
CITY OF KELOWNA

MEMORANDUM

Date: June 4, 2003
File No.: 0870-20

To: City Manager

From: Director of Parks & Leisure Services

Subject: Okanagan Mission Hall Society Lease for the Operation and Development of Tennis Courts at Dehart Park

RECOMMENDATION:

THAT City Council approve the lease as attached to the June 4, 2003, report from the Director of Parks and Leisure Services;

AND THAT the Mayor and Clerk be authorized to execute the lease.

BACKGROUND:

City Council has already endorsed the key principles of this lease through its approval of conditions set out in a report dated March 19, 2003. The following background is extracted from that report and clearly sets out the nature of this agreement.

The Okanagan Mission Community Hall Association wishes to partner with the City to expand its current tennis facilities with the addition of three outdoor tennis courts. The proposal is to locate the courts on City land to be leased to the Hall Association adjacent to their site at the corner of Lakeshore Road and Dehart Road. The City land is now appropriately zoned as "park" and comprises part of a future land assembly to create a community park.

The City and the Hall Association previously completed a lot line adjustment involving our respective properties to enable the development of an indoor tennis facility, however, this project is not proceeding. The lot line adjustment resulted in a net increase to the City-owned land. The City did not pay for this additional land because of the anticipated partnership for the indoor facility. The proposed lease satisfies the Hall Society regarding the previous differences in land value.

The Hall Society has asked the City to provide a grant of \$80,000 toward the costs of construction. This is the amount originally approved by Council in relation to the original proposal to build both indoor and outdoor tennis courts. The funding for this grant is set aside in the City's approved 2002 budget in anticipation of the City's contribution to the indoor tennis facility and is being carried over to 2003. Full responsibility for construction including all costs, any cost over-runs, operation, and maintenance of the courts would be with the Hall Society. The operation would be an extension of their existing club and operated with the same fees and

policies. The Hall Society's total cost of the project is estimated at \$142,000 including the net value of the land exchange. The grant funds are paid out as progress payments during the course of construction of the tennis courts.

The proposed lease includes the following:

- 5 year term
- Public access provisions
- Standard City clauses for insurance and liability
- Requirement on Hall Society to construct, operate, and maintain to an agreed standard
- All construction and operational costs to be the responsibility of the Hall Society with the City providing \$80,000 toward the costs
- Future renovation costs for sports lights, court re-surfacing, and similar improvements costs to be the responsibility of the Hall Society
- The lease is to be non-transferable or assignable

David Graham, Director of Parks & Leisure Services

DG/dhk

Attachment

DOCUMENT APPROVAL			
Document No.			
Cir.	Department	Date	Init.
	Parks & Leis.		
	Finance		
	City Clerk		

THIS AGREEMENT made the _____ day of _____ 2003.

BETWEEN:

CITY OF KELOWNA
a municipal corporation
1435 Water Street, Kelowna, BC V1Y 1J4

(the "City")

OF THE FIRST PART

AND:

Okanagan Mission Community Hall Association (OMCHA)
4409 Lakeshore Road,
Kelowna, BC
V1W 1W7

(the "Tenant")

OF THE SECOND PART

In consideration of the mutual covenants, conditions and agreements herein contained, the City and Tenant agree as follows:

- 1.01 THE PREMISES. The City hereby leases to the Tenant, those lands and buildings as described in Schedule "A" (hereinafter called the "Premises").
- 2.01 TERM OF THE LEASE. TO HAVE AND TO HOLD the said Premises for a five (5) year term commencing the 1st day of June, 2003 up to and including the 31st day of May, A.D. 2008, with an option to renew for a further five year term at the discretion of the City.
- 3.01 RENT. YIELDING AND PAYING to the City rental for the Premises, the sum of ONE DOLLAR (\$1.00) per year the receipt of which is hereby acknowledged.

