
CITY OF KELOWNA

MEMORANDUM

Date: November 27, 2007
File No.: 0170-20
To: City Manager
From: Development Manager, Recreation Parks and Cultural Services
Subject: Okanagan Boys and Girls Clubs - Management and Operating Agreement

RECOMMENDATION:

THAT City Council support the Management and Operating Agreement with the Okanagan Boys and Girls Clubs as attached to the report from the Development Manager Recreation Parks and Cultural Services dated November 27, 2007;

AND THAT an alternative approval process opportunity open to all electors within the City of Kelowna be initiated in relation to the Management and Operating Agreement with the Okanagan Boys and Girls Clubs;

AND FURTHER THAT 4:00 p.m. Tuesday, January 15, 2008 be set as the deadline for receipt of elector responses in the form attached to the November 27, 2007 report of the Development Manager.

BACKGROUND:

The City and the Okanagan Boys and Girls Clubs (the Clubs) have had a long standing relationship for over 47 years, beginning in 1959 when the Kelowna Boys Club was first founded by the citizens of Kelowna. Since that time, the City of Kelowna has provided facilities and funding for Boys & Girls Clubs operations in Kelowna.

The City has long considered the programs and community services provided by the Clubs to be a significant component of the overall delivery system for the Recreation Parks and Cultural Services Department. The City has also had a number of separate leases with the Clubs, which were at different stages in their term, or indeed in an over holding position.

The new Management and Operating Agreement accomplishes two major points;

- Confirms the relationship between the parties as one of a "purchase of services", so that these community services are a component of the City's service delivery system, and
- Consolidates the leases and a license to use under this one comprehensive Management and Operating Agreement and establishes a new term of 5 years, with an option of renewal for an additional 5 year term.

Key components of this agreement are for the Clubs to lease the facilities & a license to use a portion of Cameron Park from the City, and to provide community programs and services through the management of the facility leases:



Principle Objectives:

1. To provide recreation and community opportunities reasonably compatible with City Recreation Services through the operation of the facilities on an on-going basis,
2. To create an operating model that supports the Clubs as a permanent independent and successful community recreation service provider in collaboration with the City,
3. To continue a co-operative relationship based on comprehension of the mandates of each, and the achievement of mutual and evolving objectives through credible business practices,
4. To assure the long term operational viability of the facilities through the development of a planned and scheduled building maintenance.

The Leases:

5. Jaycees Downtown Youth Centre - the former site of the Glenn Avenue School, the Clubs have leased this site since 1990 and have invested over \$550,000 into leasehold improvements through partnerships and government grants. Lease Payment - \$1 annually,
6. Rutland Youth Centre - beginning in 1986, the Clubs continue to provide programs and community services to youth in this facility. The Clubs reserve funds each year to a capital repair fund. Lease Payment - the Clubs reserve \$12,000 indexed at 2.5% annually,
7. Martin Avenue Community Centre - beginning in 2003, the Clubs moved its administrative offices and programming for children up to 12 years from the Jaycees Downtown Youth Centre to the Martin Avenue Community Centre. The Clubs reserve funds each year to a capital repair fund. Lease Payment - the Clubs reserve \$12,000 indexed at 2.5% annually,
8. Cameron Park - the City had a lease with the Central Okanagan Day Care Society for a portion of the land for the operation of a day care. The City owns the land and the Day Care Society owned the building. In 2005 the Clubs amalgamated with the Central Okanagan Day Care Society and assumed all of its rights and obligations. In December 2005 a fire destroyed the day care facility. The Clubs has used its insurance money to rebuild with a modular building specifically designed daycare. This agreement now includes a new license to use a portion of Cameron Park for this purpose. Lease Payment - \$1.00 annually.

Programs and Services:

9. The mandate of the Clubs is to provide recreation and social services to children, youth and families who traditionally do not access municipal recreation programs, with a particular focus on disadvantaged and 'at risk' children, youth and families,
10. The Clubs provides programs that support healthy physical, educational and social development for skill development, active living and recreation,
11. This includes, but is not limited to, early childhood programs, child development programs, after-school and evening programs, family programs and programs for youth,
12. Youth Centres may also provide meals, family support programs, emergency shelter and other supports to children and youth at risk.

Summary of City commitments:

- Purchase of Service - 2007 City budget - \$341,551
- Term - Five years plus one option to renew for an additional five year term
- Leases - Jaycees Downtown Youth Centre - \$1 annually
Rutland Youth Centre - \$12,000 reserved indexed at 2.5% annually
Martin Avenue Community Centre - \$12,000 reserved indexed at 2.5%
- License to Use - A portion of Cameron Park for a daycare building - \$1 annually
- Maintenance - City to maintain structure, foundations, elevators, roofs, external
- Obligations facades, windows, fire alarms, emergency lighting and HVAC systems.

INTERNAL CIRCULATION TO:

Director of Recreation, Parks and Cultural Services
Financial Planning Manager
City Clerk
Civic Properties Manager
Property Manager
Risk Manager

LEGAL/STATUTORY PROCEDURAL REQUIREMENTS:

Although section 175 of the Community Charter defines limitations on municipalities incurring long-term liabilities in contracts, this section also provides for an alternative approval process, open to all qualified electors within the City of Kelowna, which can be conducted to seek electoral approval for this Agreement.

Pursuant to section 86 of the Community Charter, Council is required to approve the elector response form (attached) for an alternative approval process, and must establish the deadline for receipt of elector responses, which must be a least thirty days after the second publication of the alternative approval process notice. Notice requirements are set in section 94 of the Community Charter.

The alternative approval process is open to all qualified electors in the City, which is estimated to be 84,360, based upon the most recently available census data for Kelowna.

Advertisement for the alternative approval process will be posted on the public notice board at City Hall; will run in the Kelowna Daily Courier on December 7, 2007 and December 11, 2007; in the Capital News on December 5, 2007 and December 12, 2007. This notice will also be posted on the City's website.

Approval of the electors will be obtained if the number of elector responses received by the end of the alternative approval process is less than 10% of the number of electors (8,436).

FINANCIAL/BUDGETARY CONSIDERATIONS:

This agreement provides for the annual purchase of services for programs and management services from the Clubs. In 2007, the amount is \$341,551. As the City considers its annual financial plan, the Clubs may also propose annual operational budget amendments for the following year. The City and the Clubs will collaborate to prepare an acceptable annual operational budget, but if an agreement cannot be reached Council will have the final decision as to what annual operational budget amount it can support.

EXTERNAL AGENCY/PUBLIC COMMENTS:

The City has negotiated this Management and Operating Agreement with the Okanagan Boys and Girls Clubs, and the Agreement has been approved by representatives for the Clubs.

Considerations that were not applicable to this report:

Personnel Implications:

Alternate Recommendation:

Technical Requirements:

Existing Policy:

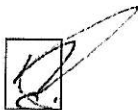
Legal/Statutory Authority:

Submitted by:



JWR Oddleifson, Development Manager
Recreation Parks and Cultural Services

Approved for Inclusion:
Attachments



Cc: Director of Recreation, Parks and Cultural Services
Financial Planning Manager
City Clerk
Civic Properties Manager
Property Manager
Risk Manager

**Okanagan Boys and Girls Clubs Management & Operating Agreement
ALTERNATIVE APPROVAL PROCESS ELECTOR RESPONSE FORM**

I am **OPPOSED** to the City of Kelowna proceeding with the Okanagan Boys and Girls Clubs Management & Operating Agreement. The Management & Operating Agreement is between the City of Kelowna and the Okanagan Boys and Girls Clubs for a period of 5 years with one 5 – year renewal option. The Agreement leases the Jaycees Downtown Youth Centre, Rutland Youth Centre, Martin Avenue Community Centre; provides a licence to use a portion of Cameron Park to the Okanagan Boys and Girls Clubs; and provides terms and conditions for the operation by the Okanagan Boys and Girls Clubs, including administration, management, and programming of the facilities to provide community programs and services through the management of the facilities.

I, the undersigned, hereby certify that:

- I am eighteen years of age or older; and
- I am a Canadian citizen; and
- I have resided in British Columbia for at least six months; and
- I have resided in, OR have been the registered owner of real property (and have been designated as the elector in regard to that property) in, the City of Kelowna for at least thirty days; and
- I am not disqualified by the *Local Government Act* or any other enactment or otherwise disqualified by law from voting in local elections; and
- I am entitled to sign this alternative approval process elector response form and have not previously signed an alternative approval process elector response form for the proposed Agreement.

All alternative approval process elector response forms must be received by the City Clerk, 3rd Floor, City Hall, 1435 Water Street, Kelowna, B.C., V1Y 1J4 on or before 4:00 p.m. on Tuesday, January 15th, 2008.

ELECTOR'S <u>FULL</u> NAME (Print – NO initials)	RESIDENTIAL ADDRESS (or address of real property in Kelowna owned by elector if not resident)	SIGNATURE OF ELECTOR

NOTE: A person must not sign any alternative approval process elector response form more than once and may not withdraw his or her name from the alternative approval process elector response form after the deadline for submission of the petitions has passed.

The number of electors of the City of Kelowna is estimated to be 84,360. If 10% (8,436) of the estimated number of electors of the City of Kelowna sign an alternative approval process elector response form opposing the noted transactions, City Council will not be able to proceed without then receiving the assent of the electors by referendum.

