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**CITY OF KELOWNA**  
**MEMORANDUM**

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**Date:** June 5, 2006  
**File No.:** 2380-20  
**To:** City Manager  
**From:** Sport & Recreation Manager  
**Subject:** **KLO Sportsfield Lease Agreement**

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**RECOMMENDATION**

THAT City Council authorize the Mayor and City Clerk to execute the attached lease agreement with the Central Okanagan Regional District for a three year term commencing April 1, 2006, to and including March 31, 2008.

**BACKGROUND**

The attached lease with the Central Okanagan Regional District is for the lands more commonly known as KLO Sportsfields. The lease has expired and requires renewal. The site is used as a softball site and booked for community play by the Sport & Recreation Division and maintained by the Parks Division. This site is an important field within our sportsfield allocation for both league and tournament play.

The terms and conditions are consistent with the previous agreement and key points are outlined as follows:

- 3 year agreement with the rental rate of \$1.00 per year.
- City has first right of refusal for a new lease with the same terms and conditions.
- To use the site for only the purpose of recreational playing fields.
- The playing fields not to be booked for community play between the hours of 8:00AM through 5:00PM daily Monday through Friday except for statutory holidays.
- City responsible for any capital improvements to the site.

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Jim Gabriel  
Sport & Recreation Manager

Cc: Director of Recreation, Parks and Cultural Services  
Parks Manager  
City Clerk

Attach.

THIS AGREEMENT made the

BETWEEN:

**REGIONAL DISTRICT OF CENTRAL OKANAGAN**

1450 KLO Road  
Kelowna, B.C. V1W 3Z4

(hereinafter called the "Regional District")

OF THE FIRST PART

AND:

**CITY OF KELOWNA**

1435 Water Street  
Kelowna, BC V1Y 1J4

(hereinafter called the "City")

OF THE SECOND PART

WHEREAS the Regional District is the registered owner of certain lands situated in the City of Kelowna, Province of British Columbia and legally described as:

Parcel Identifier: 018-991-793  
Lot 2, District Lot 131  
Osoyoos Division Yale District  
Plan KAP53338

(hereinafter called "the Lands")

AND WHEREAS the City has agreed to lease a portion of the Lands for recreational playing fields.

NOW THEREFORE the parties hereto agree as follows:

- 1.01 **The Premises.** The premises hereby leased comprise that portion of the Lands shown outlined in black on the plan attached as Schedule A and forming part of this agreement (the "Premises").
- 2.01 **Term of the Lease.** The Regional District shall lease the Premises to the City for a term of three years commencing the 1<sup>st</sup> day of April, 2006 and terminating the 31<sup>st</sup> day of March, 2009. Should the Regional District wish to lease the premises for a term to follow the expiry of the term of this lease, then the City shall have the first right of refusal on a new lease, with the same terms and conditions as outlined herein save and except for the date of commencement and termination, which shall be exercised in writing prior to the expiry of the term; provided however, that the right of first refusal granted herein shall be exercisable by the City only in the event that the City is not in breach of the terms of this agreement.
- 3.01 **Rent** Yielding and paying to the Regional District rental for the Premises, the sum of one dollar (\$1.00) annually.
- 4.00 **City Covenants.** The City covenants with the Regional District:
- 4.01 **Maintenance.** To maintain the Premises throughout the term of this lease and any renewals thereof in a neat and tidy condition including mowing and fertilizing all grassed areas and maintaining all improvements. The Premises shall be maintained to a standard agreed upon annually between the City and the Regional District. The Regional District agrees to maintain the parking lot that will service the premises.

