
CITY OF KELOWNA

MEMORANDUM

Date: February 27, 2008
File No.: 6120-20
To: City Manager
From: Parks Planning Manager
Subject: Crawford School Site – Lease Renewal

RECOMMENDATION:

THAT Council approve the renewal of the Lease between the City of Kelowna and the Board of School Trustees of School District No. 23 Central Okanagan for Lot 2, Section 29, Twp. 29, Plan 52409 located on Stewart Road West (Crawford Estates) for a five year term commencing January 31, 2008.

BACKGROUND:

The Crawford Estates Joint Use Agreement has expired and requires renewal. The terms and conditions have remained consistent with the original agreement from 2001 which allows the City to operate a multi-court, a small parking area and to maintain the boulevard areas.

The facilities were built in partnerships with local residents, the Kinsmen Club of Kelowna and the Partners in Parks Program and in cooperation with the School District. The multi-court and parking area were built in areas of the site that will complement the future development of the property for school purposes.

The attached lease outlines the payments, tenant and landlord covenants and general terms.

Considerations that were not applicable to this report:

INTERNAL CIRCULATION TO:

LEGAL/STATUTORY AUTHORITY:

LEGAL/STATUTORY PROCEDURAL REQUIREMENTS:

EXISTING POLICY:

FINANCIAL/BUDGETARY CONSIDERATIONS:

PERSONNEL IMPLICATIONS:

TECHNICAL REQUIREMENTS:



EXTERNAL AGENCY/PUBLIC COMMENTS:

COMMUNICATIONS CONSIDERATIONS:

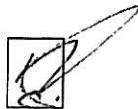
ALTERNATE RECOMMENDATION:

Submitted by:



T. Barton, Parks Planning Manager

Approved for Inclusion:



Cc: Director of Parks and Leisure Services
City Clerk/Assistant Land Agent
Recreation Manager

GROUND LEASE

THIS AGREEMENT IS MADE AS OF THE _____ DAY OF _____ 2007.

THE BOARD OF EDUCATION OF SCHOOL DISTRICT NO. 23 (CENTRAL OKANAGAN), of 1940 Underhill Street, in the City of Kelowna, in the Province of British Columbia;

(Goods & Services Tax Registration # R107960866)

(hereinafter called the "Landlord"),

AND:

CITY OF KELOWNA

a municipal corporation having its offices at 1435 Water Street, in the City of Kelowna, Province of British Columbia

(hereinafter called the "Tenant").

RECITES THAT IN CONSIDERATION of the payments and covenants herein contained on the part of the Tenant the Landlord hereby leases to the Tenant the lands and Premises described in Schedule "A" which is attached to and forms part of this agreement, and all rights and appurtenances thereto, hereinafter collectively referred to as the "Premises".

TO HOLD the Premises for the term of years set out in Schedule "A" hereto from the date indicated in, and for the use outlined in Schedule "A", unless such term be sooner terminated or renewed as hereinafter provided, with the Tenant paying therefore yearly and every year during the term granted that sum specified in Schedule "A" in installments as provided in Schedule "A".

1. MAINTENANCE ADJUSTMENT

The Tenant shall pay the costs arising from the use or occupation of the Premises as set out in this agreement.

2. RECOVERY OF ADJUSTMENTS

The Landlord shall have, in addition to any other right or remedy, the same rights and remedies in the event of default by the Tenant in payment of any other amount payable by him as the Landlord would have in the case of default in payment of rent.

3. TENANT'S COVENANTS

The Tenant covenants with the Landlord:

- (a) Rent: To pay rent as set out in Schedule "A".
- (b) Taxes and Utilities: As additional rent in each year during the term to pay and discharge all taxes (including local improvement rates), rates, duties and assessments that may be levied, rated, charged or assessed against the Premises or any part thereof and every other tax, charge, rate, assessment or payment which may become a charge or encumbrance upon or levied or collected upon or in respect of the Premises or any part thereof, or in respect of any building, equipment or machinery of the Tenant as they become due, whether charged by any municipal,