DOCUMENT APPROVAL			
Facility Lease - Master			
Cir.	Dept.	Date	Int.
	R,P & CS		
	Risk Mgmt.		
	City Clerk		

MANAGEMENT AND OPERATING AGREEMENT

BETWEEN

CITY OF KELOWNA

AND

OKANAGAN BOYS AND GIRLS CLUBS

1.0	OBJECTIVES	8
2.0	GENERAL DUTIES AND OBLIGATIONS	9
2.1	Society.....	9
2.2	City.....	10
3.0	TERM	10
3.1	Right of Renewal	10
4.0	USE AND OCCUPATION OF FACILITIES	11
4.1	Grant of Leases and Licences	11
4.2	State of Titles	11
4.3	Permitted Uses	12
4.4	Acceptance of Facilities “As Is”	12
4.5	Covenant to Operate	12
4.6	Abandonment.....	13
4.7	Compliance with Laws	13
4.8	Public Safety	13
4.9	No Waste or Nuisance	13
4.10	Energy Efficiency	13
4.11	Furniture and Equipment	13
4.12	Right to Inspect.....	13
5.0	REPAIRS, MAINTENANCE AND CHANGES TO FACILITIES	14
5.1	Society’s Construction of Buildings, Structures and Other Improvements.....	14
5.2	Daycare Building	14
5.3	Builders Liens	14
5.4	Demolition of Martin Avenue Community Centre.....	14

5.5	City's Construction of Buildings, Structures and Other Improvements	15
5.6	Routine Maintenance and Repair.....	16
5.7	Substantial Maintenance and Repair.....	16
5.8	Maintenance of Grounds Licence Areas.....	16
5.9	Damage or Destructions of the Facilities.....	17
5.10	No Capital Liabilities.....	17
6.0	ENVIRONMENTAL OBLIGATIONS	17
7.0	FEES AND EXPENSES FOR USE OF FACILITIES	19
7.1	Annual Rent and Licence Fees	19
7.2	Contributions to Reserve Fund	20
7.3	Use of Reserve Fund	20
7.4	Additional Fees	20
7.5	No Deductions	20
7.6	Utilities.....	20
7.7	Payment of Taxes and Expenses.....	21
7.8	GST.....	21
7.9	Net Agreement.....	21
8.0	MANAGEMENT OF FACILITIES AND PROVISION OF SERVICES	21
8.1	Appointment of Society as Manager.....	21
8.2	No Discrimination.....	22
8.3	Employee Standards.....	22
8.4	Occupational Health and Safety.....	22
8.5	Programming and Services Rates	23
8.6	City Use of Facilities	23

8.7	Incidental Rights	23
9.0	FINANCIAL AND REPORTING OBLIGATIONS	24
9.1	Purchase of Services provided as Operational Grants	24
9.2	Proposed Operating Budget	24
9.3	Annual Reporting	25
9.4	Accounts	26
10.0	SOCIETY INSURANCE	26
10.1	Obligation to Insure	26
10.2	Policy Terms	27
10.3	Certificate of Insurance	28
10.4	Additional Insurance	28
10.5	Failure to Provide Insurance	28
11.0	LIABILITY AND INDEMNIFICATION	28
11.1	Release	28
11.2	Indemnification	28
11.3	Survival of Releases and Indemnities	29
12.0	DEFAULTS, TERMINATION AND EXPIRATION	29
12.1	Notice of Default	29
12.2	City May Cure Default	29
12.3	Termination Due to Default	29
12.4	Distress	30
12.5	Termination Without Cause	30
12.6	Return of Operating Grant and Reserve Fund	30
12.7	Overholding	30

12.8	No Compensation Upon Termination.....	30
12.9	State of Facilities at Termination.....	31
12.10	City May Repair.....	31
12.11	Remedies Cumulative	31
13.0	GENERAL TERMS.....	31
13.1	Assignment and Subleasing or Sublicensing	31
13.2	Society's Representations and Warranties.....	31
13.3	No City Representations or Warranties	32
13.4	City's Powers Unimpaired.....	32
13.5	Freedom of Information.....	32
13.6	Surrender of Existing Lease.....	32
13.7	Entire Agreement.....	33
13.8	Amendment.....	33
13.9	Enurement	33
13.10	City Interests	33
13.11	Attornment	33
13.12	Certificates	33
13.13	Not in Registrable Form.....	34
13.14	Notice	34
13.15	Waivers	35
13.16	Further Assurances.....	35
13.17	Own Cost	35
13.18	No Joint Venture	35
13.19	Legal Advice.....	35

13.20	Time is of the Essence	35
14.0	INTERPRETATION.....	35
14.1	Headings and Table of Contents.....	35
14.2	Schedules	35
14.3	Number and Gender.....	36
14.4	Use of the Word “Including”	36
14.5	Governing Law	36
14.6	Severability	36

MANAGEMENT AND OPERATING AGREEMENT

THIS AGREEMENT made as of the _____ day of _____, 2007

BETWEEN:

CITY OF KELOWNA, a municipality incorporated under the laws of the Province of British Columbia, having an office at 1435 Water Street, Kelowna, British Columbia, V1Y 1J4

(the "City")

AND:

OKANAGAN BOYS AND GIRLS CLUBS, (S-50098) a society duly registered pursuant to the *Society Act* of the Province of British Columbia, having its offices at 1434 Graham Street, Kelowna, British Columbia, V1Y 3A8

(the "Society")

WHEREAS:

- A. The City wishes to offer community and recreation opportunities and develop new services for children, youth and families in the City;
- B. The City wishes to contract with an organization that can develop diverse funding sources for the provision of recreation programs through development and expansion and reduce overall operating and capital costs to the City with respect to recreation facilities;
- C. The City is the registered owner of the lands, together with the buildings, structures and improvements thereon, legally described as:

Parcel Identifier: 007-321-945

Lot A, Section 26, Township 26, Osoyoos Division Yale District, Plan 21551
("Rutland Youth Centre");

Parcel Identifier: 008-511-900

Lot A, District Lot 138, Osoyoos Division Yale District, Plan 16898 except Plan KAP82234
("Jaycees Downtown Youth Centre");

Parcel Identifier: 010-916-466

Lot 1, District Lot 138, Osoyoos Division Yale District, Plan 3163
("Martin Avenue Community Centre"); and

Parcel Identifier: 009-756-345

Lot A, District Lot 136, Osoyoos Division Yale District, Plan 9012 Except Plans 9138 and 11487

("Cameron Park")

- D. The City and the Society have had a long standing relationship and the Society currently occupies some or all of the above noted properties and provides certain recreation and community services;
- E. The City and the Society wish to enter into a management and operating agreement for the provision of recreational services that serve the community recreation needs of children, youth and families; and
- F. The City has posted and published notice of its intention to enter into the leases contained in this Management and Operating Agreement (the "Agreement") and to grant assistance to the Society pursuant to the *Community Charter*,

NOW THEREFORE in consideration of the promises and payments provided for in this Agreement and the payment of one dollar (\$1.00) from each party to the other and other good and valuable consideration (the receipt and sufficiency of which the parties hereby acknowledge) the parties agree as follows:

1.0 OBJECTIVES

The parties acknowledge and agree that the objectives of this Agreement are for the Society to lease or licence, as applicable, land and buildings from the City and to provide community programs and services through the management of those lands and buildings.

The City and the Society jointly wish to achieve the following objectives through this co-operative arrangement:

- (a) to provide recreation and community opportunities compatible with those recreation services provided by the City through the operation of City-owned lands and buildings;
- (b) to create an operating model that supports the Society as an on-going, independent and successful recreation service provider in the City;
- (c) to continue a co-operative relationship based on comprehension of the mandates of each, and the achievement of mutual and evolving objectives through credible business practices; and
- (d) to assure the long term operational viability of certain City-owned lands and buildings through the development of a planned and scheduled structural and routine maintenance program.

In addition to the parties' joint objectives, the parties each have individual objectives including:

- (e) the City:
 - (i) to ensure community recreation opportunities and new services for children, youth and families are available in the City;
 - (ii) to partner with an organization who can develop diverse funding sources, other than taxation, for the provision of recreation programs; and
 - (iii) to reduce overall operating and capital costs to the City with respect to facilities.
- (f) the Society:
 - (i) to provide security and growth opportunities inherent in long term tenure as the manager of City-owned lands and buildings that enables a community centered approach to recreation;
 - (ii) to provide programs and services to children, youth and families who traditionally do not access municipal recreation programs, with a particular focus on disadvantaged and at-risk children, youth and families; and
 - (iii) to increase the Society's contribution to community quality of life through initiatives and Society programs.

2.0 GENERAL DUTIES AND OBLIGATIONS

2.1 Society

In addition to the other covenants and obligations to be performed by the Society under this Agreement, the Society covenants and agrees that it will, at all times:

- (a) continue to be a society registered and in good standing in the Province of British Columbia;
- (b) perform promptly and safely all of its obligations under this Agreement;
- (c) be just and faithful in the performance of its obligations under this Agreement and in its dealing with the City under this Agreement;
- (d) provide to the City a true copy of its current constitution and bylaws upon execution of this Agreement, and thereafter to provide true copies of all amendments to the bylaws and not amend its constitution without the express written consent of the City; and

- (e) provide recreation and community services including:
 - (i) programs for children, youth and families that support their healthy physical and educational development, active living and recreation, including without limitation, early childhood programs, child development programs, after-school and evening programs, family programs and programs for youth;
 - (ii) programs that focus on disadvantaged and at-risk children and youth that wherever possible, reduce or eliminate barriers to participation;
 - (iii) the provision of a safe, supportive environment where children and youth experience new opportunities, overcome barriers, build positive relationships and develop confidence and skills for life;
 - (iv) programs that develop lifelong interests in recreation and leisure activities, and through that, address the issues of nutrition, personal safety, violence prevention, literacy and lifelong learning; and
 - (v) opportunities for other non-profit community groups to further enrich the community by their activities through partnership with the Society
 (the "Core Programs and Services").