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- 4.02 **Taxes.** That it will pay promptly as the same become due all rates, taxes, property taxes and assessments of whatever description that may at any time during the existence of this agreement be lawfully imposed or become due and payable in connection with the Premises, which share the City shall determine pro rata in the proportion that the area of the Premises bears to the total area of the Lands.
- 4.03 **Utilities.** That it will pay promptly as the same become due all utilities of whatever description that may at any time during the existence of this agreement be lawfully imposed or become due and payable in connection with the Premises, which share the City shall be determine pro rata in the proportion that the area of the Premises bears to the total area of the Lands.
- 4.04 **Nuisance and Negligence.** Not to do, suffer or permit any act which may in any manner, directly or indirectly, cause injury or damage to the Premises or to any fixtures or appurtenances thereof, including but not limited to any sidewalk, curb, gutter, road surface and/or landscaped boulevard bordering the Premises, or which may be or become a nuisance or interfere with any one who occupies or has access to any part of the Premises, or which may render the Premises or any part thereof less desirable or injure the reputation thereof.
- 4.05 **Assignment.** Not to assign or sub-let, in whole or in part, the Premises without the prior written consent of the Regional District, which consent may be arbitrarily withheld.
- 4.06 **Abide by Laws.** To abide by and comply with at its own expense all laws, rules and regulations of every authority which in any manner relates to, or affects, the business or profession of the City or the use of the Premises by the City and to save harmless the Regional District from all costs, charges or damages to which the Regional District may be put or suffer by reason of any breach by the City of any such law, rule or regulation.
- 4.07 **Insurance.** The City shall, without limiting its obligations under this Agreement, procure and maintain, at its own expense and cost, the insurance policies listed in Schedule "B" attached to this agreement. The insurance policies shall be maintained continuously for the term of the lease or such further period as may be specified in Schedule "B".
- 4.08 **Not to Void Insurance.** Not to do or permit anything to be done which would render any other policy of insurance on the Premises or any part thereof void or voidable or which would cause an increase in the insurance premiums. In the event that the City does anything that would cause an increase in the insurance premiums on the Premises, the City shall pay to the Regional District that amount which represents the increase in the insurance premium by virtue of the City's use or occupation of the Premises.
- 4.09 **Cleanliness.** Not to permit the Premises to become untidy, unsightly or hazardous or to permit unreasonable quantities of waste or refuse to accumulate on the Premises.
- 4.10 **Use of Premises**
- a. Not to use the Premises for any purpose other than recreational playing fields and to operate the fields to the satisfaction of the Regional District and in accordance with any conditions or requirements as may from time to time be detailed by the Regional District.
  - b. To pay for all works and improvements including any sewer or other works necessary for the use of the Premises including any works or improvements effected to areas immediately adjacent to the Premises.
  - c. Not to use the Premises between the hours of 8:00 a.m. through 5:00 p.m. daily Monday through Friday except, for statutory holidays (including Victoria Day, Canada Day, B.C. Day and Labour Day), and except for any days that may, upon request of the City, be agreed upon in writing by the Regional District.

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- d. To allow the Regional District use of one ball diamond located on the Premises twice in each year of the term of this agreement, which use by the Regional District shall be arranged in advance, prior to February 28 of each year.
- 4.11 **Conduct of Business.** Recognizing that it is in the best interest of the Regional District and the City that the City should have exclusive use of the Premises only for the purpose described in section 4.10 above, the City agrees with the Regional District not to establish or erect any structure on the Premises without prior written approval from the Regional District.
- 4.12 **No Other Agreement.** No verbal agreement or conversations with any officer, agent or employee of the Regional District, either before or after the execution of this agreement, shall affect or modify any of the terms or obligations herein contained.
- 5.00 **Regional District Covenants.** The Regional District covenants with the City:
- 5.01 **Quiet Enjoyment.** For quiet enjoyment.
- 6.00 **Provisos.** Provided always and it is hereby agreed as follows:
- 6.01 **Re-entry on Default.** If and whenever the rent is not paid in full when due or in case of breach of or non-observance or non-performance by the City of any of the provisions of this agreement, and if the default continues for ten days after written notice thereof to the City, or if the Premises are vacated or remain unoccupied for ten days or if the term shall be taken in execution or attachment for any cause whatever, then, in every such case, the Regional District, in addition to any other remedy now or hereafter provided by law, may at its option, cancel this agreement and re-enter and take possession of the Premise or any part thereof by force if necessary, without any previous notice of intention to re-enter and may remove all persons and property therefrom and may use such force and assistance in making such removal as the Regional District may deem advisable and such re-entry shall not operate as a waiver or satisfaction in whole or in part of any right, claim, or demand arising out of or connected with any breach or violation by the City of any covenant or agreement on its part to be performed.
- 6.02 **Regional District not Liable for Injury to City.** The Regional District shall not be liable for any injury or damage to the City, its agents, employees, customer or invitees as to any of their property while on the Premises, regardless of the cause of such injury or damage, except such injury or damage which may be caused by the negligence of the Regional District, its officers or employees.
- 6.03 **Hold Harmless and Indemnification.** The City shall be liable for all loss, costs, damages, and expenses whatsoever incurred or suffered by the Regional District, its elected officials, officers, employees and agents (the Indemnitees) including but not limited to damage to or loss of property and loss of use thereof, and injury to or death of a person or persons resulting from or in connection with the performance, purported performance, or non-performance of this Agreement, excepting only where such loss, costs, damages and expenses are as a result of the sole negligence of the Indemnitees. The City shall defend, indemnify and hold harmless the Indemnitees from and against all claims, demands, actions, proceedings, and liabilities whatsoever and all costs and expenses incurred in connection therewith and resulting from the performance, purported performance, or non-performance of this Agreement, excepting only where such claim, demand, action, proceeding or liability is based on the sole negligence of the Indemnitees.
- 6.04 **No Representation.** The City agrees that it has leased the Premises after examining the same and that no representations, warranties or conditions have been made other than those expressed herein, and that no agreement collateral hereto shall be binding upon the Regional District unless it be made in writing and signed on behalf of the Regional District.
- 6.05 **No Waiver.** The failure of the Regional District to insist upon strict performance of any covenant or condition in this agreement or to exercise any right or option hereunder shall not be construed or operate as a waiver or relinquishment for the future of any such covenant, condition or option and no waiver shall be

