agree on the identity of an arbitrator, the Minister of Municipal Affairs by Ministerial Order No. MSD:054/21 dated June 3<sup>rd</sup>, 2021, appointed me as arbitrator to make an award that resolves the issues in dispute between the Town and the County respecting the creation of the Framework as required under s. 708.28 of *Act*.

## **II. STATEMENT OF BACKGROUND FACTS**

5. The Town is an urban municipality and is surrounded by the County. The Town provides a full range of institutional, recreational and commercial services to the region. (Agreed Statement of Facts ("ASF") para. 7)

6. The County is a rural municipality which borders the Town and five rural municipalities, the Clearwater County, Leduc County, Parkland County, Wetaskiwin County and Yellowhead County. In addition, the County has one urban municipality wholly within its boundaries, the Village of Breton. (ASF, para. 8)

7. The Town and the County have agreed the following services provided by the Town and the County are intermunicipal services which should be included in the ICF:

- (a) Omniplex (includes 2 Arenas, Curling Rink and Fitness Centre);
- (b) MacKenzie Conference Centre;
- (c) Park Valley Pool;
- (d) Class A Ball Diamonds – Lions West Valley Park;
- (e) Class A Ball Diamonds – Brazeau Sports Park;
- (f) Class A Soccer/Rugby Pitches – Lions West Valley Park;
- (g) Class A Soccer/Rugby Pitches – Park Place;
- (h) Class A Soccer/Rugby Pitches – Brazeau Sports Park;
- (i) Tennis Court/Pickleball Courts – Hospital Reservoir Site;
- (j) Tennis Court/Pickleball Courts – Rotary Park;
- (k) 4-S Skatepark;
- (l) Splash Park; and
- (m) Aquatic Centre

(Collectively, the "Recreation Facilities"). (ASF, para 4)

8. In approximately 2008 the Town established an Early Childhood Development Centre (the "ECDC"). Residents of both the Town and the County utilize the services of the ECDC. The Town has periodically requested that the County contribute to the operational costs of the ECDC. The County has not agreed to do so. It does not agree that the ECDC is an intermunicipal service provided by the Town which should be included in the ICF.

9. The Recreation Facilities are all provided by the Town with the exception of the Class A Ball Diamonds and the Class A Soccer/Rugby Pitches within the Brazeau Sports Park. Those facilities are provided by the County.

10. As set out in the Agreed Statement of Facts, the Town and the County have entered into previous cost sharing agreements which as follows:

- (a) The Town and the County entered into a Recreation and Culture Cost Sharing Agreement, dated September 20, 2007 (the "2007 Agreement"), with a 4-year term, whereby the County agreed to pay \$73.64 per capita (indexed to CPI) towards the Omniplex and the Park Valley Pool. (ASF para. 9)
  - (b) The 2007 Agreement was based on usership, which required determining the residency of each user of the recreation facilities. Given the challenges with accurately identifying usership, the Town and the County agreed to approach cost sharing on the basis of residency of students enrolled in the two school divisions, Wild Rose School Division and St. Thomas Aquinas Catholic School Division. It was determined at that time that residency of students was split approximately 50% - 50% between the Town and the County. (ASF para. 10)
  - (c) The Town and the County entered into a Recreation and Culture Cost Sharing Agreement, dated January 1, 2012 (the "2012 Agreement"), with a 3-year term, whereby the County agreed to pay \$805,809 per annum (now based on 50% of the average operating deficit for the Recreational Facilities over the previous three years, indexed to CPI) towards the Town's Recreation Facilities. (ASF para. 11)
  - (d) The Town and the County entered into a Recreation and Culture Cost Sharing Agreement, dated January 1, 2015 (the "2015" Agreement"), with a 3-year term, whereby the County agreed to pay \$872,364 per annum (now based upon 50% of the average operating deficit for the Recreational Facilities over the previous three years, indexed to CPI) towards the Town's Recreation Facilities, and the Town agreed to pay \$9,222.00 per annum (based on 50% of the annual maintenance costs, indexed to CPI) toward the County's Recreation Facilities. (ASF para. 12)
  - (e) The Recreation and Culture Cost Sharing Agreement for 2018 was prepared based on the average operating deficit for the Recreational Facilities over the previous three years. The agreement was prepared by the administrations of the Town and the County and was approved by Town Council, but was not approved by County Council. In 2018, the County paid \$889,890.64 to the Town towards the Town's Recreation Facilities. (ASF para. 13)
11. In the summer of 2018, the Town and the County created the Joint Exploratory Recreation and Culture Ad Hoc Committee (the "Ad Hoc Committee") in order to review the operations of the Recreational Facilities. (ASF para. 14)
12. The Ad Hoc Committee recommended that the Recreation and Culture Cost Sharing Agreement for 2019 should be based on the 2017 operating budget, rather than a three-year average, and this was accepted by Council for both parties. (ASF para. 15)
13. The Town and the County entered into a Recreation and Culture Cost Sharing Agreement, dated January 1, 2019 (the "2019 Agreement"), with a 1-year term, whereby the County agreed to pay \$1,036,000 (based upon 50% of the operating deficit for the Recreational

Facilities for 2017) toward the Town's Recreation Facilities, and the Town agreed to pay \$4,845.00 (based upon 50% of the operating costs for 2017) to the County's Recreation Facilities. (ASF para. 16).

14. As a result of the work of the Ad Hoc Committee, the Town and the County jointly established an advisory board, the Joint Recreation and Culture Board (the "Recreation Board") in January 2020. (ASF para. 18)

15. The Recreation Board made recommendations to Town Council and County Council; the Recreation Board's recommendations were not binding on either municipality. (ASF para. 19)

16. The Recreation Board reviewed the operations of the Recreation and Cultural Facilities from February 2019 to September 2019. The Recreation Board passed a resolution recommending the parties enter into a Recreation and Culture Cost Sharing Agreement for 2020 based on 50% of the average operating deficit for the previous year, in the following amounts:

- (a) \$1,046,141 plus GST from the County to the Town;
- (b) \$6,650 plus GST from the Town to the County. (ASF para. 20)

17. On September 16, 2020, Council for the Town approved the Recreation and Culture Cost Sharing Agreement recommended by the Recreation Board for 2020 for a 1-year term. (ASF para. 21).

18. At a meeting on September 15, 2020, the County Council did not approve the recommended agreement. Rather, it passed a motion which would have it pay the equivalent of \$58.49 per capita, for a total of \$454,548.28. (ASF para. 22).

19. In December 2020, the Town, in cooperation with the County's administration, engaged Russell Farmer and Associates Consulting Ltd. to conduct a benchmark study of the Omniplex facility which compares it to other facilities in similarly sized municipalities in Alberta. (ASF para. 23).

### **Arbitration Procedural History**

20. By Ministerial Order No. MSD: 054/21 dated June 3, 2021, I was appointed as Arbitrator to make an award that resolves the issues in dispute between the parties.

21. On July 8, 2021, I convened an organizational video conference with the parties and their counsel. At that videoconference timelines were set for each party to set out a list of issues in dispute between them and to respond to each other's proposed list of issues. In addition, a target date for the Hearing was set for December 13-17, 2021.

22. On August 5, 2021, a further organizational video conference was held with the parties and counsel. The matters discussed and orders made in that conference were set out in my correspondence dated August 7, 2021. As set out in that letter, the outstanding issues between the parties were:

- (a) Recreation and Culture Cost Sharing – what is an equitable sharing of costs with respect to recreation and culture?
- (b) Early Childhood Development Centre (ECDC) issues:
  - (i) Is the ECDC a service that qualifies for the ICF (i.e., is there jurisdiction for me to consider any ECDC issues?); and
  - (ii) If there is jurisdiction to determine ECDC issues, what would be an equitable sharing of costs with respect to the ECDC?

23. As set out in my August 7<sup>th</sup> correspondence, I also set out a process with respect to the exchange of documents between the parties. After receiving submissions from the parties with respect to the exchange of documents by letters dated August 12 and 17 and receiving Counsel's oral submissions on August 24<sup>th</sup>, I made an Order dated August 24, 2021, with respect to the production of documents.

24. As noted in that Order it had become apparent that the Town had in May 2020 provided the County with accounting records (variously referred to as detailed "trial balances" or "transaction reports") for the fourth quarter of 2019. I noted that the Town agreed it would be able to provide such documents for the calendar years 2019 to date without having to create new documents. I found the Town's Submissions to be a reasonable and appropriate response to the requests set out in the County's Submissions and I accordingly ordered that the Town needs to disclose only those documents described in its Submissions.

25. By letter dated September 1, 2021, counsel provided a procedural timeline table outlining the steps that they agreed should take place prior to this hearing. The procedural timeline table was satisfactory to me.