- parliamentary or other body during the term, excepting only from the foregoing taxes on the income of the landlord. The Tenant shall pay as they become due all charges for public utilities, including water, gas, electrical power or energy, steam or hot water, used upon or in respect of the Premises and for fittings, machines, apparatus, meters or other things leased in respect thereof, and for all work or services performed by any corporation or commission in connection with such public utilities, PROVIDED FURTHER that the Tenant shall have the right to contest by appropriate legal proceedings the validity of any tax, rate (including local improvement rates), assessment or other charges referred to in this paragraph; and if the payment of any such tax, rate, local improvement rates, assessment or other charges may legally be held in abeyance without subjecting the Landlord or the Tenant to any liability for failure so to pay, the Tenant may postpone such payment until the final determination of any such proceedings, provided that all such proceedings shall be prosecuted with all due diligence and dispatch.
- (c) Maintenance of Premises: At its own expense to maintain and keep the Premises, as outlined in the attached Schedule "B", in good order and condition and promptly make all needed repairs and replacements (reasonable wear and tear and damage by fire, external explosion, impact by aircraft or vehicles not belonging to the Tenant, lightning, riot, smoke, windstorm and hail or the Queen's enemies only excepted) and to keep the Premises clean and in such condition as a careful owner would do, and as reasonably required by the Landlord;
 - (d) Condition of Premises: To keep the Premises and every part thereof in a clean and tidy condition and not to permit waste paper, garbage, ashes or waste of objectionable material to accumulate thereon, and at its own expense, to keep the grounds, sidewalks and curbs upon the Premises clean and free of snow and ice.
 - (e) Repair: To repair the Premises, reasonable wear and tear excepted, and to repair any structures and services, including reasonable wear and tear, and to permit the Landlord to enter and view the state of repair and to repair according to notice in writing as required by this clause, and to leave the Premises in good repair, reasonable wear and tear excepted.
 - (f) Assigning or Subletting: Not to assign, sublet or part with possession of any part of the Premises without leave of the Landlord, which leave may be arbitrarily withheld.
 - (g) Rules and Regulations: That the Tenant and his employees and all persons visiting or doing business with them on the Premises shall be bound by and will observe and perform any rules and regulations attached to this Lease and any further reasonable rules and regulations made hereafter by the Landlord of which notice in writing shall be given to the Tenant and that all such rules and regulations shall be deemed to be incorporated in and form part of this Lease.
 - (h) Use of Premises and Insurance:
 - (i) The Landlord agrees that the use of the Tenant's Lands and Facilities located on the Premises, will be at its own risk and the Landlord agrees to indemnify and save harmless the Tenant from and against all actions, costs, claims and demands of every kind, description or nature arising out of or in any way connected with such use, including claims arising pursuant to the Occupiers' Liability Act, except where any such actions, costs, claims and demands arise from the negligent acts or omissions of the Tenant.

- (ii) The Tenant agrees that the use of the Landlord's Lands and Facilities located on the Premises, will be at its own risk and the Tenant agrees to indemnify and save harmless the Landlord from and against all actions, costs, claims and demands of every kind, description or nature arising out of or in any way connected with such use, including claims arising pursuant to the Occupiers' Liability Act, except where any such actions, costs, claims and demands arise from the negligent acts of omissions of the Landlord.
- (iii) The Tenant and the Landlord, subject to limitations placed on the Landlord by the Ministry of Education, further agree that each party shall maintain liability insurance for their Lands and the Facilities located on the Premises, in an amount and form that is common to their respective industries.
- (iv) Rental of the Premises to any third party shall require such third party to obtain comprehensive general liability insurance as specified in the rental agreement and such insurance shall name both the Tenant, and the Landlord, as Additional Insureds thereunder. The rental agreement shall also specify that the third party shall indemnify the Tenant, its elected officials, officers, employees and agents and the Landlord, its officers, employees and agents from and against any and all suits or claims alleging damage or injury (including death) to any person or property that may occur or that may be alleged to have occurred, in the course of the rental or other use of the specific Lands and Facilities included in the rental agreement.
- (i) Observance of Law: In use and occupation of the Premises, not to violate any law or ordinance or any order, rule, regulation or requirement of any federal, provincial or municipal government and any appropriate department, commission, board or officer thereof.
- (j) Waste and Nuisance: Not to do or suffer any waste or damage, disfiguration or injury to the Premises; and not to use or permit the use of any part of the Premises for any dangerous, noxious or offensive trade or business and not to cause or maintain any nuisance on the Premises.
- (k) Entry by Landlord: To permit the Landlord or its agents to enter upon the Premises at any time and from time to time for the purpose of inspecting and of making repairs to the Premises as permitted by the terms of this Lease, and the Tenant shall not be entitled to compensation for any inconvenience, nuisance or discomfort occasioned thereby.
- (l) Exhibiting Premises: To permit the Landlord or its agents to exhibit the Premises to prospective tenants during normal business hours of the last six (6) months of the term.
- (m) Installations: Not to make or erect in or on the Premises any installation, alteration, addition, or partition without submitting plans and specifications to the Landlord and obtaining the Landlord's prior written consent; such work shall if the Landlord so elects be performed by employees of or contractors designated by the Landlord; in the absence of such election, such work may be performed with the Landlord's consent in writing by contractors engaged by the Tenant but in each case only under written contract approved in writing by the Landlord and subject to all conditions which the Landlord may impose; the Tenant shall submit to the Landlord's supervision over construction and promptly pay to the Landlord or the Tenant's contractors, when due the cost of all such work and of all materials, labour and services involved therein and of all