inferred from or implied by anything done or omitted by the Regional District save only express waiver in writing. The acceptance of any rent or the performance of any obligation hereunder by a person other than the City shall not be construed as an admission by the Regional District of any right, title or interest of such person as a sub-tenant, assignee, transferee or otherwise in the place and stead of the City.

6.06 **Overholding.** If the City shall continue to occupy the Premises after the expiration of the term hereby granted and the Regional District shall accept rent, the new tenancy thereby created shall be deemed to be a monthly tenancy and shall be subject to the covenants and conditions contained in this agreement insofar as the same are applicable to a tenancy from month to month save and except that the rental payable shall be as determined by the Regional District.

6.07 **Improvements.** At the expiry or termination of this agreement, it is understood and agreed by the Regional District and the City that all improvements fixed to the Premises shall be vested in the Regional District.

6.08 **Enurement.** This agreement and everything herein contained shall enure to the benefit of and be binding upon the parties and their heirs, executors, administrator, successor and permitted assigns. Wherever the singular or masculine is used the same shall be construed as meaning the plural or feminine or body corporate or politic as the context may require.

IN WITNESS WHEREOF this agreement has been executed by the parties hereto on the day and year first above written.

**REGIONAL DISTRICT OF CENTRAL OKANAGAN** by its authorized signatories:

\_\_\_\_\_  
Authorized Signatory  
Print Name \_\_\_\_\_

\_\_\_\_\_  
Authorized Signatory  
Print Name \_\_\_\_\_

**CITY OF KELOWNA** by its authorized signatories:

\_\_\_\_\_  
Mayor

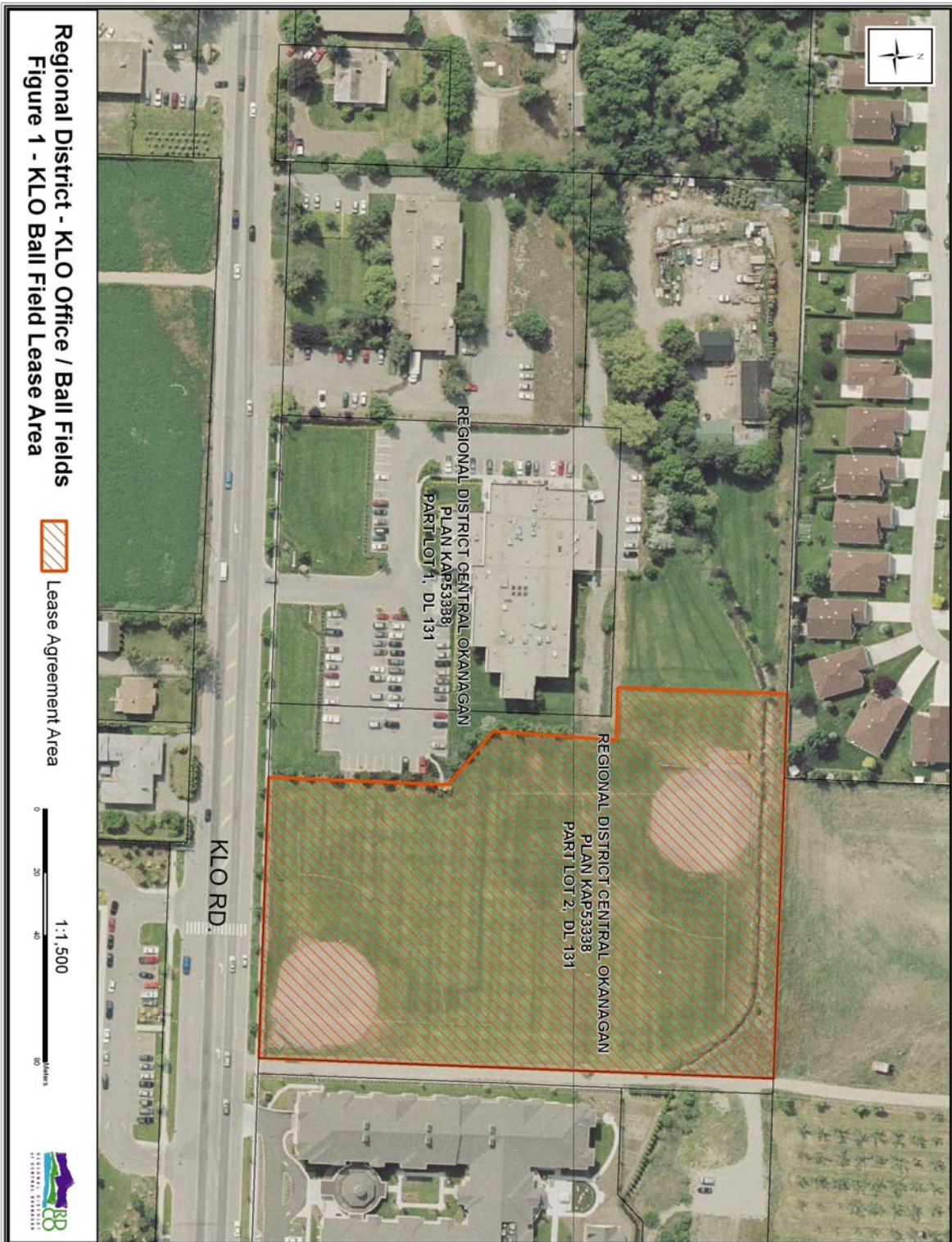
\_\_\_\_\_  
City Clerk

**SCHEDULE "A"**

**PREMISES**

The Premises is the land located on part of Lot 2 District Lot 131 ODYD Plan KAP53338, located at 1456 KLO Road, Kelowna, BC as shown in orange hatch on the drawing below attached as Figure 1.