26. On September 2, 2021, I issued a ruling with respect to jurisdiction to consider issues related to the ECDC (the "ECDC Jurisdictional Ruling"). That Ruling is attached as Schedule A to this Award. As set out in that Ruling, I found that I do have jurisdiction to make orders with respect to any matters in dispute between the parties related to the ECDC.
27. The parties completed their exchange of documents and will say statements in October 2021.
28. On or about November 15, 2021, the parties exchanged and provided to me their written submissions ("Written Submissions") with respect to the arbitration.
29. On or about December 3, 2021, the parties exchanged and provided to me their rebuttal written submissions ("Rebuttal Submissions").
30. During further prehearing videoconferences with counsel, it was determined that it may be beneficial for the parties and the arbitrator to take a "view" of the Recreational Facilities.
31. That view was conducted on Friday December 10<sup>th</sup>, 2021. Included in the facilities viewed were the Omniplex (two ice arenas, curling rink and fitness centre), the MacKenzie Conference Centre, Park Valley pool, the ball diamonds and rugby pitches at the Brazeau Sports Park, the Four S Skate Park and the Splash Park.
32. The hearing commenced on December 13, 2021, and concluded on December 16, 2021.
33. Oral testimony was received under affirmation from the following witnesses:
  - (a) Town Witnesses:
    - (i) Annette Driessen, previously General Manager of Community Services, now Special Project Coordinator;
    - (ii) Owen Olynyk, General Manager of Infrastructure;
    - (iii) Alicia Tiffen, Human Resource Professional;
    - (iv) Elvera Thomson, General Manager of Finance;
    - (v) Michael Doerksen, former Mayor of the Town of Drayton Valley (up to October 2021);
    - (vi) Bill Ballas, Councillor – Town of Drayton Valley;
    - (vii) Bernice Taylor, Program Manager for ECDC.

- (b) County Witnesses:
  - (i) Lee Chambers, Community Services Director
  - (ii) Shawn McKerry, Interim CAO; and
  - (iii) Colin Swap, General Manager of Finance.

34. Leading up to and contemporaneous with the arbitration proceedings counsel for the Town and the County attempted to agree on the form and content of an ICF agreement. On December 23, 2021, counsel submitted to me their draft agreements which indicated that, while they had agreed upon a number of items, the following matters remained in dispute:

- (a) The Term of the ICF (i.e. its start date and length);
- (b) Article 4.7 - funding formula for County's payment to Town for Recreation Facilities;
- (c) Article 4.8 - funding formula for Town's payment to the County for Recreation Facilities;
- (d) Articles 4.10 and 4.11 - starting dates for payments by County and Town;
- (e) Article 4.12 - level of financial reporting to be provided by each party.
- (f) Schedule "B" – Whether the ECDC should be included in the Award.

### **III. ISSUES TO BE DETERMINED**

35. The following issues will be considered in this Award:

- (a) Should the ECDC be included in the ICF and, if so, what should be the funding formula with respect to it and what should be the commencement date of any payments;
- (b) with respect to the Recreation Facilities
  - (i) what is the equitable sharing of costs?
  - (ii) are the operating costs of the Omniplex reasonable?
  - (iii) what financial information should be shared between the parties?
  - (iv) what should be the commencement and termination dates of the ICF?

36. During the hearing, I heard evidence with respect to some of parties' past disagreements. These include matters such as which party first caught an error in the 2019 financial statements with respect to the characterization of certain expenses as operational or capital. These past disagreements in my view are not relevant to my determination of what would be a fair and equitable allocation of costs in this ICF. I accordingly propose to not deal with such past disagreements in this Award.

**IV. WHETHER THE ECDC SHOULD BE INCLUDED IN THE ICF. IF SO, WHAT SHOULD BE THE FUNDING FORMULA WITH RESPECT TO IT AND WHEN SHOULD PAYMENTS START?**

37. The parties agree that there are two issues to be determined in this arbitration with respect to the ECDC, namely:

- (a) whether the ECDC is an intermunicipal service which should be included in the ICF; and
- (b) if it is, what should the funding formula be to determine any contribution from the County towards the ECDC.

38. The County raised as an interlocutory issue whether I had jurisdiction to consider any matter related to the ECDC. The parties provided written submissions with respect to this jurisdiction issue in August 2021. By an interlocutory ruling dated September 2, 2021, I ruled that I do have jurisdiction to make orders with respect to any matters in dispute between the parties related to the ECDC. As mentioned, a copy of that interlocutory ruling is attached to this Award as Schedule "A" and forms part of this Award.

**Written Submissions**

39. In its November Written Submissions, the Town notes that the arbitrator's jurisdiction is to resolve the disputes between the municipalities in relation to the creation of an ICF, and that therefore the purpose and contents of the ICF are relevant in establishing the arbitrator's jurisdiction. It notes that pursuant to s. 708.29 of the MGA, the ICF must contain a description of the services that are provided under the ICF which benefit residents of more than one municipality.

40. It further notes that the ECDC is a licensed childcare facility located in the Town and operated by the Town that has been in operation since 2008 and that families from both the Town and the County utilize the ECDC. It acknowledges that there has been no prior cost sharing agreement between the Town and the County with respect to the ECDC.

41. The Town further notes that while the *Act* does not provide a definition for "intermunicipal services", the term is used in part 17.2 of the *Act* to describe services that benefit residents in more than one municipality. (s. 708.27(3) and s. 708.29(1)).

42. The Town also submits in its Written Submissions that while services provided by third parties such as library boards, regional service commissions, the RCMP and provincial governments should not be included in ICF, services provided by a municipality that benefit residents in more than one of the municipalities should be.

43. The Town proposes that the County's contribution to the ECDC ought to be based on the average percentage of children from the County that have attended the ECDC over the previous year. It notes that the average percentage of children from the County at the ECDC in 2019 was 36.17% and that the operating shortfall for the ECDC for that year was \$142,136.44. It accordingly submits that a contribution of \$52,410.75 (based on a 36.17% contribution towards the operating shortfall) would be appropriate.

44. In its November Written Submissions, the County submits that child and daycare services are not a service that one would ordinarily expect a municipality would provide. It submits that to the knowledge of the County the Town is one of approximately four municipalities in Alberta to operate and fund childcare services. It further submits that there are other private and nonprofit childcare services available.

45. Essentially the County submits that childcare services are not properly an intermunicipal service and should not be included in the ICF. The County further submits that while it was a policy decision of the Town's elected officials to set up, operate and provide childcare services to seek to have the County contribute to and pay for that service is the antithesis of a shared service. It further re-argues that if childcare services are an intermunicipal service that can be included in an ICF through the arbitral process, the County residents have no electoral recourse against such decision.

## Rebuttal Submissions

46. In its December Rebuttal Submissions, the Town reiterates that intermunicipal services are those services provided by a municipality that benefit the residents in more than one municipality and that the ECDC is such a service.

47. It notes that there are very few services that municipalities provide that are "required" to be provided to residents. Rather, the usual intermunicipal services and facilities included in ICFs are all voluntary (such as recreation services, transportation, etc.) and the decision to provide those services is based on the individual municipal council's individual resources, policies and priorities.

48. Once a municipality has made a decision to provide those services if those services or facilities benefit the residents of another municipality, the services and facilities are intermunicipal services and part 17.2 (Intermunicipal Collaboration) of the *Act* requires the benefitting municipality to fairly and equitably contribute to the cost of providing those services.

49. The Town further submits that it is irrelevant how many other municipalities have decided to directly provide childcare services. It further submits that licensed childcare is a scarcity in the region with the number of children significantly outnumbering the number of available spaces.

50. In its December Rebuttal Submissions, the County relies in part on portions of a document entitled "Intermunicipal Collaboration Framework: Cost Sharing Principles", published by AUMA (the "AUMA Publication"). It notes that the AUMA Publication includes some guiding principles. In Paragraph 29 of its Rebuttal Submissions, it sets out:

The AUMA Publication includes some Guiding Principles for identifying what kinds of services might be included in an ICF. Those principles are:

- (a) The service is open and accessible to all regional residents (i.e., there is no discrimination based on where someone resides).
- (b) The service is meant to serve a wider population and not a local or neighborhood specific population (e.g. local parks).

- (c) There are established cost-sharing agreements across the province which identify the service.
- (d) Services are municipally delivered or where municipal funding constitutes a significant proportion of the service's funding and is given on a regular, consistent basis.  
(Emphasis added).

51. The County submits that the Town is not in a position to demonstrate that there are established cost sharing ICF agreements which identify childcare as a service. It notes its previous submission that the Town is only one of four municipalities in Alberta to operate and fund childcare services and that as a consequence of that small number there are likely no established cost sharing agreements across the province which identify childcare services as a "shared service". It submits that childcare services would likely be unique to any other ICFs in the province and as a result this is a factor that weighs heavily in excluding the ECDC from the ICF.

### **Counsel's Closing Submissions**

52. In her closing submissions counsel for the Town noted that the evidence is that the County has contributed to the Town for childcare support in the past. She further noted that there has been no issue raised with respect to the reasonableness of the operating expenses of the ECDC. Finally, she further noted that the Town has a duty to ensure that it is fairly compensated for services that it provides to the County.