2.2 City

In addition to the other covenants and obligations to be performed by the City hereunder, the City covenants and agrees that it will, at all times:

- (a) perform promptly all of its obligations under this Agreement; and
- (b) be just and faithful in the performance of its obligations under this Agreement and in its dealings with the Society under this Agreement.

3.0 TERM

The term of this Agreement and the leases and licences granted hereunder shall be for five (5) years from _____, 2007 (the "Commencement Date") to and including _____, 2012 (the "Term"), subject to earlier termination as provided herein.

3.1 Right of Renewal

If the Society is not and has not been in default under this Agreement, it shall have one (1) option to renew this Agreement for a further term of five (5) years, which option may be exercised by the Society giving written notice to the City not less than six (6) months and not more than nine (9) months before the expiry of the Term. In the event the option is

exercised, this Agreement shall continue on all the same terms and conditions except this right of renewal.

The exercise of the right of renewal is solely within the control of the Society and nothing contained in this Agreement obligates or requires the City to remind the Society to exercise the rights of renewal.

4.0 USE AND OCCUPATION OF FACILITIES

4.1 Grant of Leases and Licences

The City hereby:

- (a) demises and leases to the Society those buildings, structures and improvements comprising Jaycees Downtown Youth Centre, Rutland Youth Centre and Martin Avenue Community Centre (collectively, the "Leased Buildings");
- (b) grants to the Society a non-exclusive right and licence to enter onto and use the outdoor steps, patios, walkways, pathways, loading areas and other areas necessary for pedestrian and vehicle access between the Leased Buildings and the adjoining public streets, lanes and sidewalks including, without limitation, the parking areas, playing fields and landscaped grounds within the licence areas outlined in heavy black on the sketch maps attached hereto as Schedules "A-1", "A-2" and "A-3" (collectively, the "Grounds Licence Areas"); and
- (c) grants to the Society a non-exclusive right and licence to enter onto and use that portion of Cameron Park shown outlined in heavy black on the sketch map attached hereto as Schedule "B" (the "Cameron Park Licence Area"), together with a right to access the Cameron Park Licence Area from the public areas of Cameron Park and a right to reasonable use of the public parking in Cameron Park

(collectively, the "Facilities")

for the duration of the Term (or until the earlier termination of this Agreement) and for the purposes and on the conditions provided in this Agreement.

4.2 State of Titles

The Society acknowledges and agrees that this Agreement and the leases and licences granted hereunder are subject to legal notations, charges and other encumbrances (the "Charges") registered against title to the lands on which the Facilities are located, a list of which Charges is attached hereto as Schedule "C". The Society acknowledges that the Charges may affect or prevent some the Society's intended uses of one or more of the Facilities. The Society agrees to comply with the obligations within the Charges and within any further notations, charges, encumbrances, interests and rights that the City

may grant from time to time in the future, provided such future charges do not materially affect the interests of the Society under this Agreement. The Society further agrees to execute any associated documents and plans necessary to register such future charges against title to the lands on which the Facilities are located.

4.3 Permitted Uses

The Society will use the Facilities only for the purposes of providing the Core Programs and Services and such other purposes as authorized under this Agreement or by the City in writing. Notwithstanding the generality of the foregoing, the Society:

- (a) may use only the Jaycees Downtown Youth Centre and not the other Facilities for overnight uses such as a short-term shelter;
- (b) may use any of the Facilities except Cameron Park to provide meals, family support programs and other forms of support to children and youth at risk;
- (c) may use any of the Facilities for the purpose of operating a duly licensed daycare for children; and
- (d) may not use any of the Facilities to operate a needle exchange or any similar activity.

4.4 Acceptance of Facilities "As Is"

The Society acknowledges and agrees that:

- (a) the leases and licences granted pursuant to this Agreement are on an "as is" basis;
- (b) it has had the opportunity to undertake such inspections, tests and surveys of the Facilities as it considers necessary;
- (c) the City has made no representations or warranties respecting the Facilities; and
- (d) by entering into this Agreement, it is satisfied that the Facilities are suitable for the Society's purposes.

4.5 Covenant to Operate

The Society shall ensure that, unless prevented by applicable regulatory authorities or for reasons of repair or maintenance, the Facilities are open to and accessible by the public throughout the Term, subject to the Society's right to close one or more of the Facilities at the Society's discretion on statutory holidays, on Sundays, in accordance with the Society's published schedules and as the parties otherwise agree in writing.

4.6 Abandonment

The Society shall not cease to provide or cause to be provided the Core Programs and Services at any one or more of the Facilities for a period of more than 14 consecutive days.

4.7 Compliance with Laws

The Society shall use and occupy the Facilities in compliance with all statutes, laws, regulations and orders of any authority having jurisdiction (including federal, provincial and municipal laws and bylaws) and all the rules, regulations, policies, guidelines and criteria made under or pursuant to any such laws.

4.8 Public Safety

The Society shall take all possible precautions to ensure the safety of persons using the Facilities.

4.9 No Waste or Nuisance

The Society shall not:

- (a) commit, suffer or permit any wilful or voluntary waste, spoil or destruction of the Facilities; or
- (b) do or permit to be done anything that may be a nuisance or annoyance to owners or occupiers of lands adjoining the Facilities or to the public generally.

4.10 Energy Efficiency

The Society shall operate and maintain the Facilities in a way that promotes recycling, energy efficiency, use of biodegradable products, use of recycled materials and so as to reduce disposable materials.

4.11 Furniture and Equipment

The Society shall purchase, repair and replace, at its sole expense, all furniture and equipment that the Society considers necessary or desirable for using the Facilities and providing the Core Programs and Services including, without limitation, computers and licensed computer software.

4.12 Right to Inspect

Upon receipt of reasonable notice from the City, the Society shall give the City unobstructed access to the Facilities at all reasonable times to determine if the Society is complying with all of its promises and obligations under this Agreement.

5.0 REPAIRS, MAINTENANCE AND CHANGES TO FACILITIES

5.1 Society's Construction of Buildings, Structures and Other Improvements

The Society shall not construct, erect or install or cause to be constructed, erected or installed any buildings, structures, improvements, extensions, installations, alterations or other constructions in, on, over, under, around and to the Facilities without the prior written consent of the City, which consent may be withheld for any reason or may be granted on any conditions the City, in its sole discretion, deems necessary or desirable.

5.2 Daycare Building

Notwithstanding section 5.1, the City acknowledges and agrees that the Society may erect a prefabricated building no larger than 53 feet by 65 feet 10 inches on the Cameron Park Licence Area for the purpose of operating a daycare (the "Daycare Building"). The Daycare Building shall be considered part of the Facilities in this Agreement.

The parties agree that title to and ownership of the Daycare Building (as it may be improved, altered or rebuilt throughout the Term) shall at all times during the Term be vested in the Society, notwithstanding any rule of law to the contrary.

5.3 Builders Liens

The Society shall, immediately upon demand by the City, remove or cause to be removed, and thereafter institute and diligently prosecute any action pertinent to, any builders or other lien or claim of lien noted or filed against or otherwise constituting an encumbrance on any title to any of the lands comprising the Facilities provided that any such encumbrance arises out of the action of the Society. Without limiting the foregoing, the City may cause the same to be removed, in which case the Society shall pay to the City as Additional Fees the cost of so doing, including the City's complete legal costs.

5.4 Demolition of Martin Avenue Community Centre

The parties acknowledge and agree that the City's future plans for the Martin Avenue Community Centre site is demolish all buildings and structures and turn the entire site into a neighbourhood park. The Society hereby acknowledges and agrees that at any time during the Term, the City may, in its sole discretion and upon providing at least twelve (12) months written notice to the Society, demolish the Martin Avenue Community Centre notwithstanding any other provision of this Agreement. If the City decides to exercise its right to demolish in accordance with this section, the parties agree that the Society must elect:

- (a) to continue its occupation and use of the remaining Facilities only, at which time the parties agree that:

- (i) as soon as practicable, the Society shall fully vacate and cease occupation of the Martin Avenue Community Centre,
 - (ii) the reference to Martin Avenue Community Centre in paragraph (c) of the preamble to this Agreement shall be deleted,
 - (iii) the reference to Martin Avenue Community Centre in section 4.1(a) of this Agreement shall be deleted,
 - (iv) the reference to Martin Avenue Community Centre in section 4.1(b) of this Agreement shall be deleted,
 - (v) the map of the Martin Avenue Community Centre grounds licence area attached as Schedule "A-3" shall be deleted,
 - (vi) section 7.1(c) of this Agreement shall be deleted,
 - (vii) the Reserve Fund Contributions payable under this Agreement shall be decreased by 50 %,
 - (viii) all other terms and conditions of this Agreement shall remain in force and binding on the parties, and
 - (ix) the parties thereafter shall have no further rights or obligations under this Agreement with respect to the Martin Avenue Community Centre; or
- (b) to terminate this Agreement.