(hereinafter called the "Premises").



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Schedule "B" – Insurance Requirements

**1. City To Provide**

The City shall procure and maintain, at its own expense and cost, the insurance policies listed in section 2 of this Schedule, with limits no less than those shown in the respective items, unless in connection with the performance of some particular part of this Agreement, the Regional District advises in writing that it has determined that the exposure to liability justifies less limits. The insurance policy or policies shall be maintained continuously from commencement of the Term of the Agreement until the termination of this agreement or such longer period as may be specified by the Regional District.

**2. Insurance**

As a minimum, the City shall, without limiting its obligations or liabilities under any other contract with the Regional District, procure and maintain, at its own expense and cost, the following insurance policies:

**2.1 Comprehensive General Liability Insurance**

- (i) providing for an inclusive limit of not less than \$2,000,000 for each occurrence or accident;
- (ii) providing for all sums which the City shall become legally obligated to pay for damages because of bodily injury (including death at any time resulting therefrom) sustained by any person or persons or because of damage to or destruction of property caused by an occurrence or accident arising out of or related to this Agreement or any operations carried on in connection with this Agreement;
- (iii) including coverage for Products/Completed Operations, Blanket Contractual, Contractor's Protective, Personal Injury, Contingent Employer's Liability, Broad Form Property Damage, Tenant's Legal Liability and Non-Owned Automobile Liability.
- (iv) including a Cross Liability clause providing that the inclusion of more than one Insured shall not in any way affect the rights of any other Insured hereunder, in respect to any claim, demand, suit or judgement made against any other Insured.