53. In his closing submissions counsel for the County advised that the County had not been asked to pay for the ECDC until this arbitration. I take this to mean that this was not the subject of negotiation between the parties in the discussions between the parties immediately prior to the commencement of the arbitration proceedings in June 2021, as there is clear evidence there had been requests by Town for contributions over the years. Counsel also reiterated that only a handful of municipalities provide childcare and that childcare is not an intermunicipal service that should be encapsulated into the ICF.

### **Evidence of Bernice Taylor**

54. Bernice Taylor, the Program Manager for the ECDC, testified with respect to the ECDC's programming.

55. She confirmed that she had prepared Exhibit 2, Tab 58 ("Tab 58") being the September 17, 2021, ECDC report. As noted in her testimony and in the report, the ECDC has a licensed daily capacity of 93 childcare spaces. Through the pandemic it has been operating with a capacity of 66 children.

56. The ECDC has families who utilize the service from both the Town and the County. The composition of the attendance is set out in Appendix A of Tab 58. It notes that the percentage of enrollment from the County in 2019 (the last full year prior to COVID) ranged from a low of 32% to a high of 39% with most of the months (8 out of the 12) being in the 37 to 39% range.

57. When COVID hit in 2020, the Centre was closed for April and May. When it reopened in June, attendance from the County was low (June - 7%; July – 19%; August – 19%). From September 2020 until September 2021 (the last month for which statistics were provided), the percentage enrollment from the County has ranged from a low of 29% (November/December 2020) to a high of 46% (42% for each of April, May and June 2021 and 45% for July, 46% for August and 44% for September 2021).

58. Ms. Taylor's testimony confirmed that the services are available to both residents of the County and the Town. The enrollment is tracked by the parents filling out a registration package that indicates where they live. The fees do not vary depending on residency; rather they vary depending on the age of the children.

59. Ms. Taylor confirmed that all employees of the ECDC are employees of the Town. There are up to 25 employees but the regular everyday number of employees is 17. The salaries were determined by a wage grid established at the opening of the program.

60. Ms. Taylor's evidence was not significantly challenged in cross examination.

61. The parties have agreed in the Agreed Statement of Facts No. 33 that the Town's operating deficit for ECDC for 2019 was \$142,136.44.

62. While it does not appear to be the subject of an agreed fact, Exhibit 2 Tab 84, (the monthly financial summary of ECDC for 2020, appears to show that the operating deficit for 2020 was the identical amount (\$142,136.44). Exhibit 2 Tab 85 indicates an operating surplus of \$113,235.15 for the first 8 months of 2021. This was not the subject of any *viva voce* testimony before me.

**Evidence of Shawn McKerry re ECDC**

63. Shawn McKerry, the interim CAO of the County since early January 2021 testified on behalf of the County respect to the ECDC issue.

64. He testified that it was his understanding that the County had contributed money in the past with the intent of it going to smaller daycare operations and not the ECDC. He testified that the philosophy of County Council was that if it could reduce fees and keep more money in residents' pockets, they can express their freedom of choice by using the money as they see fit.

65. In cross examination it was pointed out that it was noted in Exhibit 2 Tab 32 (the February 9, 2016, Municipal Inspection Report authored by Russell Farmer & Associates) that the County had budgeted transfers to the Town in 2015 for daycare in the amount of \$45,000.00. He testified that he understood that the intent of the County was that this contribution was to be delivered to the Town to support the independent providers. In any event, he confirmed that he has no information as to how the Town distributed the \$45,000.00 received from the County with respect to childcare in 2015.

66. In my view it is irrelevant whether the County has previously either intentionally or unintentionally provided contributions to childcare at the ECDC to the Town. The reality is that quite aside from whatever contributions may have been made or the intent of the parties in either giving them or receiving them there had been no previous agreement between the parties that the County would contribute to childcare services.

67. The parties entered as Exhibit 2 Tabs 148 to 154 and Tabs 156 and 157 correspondence between them with respect to the Town's requests from the County for contributions to the ECDC.

68. The correspondence confirms that by letter dated November 20, 2007, the Town asked for a contribution. Annette Driessen and others made a presentation to Brazeau County on November 27, 2007, following which Brazeau County passed a motion that it was not prepared to provide the financial support for either operating or capital.

69. In 2012 the Town thanked the County for its support of the ECDC and its contribution of \$20,000.00 for the promotion of additional day homes in 2012 and indicated that it hoped that it would consider continuing the funding in 2013. As noted in the County's response of November 6, 2012, the County indicated that it recognized that both the Town and the County "are faced with a significant challenge of meeting the needs of our community specifically addressed in the lack of childcare services" and that there is a waiting list of over 40 children. The County advised that "to avoid exacerbating the current situation we feel we need to complement the current infrastructure by contemplating investing into childcare service through other means in support of the Early and Development Centre".

70. In 2016 the Town again approached the County to extend an invitation to the County to enter into a cost and revenue sharing agreement with respect to the ECDC. It noted the historical reliance that County residents have had on this regional service. It invited the County to enter new discussions with them. By letter of response (Exhibit 2 Tab 148) the County advised that its approach to the ECDC funding has not changed and that in particular the County is not prepared to commit municipal dollars to a childcare centre as it is a provincial mandate.

71. Mr. McKerry also testified that he believes that the present County Council has a vision to be collaborative with the Town and has a strong commitment to be transparent and successful in its partnerships. The 2 Councils have already been brought together in a joint governance session as part of their orientation training.

### **Findings re: ECDC**

72. The first issue to be determined is whether the ECDC is an intermunicipal service that ought to be included in an ICF.

73. This requires an interpretation of the *Act*.

74. The term "intermunicipal service" is not defined in the *Act*. As noted in the Town's Submissions however, there are certain portions of the *Act* which shed light on the intention of the legislature as to what is an intermunicipal service.

75. For example, s. 708.29 provides that an ICF "must describe the services to be provided under it that benefit residents in more than one of the municipalities that are parties to the framework". S. 708.29(2) provides that the ICF framework must identify which municipality is responsible for providing the services and outline how the services will be provided and funded.

76. Further s. 708.27 provides that the purpose of part 17.2 of the *Act* is to provide for ICFs to provide for the integrated and strategic planning, delivery and funding of intermunicipal services, to steward scarce resources efficiently in providing local services and to ensure municipalities contribute funding to services that benefit their residents.

77. While these provisions do not define "intermunicipal services", they do shed light on the intent of the legislature with respect to what services may be included in an ICF. In particular I find that the provisions evidence an intention by the legislature that those services provided by one municipality that benefit residents in more than one of the municipalities that are parties to an ICF, can be included in the ICF.

78. Both parties submit that there are extraneous documents which also may provide guidance with respect to the legislature's intention. These include a document published by AUMA entitled "Intermunicipal Collaboration Frameworks: Cost-Sharing Principles". (Town's Submissions Tab 19). As noted earlier, that document, provides that

"Your ICF position should be consistent and be based on rational and easy to understand principles. Consider the following principles as a way of identifying what kinds of services might be included in your ICF:

- the services open and accessible to all regional residents (i.e., there is no discrimination based on where someone resides);
- the services meant to serve a wider population and not a local or neighbourhood specific population (example local parks);
- there are established cost sharing agreements across the province which identify the service;
- services are municipally delivered or where municipal funding constitutes a significant portion of the services funding and is given on a regular consistent basis.

79. The County relies on the 3<sup>rd</sup> guiding principle above (i.e. that "there are established cost sharing agreements across the province which identify the service") and submits that given the apparent small number of municipalities that provide childcare services, to include childcare services in this ICF would be contrary to that guiding principle.

80. However, I am unable to interpret the AUMA document as being an indication that simply because there are (apparently) not a large number of cost sharing agreements identifying childcare services as an intermunicipal service that this would prohibit childcare services being included in an ICF. If the legislature had intended to restrict the type of services which can be included in an ICF, it could have specifically said so in the legislation.

81. I do appreciate and accept however that the fact that there are apparently a small number of municipalities that provide childcare services is a factor for me to consider in deciding whether to include the ECDC in this ICF.

82. Further it is counterintuitive to me that there would have to be some critical mass of established ICFs with childcare services before such services can be included in an ICF. One municipality obviously had to be first.

83. Further other publications from AUMA including the Intermunicipal Collaboration Framework Workbook (Tab 30 of the Town's Written Submissions) appear to evidence a broader intention that is more consistent with the wording of the *Act* referred to above.

84. That document includes as "Tool E" an "ICF Services Summary Tool (Bilateral ICF)" for the purpose of assisting municipalities in developing the content and structure of their ICFs. It appears to suggest that the definition of "intermunicipal" is "a service that is provided to two or more municipalities".