decoration and all changes in the building, its equipment or services, necessitated thereby.

- (n) Fencing: To install at the request of the Landlord and at the expense of the Tenant, such fencing as may be required by the Landlord according to its own specification and design as the Landlord may consider necessary to separate the Premises from the lands of the Landlord of which the Premises form a part, and shall remove such fencing upon the termination of this Lease unless otherwise agreed.
- (o) Signs: To erect a sign at the expense of the Tenant, subject to specifications outlined in Schedule "C".
Not to paint, display, inscribe or affix any other signage, picture, advertisement, notice, lettering or direction on any part of the outside of the structures or on the Premises without the prior consent of the Landlord, and the Landlord shall have the right to determine the colour, size, style, character and material of the said signs, and the cost of preparation and placement of the signs shall be paid by the Tenant.
- (p) Address: To make all necessary arrangements for a designation of the lands according to address so as to avoid any confusion with lands or buildings of the Landlord adjacent to the Premises.

4. LANDLORD'S COVENANTS

The Landlord covenants with the Tenant:

- (a) Quiet Enjoyment: for quiet enjoyment;
- (b) Access: to permit the Tenant, its employees and all persons lawfully using the Premises access only in accordance with the plan of the Premises set out in Schedule "B" hereto.

5. ARBITRATION

Any dispute arising as to the terms of this Lease, including the determination of rent, shall be referred to a single arbitrator appointed in accordance with the Commercial Arbitration Act, as applicable at time of referral, of the Province of British Columbia.

6. PROVISOS

It is further agreed as follows:

- (a) Fixtures: The Tenant may remove Tenant's fixtures and portable structures installed by the Tenant, but all installations of services, whether placed by the Tenant or the Landlord, shall be the Landlord's property without compensation therefore to the Tenant and shall not be removed from the Premises at any time. PROVIDED FURTHER THAT the Tenant shall leave the Premises in as good a condition as at the commencement of this Lease and shall repair any damage to the Premises related to the installation or removal of structures upon the Premises and in particular shall remove at the request of the Landlord and at the cost of the Tenant any asphalt paving, gravel, parking service and other improvements made by the Tenant for its own purposes.
- (b) Fire: In the case of damage to any structures of the Tenant by fire or any other cause which renders them unusable for the purpose intended, rent shall not abate and the structures shall be removed, replaced or rebuilt, provided that the Tenant shall proceed diligently to remove, replace or repair the said structures, and provided further that the Tenant may, at its option, terminate this Lease on giving to the Landlord within thirty (30) days after such damage notice in writing of his intention to do so, and thereupon rent and any other payments for which the Tenant is liable

under this Lease shall be apportioned and paid to the date of such damage and the Tenant shall immediately deliver up possession of the Premises to the Landlord.