The Society must provide the City with written notice of its election under clause (a) or (b) within three (3) months of receiving notification of demolition from the City.

5.5 City's Construction of Buildings, Structures and Other Improvements

The Society acknowledges and agrees that the City may, in consultation with the Society, construct or cause to be constructed certain leasehold improvements in, on, over, under, around or to the Facilities ("Future Construction"), the design, construction and performance of which is in the sole discretion of the City. If the City undertakes any Future Construction, the Society:

- (a) acknowledges and agrees that the Future Construction may be performed during the Term;
- (b) shall grant full access to the Facilities by the City and its elected officials, officers, employees, contractors agents and others for purposes relating to the Future Construction;

- (c) acknowledges and agrees that the Future Construction may result in the temporary closure, in whole or in part, of one or more of the Facilities and may require the interruption, disruption, rescheduling or cancellation of regularly scheduled programs and services offered at the Facilities; and
- (d) acknowledges and agrees that the City may use money from the Reserve Fund described in section 7.2 to pay for the Future Construction.
- (e) Should the parties agree to any capital improvements in the future this will require a separate legal agreement.

5.6 Routine Maintenance and Repair

Throughout the Term, the Society shall, at its sole expense, clean, maintain and repair the Leased Buildings and the Daycare Building and keep them in a state of good repair as a prudent owner would do. Except as expressly set out in this Agreement, the City will not be obliged to clean, maintain, repair, replace or alter the Leased Buildings or the Daycare Building or any other building or structure or any part thereof during the Term or to supply any services or utilities thereto except for such services and utilities as the City may be required to provide strictly in its capacity as a municipality and not in its capacity as a landlord. The Society hereby assumes the full and sole responsibility for the condition, operation and management of the Leased Building and the Daycare Building during the Term and agrees to establish and maintain a cleaning management program that sets out cleaning standards, frequency and products to be used to ensure a safe and healthy environment at all times.

5.7 Substantial Maintenance and Repair

The City, in consultation with the Society, must maintain and repair the Leased Buildings' structural members, foundations, elevators, roofs, external façades, windows, fire alarms, emergency lighting, and HVAC systems to a standard as would a prudent owner to ensure the operational and structural integrity of the Leased Buildings provided that there are adequate funds in the Reserve Fund described in section 7.2 at the time of the proposed maintenance or repair. The Society owns the playground equipment at the Martin Community Centre and the City shall maintain the playground structures to a standard similar to other City-owned playground structures.

The Society acknowledges and agrees that this section does not apply to the Daycare Building and that the City has no obligations whatsoever as to the maintenance or repair of the Daycare Building.

5.8 Maintenance of Grounds Licence Areas

The Society shall, at its sole expense, clear all ice and snow, cut grass, and landscape within the Grounds Licence Areas and the Cameron Park Licence Area and maintain those areas in a clean, tidy and safe state as a prudent owner would do.

5.9 Damage or Destructions of the Facilities

If during the Term one or more of the Facilities shall be damaged or destroyed by any cause whatsoever such that one or more of the Facilities is rendered unfit for occupancy by the Society, the City may chose whether or not to use the insurance proceeds, if any, to repair, rebuild or replace the Facilities. If the City chooses not to repair, rebuild or replace the Facilities the then the City at its sole discretion may:

- (a) provide three (3) months written notice to the Society that this Agreement is terminated and the Society shall vacate all the Facilities as if this Agreement had expired or been terminated for cause.
- (b) negotiate the continuation of the agreement deleting all references and obligations related to the destroyed facility, operating grant and program provision.

5.10 No Capital Liabilities

Despite any other provision of this Agreement, nothing in this Agreement obligates the City to make any expenditure of a capital nature and nothing in this Agreement shall be interpreted in a manner that results in the City having expressly or implicitly incurred a 'liability of a capital nature' as that phrase is used in the Municipal Liabilities Regulation, B.C. Reg. 254/2004.

6.0 ENVIRONMENTAL OBLIGATIONS

- (a) **Definitions** – For the purpose of this section:

"Environmental Law" means all federal, provincial, or municipal laws, statutes or ordinances relating to environmental matters, including all rules, regulations, policies, guidelines and criteria made under or pursuant to any such laws;

"Hazardous Substance" means a contaminant, pollutant, dangerous good, waste, toxic substance, special waste or hazardous substance as defined in or pursuant to any Environmental Law;

"Notice" means any citation, directive, order, claim, litigation, investigation, proceeding, judgment, letter or other communication, written or oral, actual or threatened, from any person, including any governmental agency;

"Permit" means any authorization, permit, licence, approval or administrative consent issued pursuant to an Environmental Law.

- (b) **Compliance with Laws** – The Society will occupy, use and manage the Facilities in compliance with all Environmental Laws and all Permits.

- (c) **Notice to District** – The Society will immediately notify the City of the occurrence of any of the following and will provide the City with copies of all relevant documentation in connection with:
 - (i) a release of a Hazardous Substance at the Facilities, except as is authorized under Environmental Law;
 - (ii) the receipt by the Society of a Notice from any governmental agency of non-compliance pursuant to any Environmental Law, including a Notice of non-compliance respecting a Permit;
 - (iii) the receipt by the Society of a Notice of a claim by a third party relating to environmental concerns; or
 - (iv) the receipt by the Society of information which indicates that Hazardous Substances are or may be present at the Facilities.
- (d) **Storage of Hazardous Substances** – The Society will not permit the storage, treatment or disposal of Hazardous Substances at the Facilities except in accordance with all Environmental Laws.
- (e) **Investigations** – The Society will conduct such investigations, searches, testing, drilling and sampling (“Investigations”) as may at any time be required by the City where any reasonable evidence exists that the Society’s current or prior use or occupation of the Facilities may be introducing or increasing the existence of any Hazardous Substance at the Facilities. If the Society does not complete the Investigations to the satisfaction of the City, the City may enter the Facilities and take any actions necessary to complete the Investigations at the Society’s sole expense.
- (f) **Remediation** – If Hazardous Substances are present at the Facilities as a result of the Society’s use or occupation of the Facilities, the Society will take all necessary action, at its sole cost, to remediate the Facilities to a level acceptable to the City and to governmental authorities.
- (g) **Condition of Facilities on Termination** – At or prior to the expiration of the Term or the earlier termination of this Agreement, the Society will conduct all Investigations required by the City where any reasonable evidence exists that the Society’s use or occupation of the Facilities has introduced or increased the existence of any Hazardous Substance at the Facilities. The Society will provide the result of the Investigations to the City. Where any Hazardous Substance is found at the Facilities as a result of the Society’s use or occupation of the Facilities, the Society will take all necessary action, at its sole cost, to remediate the Facilities to a level acceptable to the City and to governmental authorities.

- (h) **Permits** – The Society will provide to the City satisfactory documentary evidence that all Permits are valid and in good standing as requested by the City from time to time.
- (i) **Indemnity (Environmental)** – The Society hereby indemnifies and saves harmless the City and its elected officials, officers, employees, contractors agents and others (the “City’s Representatives”) from and against any and all losses, claims, costs, expenses, damages and liabilities, including all costs of defending or denying the same, and all costs of investigation, monitoring, remedial response, removal, restoration or permit acquisition and including all solicitor’s fees and disbursements in connection therewith which at any time may be paid or incurred by or claimed against the City or the City’s Representatives arising, directly or indirectly, out of:
 - (i) a breach by the Society of any of the covenants contained in this Agreement;
 - (ii) where the Society’s use or occupancy of the Facilities results in the presence, release or increase of any Hazardous Substance at the Facilities (or on any other land by way of migration, seepage or otherwise);
 - (iii) any reasonable action taken by the City with respect of the existence of or remediation for any such Hazardous Substance at the Facilities (or on any other land by way of migration, seepage or otherwise); or
 - (iv) any reasonable action taken by the City in compliance with any Notice of any governmental authority with respect to the existence of any such Hazardous Substance at the Facilities (or on any other land by way of migration, seepage or otherwise).

7.0 FEES AND EXPENSES FOR USE OF FACILITIES

7.1 Annual Rent and Licence Fees

The Society shall pay to the City

- (a) annual rent in the amount of \$1.00 for the lease of Jaycees Downtown Youth Centre;
- (b) annual rent in the amount of \$1.00 for the lease of Rutland Youth Centre;
- (c) annual rent in the amount of \$1.00 for the lease of Martin Avenue Community Centre; and
- (d) an annual licence fee in the amount of \$1.00 for the licence of Cameron Park

(collectively, the "Facilities Fees"), to be paid in advance of the first day of each year of the Term.

7.2 Contributions to Reserve Fund

In addition to the nominal Facilities Fees set out above, the Society shall establish and maintain a building contingency reserve fund (the "Reserve Fund") and shall make lump-sum contributions to the Reserve Fund in accordance with the increasing scale set out in Schedule "D" to this Agreement (the "Reserve Fund Contributions") on or before the first day of each year of the Term.

7.3 Use of Reserve Fund

The Society and the City agree that the City may draw on the Reserve Fund (together with all accrued interest). The City agrees that it is obligated to consult with the Society for use of the Reserve Fund for the following purposes:

- (a) any substantial maintenance or repair to the Leased Buildings to be performed by the City under section 5.7; and
- (b) demolition of the Martin Community Centre and site rehabilitation; and
- (c) any landlord responsibilities.