85. The same document notes as "Tool B" the "Services Inventory Development". Tool B encourages the parties to "list any new intermunicipal services that your municipality would like to see and their rationale for providing that service intermunicipally". It notes that "there are a wide variety of services which may or may not apply in different areas." Tool B also leaves additional blanks and spaces to list services provided that benefit more than one municipality other than the typical core services such as transportation, water, wastewater, solid waste, emergency services, and recreation.

86. In the final analysis however, I am loathe to use the AUMA documents as interpretation aids with respect to the *Act*. My view of the AUMA documents taken as a whole is that they do not shed light on whether or not childcare services are properly considered an intermunicipal service that can form part of an ICF.

87. Rather, in my view the best evidence of this is that it falls within the plain wording of s. 708.29, namely that the ECDC is a service that is provided by the Town that benefits residents in both the Town and the County. In my view it is accordingly an intermunicipal service and can properly be included in the ICF.

### **Fair Allocation of ECDC Costs**

88. The next issue to determine is what is the fair allocation of costs with respect to the ECDC.

89. I accept the submission of the Town that cost sharing with respect to the ECDC should be based on the average percentage of children attending the ECDC from the County over the previous year.

90. In this regard the evidence establishes that the use by the County residents of the ECDC has been as follows:

- (a) 2019 - 36.17%
- (b) 2020 - 26.6 % (10 months)
- (c) 2021 - 40% (10 months to September 30<sup>th</sup>)

91. 2020 appears to have been an anomaly given the advent of COVID, the closure of the ECDC for the months of March and April 2020 and the extremely low use by the County residents upon reopening in the early days of COVID in May through August 2020.

92. I order however that the County's contribution to the costs of the ECDC should not commence until the calendar year 2022 (i.e. January 1, 2022), and that the contribution be based on the 2021 attendance numbers when they become available.

93. I have chosen the January 1<sup>st</sup>, 2022, commencement date because, with the implementation of this Award and the ICF, this will be the first time that contributions by the County to the costs of the ECDC will be the subject of an agreement between the Town and the County. In my view it is equitable for the payments to commence contemporaneously with the implementation of the ICF and that there be no retroactivity to these payments.

**V. WHAT IS THE EQUITABLE SHARING OF COSTS BETWEEN THE TOWN AND THE COUNTY FOR THE RECREATION FACILITIES?**

94. This portion of the Award will deal with the equitable sharing of costs between the Town and the County with respect to the Recreation Facilities.

95. As noted in paragraphs 9 through 20 of the Agreed Statement of Facts, the parties have a history of cost sharing for the Recreation Facilities. As set out in those paragraphs, the 2007 agreement had a four-year term which was based on usership which required determining the residency of each user of the Recreation Facilities. Given the challenges with accurately identifying usership, the Town and the County agreed to approach cost sharing on the basis of residency of students enrolled in the two school divisions. At that time (and apparently up to the present) the residence of students was split approximately 50/50 between the Town and the County. Subsequent agreements between the Town and the County have been based essentially on 50% of the operating deficit either for a previous year or a three-year average.

96. The Town submits that it would be most equitable for the costs to be shared based on a funding formula based on 50% of the operating deficit for the previous year. It notes that the percentage of the residency of students enrolled in schools located in the Town and County is roughly equivalent. It also submits that the Town and the County's relative total populations are also roughly equivalent (with the County's population representing 51.7% of the population and the Town's representing 48.3% of the total population).

97. The Town submits that relative size of the Town's and the County's equalized assessments also supports a funding formula whereby the County contributes 50% of the shortfall in operating expenses. Equalized assessment is a means of comparing property wealth in a uniform manner. It is a measure of a municipality's ability to generate tax revenues. The County's equalized assessment is almost three times that of the Town. (County: - \$3,637,073,543 v. Town - \$1,275,684,041).

98. As an alternative, the Town seeks contribution from the County based on a dollar amount per capita. It submits that the correct per capita number could also be fair and equitable and would have the added benefit of avoiding having the Town having to report to the County on its operating revenues and expenses for the Recreation Facilities. The operating shortfall would be entirely divorced from the calculation of the County's contribution.

99. The Town, in its Written Submissions, also noted that while detailed user numbers are not available, recent inquiries had shown that user figures with respect to the Omniplex tip in favor of the County with between 60% and 73% of the children registered in figure skating, ringette and minor hockey residing in the County. However, this was not the subject of evidence before me so I will not take it into account in this Award.

100. In its Written Submissions, the County submits that ICF providing for fixed amounts for individual services and a total maximum contribution amount (a "cap") is warranted and appropriate. It submits that this is particularly true for the ICF term made retroactive to January 1, 2020, which the County proposes be based on a five-year term concluding on December 31, 2024.

101. In its Rebuttal Submissions, the County submits that while enrolment figures from schools within the County may be useful in assisting in a determination based on a percentage contribution, there are additional contextual factors that are relevant and should be considered when dealing with the Recreation Facilities usage. It submits that there are relevant practical considerations that act to reduce the actual usership of the Recreation Facilities by County residents as opposed to Town residents. It submits that at the conclusion of the school day many school children are required to bus home and that County residents are spread out throughout the boundaries of the County and often have considerable distance to access the facilities while the Town residents have no such spatial problem in accessing the facilities.

102. The County submits that a fixed lump sum amount is more appropriate. It submits that fixing the operating costs that are used to calculate the County's contribution per recreation would ensure the County contributes fairly to the Town's recreation costs while acknowledging the County has no control over the operation of the Town's facilities, and that the Town and County are autonomous entities. It submits that it will encourage the Town to run its facilities in a cost effective and efficient manner.

103. In its Rebuttal Submissions, the Town notes that while contribution to operational funding for Recreation Facilities based on a fixed amount per annum or a per capita figure does provide absolute certainty to the parties, it does not take into consideration the inevitable fluctuation in operating costs and revenue which are unavoidable in facility operations.

104. It points out that any fluctuation in the operating costs from year to year would be disproportionately shouldered by the residents of either the County or the Town if a fixed contribution amount was set. On the other hand, a funding formula based on 50% of the operating deficit for the previous year would result in any fluctuation in operating costs being equitably distributed to those who benefit from the services.

105. It further points out that the Town is the only municipality to provide Recreation Facilities of this type and quality. It submits that all residents of the County are within a 40 minute drive of the Recreation Facilities and are just as likely to use the Recreation Facilities as Town residents.

106. In closing Oral Submissions, the County's counsel acknowledged that there were pros and cons to a fixed lump sum contribution and that, while the parties get the benefit of certainty, changes in the operating costs could work for or against either party. Counsel advised that he was thinking of a lump sum of about \$700,000 or, if based on a percentage, a formula where the County contributes 40% rather than the 50% proposed by the Town.

107. In its December 23<sup>rd</sup>, 2021, correspondence, the County's counsel advised that if a lump sum is awarded, the County would like clause added to the ICF that funding is contingent upon the continued operation of each of the facilities delivering a level of services substantially similar to those offer by each of the facilities in the years 2017 to 2019. If levels of service are reduced, the non-operating party would be entitled to a return of funding proportional to the reduction in services.

### **Decision re Funding Formula**

108. I have considered the parties' submissions. I am of the view that it would be fairest and most equitable for the Town and County to contribute to the applicable operating deficits of the Recreation Facilities pursuant to a funding formula based on 50% of the operating deficits for the previous year.

109. I considered the option of setting a fixed amount for the parties to contribute. However, I agree with the submission of the Town that the inevitable fluctuation of operating costs each year would result in either the Town or the County disproportionately shouldering the burden in any given year.

110. I also considered whether a percentage other than 50% would be appropriate. In my view 50% is the most appropriate percentage for a number of reasons.

111. First, it is the historical percentage the parties have voluntarily agreed to over the years and recommended by the parties' Recreation Board in 2020. There does not appear to be any evidence of a change in circumstances or facts to justify a departure from it.

112. Second, it reflects the approximate percentages (although the County is a bit higher) of both the general population and the school populations of the Town and County.

113. I considered the County's submission that a lower percentage should be attributed on the basis that actual usership of the Recreation Facilities by County students *may* be less than Town students due to their reliance on school bussing. I also noted the anecdotal evidence of Mr. Swap that when he was in school a lot of his friends who resided in the County were reliant on bussing and he wouldn't see a lot of them after school or on weekends. However, in my view there is an insufficient evidentiary basis for me to justify departing from the 50% sharing of costs.

**VI. ARE THE OPERATING COSTS OF THE OMNIPLEX REASONABLE AND WHAT LEVEL OF FINANCIAL INFORMATION SHOULD BE SHARED BETWEEN THE PARTIES?**

114. The parties are agreed that the Town's operating deficit for the Recreation Facilities in 2019 (less appropriate adjustments) was \$2,092,282.43. (ASF para 31)

115. The agreed breakdown for the Town's operating deficit is set out in paragraph 31 of the Agreed Statement of Facts which is reproduced below:

The Town's Operating Deficit for the Recreation Facilities for 2019 were as follows.