- (c) Damage to Property: The Landlord shall not be liable nor responsible in any way for any loss of or damage or injury to any property belonging to the Tenant or to employees of the Tenant or to any other person while such property is on the Premises unless such loss, damage or injury shall be caused by the negligence of the Landlord or of its employees, servants or agents and the Landlord shall not be liable in any event for any damage to any such property caused by steam, water, rain or snow which may leak into, issue or flow from any part of the structures or from the water, steam or drainage pipes or plumbing works of the structures or from any other place or quarter nor for any damage caused by or attributable to the condition or arrangement of any electric or other wiring nor for any damage caused by anything done or omitted by any other tenant.
- (d) Impossibility of Performance: It is understood and agreed that whenever and to the extent that the Landlord shall be unable to fulfill, or shall be delayed or restricted in fulfilling any obligation hereunder for the supply or provision of any service or utility or the doing of any work or the making of any repairs because it is unable to obtain the material, goods, equipment, service, utility or labour required to enable it to fulfill such obligation or by reason of any statute, law or order-in-council or any regulation or order passed or made pursuant thereto or by reason of the order or direction of any administrator, controller or board, or any government department or officer or other authority or by reason of not being able to obtain any permission or authority required thereby, or by reason of any other cause beyond its control whether of the foregoing character or not, the Landlord shall be relieved from the fulfillment of such obligation and the Tenant shall not be entitled to compensation for any inconvenience, nuisance or discomfort thereby occasioned.
- (e) Default of Tenant: If the rent reserved or any part thereof shall not be paid on the day appointed for payment, whether lawfully demanded or not, or in the case of break or non-observance or non-performance of any of the covenants or agreements or rules or regulations herein contained or referred to on the part of the Tenant to be observed and performed, or in case the Premises shall be vacated or remain unoccupied or in case the term shall be taken in execution or attachment for any cause whatever, then the Landlord shall be entitled thereafter to enter upon the Premises and the same to repossess and enjoy as of its former estate, anything herein contained to the contrary notwithstanding.
- (f) Distress: The Tenant waives and renounces the benefit of any present or future statute taking away or limiting the Landlord's right of distress, and covenants and agrees that notwithstanding any such statute none of the goods and chattels of the Tenant on the Premises at any time during the term shall be exempt from levy by distress for rent in arrears.
- (g) Right of Re-entry: On the Landlord's becoming entitled to re-enter the Premises under any of the provisions of this Lease, the Landlord in addition to all other rights may do so as the agent of the Tenant, using force if necessary, without being liable for any prosecution therefore, and may relet the Premises as agent of the Tenant, and receive the rent therefore, and as agent of the Tenant may take possession of any furniture or other property on the Premises and sell the same at public or private sale without notice and apply the proceeds of such sale and any

rent derived from reletting the Premises upon account of the rent under this Lease, and the Tenant shall be liable to the Landlord for any deficiency.

- (h) Right of Termination: On the Landlord's becoming entitled to re-enter the Premises under any of the provisions of this Lease, the Landlord, in addition to all other rights, shall have the right to terminate this Lease forthwith by mailing, to the Tenant, a notice of its intention to terminate, and thereupon rent and any other payments for which the Tenant is liable under this Lease shall be computed, apportioned and paid in full to the date of such determination, and the Tenant shall immediately deliver up possession of the Premises to the Landlord, and the Landlord may re-enter and take possession of the Premises.
- (i) Non-Waiver: Any condoning, excusing or overlooking by the Landlord of any default, breach or non-observance by the Tenant at any time in respect of any covenant, proviso or condition herein contained shall not operate as a waiver of the Landlord's rights hereunder in respect of any subsequent default, breach or non-observance, and shall not defeat or affect in any way the rights of the Landlord herein in respect of any subsequent default or breach.
- (j) Overholding: If the Tenant shall continue to occupy the Premises after the expiration of this Lease with or without the consent of the Landlord, and without any further written agreement, the Tenant shall be a monthly tenant at the monthly rental, at a rate to be negotiated and on the terms and conditions herein set out except as to length of tenancy.
- (k) Notice: Any notice required or contemplated by any provision of this Lease shall be deemed sufficiently given if contained in writing and delivered to the address of the relevant party indicated in Schedule "A" hereto.
- (l) Voluntary Termination: Either party may terminate this Lease on ninety (90) days' notice in writing to the other party.

7. EFFECT OF LEASE

This Agreement and everything herein contained shall extend to and bind and may be taken advantage of by the heirs, executors, administrators, successors and assigns, as the case may be, of each and every of the parties hereto subject to the granting of consent by the Landlord as provided in paragraph 3(f) to any assignment or sublease, and where there is more than one tenant or there is a female party or a corporation, the provisions hereof shall be read with all grammatical changes thereby rendered necessary and all covenants shall be deemed joint and several.