7.4 Additional Fees

The Society shall pay to the City, from time to time and upon demand, all other sums payable by the Society pursuant to this Agreement (the "Additional Fees"), whether or not specifically described as Additional Fees.

7.5 No Deductions

The Society shall pay the Facilities Fees, the Reserve Fund Contributions and the Additional Fees without deduction, abatement, set-off or withholding whatsoever, despite any law or statute now or in the future to the contrary. The Society's obligation to pay the Facilities Fees, the Reserve Fund Contributions and the Additional Fees survives the expiry or earlier termination of this Agreement.

7.6 Utilities

The Society shall pay all charges for water supply, sewage disposal, garbage removal, gas, heating fuel, telecommunications, electricity, power or other utility or communication service rendered in respect of its use and occupation of the Facilities.

7.7 Payment of Taxes and Expenses

Unless otherwise provided herein, the Society covenants and agrees to pay all costs and expenses of any kind whatsoever associated with and payable in respect of the Society's use of the Facilities, including without limitation, all municipal property taxes (if any); other taxes, levies, charges and assessments; and permits and licence fees.

7.8 GST

The Society shall pay to the City any Goods and Services Tax (or any replacement tax) which may be payable in respect of this Agreement.

7.9 Net Agreement

It is the intention of the parties that this is a net agreement and that all expenses, costs and payments incurred in respect of the Facilities shall be borne by the Society, except as specifically provided in this Agreement.

8.0 MANAGEMENT OF FACILITIES AND PROVISION OF SERVICES

8.1 Appointment of Society as Manager

The City hereby appoints, approves and authorizes the Society to manage the Facilities for the Term in accordance with the terms and conditions of this Agreement and more particularly as follows:

- (a) the Society shall exercise that standard of care and diligence that is consistent with prudent management practice for municipally-owned recreation facilities in British Columbia;
- (b) the Society shall establish, maintain and enforce reasonable rules for the safe use of the Facilities by members of the public which are similar to the rules in effect for other public facilities in the Kelowna area;
- (c) the Society shall designate a chief officer of the Society to liaise with the City (the "Society Representative") and the Society Representative shall meet with the City's Director of Recreation, Parks and Cultural Services or his or her designate (the "Director") once every calendar year by June 30th during the Term to review the following matters and to consider the Director's input in the subsequent management of the Society's activities at the Facilities:
 - (i) programs and services,
 - (ii) user rates and program registration,
 - (iii) hours of operation,

- (iv) staff accreditation,
- (v) general policies, procedures, rules and regulations,
- (vi) inspection and incident reports,
- (vii) maintenance requirements and capital planning, repair or replacement, and
- (viii) the Society's overall financial performance.

Notwithstanding the above requirements, the parties acknowledge and agree that the Society shall have operational autonomy with respect to the following matters:

- (ix) executive management of the Society;
- (x) human resource management including, without limitation, staff complement, structure, wages, and benefits; and
- (xi) actual budget development, allocation, operational and policy management.

8.2 No Discrimination

The Society acknowledges and agrees that it is in the community's best interest that recreation and community services be provided in a non-discriminatory manner. The Society hereby covenants and agrees to provide the Core Programs and Services and other services offered at the Facilities in accordance with the *Human Rights Code* (British Columbia).

8.3 Employee Standards

The Society shall hire, train, supervise and remunerate or cause to be hired, trained, supervised and remunerated, all employees, contractors and volunteers required for the provision of the Core Programs and Services. The Society must immediately discharge or cause to be discharged any employee, contractor or volunteer whose conduct or health is contrary to the provision of the Core Programs and Services in accordance with this Agreement or is detrimental to members of the public patronizing the Facilities or upon reasonable demand in writing from the City.

8.4 Occupational Health and Safety

The Society shall comply with all applicable occupational health and safety laws, including all applicable provisions from time to time in force under the *Workers Compensation Act* and regulations and orders pursuant to that Act and the Society maintain or cause to be maintained the Facilities in a manner that ensures the health and safety of persons at or near the Facilities.

8.5 Programming and Services Rates

The Society shall set its fees and charges for use of the Facilities including, without limitation, for the Core Programs and Services, at rates such that the Society operates on a non-profit basis.

8.6 City Use of Facilities

The City may book space at the Facilities, at no charge, for City functions and staff and Council social activities, where and when space is available.

8.7 Incidental Rights

The Society may:

- (a) offer programs and services at the Facilities in addition to the Core Programs and Services to reflect community needs or respond to unique market opportunities, provided that such programs and services are compatible with City policies and priorities;
- (b) rent rooms within the Leased Buildings to other non-profit organizations for periods not to exceed seven (7) continuous days at rates approximate to market rents;
- (c) rent rooms within the Leased Buildings to organizations other than non-profit organizations or for periods in excess of seven (7) continuous days only with the prior written consent of the City;
- (d) rent a portion of the Martin Avenue Community Centre to the Society for Learning in Retirement on a month to month basis;
- (e) require damage deposits from persons or organizations using the Leased Buildings where there is a likelihood that such persons or organizations may cause damage to the Leased Buildings;
- (f) enter into sponsorship, media or advertising agreements ("Endorsements") involving the Facilities or the Core Programs and Services provided that the Endorsements are:
 - (i) appropriate for families and children;
 - (ii) consistent with the parties' joint values of equality, accessibility, health, respect and the dignity of the individual;
 - (iii) respectful of the neighbourhoods surrounding the Facilities and all scheduled programs and services at the Facilities; and

- (iv) appropriate to the aesthetics of the Facilities;
- (g) undertake fundraising activities at the Facilities for the Society's benefit only; and
- (h) use the Facilities for the Society's Kelowna office and headquarters during the Term.

9.0 FINANCIAL AND REPORTING OBLIGATIONS

9.1 Purchase of Services provided as an Operating Grant

The City may (but is not obliged to) pay to the Society an amount, to be determined by Council in its sole discretion, for the Society's provision of Core Programs and Services as identified in Section 2.1 (e) and submitted by the Society to the City in accordance with section 9.2

The Society acknowledges and agrees that the below-market rent and licence fees payable by the Society to the City under this Agreement are full and adequate consideration for the provision of the Core Programs and Services by the Society and that the City is not required to fund all or any of the Society's proposed annual operational budget and that all such funding decisions are to be made by the City's elected Council in its sole and unfettered discretion.

If Council approves funding for the Society, the City shall pay this amount to the Society in semi-annual instalments beginning January 1st or the next quarter occurring after approval of the funding.

9.2 Proposed Operating Budget

On or before September 15th of every year of the Term, the Society shall submit any changes to the Society's Operating Grant Request to the City for the City-funded Core Programs and Services for the following fiscal year. Such funding changes shall include the justification for the change and the framework of how it is incorporated into the Society's annual operating budget for Core Programs and Services. The City shall present the Society's proposed operational budget changes to the City's elected Council for consideration at the meeting or meetings at which Council considers the City's own financial plan. The City acknowledges and agrees that the Director will meet with the Society Representative prior to the date or dates on which the Society's proposed operating budget changes will be considered by Council and that the Director will work with the Society Representative to make any revisions or amendments to the Society's proposed budget changes that the parties consider desirable in order to increase the likelihood that Council will grant operating funding changes to the Society pursuant to section 9.1.

9.3 Annual Reporting

On or before June 30th of every year of the Term, the Society shall submit to the Director an audited annual report that contains, at the minimum, the following information for the period from April 1 of the previous year to March 31 of the current year:

- (a) the audited financial statements;
- (b) the projected and actual budgets for the Core Programs and Services;
- (c) a separate account of all program fees, rents, and other revenues received by the Society for each of the items set out in section 8.7;
- (d) a separate account for the Reserve Fund;
- (e) the Society's overall projected and actual budgets; and
- (f) permit the City, at all reasonable times and upon reasonable notice, to inspect and obtain copies or temporarily remove for copying all records and accounts relating to repairs, replacements, alternations or improvements to the Facilities;
- (g) turn over to the City, forthwith upon the expiration or termination of this Agreement, all records and accounts in respect of repairs, replacements, alterations or improvements throughout the Term and financial records for the previous seven (7) years with respect to the operation of the Facilities. This obligation will survive any expiration or termination of this Agreement;
- (h) such other matters as the Director may reasonably request.

Maintain and make available for review by the City upon reasonable request, the following records:

- (a) Program and Operations Records
 - Financial reports and records
 - Accident/incident reports
 - Daily attendance and program registration reports
 - Customer comments
 - Records of in-service training
 - Current staff certifications/qualification
- (b) Facilities Records
 - Work Safe safety inspections
 - Energy consumption logs

- Emergency lighting inspections
- Annual building inspections
- Health Department inspections and reports
- Preventative maintenance records
- Inspection and maintenance of emergency equipment and supplies
- Facilities fire and emergency drills
- Minor mechanical, structural or electrical repair records

9.4 Accounts

The Society shall, at all times during the Term:

- (a) keep or cause to be kept true and accurate records and accounts, in accordance with generally accepted accounting principles, regarding management and operation of the Facilities, including without limitation:
 - (i) Core Programs and Services Records: financial reports and records, accident and incident reports, daily attendance and program registration reports, customer comments, records of in-service training, and records of current staff certifications and qualifications; and
 - (ii) Facilities Records: any WorkSafeBC safety inspection records, energy consumption logs, emergency lighting inspection records, annual building inspection reports, health department inspections and reports, preventative maintenance records, fire and emergency drill records or other such similar records that the Society may acquire from time to time;
- (b) permit the City, at all reasonable times and upon reasonable notice, to inspect and obtain copies of all records and accounts relating to the Facilities; and
- (c) turn over to the City, immediately upon expiration or termination of this Agreement, copies of all records and accounts required to be kept by the Society under this Agreement.