<b>Operating Costs: Recreation Facilities</b>	
<b>Service</b>	<b>Net Operating Cost</b>
Omniplex 1 and 2	(1,310,484.96)

Curling Rink	(54,306.10)
Fitness Centre	28,108.76
MacKenzie Conference Centre	(144,567.17)
Park Valley Pool	(717,365.76)
Parks (includes Lions West Valley Park, Park Place, Hospital Reservoir Site, Rotary Park & Skatepark)	(805,054.49)
Splash Park	(33,314.65)
Total Operating Deficit	(3,036,984.37)
Adjustments	753,819.46
Parks Provision	
Parkland County Cost Share	120,609.00
Debenture Interest	31,017.10
Thunder Ice Rental	39,256.38
Total Operating Deficit Less Adjustments	(2,092,282.43)

### **Positions of the Parties re Reasonableness of Costs**

116. The County has had a historical and ongoing concern that the operating costs of the Town's Recreation Facilities are too high.

117. While initially the concerns related to a number of facilities, the remaining concerns with respect to operating costs relate solely to the Omniplex 1 and 2. Indeed the County's concerns now seem to relate almost exclusively to the salaries, wages and benefits at the Omniplex. The County does not take issue with the operating costs of the other Recreation Facilities.

118. In support of its position that the costs are too high, the County relies on survey information it has obtained or developed which indicates that the Town's operating costs significantly exceed the operating costs in other municipalities.

119. The Town's position is that there is no evidence that its operating costs are anything but accurate and reasonable and that it runs its operations efficiently. It submits that the survey information relied on by the County are not useful comparators in the absence of a detailed analysis of the factors leading to the differences in cost.

**Positions of Parties with respect to Access to Financial Information**

120. One of the themes of the County's evidence during the hearing was that it did not have access to the appropriate level of financial information in its dealings with the Town.

121. The Town's position is that the County, through the Ad Hoc Committee and the Recreation Board, has had access to any financial information that it has requested.

**Chronology re Concerns about Costs and Access to Financial Information**

122. The County and the Town, initially through the Ad Hoc Committee and subsequently through the Recreation Board have at various times examined the operating revenues and expenses with a view to maximizing revenue and minimizing expenses.

**2016 Inspection Report**

123. The County's concerns with respect to the Town's operating expenses appear to have their genesis (at least in part) from a February 2016 Municipal Inspection Report authored by Russell Farmer & Associates Consulting Ltd. (the "2016 Inspection Report"). That report is contained at Exhibit 2 Tab 32.

124. The 2016 Inspection Report is a wide-ranging report which covers a number of topics not related to the issues in this arbitration. The inspection was undertaken by the Minister of Municipal Affairs following a petition from the electors of the County requesting that the Minister undertake an inquiry into the affairs of the County. As noted in the 2016 Inspection Report, one of the petitioners' concerns was that the County's expenditures on Town projects were excessive.

125. Mr. Farmer compared the 2015 County budgeted per capita transfer to Drayton Valley of \$142.58 to the average of other benchmark municipalities. He looked at six counties with populations comparable to the County (plus or minus 30%), all of which had a town falling within their boundaries with a population comparable to the Town's (plus or minus 35%). The median per capita expenditure for the comparables was \$42.50, compared to the County's \$142.58. Farmer also noted that the total expenditures on recreation for the County were approximately 59% above that of a comparison group of municipalities.

126. It does not appear from the 2016 Inspection Report that any effort was made to determine what recreation and culture amenities were available in any of the unidentified benchmark municipalities. This is understandable given the purpose of the report.

127. Mr. Farmer went on to opine that while the per capita recreation transfers were substantially higher than the comparable municipalities, he did not consider this to be a problem. He noted that the County is in a strong financial position with lower than average residential tax rates and that the inter-municipal transfers being provided to the Town does not appear to be a hardship for County residents.

128. He also noted that regional service delivery and inter-municipal cooperation is encouraged by Alberta Municipal Affairs as a sustainable approach to service delivery. He further noted that the County is benefitting from the Town's role as the regional service hub and that the inter-municipal transfers are consistent with the County's mandate. He did not consider the level of inter-municipal transfers to be a significant point for criticism.

#### The Ad Hoc Committee and the Recreation Board

129. As previously noted, in the summer of 2018 the County and the Town established the Ad Hoc Committee. It appears to have held its first meeting on Friday, August 3, 2018. The Committee consisted of two Town councilors and two County councilors as voting members. Annette Driessen and Lee Chambers attended in their capacities as Director of Community Services for the Town and County respectively.

130. The minutes of that meeting (Exhibit 2 Tab 8) indicate that the Ad Hoc Committee reviewed a summary of recreation cost sharing agreements from other municipalities. It was recommended that administration review the expenditures and revenues from similar facilities in neighboring communities. As noted in the minutes, there was a request for a breakdown of expenditures for facility staff including pay scale range for each position and number of staff in each position. The minutes also note that the County administration will retrieve quarterly financial reports submitted to the County corporate services for distribution as appropriate and that Town administration would compile the utility expenditures over the past several years for the Park Valley Pool.

131. The Ad Hoc Committee met again on October 1, 2018. At that meeting, Lee Chambers presented information he had obtained comparing the 2017 operating costs of the twin arenas and pools in Lacombe and Rocky Mountain House with Drayton Valley.

132. Mr. Chambers prepared tables which are attached to the minutes outlining the 2017 operating costs for the twin arenas and the swimming pools and comparing Drayton Valley's costs to those in Lacombe and Rocky Mountain House.

133. Those tables were presented at the October 1, 2018, meeting. They show that the costs for "salaries/wages/benefits" at Drayton Valley were significantly higher than those at Lacombe or Rocky Mountain House. This resulted in the total expenses also being also significantly higher. (Drayton Valley's total expenses being \$1.587 million compared to Lacombe's and Rocky Mountain House's being slightly more than \$1 million dollars).

134. The minutes (Exhibit 2 Tab 9) at Item 4.0 Cost Sharing Agreements – Comparative Analysis indicate that Mr. Chambers presented his information and a number of items were discussed with respect to it. These included what might be the influencing factors such as contracted services, facility operating hours and construction materials that may need to be considered when comparing one facility operation to another and the application of external management fees to facility operations.

135. Mr. Chambers acknowledged at the hearing that Rocky Mountain House was not unionized and that he wasn't aware whether Lacombe was unionized. He was not aware whether the "salaries/wages/benefits" column contained items other than the union wages. He testified that he didn't ask the Town if salaried employees and portions of their salaries were included in the Town's figures for total salaries for the pool and the Omniplex. He also acknowledged that the population of Lacombe was some 13,000 compared to Drayton Valley's population of approximately 7,000.

136. Ultimately, Mr. Chambers and indeed the entire Ad Hoc Committee, were not able to say why Drayton Valley's operating costs were higher than those in Lacombe or Rocky Mountain House other than that the difference appeared to relate to the salaries/wages/benefit column in the Tables.

137. The next meeting of the Ad Hoc Committee took place on October 19, 2018. Its minutes reveal that additional information was shared at the meeting including a breakdown of the staff allocations for the Omniplex and the Park Valley Pool. The minutes note that the County councilors outlined a number of questions to administration that speak to the operation of the Recreation Facilities and the basis of the cost sharing agreement and that administration will address these inquiries for review at the next meeting.

138. The Committee established as its top priority receiving all relevant information in order to address the recreation and culture cost sharing agreement. Administration was directed to prepare a memo with all relevant information for the Committee to send to the two Councils.

139. The Ad Hoc Committee met again on November 2, 2018 (Exhibit 2 Tab 11). Under Old Business, it was noted that the municipal councils were desirous of finding solutions to the challenges presented by the operations of the Recreation Facilities. It was apparent that there was a presentation made at the meeting which was discussed in detail.

140. At the December 10, 2018, meeting (Exhibit 2 Tab 12), it was noted the committee reviewed the 2017 operating financials for the Omniplex and Park Valley Pool. A number of items were noted including that administration would provide the CAOs with a breakdown of the salaries and wages for the Omniplex and Park Valley Pool. At this meeting, a draft outline of the 2019 Recreation and Culture Cost Sharing Agreement was put forward.

141. The minutes also reflect that Town Council was apprising County Council of a request by the Drayton Valley Thunder for special consideration and reduction in ice rental fees. The minutes note Town Council is apprising County Council of this request as it impacts the Omniplex budget. Town administration provided an outline of the contributions of the Town to Drayton Valley Thunder and Thunder's contributions to the community.

142. The next meeting was held on December 20, 2018 (Exhibit 2 Tab 13). The minutes of that meeting reflect that there was a review of the 2017 operating financials and the Town administration provided additional financial information addressing the requests made at the December 10 meeting. The Committee then determined the calculation of the cost sharing amounts and requested administration to prepare the final draft Recreation and Cost Sharing Agreement for 2019.