IN WITNESS WHEREOF the parties hereto have executed this Agreement on the day and year first above written.

THE BOARD OF EDUCATION OF SCHOOL
DISTRICT NO. 23 (CENTRAL OKANAGAN) by
its authorized signatories:

CITY OF KELOWNA by its authorized
signatories:

Mayor

Secretary Treasurer

City Clerk

SCHEDULE A

The following terms shall form part of that certain Lease dated the 1st day of April 2001, between The Board of School Trustees of School District No. 23 (Central Okanagan) and City of Kelowna.

PREMISES

1. That those lands, more particularly known and described as follows:

Lot 2, Section 29, Township 29, SDYD, Plan KAP52409

Lot 65, Section 29, Township 29, SDYD, Plan KAP52450

TERM

2. The Tenant shall hold the Premises for the term of 5 years from the 1st day of April 2006 to the 31st day of March 2011, inclusive.

RENT PAYABLE

3. The Tenant will pay yearly and every year during the term hereby granted the sum of ONE DOLLAR (\$1.00) of lawful money of Canada on or before the 30th day of September within the lease period.

USE OF PREMISES

4. The Premises shall be used for recreational purposes and off leash dog park.

REMOVAL OF FOLIAGE

5. The Landlord grants permission to the Tenant to remove sufficient shrubs and trees to construct a play court and parking area. Any further removal of foliage requires additional written permission of the Landlord.

ADDRESSES FOR NOTIFICATION:

Landlord:

Secretary Treasurer
SCHOOL DISTRICT NO. 23
1940 Underhill Street
Kelowna, BC V1X 5X7

Tenant:

City Clerk
CITY OF Kelowna
1435 Water Street
Kelowna, BC V1Y 1J4

SCHEDULE B
SCHEDULE OF MAINTENANCE RESPONSIBILITIES
FUTURE CRAWFORD ELEMENTARY SITE
LEASE TO THE CITY OF KELOWNA

Property: North Portion of the Future Crawford Elementary Site
 Lot 2, Section 29, Township 29, SDYD, Plan KAP52409
 Lot 65, Section 29, Township 29, SDYD, Plan KAP52450

Partner Agency: City Of Kelowna

Agreement Date: April 1, 2006

Expiry Date: March 31, 2011

Type: Lease (rent is \$1.00 yearly)

Maintenance Item	Responsibility	
	SD 23	City
Grounds Repair & Maintenance: *		
Grass & Turf Mowing		✓
Seeding/Turfing		✓
Hydro Seeding		✓
Over Seeding		✓
Aeration		✓
Field Lining		✓
Fertilization		✓
Weed/Pest Control		✓
Landscaped Areas Including Border Plantings & Planters		✓
Tree Pruning, Spraying Etc.		✓
Irrigation System		✓
Fencing & Gates		✓
Goal Posts		✓
Playground Equipment		✓
Line & Curb Painting		✓
Sidewalks & Steps		✓
Garbage Collection & Disposal		✓
Garbage and Litter Pickup and Disposal		✓
All Access Roadways & Parking Areas		✓
Sanding/Plowing & Snow Clearing All Sidewalks, Steps, Roadways & Parking Areas		✓
Sweeping/Sealing & Line Painting Road Ways & Parking Lots		✓
Septic Field Maintenance		N/A
Playing Fields/Ball Diamonds		✓
Building Repair & Maintenance:		
Roofs, Eaves & Roof Drainage Systems		N/A
Foundations		✓
Supporting Structures		✓
Fire Alarm & Sprinklers		✓
Heating, Ventilation & A/C Systems		N/A
Water Supply & Drainage		✓
Plumbing Fixtures		✓
Electrical Services & Equipment		✓
Parking Lot Lighting		✓
Locks & Keys		✓
Exterior & Interior Finishes & Woodwork		✓
All Improvements & Building Services		✓
Specialty Facilities Repair & Maintenance:		
Multi Purpose & Sports Court		✓
Tennis Courts		N/A
Basketball Courts		N/A
Volleyball Courts		N/A
Well &/or Pumphouse		N/A
Public Washrooms		✓
Utilities		✓

*All Grounds Repair & Maintenance to Conform to the BC Landscape Standard