10.0 SOCIETY INSURANCE

10.1 Obligation to Insure

The Society shall, at its sole expense, obtain and maintain during the Term:

- (a) comprehensive general liability insurance providing coverage for death, bodily harm and injury, property loss and damage, and all other losses (including, without limitation, coverage for Products/Completed Operations, Blanket Contractual, Contractor's Protective, Personal Injury, Contingent Employer's Liability, Broad Form Property Damage and Non-Owned Automobile Liability),

arising out of or in connection with the operation, use and occupation of the Facilities in an amount of not less than \$10,000,000.000 per occurrence;

- (b) "all risks" tenants' insurance, for replacement cost, of all equipment owned, leased or for which the Society may otherwise be responsible and used or to be used in the performance of this Agreement including, without limitation, business interruption coverage for loss of revenue resulting from or due to loss of or damage to the insured equipment or the Facilities;
- (c) WorkSafeBC insurance or any replacement workers' compensation insurance; and
- (d) any other form or forms of insurance that the City may reasonably require from time to time in amounts and for such perils against which a prudent operator acting reasonably would protect itself in similar circumstances.

10.2 Policy Terms

All policies of insurance required to be taken out by the Society must:

- (a) name the City as an additional insured;
- (b) include that the City is protected notwithstanding any act, neglect or misrepresentation by the Society which might otherwise result in the avoidance of a claim and that such policies are not affected or invalidated by any act, omission or negligence of any third party which is not within the knowledge or control of the insureds;
- (c) be issued by an insurance company entitled to carry on the business of insurance under the laws of British Columbia;
- (d) be primary and non-contributing with respect to any policies carried by the City and that any coverage carried by the City is excess coverage;
- (e) not be cancelled without the insurer providing the City with 60 days written notice to the City's Risk Management Department stating when such cancellation is to be effective;
- (f) not include a deductible greater than \$5,000.00 per occurrence;
- (g) include a cross liability clause; and
- (h) be on other terms acceptable to the City, acting reasonably.

10.3 Certificate of Insurance

The Society must obtain all required insurance at its sole expense and must provide the City with certificates of insurance confirming the placement and maintenance of all required insurance on or before the commencement of this Agreement.

10.4 Additional Insurance

The City may, but is not required to, take out any additional insurance that it considers necessary or desirable.

10.5 Failure to Provide Insurance

If the Society fails to insure or provide proof of insurance as required, the City may, immediately and without notice to the Society, effect the insurance in the name of and at the expense of the Society. For clarity, the City has no obligation to effect such insurance during the Term or otherwise.

11.0 LIABILITY AND INDEMNIFICATION**11.1 Release**

The Society hereby releases the City and its elected officials, officers, employees, contractors, agents and others (the "City's Representatives") from and against all demands and claims that the Society may have, now or in the future, in relation to the granting of this Agreement, the provision of the Core Programs and Services, the Facilities or the Society's use of the Facilities, except demands or claims arising solely and directly due to the negligence of the City, the City's Representatives, or both.

11.2 Indemnification

Save and except for the negligence of the City and the City's Representatives, the Society will and hereby does indemnify and save harmless the City and the City's Representatives from any and all suits, actions, causes of action, liabilities, damages, costs, claims, expenses (including actual fees of professional advisors) and harm, of any nature or kind whatsoever, whether related to death, bodily injury, property loss, property damage or consequential loss or damage, which may be directly or indirectly connected with or arise from:

- (a) any breach of any obligation set forth in this Agreement to be observed or performed by the Society;
- (b) any act, omission, or negligence of the Society, its members, officers, directors, employees, volunteers, agents, contractors, subcontractors, sublicensees, invitees or others for whom it is responsible;

- (c) the use or occupation of the Facilities;
- (d) the provision of the Core Programs or Services; or
- (e) the granting of this Agreement.

11.3 Survival of Releases and Indemnities

All of the releases and indemnities contained in this Agreement will survive the expiration or earlier termination of the Term.

12.0 DEFAULTS, TERMINATION AND EXPIRATION

12.1 Notice of Default

If the Society fails to observe, comply with, keep or perform any of its covenants, agreements or obligations under this Agreement, the City may deliver to the Society a notice of default (in the manner set out below for giving notices) stipulating that the default must be rectified or cured within 15 days of the notice if the default is non-payment of the Facilities Fees, the Additional Fees or the Reserve Fund Contributions and within 30 days of the notice for other defaults.

The City does not need to provide any notice in emergency or urgent circumstances, as determined by the City in its sole discretion, acting reasonably, or where the Society has failed to keep the Facilities insured or in proper working condition to ensure public safety and in strict accordance with this Agreement.

12.2 City May Cure Default

If the Society fails to observe, comply with, keep or perform any of its covenants, agreements or obligations under this Agreement, the City may, but is not obliged to, at its discretion and without prejudice, take all steps considered in its sole discretion necessary to rectify or cure the default and all costs of so doing, including the costs of retaining professional advisors, shall be payable immediately by the Society as Additional Fees. Nothing in this Agreement obligates the City to rectify or cure any default of the Society but should the City choose to do so, the City shall not be liable to the Society for any act or omission in the course of rectifying or curing or attempting to rectify or cure any default.

12.3 Termination Due to Default

If and whenever

- (a) the Society does not fully observe, perform and keep each and every term, covenant, agreement, stipulation, obligation, condition and provision of this Agreement to be observed, performed and kept by the Society, and persists in

such default after the time allotted in section 12.1 for rectifying or curing a default; or

- (b) the Society should cease to exist as a non-profit society in good standing in the records of the Registrar of Companies, or if it should take any proceedings towards dissolution or winding up or if it should be dissolved or wound up

then the City may, in its sole discretion, terminate this Agreement and the Facilities Fees, Reserve Fund Contributions, Additional Fees and all outstanding levies and charges shall become immediately due and payable and the Term shall immediately become forfeited and void and the City may re-enter and take possession of the Facilities.

12.4 Distress

If the Facility Fees, Additional Fees or Reserve Fund Contributions payable by the Society are in arrears, the City or a person authorized in writing by the City may enter upon or into the Facilities and seize any goods or chattels and may sell the same.

12.5 Termination Without Cause

Notwithstanding the rest of this Agreement, either party may terminate this Agreement upon at least six (6) months' written notice to the other party.

12.6 Return of Operating Grant and Reserve Fund

The Society shall immediately upon expiration of the Term or the earlier termination of this Agreement, release, relinquish and forfeit the balance of the Reserve Fund and return any unused portion of the Operating Grant as provided in section 9.1 to the City.

12.7 Overholding

If the Society continues to occupy any or all of the Facilities after the expiration of the Term, such holding over will not constitute a renewal of this Agreement. In such case, the City, at its option, may elect to treat the Society as one who has not vacated at the end of the Term and to exercise all of its remedies in that situation, or may elect to construe such holding over as a tenancy from month to month subject to all the terms and conditions of this Agreement except as to the Term. For clarity, this section does not authorize or permit the Society to overhold.

12.8 No Compensation Upon Termination

The Society shall not make any claim for compensation, in damages or otherwise, upon the lawful termination of this Agreement. If the City terminates this Agreement, the City retains the right to proceed at law against the Society for all of the Facilities Fees, Additional Fees and Reserve Fund Contributions and other loss or damage and costs,

including all prospective losses or prospective damages suffered or to be suffered by the City arising from the default of the Society under this Agreement.

12.9 State of Facilities at Termination

At the expiry or earlier termination of this Agreement, the Society shall deliver to the City:

- (a) the Leased Buildings vacant and in good and clean condition, excepting reasonable wear and tear;
- (b) the Cameron Park Licence Area vacant of the Daycare Building; and
- (c) the Grounds Licence Areas and the Cameron Park Licence Area remediated to public park standards, as determined by the City acting reasonably.

12.10 City May Repair

If, upon the expiry of the Term or the earlier termination of this Agreement, the Society fails to comply with section 12.9:

- (a) the City may undertake such repairs and work as it deems fit on behalf of the Society including, without limitation, the removal of any structures, buildings, improvements or equipment, and the Society must, on demand, compensate the City for all costs incurred by the City in so doing; and
- (b) any improvements, extensions, installations, alterations, renovations or additions to the Facilities, including the Daycare Building, done or installed by or on behalf of the Society, are forfeited to and become the property of the City.

12.11 Remedies Cumulative

No reference to or exercise of any specific right or remedy by the City prejudices or precludes the City from any other remedy, whether allowed at law or in equity or expressly provided for in this Agreement.

13.0 GENERAL TERMS

13.1 Assignment and Subleasing or Sublicensing

The Society shall not assign or sublicense the Society's interest in or rights under this Agreement in whole or in part and the Society may not mortgage this Agreement by assignment or sublease.

13.2 Society's Representations and Warranties

The Society represents and warrants that it:

- (a) is now and will continue to be a non-profit society and a non-commercial undertaking and that it does not and will not distribute profit to its members;
- (b) will file all forms and documents which are required by law to be filed with the Registrar of Companies and diligently keep all corporate records required by law to be kept;
- (c) has the power and capacity to enter into and carry out its obligations under this Agreement; and
- (d) has completed all necessary resolutions and other preconditions to the validity of this Agreement.