143. A further meeting was held on February 28, 2019. At that meeting it was noted that the Recreation and Cost Sharing Agreement for 2019 had been approved and signed by both the Town and County councils.

144. At this meeting it was also noted that, in response to the Committee's request, Town administration had presented an outline of the expenditures that would be reviewed for inclusion in future cost sharing agreements. It was noted that this matter would be considered after discussion and decision on governance structure for recreation.

145. Commencing at the April 8, 2019, meeting, the Ad Hoc Committee began to discuss a revised governance structure.

146. At the July 25, 2019, meeting (Exhibit 2 Tab 16), the financial tracking for the Omniplex and Park Valley Pool was presented and reviewed, and Town administration agreed to prepare a comparative budget from January 1 to July 31, 2018, and submit this information with the minutes. At this meeting the Ad Hoc Committee started to discuss the 2020 Recreation and Culture Cost Sharing Agreement and the different methods available to establish it.

147. In the summer of 2019, the Ad Hoc Committee commenced the process of changing its governance structure to a Recreation Board. At the August 2019 meeting it was noted that the Ad Hoc Committee would present its Final Report to the respective councils in October. The Committee also discussed the basis for the 2020 Recreation Cost Sharing Agreement and noted that the objectives were to have the cost sharing formula based on true current costs and to have the agreement be on an annual renewal basis.

148. The Ad Hoc Committee prepared a final report to the Town and County councils. That report is Exhibit 2 Tab 19. That report outlined a number of matters including:

- (a) the mandate of the Committee was to complete an operational review of the Omniplex including the MacKenzie Conference Centre and Total Works Health and Fitness Centre and Park Valley Pool to identify issues, trends and gaps in service and to identify potential cost reductions and revenue generation opportunities. The operational review will ultimately lead to a determination of optimal service delivery system;
- (b) with respect to communications, the Committee identified methods to facilitate the purposeful flow of information between the municipalities including quarterly financial reports for the Omniplex and Park Valley Pool;

- (c) it was further noted that the Ad Hoc Committee was motivated by the need to understand the significant increase in operating deficits of the major recreation and parks facilities over the past few years. The causes of the increased deficit were examined.
- (d) it attaches a breakdown of the Town's staff allocations for the Park Valley Pool and the Omniplex, McKenzie Cultural Centre and Fitness Centre, including the 2018 proposed Salaries and Wages for all 3 venues.

149. By municipal bylaws dated January 15 and January 31 respectively, the Town and the County established the Recreation Board. Its powers and the duties are to make recommendations to the Councils with respect to the management and operation of the Recreation Facilities as identified in the Recreation and Culture Cost Sharing Agreement. The Board continued to meet on a regular basis apparently until September 2020.

150. The Board met on February 27, 2020. (Exhibit 2 Tab 20). It was noted that as the 2019 audit would be completed soon, it was recommended that the Board use the full 2019 calendar year to determine the budget for 2020.

151. The Board next met on May 28, 2020 (Exhibit 2 Tab 21). As noted in the minutes, with respect to item 4.1 -Revised Cost Sharing Agreement, the Board reviewed the 2019 year end financials. The Town's General Manager of Finance Jennifer Fancey presented the 2019 financial information and the Board had a discussion on the financial information as set out in the minutes.

152. It was noted that the Board would review the quarterly financial information at their respective meetings that that the Quarterly reviews are intended to confirm transparency and accountability. The Chair recommended that the Board review the financial information and discuss it at a subsequent meeting.

153. A motion was carried to direct administration to research comparable twin arena facilities in an effort to identify areas of efficiencies. The Board also requested information on the impact of COVID-19 and information was provided. Included in the individual priorities of the members were to explore potential cost saving efficiencies without affecting customer service (Bill Ballas) and to "work diligently to dispel perception that the Town and the County do not get along (Donna Wiltse).

154. The next meeting of the Recreation Board was held on June 25, 2020 (Exhibit 2 Tab 22). The minutes reflect that the 2019 Financial Statement was reviewed to reallocate capital projects to operating. Jennifer Fancey indicated she would review the statements and carry-overs to make the necessary corrections.

155. The minutes at Item 4.3 - Recreation Cost-Sharing Agreement - reflect that Lee Chambers provided further recreation cost comparisons of other municipalities. A general discussion ensued on the analysis of these comparisons and receiving information to assist in improving local services. Jennifer Fancey noted that Treasury will provide financial breakdowns for the Omniplex without the Fitness Centre, Curling Rink and the MacKenzie Conference Centre for such expenditures as wages and utilities.

156. The Twin Arena and Pool and County Cost-Sharing survey results were accepted as information. The Board indicated that it was targeting August as the month to present the 2020 Recreation Cost Sharing Agreement to the municipal councils.

157. The June 25<sup>th</sup> minutes (as corrected by the July 23<sup>rd</sup> minutes) also reflect that at that this meeting the 2019 Financial Statement was reviewed in light of the reallocation of capital projects to operating, and that Jennifer Fancey will review the Statements and carry overs to make the necessary corrections.

158. This reallocation of a capital projects to operating was the subject of some controversy in the testimony at the hearing. In particular the controversy surrounded whether the error was initially caught by the Town auditors or by the County (Mr. Swap and/or Mr. Chambers) when they received the transaction level accounting information from the Town through Ms. Fancey on or about May 25<sup>th</sup>, 2020.

159. At the July 23, 2020, meeting (Exhibit 2 Tab 23), the Board reviewed the Q2 2020 Financial Summary and Transactions. Jennifer Fancey presented the revenues and expenditures for each recreation venue. The minutes reflect that she highlighted corrections to staff wages at the curling rink and the MacKenzie Conference Centre to reflect the actual costs.

160. The minutes also reflect that Jennifer Fancey provided clarification on the Capital Projects and that she advised that these projects were presented and approved as capital, however

the Town's auditors directed they be included in the Operating Budget. The minutes reflect that the Town would be reimbursing the County for the capital amounts of \$17,767.49 and \$27,003.38.

161. Further items discussed at the July 23<sup>rd</sup> meeting included discussions on the efforts to reflect more accurate financial statements on the Curling Rink and a motion was made to obtain Curling Rink comparables from other municipalities and to determine how it impacts on the Omniplex operations. Further, the finalization of the 2020 Recreation Cost-Sharing Agreement was tabled to the August 27 meeting.

162. The next meeting of the Board was September 3, 2020 (Exhibit 2 Tab 24). The minutes reflect that (with respect to the finalization of the Recreation Cost Sharing Agreement), the Board held a discussion with respect to the average deficits for facilities in neighboring communities with the desire expressed to identify causes and concerns. It was noted that the Town's pool deficits were approximately the same as the average of other pools however the Omniplex's deficit is of note (i.e., it was higher). Jennifer Fancy noted the challenge in comparing facilities and being able to break down the costs to the particular venues in the Omniplex. Chair Heinrich recommended that the focus needs to shift to find adjustments or savings and emphasized the need to show County Council viable opportunities that would create positive change.

163. Following discussion, the Board passed a motion that was carried unanimously. The motion was that the Recreation Board recommend the Recreation Cost-Sharing Agreement for 2020 based on the attached financial showing the \$1,046,141.00 to both Councils for approval, and further, that the Joint Recreation Board shall investigate how increased efficiencies and increased revenues will occur.

164. At the September 3 meeting there were also further discussions about the costs of the Curling Rink and that the Board would make the Curling Rink a focal point to identify where cost savings and new revenues could be found. The Recreation Board would be presented with an opportunity to ask the Omniplex staff questions regarding the Curling Rink and the President of the Curling Rink be present as a delegation to speak about the Club's operations and future plans. A meeting was arranged for September 23 for this to occur.

165. On September 15<sup>th</sup>, 2020, Mr. Chambers presented the proposed Recreation Cost-sharing Agreement to County Council. The Council considered two motions; the first being to contribute \$83.43 per capita in 2020 and \$58.49 per capita in 2021 and onward. That motion was defeated. A second motion to not accept administration's recommendation and to set the recreation cost sharing contribution at \$58.49 per capita for 2020 and moving forward was passed.

### **Oral Testimony with respect to Costs and Access to Financial Information**

#### Lee Chambers

166. Lee Chambers, the County's Director of Community Services, characterized the meetings of the Ad Hoc Committee and the Recreation Board as being very professional, courteous and respectful. He did note that occasionally there was controversy with respect what documents (particularly his survey) should be attached to the minutes.

167. With respect to the information he shared with the Ad Hoc Committee at the October 1<sup>st</sup>, 2018, meeting, he picked Lacombe and Rocky Mountain House because they were of similar size to the Town in central Alberta and had twin arenas. He is aware that Rocky Mountain House's employees are not unionized. He also is aware that Rocky Mountain House has an agreement with its surrounding municipality in which it shares the costs on a 50/50 basis.