**2.2 All Risks Property Insurance for loss of or damage to the tennis facilities and equipment, owned, leased or for which City may otherwise be responsible and used or to be used for the tennis facilities. This insurance shall be for an amount not less than the replacement cost value of the tennis facilities and equipment. In the event of loss or damage, City shall if so requested by the Regional District, forthwith replace such lost or damaged tennis facilities and equipment. Such All Risks Property Insurance shall be endorsed to waive all rights of subrogation against the Regional District.**

**3. The Regional District Named As Additional Insured**

The policies required by section 2.1 above shall provide that the Regional District is named as an Additional Insured thereunder and that said policies are primary without any right of contribution from any insurance otherwise maintained by the Regional District. The Regional District shall also be named as a Loss Payee under the policy required by Section 2.2.



4. **Certificates of Insurance**

The City agrees to submit a Certificate of Insurance, in the form of Schedule B-1, attached hereto and made a part hereof, to the Regional District prior to the commencement of the Term of the Lease. Such Certificate shall provide that 30 days' written notice shall be given to the Regional District, prior to any material changes or cancellations of any such policy or policies.

5. **Additional Insurance**

The City may take out such additional insurance, as it may consider necessary and desirable. All such additional insurance shall be at no expense to the Regional District.

6. **Insurance Companies**

All insurance, which the City is required to obtain with respect to this Agreement, shall be with insurance companies registered in and licensed to underwrite such insurance in the province of British Columbia.

7. **Failure to Provide**

If the City fails to do all or anything which is required of it with regard to insurance, the Regional District may do all that is necessary to effect and maintain such insurance, and any monies expended by the Regional District shall be repayable by and recovered from the City. The City expressly authorizes the Regional District to deduct from any monies owing the City, any monies owing by the City to the Regional District.

8. **Nonpayment of Losses**

The failure or refusal to pay losses by any insurance company providing insurance on behalf of the City shall not be held to waive or release the City from any of the provisions of the Insurance Requirements or this Agreement, with respect to the liability of the City otherwise. Any insurance deductible maintained by the City under any of the insurance policies is solely for their account and any such amount incurred by the Regional District will be recovered from the City as stated in section 7 of this Schedule "B".

**SCHEDULE B-1**

**CERTIFICATE OF INSURANCE**

**PROOF OF LIABILITY INSURANCE WILL BE ACCEPTED ON THIS FORM ONLY**

**REGIONAL DISTRICT OF CENTRAL OKANAGAN**

This is to certify that policies of Insurance, subject to their terms, conditions and exclusions, are at present, in force for the Insured named below with the insurer specified.

**NAME OF INSURED:** \_\_\_\_\_

**ADDRESS OF INSURED:** \_\_\_\_\_

**PROJECT:** \_\_\_\_\_

<b>TYPE</b>	<b>INSURER &amp; POLICY NO.</b>	<b>TERM</b>	<b>LIMITS OF LIABILITY</b> <b>(Not less than \$2,000,000)</b>
<b>COMMERCIAL GENERAL LIABILITY</b>			Inclusive Limit each Occurrence
Including			
<b>NON-OWNED AUTOMOBILE LIABILITY</b>			Aggregate Limit, Products and Completed Operations

**REGIONAL DISTRICT OF CENTRAL OKANAGAN** has been added as Additional Insured to the Commercial General Liability Policy, but **ONLY** with respect to liability arising out of operations performed by or on behalf of the named Insured. The Policy provides Products and Completed Operations, Blanket Written Contractual, Owners and Contractors Protective Severability of Interest or Cross Liability; and where performed by the named insured, coverages include Piledriving, Demolition, Excavation Hazard, Shoring/Underpinning Hazard and Blasting Hazard.

This is to certify that Policies (including endorsements) or insurance as described above have been issued by the undersigned to the named insured above and are in full force at this time. If cancelled or changed in any manner for any reason, during the period of coverage stated herein so as to effective this certificate, FIFTEEN (15) days prior written notice will be give by this Insurance Company to Regional District of Central Okanagan, 1450 KLO Road, Kelowna, BC V1W 3Z4

Date: \_\_\_\_\_

Signed by: \_\_\_\_\_

Authorized Representative/Official