13.3 No City Representations or Warranties

The Society acknowledges and agrees that the City makes no representations or warranties with respect to the Facilities including, without limitation, with respect to the suitability of the Facilities for the Society's intended use or the Facilities' condition.

13.4 City's Powers Unimpaired

Nothing in this Agreement affects the City's rights, powers, duties or obligations in the exercise of its functions pursuant to the *Local Government Act*, the *Community Charter* and under all other applicable public and private statutes, bylaws, orders and regulations.

13.5 Freedom of Information

The parties acknowledge, agree and consent to the disclosure of this Agreement as a matter of public record and further acknowledge and agree that applicable laws may require disclosure of information provided by one party to the other pursuant to or in connection with this Agreement.

13.6 Surrender of Existing Lease

In consideration of the covenants and agreements contained in this Agreement, including without limitation, the new leases and licences granted to the Society effective on the Commencement Date the Society surrenders to the Society that agreement dated for reference April 4, 1990, and all amendments thereto, whereby the Society leases Jaycees Downtown Youth Centre from the City (the "Existing Lease") and any right or interest of the Society under the Existing Lease, the unexpired term of the Existing Lease, and any right of the Society to occupy Jaycees Downtown Youth Centre pursuant to the Existing Lease, with the intent that all of these rights will merge into the reversion of the Existing Lease and be forever extinguished.

Each of the Society and the City releases and discharges the other from any liability arising under the Existing Lease.

13.7 Entire Agreement

The provisions in this Agreement constitute the whole of the agreement between the parties and supersede all previous communications, representations, warranties, covenants and agreements, whether verbal or written, between the parties with respect to the subject matter of this Agreement.

13.8 Amendment

This Agreement may not be modified or amended except in writing signed by the City and the Society.

13.9 Enurement

This Agreement shall enure to the benefit of and be binding upon the City and the Society and their respective successors and permitted assigns, if any.

13.10 City Interests

The Society acknowledges and agrees that the City may assign, transfer, mortgage, subdivide and otherwise deal with its interests in the Facilities or any portion thereof, whether land or improvement, without the consent of the Society.

13.11 Attornment

If any person shall through the City succeed to the rights of the City under this Agreement or to ownership of the Facilities then, upon the request of the party succeeding to the City's rights hereunder, the Society shall attorn to and recognize the new owner(s) as the landlord of the Society under this Agreement, and shall promptly execute and deliver any instrument that such party may reasonably request to evidence the attornment. In the event of any other transfer of interest of the City hereunder, upon the written request of the transferee and the City, the Society shall attorn to and recognize the transferee as the landlord of the Society under this Agreement and shall promptly execute and deliver any instrument that the transferee and the City may reasonably request to evidence the attornment provided that the transferee agrees with the Society to become the landlord hereunder and to assume the obligations of the City hereunder that are to be performed by the transferee after the transfer.

13.12 Certificates

The City and the Society agree that at any time and from time to time upon not less than thirty (30) days prior request by the other party, each will execute, acknowledge and deliver to the other a statement in writing certifying:

- (a) that this Agreement is unmodified and in full force and effect or if there have been modifications that the same are in full force and effect as modified and identifying the modifications;
- (b) the dates to which the Facilities Fees, Reserve Fund Contributions and other charges or fees have been paid;
- (c) that, so far as the maker of the statement knows, without having conducted any searches or made any particular enquiries, the party who requests the statement is not in default under any provisions of this Agreement or, if in default, the particulars thereof; and
- (d) any other reasonable information which is requested.

13.13 Not in Registrable Form

The Society agrees that the City is not required to provide this Agreement or the leases granted under it to the Society in a form registrable in the Land Title Office.

13.14 Notice

Where any notice, request, direction or other communication must be or may be given or made by a party, it must be in writing and is effective if delivered personally on the date of such personal delivery or, if faxed, on the day of transmission, or if mailed, on the third business day after the mailing of the same in British Columbia by prepaid post addressed:

To the City:

City of Kelowna
Attn: City Clerk
1435 Water Street
Kelowna, B.C. V1Y 1J4
Fax: (250) 470-0697

To the Society:

Okanagan Boys and Girls Societys
Attn: Chief Executive Officer
1434 Graham Street
Kelowna, B.C. V1Y 3A8
Fax: (250) 762-6562

13.15 Waivers

Waiver by a party of any default by the other party shall not be deemed to be a waiver of any subsequent default. A waiver is effective only if it is in writing.

13.16 Further Assurances

The parties shall execute and do all such further deeds, acts, things and assurances as may be reasonably required to carry out the intent of this Agreement.

13.17 Own Cost

The Society shall perform all of its obligations, covenants and agreements under this Agreement solely at its own cost.

13.18 No Joint Venture

Nothing in this Agreement shall constitute the Society the agent, joint venturer or partner of the City or give the Society any authority or power to bind the City in any way.

13.19 Legal Advice

The Society acknowledges and agrees that the City has recommended that it receive independent legal advice with respect to this Agreement, and that the City has provided the Society with adequate time to do so.

13.20 Time is of the Essence

Time is of the essence of this Agreement.

14.0 INTERPRETATION**14.1 Headings and Table of Contents**

The division of this Agreement into sections, the insertion of headings and the provision of a table of contents are for convenience only and do not form a part of this Agreement and will not be used to interpret, define or limit the scope, extent or intent of this Agreement.

14.2 Schedules

The following schedules are attached to and form part of this Agreement:

- (a) Schedule "A-1"—Sketch Plan of Jaycees Downtown Youth Centre Grounds Licence Area
- (b) Schedule "A-2"—Sketch Plan of Rutland Youth Centre Grounds Licence Area

- (c) Schedule "A-3"—Sketch Plan of Martin Avenue Community Centre Grounds Licence Area
- (d) Schedule "B"—Cameron Park Licence Area
- (e) Schedule "C"—Legal Notations and Encumbrances
- (f) Schedule "D"—Reserve Fund Contributions

14.3 Number and Gender

Unless otherwise specified, words importing the singular include the plural and vice versa and words importing gender include all genders.

14.4 Use of the Word "Including"

The word "including" when following any general term or statement will not be construed as limiting the general term or statement to the specific matter immediately following the word "including" or to similar matters, and the general term or statement will be construed as referring to all matters that reasonably could fall within the broadest possible scope of the general term or statement.

14.5 Governing Law

This Agreement and each of the documents contemplated by or delivered under or in connection with this Agreement are governed exclusively by, and are to be enforced, construed and interpreted exclusively in accordance with the laws applicable and in force in British Columbia.

14.6 Severability

If any portion of this Agreement is held invalid by a court of competent jurisdiction, the invalid portion shall be severed and the decision that it is invalid shall not affect the validity of the remainder of this Agreement.

IN WITNESS WHEREOF the City and the Society have executed this Agreement on the date first above written.