168. Mr. Chambers testified with respect to information in the table that he provided at the June 25<sup>th</sup>, 2020, meeting with respect to Twin Arena Operating Costs at Lacombe, Ponoka, Olds and Rocky Mountain House. (Exhibit 2 Tab 33). He picked these because they were central Alberta communities that had Twin Arenas and the populations were similar to the Town's. In some cases he obtained the information from the municipalities websites and in others he had it sent to him.

169. He testified that that the main difference in the expenses relates to the column of salaries/wages/benefits. He is aware that the Town's employees are unionized. He did not request information from the Town about the collective agreement or a breakdown of which management positions had time attributed to the arenas.

170. On cross-examination, he acknowledged that the table is in error with respect to in the calculation of the average of the actual expenses of Rocky Mountain House and Lacombe. He testified that the correct figure would be in the range of \$1.425 million (which is comparable to Drayton Valley's actual costs of \$1.578 million) rather than \$712,391.00 set out in the table.

171. Exhibit 2 Tab 33 also contains information prepared by Mr. Chambers with respect to the contributions that 6 counties make with respect to recreation. The 6 counties were Leduc, Clearwater, Wetaskiwin, Sturgeon County, Parkland County and Yellowhead County. Mr. Chambers' calculations indicated that the average dollars per capita cost sharing contributions was \$58.49.

172. Mr. Chambers acknowledged in his testimony that the population of the six counties significantly exceeded the County's population. They ranged from 10,995 (Yellowhead) to 32,097 (Parkland). The population of Brazeau is 7,771. He acknowledged that the calculation of a per capita amount would increase significantly if it was divided by a lower population than the counties he chose.

173. The chart contains a note that "Leduc County calculates per capita costs regionally based on the urban centre in the area which typically averages at \$160 to \$170 per capita". Mr. Chambers did not know what to make of that. It was just information that Leduc County had included when he asked for information.

174. Mr. Chambers also acknowledged that his calculations did not take into account any contributions that Sturgeon County, Leduc County and Parkland County made to the Capital Region as they are members of the Edmonton Regional Municipal Board.

175. Mr. Chambers testified that when he brought this information to the September 3 Recreation Board meeting the Town representatives did raise concerns about comparing facilities and whether the numbers in the municipalities chosen by Mr. Chambers had facilities such as a fitness centre.

Annette Driessen

176. Annette Driessen testified on behalf of the Town. She was formerly the Director of Community Services for the Town.

177. Ms. Driessen gave detailed evidence about each of the Town's Recreation Facilities including their age, physical characteristics, rate of use, day to day operations and the number of employees typically on duty at each facility. I accept that testimony.

178. With respect to the County's requests for specific financial information, Ms. Driessen testified that the County representatives did have access to the Town's finance manager and CAO. Ms. Driessen testified that the best summary that she could give would be that when the County would ask for additional information, the Town would ask them to tell it what they were looking for and it would be provided.

179. Ms. Driessen testified that she thought the Ad Hoc Committee and the Recreation Board performed a valuable function. The most important and critical thing in her view was that it brought the two parties together to communicate, something that in her view had been lacking for quite some time. In her view the Recreation Board was making great strides in September 2020 with its recommendations to meet with users such as the curling club, take physical tours of other facilities to see how comparable they were, and to have the finance departments meet together to review detailed quarterly transactions.

#### Colin Swap

180. Colin Swap, the General Manager of Finance for the County testified on behalf of the County.

181. Mr. Swap began working for the County in June 2015 as a tax assessment coordinator. In 2017 he became the financing coordinator In August 2018 he became the interim General Manager of Finance and in January 2019 he took that role fulltime.

182. Mr. Swap was born and raised in Drayton Valley and completed his grade school and high school education there. He took his post-secondary education in Edmonton and is currently pursuing his CPA.

183. Mr. Swap noted that during his schooling in Drayton Valley a lot of his friends were reliant on the bus to bring them into town. He noted that his experience was that he didn't see a lot of them after school hours or on weekends.

184. After Mr. Swap became the General Manager of Finance in 2019 he became aware that the 2016 Inspection Report's findings that the funding provided by the County was significant when compared to that of other municipalities in their agreements.

185. Mr. Swap testified that with respect to the level of financial information to be shared as set out in the previous Recreation and Culture Agreements in section 4.12 (for example Exhibit 2 Tab 4) and noted that his expectation was that these agreements called for a detailed trial balances at the transaction level.

186. Mr. Swap dealt primarily with his counterpart at the Town with respect to the providing of accounting information. Initially that was apparently an individual named Mr. McMillan. Mr. Swap testified in re-examination that he had only had a brief crossover with Mr. McMillan and that they had discussed detailed trial balances for the recreation centres.

187. Mr. McMillan was succeeded by Ms. Fancy. Mr. Swap asked Ms. Fancy to provide transaction level details. She agreed to do so and did so within a reasonable time of his request. She initially provided transaction level detail for the last quarter of 2019. It was discussed that on an ongoing basis that would be the information that would be shared back and forth.

188. He confirmed that when he asked Ms. Fancy for the transaction level detail, she had no problem with providing it to him. Further, he was not aware whether anybody in the County had ever asked for the transaction level trial balances prior to him assuming the role of General Manager of Finance.

189. Mr. Swap testified that it was the Omniplex that they were concerned about. The County's concerns about the level of expenses, salaries and wages were never satisfied.

### **2021 Farmer & Associates Report**

190. As noted in Agreed Fact 23, in December 2020 the Town in cooperation with the County's administration engaged Farmer & Associates Consulting Ltd. to conduct a benchmark study of the Omniplex facility which compares it to other facilities in similarly sized municipalities in Alberta.

191. That report was marked as an Exhibit 3 during the Hearing over the objection of the County's counsel. At the time that it was admitted into evidence, I noted that as Mr. Farmer was apparently not going to be called as a witness to testify with respect to the report, the matter of what weight, if any, would be provided for the report would be a matter for consideration by me.

192. Mr. Chambers testified that he had spoken with Russell Farmer prior to Mr. Farmer completing his benchmark 2021 benchmark report and that the purpose of Mr. Russell calling him was to get his input on the benchmark report. He doesn't recall if he provided Mr. Farmer with the comparables that he had previously gathered with respect to the County's contributions to Recreation Facilities.

193. Mr. Farmer selected five comparables focusing on facilities with an equivalent variety of amenities large enough to provide services to surrounding municipalities. These five benchmarks varied significantly from Drayton Valley with respect to population and geography. The report compared the condition of the various facilities and their usage and the financial information with respect to each facility and the operating structure.

194. With respect to per capita funding, Mr. Farmer opined that the County's per capita contribution is very close to the median of the comparables (Omniplex \$76.62 compared to a median of \$75.62). He also opined that the County is slightly higher than the mean average. Mr. Farmer opined that Brazeau County's 2019 per capita funding of the Omniplex, though in the higher half amongst comparables, is by no means an inappropriate number.

195. Ultimately however, Mr. Farmer concluded that there was too much variation in terms of ownership models and cost sharing arrangements to reach any firm conclusions about what would be a fair cost sharing model between the Town and the County in this matter.

196. I am not privy to any discussions between counsel with respect to the reasons that Mr. Farmer was not called as a witness at the Hearing. I am not aware of whether there was any request to have him made available for cross-examination by the County on his report. However, given that he was not made available for cross-examination on his report, I will not put any weight on any of the opinions he reached in his report.

### **Finding with respect to reasonableness of costs**

197. As noted, the County alleges that the operating expenses with respect to the Omniplex 1 and 2 are too high. In support of its position, it notes that operating expenses in other municipalities are significantly less than the Towns.

198. The level of expenses at the Omniplex are presumably influenced by the fact that a portion of the salaries and benefits for the managers and supervisors (if any) are allocated to the subfunction for Omniplex 1 and the fact that the Town's wages with respect to the Omniplex are governed by the collective bargaining agreements that it has with the union.

199. There is no evidence before me that the number of employees working at any one time at the Omniplex is excessive. Or that the level of service is unreasonable, out of the ordinary or unnecessary. Or that Town is able to do anything about the wages it is mandated to pay pursuant to its collective bargaining agreements. Or that its salaries are excessive or improperly allocated to the Recreation Facilities.

200. In short, I am not satisfied that the County's operating expenses with respect to the Omniplex are, in and of themselves, unreasonable.

201. As noted, the Town submits that Mr. Chambers' surveys are not helpful from a benchmarking perspective in the absence of additional information and analysis of the factors contributing to the differences. I agree.

202. I accordingly find that the Town's operating costs as outlined in paragraph 31 of the Agreed Statement of Facts are reasonable.

### **Finding with Respect to Access to Financial Information**

203. My review of the minutes of the Ad Hoc Committee and Recreation Board from August 2018 to September 2020, together with evidence of the witnesses noted above, indicates that through those committees the Town shared most, if not all, of the financial information that the County ever requested. The shared information includes the staff allocations and salaries at various facilities. The evidence before me does not establish that there were any instances where the County requested information and the request was refused by the Town.

204. It is clear that since early 2020 (when the 2019 Q4 financial results became available) the Town has provided transaction level financial information to the County. It did so upon the request from Mr. Swap and it is prepared to continue to do so.

205. As noted by letter and email dated December 23, 2021, the parties provided me with their respective suggestions with respect to the clause in the ICF to deal with the level of financial information to be shared between the County and the Town.

206. The Town is seeking to have the following clause included as Article 4.12.

4.12. No later than thirty (30) days after the last day of each Quarter, each Party shall provide the other Party a quarterly report for the preceding Quarter which includes:

4.12.a. Transaction level reporting for each sub-function, the purpose of which is to provide a listing and description of the costs and expenses of the Facilities including the amounts spent to date in the year.

207. In its December 23 correspondence, the County seeks to have a slightly different clause included as 4.12.a. and 4.12.b.

208. Upon reviewing and comparing the Town's suggested clause of 4.12 and the County's clause 4.12.a. and 4.12.b., it became apparent that for all practical intents and purposes they result in the same information being provided. There is no practical difference between them.

209. I accordingly direct that the Town's suggested clause 4.12 as set out above is appropriate and should be included in the ICF.

210. In addition, however, the County suggests a further clause 4.12.c. as follows:

4.12.c. For the Omniplex, Mackenzie Conference Centre, Park Valley Pool and the Aquatic Centre, a report identifying, by position, all employees having worked at those Facilities during the relevant time period and:

- i. The number of hours each employee worked by date; and
- ii. Each employee's wage and/or salary.

211. In response, the Town submits that this level of detail unacceptably infringes on the autonomy of the Town as the operator of the facilities and is unnecessary given the continuation of the Recreation Board which facilitates requests for additional information or details as required. It indicates that this is particularly true if the County's purpose in requesting this information is to enable the County to independently verify all costs and expenses incurred by the Town in the operation of its Recreation Facilities.

212. It submits that transaction level reporting provides the County with detailed categorized information about the facilities' operating expenditures is sufficient to identify any concerns without duplication of effort or second guessing.

213. The Town further points out that while the County raised concerns during the arbitration with respect to the salaries and wages attributed to the Omniplex, similar concerns were not raised with respect to the Mackenzie Conference Centre or the Park Valley Pool about the salary or wages or the expenses generally.

214. In response to these submissions, counsel for the County indicates that the Town and the County agree to disagree on this point.

215. I have considered the parties' Submissions. I decline to order that paragraph 4.12.c. suggested by the County be included in the ICF.

216. In my view, to require a quarterly detailed report identifying by position all employees having worked at the Facilities and each employee's wage and/or salary and the number of hours each employee worked is overkill and unnecessary.

217. In my view, if there is a need for this type of information, it is much better dealt with through the operation of the Recreation Board which, working collaboratively, can facilitate requests for additional information as required.

## **VII. WHAT SHOULD BE THE EFFECTIVE DATE AND TERMINATION DATE OF THE ICF?**

218. This portion of the Award will deal with the effective date and termination date of the ICF.

219. The Town submits that the effective date of the ICF should be April 1, 2020, and that the County should be ordered to pay the Town shortfall, if any, between what it paid for 2020 and what it's required to pay for 2020 under the ICF agreement resulting from this Award.

220. The Town further submits that the next review period ought to be 2024 to allow the ICF sufficient time to be properly evaluated by each municipality and to not fall for review during an election year.

221. While the County's initial Written Submission appears to suggest at paragraph 66 that the ICF be made retroactive to January 1, 2020, and be based on a five-year term concluding on December 31, 2024, this was clarified and addressed more fully in its Rebuttal Submissions. In its Rebuttal Submissions, the County proposed that the ICF term be made retroactive to January 1, 2021, and that there be a five-year term concluding on December 31, 2025.

222. The County objects to this Award or the ICF including any amounts for the year 2020. It notes that while the County did reduce its 2020 contributions to the Town, it, at the time, advised the Town of the reasons for that. Those reasons included that the County (and other Alberta municipalities) faced considerable downloading from the Province in areas of policing and changes in linear assessment forcing the council to revisit all areas of the operating budget; and that the proposed 2020 cost share contribution and the County's historical cost share contribution for recreation were significantly higher than similar and neighboring counties in the Province.

223. It further submits that awarding additional amounts for 2020 would place an "unfair financial burden" on the County.

224. I have considered the parties' submissions on this point. I am of the view that it would be fair and equitable for the effective date of the ICF to be April 1, 2020, and for it to include a provision that the County pay the Town the shortfall between what it paid in 2020 and what it is required to pay pursuant to this Award.

225. My reasoning and rationale for this is as follows.

226. First, having the ICF commence for the year 2020 results in continuity and consistency in the Recreation and Culture Cost-sharing Agreements between the Town and the County.

227. The last negotiated agreement was for the calendar year 2019. As noted earlier, commencing in early 2020 and up to September 2020 the Town and the County, through the Recreation Board, attempted to negotiate and agree upon an agreement for 2020. The Recreation Board unanimously recommended cost sharing for 2020 in an amount which involved a payment of \$1,046,141.00 plus GST from the County to the Town.

228. As noted, the County decided to pay only \$58.49 per capita for a total of \$454,548.28. As noted in the Town's Written Submissions, the County's per capita payment of \$58.49 for the year 2020 sees the County contributing only 21.7% of the cost of the Town's Recreation Facilities.

229. This would be (and is) an unfair allocation of the costs. It does not recognize the benefit that the County and its residents received from the Recreation Facilities for the balance of 2020. An ICF that provides that the County pay its shortfall for 2020 will rectify that.

230. The County's rationale for its reduced payment was in part that the County had faced considerable downloading from the Province in various areas forcing it to revisit all areas of its operating budget. However, that downloading was also faced by the Town, and is not a reason to perpetuate the shortfall.

231. The County's further rationale for reducing its cost share contribution was that the County's historical cost share contribution was significantly higher than similar and neighboring counties in the Province. I have dealt with this concern earlier in this Award.

232. The County further submits that requiring it to make payments for 2020 would cause it undue financial hardship. The evidence does not support this submission. Rather, the evidence supports that the County is in a strong financial position.

233. Its equalized assessment is approximately three times that of the Town. It has very low tax rates, apparently in part because of an earlier decision to roll back commercial and residential tax rates by some 30%. While the County is entitled to set its tax rates at whatever level it wants, it cannot then use its low tax rates as a rationale to pay less than its fair share for the benefits that the County and its residents obtain from the Recreation Facilities.

234. With respect to the end date of the ICF, Section 708.32(1) of the *Act* provides that the municipalities that are parties to a framework must review the framework at least every five years after the framework is created or within a shorter period of time as provided for in the framework.

235. The Town submits that the next review period ought to be 2024 to allow the ICF sufficient time to be properly evaluated by each municipality and to not fall for review during an election year.

236. This makes sense. I agree with the submission and so order.

### VIII. CONCLUSION

237. The purpose of this Award is to resolve the remaining issues in dispute between the parties with respect to the proposed ICF as outlined in their respective communications of December 23, 2021. I believe that this Award resolves those issues.

238. If there are any outstanding issues in dispute with respect to the proposed ICF that have not been dealt with by this Award, or if counsel disagree as to how to incorporate this Award into their draft agreement, they are at liberty to contact me. I reserve jurisdiction to make any additional orders that may be necessary to complete the ICF.

#### Costs

239. The default position with respect to the costs of an arbitration are set out in s. 708.41 of the *Act*. That section provides that the costs be paid on a proportional basis based on the municipalities' respective equalized assessments.

240. The Town submits that the default provisions should be followed in this case. It submits that both parties have come to the table to try to collaboratively deal with this matter, that both parties went to mediation and that there was no evidence that one party was being difficult or dragging their heels or not being reasonable in trying to reach an agreement.

241. The County submits that I should deviate from s. 708.41 and award the County the costs of the arbitration. Its rationale is that the arguments it has advanced are all legitimate. However, I note that in this Award the Town has succeeded in many of the arguments that it put forward.

242. I order that the costs of this arbitration be assessed pursuant to the default position in s. 708.41 of the *Act*.

DATED at the City of Edmonton, in the Province of Alberta, this 20<sup>th</sup> day of January, 2022.

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Robert G. McBean, Q.C.  
**Arbitrator**

**SCHEDULE "A"**

**JURISDICTIONAL RULING RE ECDC**

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**IN THE MATTER of an Arbitration pursuant  
to Part 17.2, Division 2 of The *Municipal  
Government Act*, RSA 2000, c. M-26**

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BETWEEN:

**BRAZEAU COUNTY**

- and -

**THE TOWN OF DRAYTON VALLEY**

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**Award with respect to Intermunicipal  
Collaboration Framework**

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**Arbitrator:**  
Robert G. McBean, Q.C.