CITY OF KELOWNA
by its authorized signatories

Mayor

City Clerk

**OKANAGAN BOYS AND GIRLS
CLUBS**

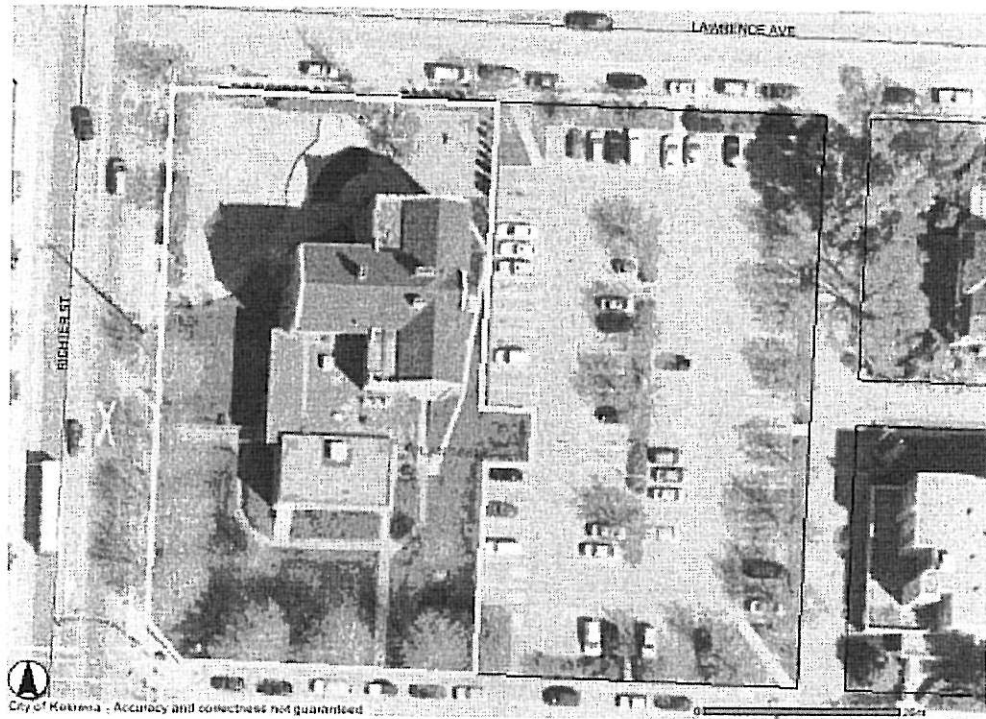
by its authorized signatories

Authorized Signatory

Authorized Signatory

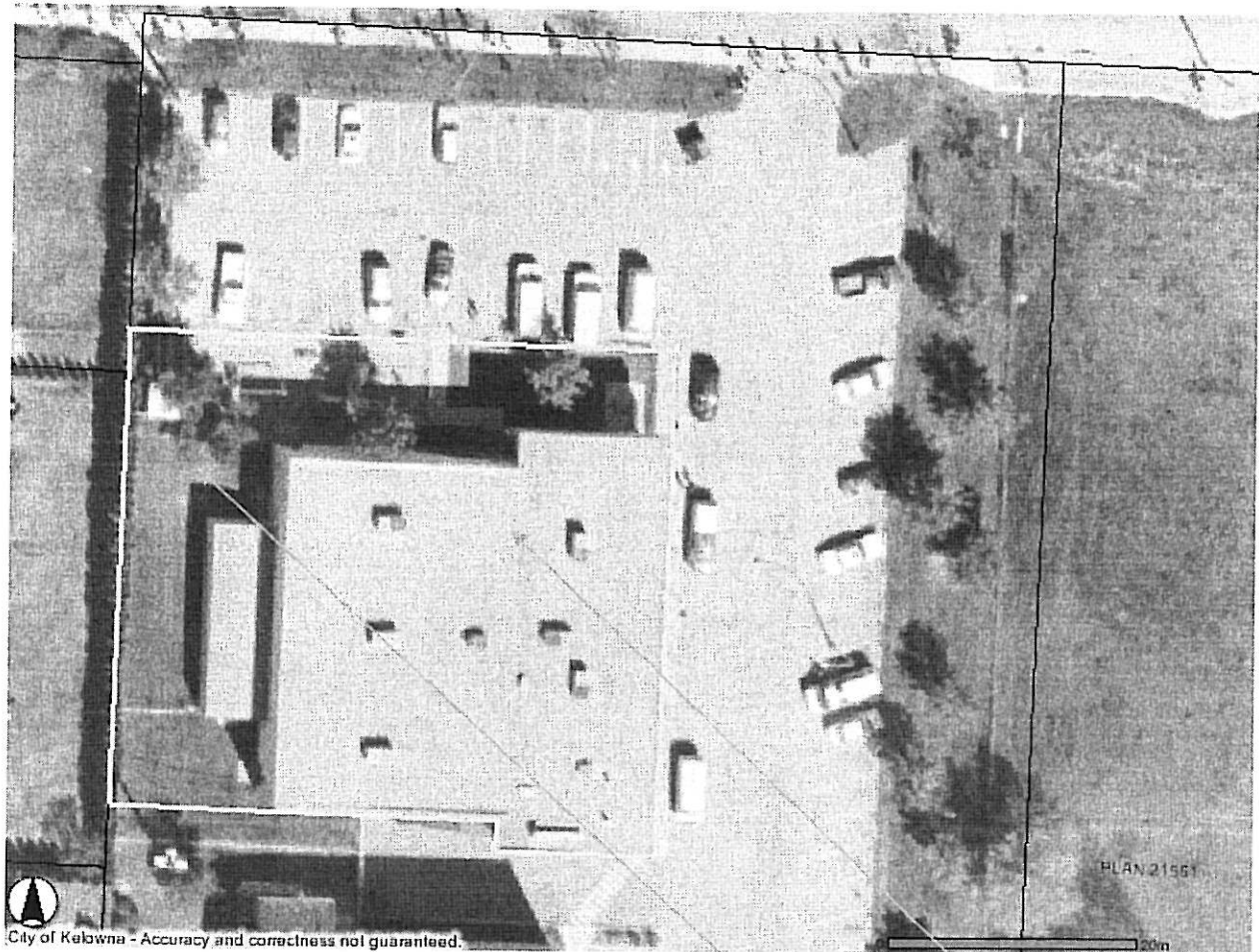
SCHEDULE "A-1"

Jaycees Downtown Youth Centre Grounds Licence Area



SCHEDULE "A-2"

Rutland Youth Centre Grounds Licence Area

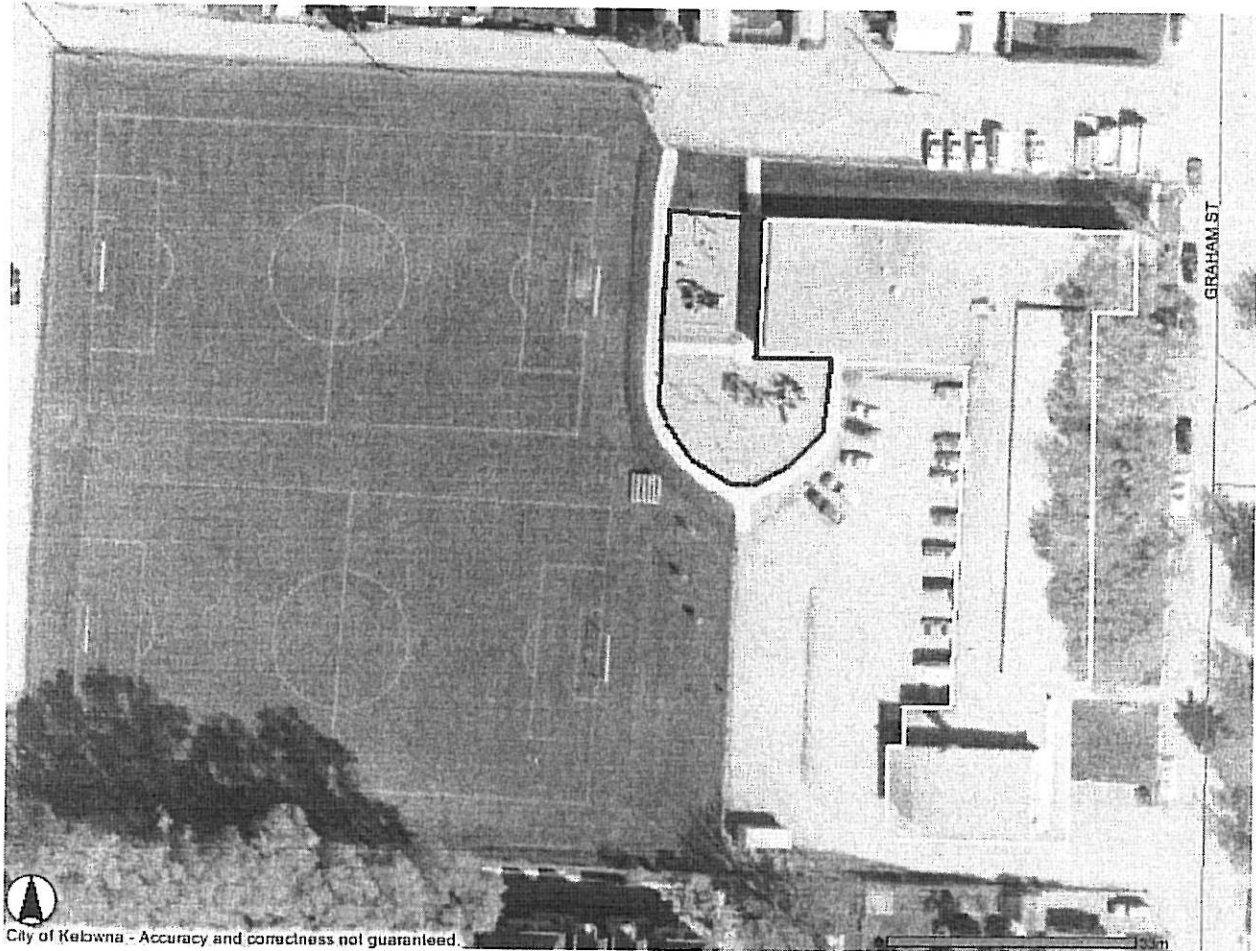


Leased Premises

License Area for Program Use

SCHEDULE "A-3"

Martin Avenue Community Centre Grounds Licence Area



The area outlined in yellow is the building.

The area outlined in red includes the playground equipment. The Society owns the equipment and the City maintains the equipment.

SCHEDULE "B"**Cameron Park Licence Area**

SCHEDULE "C"

Legal Notices and Encumbrances

Jaycees Downtown Youth Centre

Heritage Status Notice KT21341

Statutory Right of Way KD63959

Statutory Right of Way LA145302

Rutland Youth Centre

Agricultural Land Commission Act Notification, Plan M11328

Local Government Act Part 26 Permit LA97693

Right of Way N49032

Statutory Right of Way X27104

Martin Avenue Community Centre

Statutory Right of Way KM47176

Right of First Refusal KR122989

Cameron Park

Right of Way 101445E

SCHEDULE "D"**Reserve Fund Contributions**

Term Year	Amount Due	Annual Increase (+2.5%)
1	\$23,000.00	\$ 575.00
2	\$23,575.00	\$ 589.38
3	\$24,164.38	\$ 604.11
4	\$24,768.48	\$ 619.21
5	\$25,387.70	\$ 634.69
6	\$26,022.39	\$ 650.56
7	\$26,672.95	\$ 666.82
8	\$27,339.77	\$ 683.49
9	\$28,023.27	\$ 700.58
10	\$28,723.85	\$ 718.10

END OF DOCUMENT