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- 4.00 TENANT'S COVENANTS. The Tenant covenants with the City:
- 4.01 RENT. To pay rent.
- 4.02 TAXES. That it will pay promptly as the same becomes due all rates, taxes including applicable GST, property taxes and assessments, of whatsoever description, that may at any time during the existence of this agreement be lawfully imposed, or become due and payable upon, or in respect of the business of the Tenant, the said leased premises and the operations of the Tenant hereunder, or any part thereof. The City acknowledges that the Tenant may be eligible for exemption from certain property taxes levied by the City upon application by the tenant through the City's permissive tax exemption process and as approved by the Municipal Council of the City of Kelowna.
- 4.03 BUSINESS LICENCES AND PERMITS. That it will procure and maintain, at the cost and expense of the Tenant, such licences, permits or approvals from any Federal, Provincial, Municipal or other Government authorities, and such private permits as may be necessary to enable the Tenant to furnish the services and conduct the operations provided for in this agreement.
- 4.04 UTILITIES. That it will pay promptly as the same becomes due all utility rates, charges and assessments, of whatsoever description, that may at any time during the existence of this agreement be lawfully imposed, or become due and payable, upon, or in respect of the business of the Tenant, the said leased premises and the operations of the Tenant hereunder, or any part thereof. Utilities will include but are not limited to water, sewer, power, gas, telephone, and cable television.
- 4.05 REPAIR. To repair, save and except only damage by fire, lightning, tempest or other casualty; to permit the City, its agents or employees, to enter and view the state of repair, to repair according to notice in writing and to leave the Premises in good repair, all repairs to be made in a first class workmanlike manner and to the approval of the City.
- 4.06 NUISANCE AND NEGLIGENCE. Not to do, suffer or permit any act which may in any manner, directly or indirectly, cause injury or damage to the Premises or to any fixtures or appurtenances thereof or which may be or become a nuisance to or interference with any one who occupies or has access to any part of the Premises or which may, render the Premises or any part thereof less desirable or injure the reputation thereof.
- 4.07 ASSIGNMENT. Not assign or sub-license in whole or in part. The City recognizes that the Tenant may rent out facilities and/or concessions within the Premises on a temporary basis without permission from the City, in order to generate revenue and to make the facilities more accessible to the community.
- 4.08 ABIDE BY LAWS. To abide by and comply with at its own expense all laws, rules, and regulations of every authority which in any manner relates to or affects the business or profession of the Tenant or the use of the Premises by the Tenant and to save harmless the City from all costs, charges or damages to which the City may be put or suffer by reason of any breach by the Tenant of any such law, rule or regulation.
- 4.09 INSURANCE. Without in any way limiting the obligation or liabilities of the Tenant, the Tenant shall, at his own expense, maintain and keep in force during the term of this agreement, the insurance coverage required by the City and as evidenced in Schedule B attached hereto and made a part of this Agreement. The deductible or reimbursements amounts of any of the insurance policies required under this Article are the responsibility of the Tenant.
- 4.10 USE OF PREMISES. Not to use the Premises for any purpose other than the construction and operation of tennis courts or such other activity as may be properly authorized, in writing, by the City and to operate to the satisfaction of the City and in accordance with any conditions or requirements as may from time to time

be detailed by the City. The Tenant agrees that the general public shall have access to the tennis courts upon payment of a nominal fee at all times that the courts are available to the Tenant's members.

- 4.11 CONDUCT OF BUSINESS. Recognizing that it is in the best interests of the City and the Tenant that the Tenant should have exclusive use of the Premises only for the purpose described in Section 4.10 above, the Tenant agrees with the City as follows:
- (a) To use only professionally fabricated signs on the Premises which have been approved by the City, as to quality, content and location;
 - (b) To use its best efforts to operate an attractive and efficient tennis courts which will reflect positively upon the image of the City;
 - (c) Not to establish or erect any structure on the Premises except three outdoor tennis courts ;
 - (d) Not to permit the consumption of alcoholic beverages on the premises, without the holding of a valid liquor license approved by the City;
 - (e) CONSTRUCTION AND EQUIPPING OF TENNIS COURTS. To design and construct three outdoor tennis courts within the lease area to a standard acceptable to the City's Parks Manager and including surrounding landscape, fencing, and parking spaces, and other works as per the attached Schedule C Project Budget. The Tenant is to obtain all required permits and all costs associated with the construction are the responsibility of the Tenant. The Tenant is to provide at its own expense all the equipment required to operate the tennis courts to a standard at least equal to the standard of operation typical of public tennis courts in British Columbia. Any future renovation costs for sportlights, court re-surfacing, and similar improvement costs are to be the responsibility of the Tenant.
 - (f) All costs associated with the construction and operation of the tennis courts are the sole responsibility of the Tenant.
- 4.12 NO OTHER AGREEMENT. No verbal agreements or conversations with any officer, agent, or employee of the City, either before or after the execution of this agreement, shall affect or modify any of the terms or obligations herein contained.
- 5.00 CITY'S COVENANTS. The City covenants with the Tenant:
- 5.01 QUIET ENJOYMENT. For quiet enjoyment of the Premises.
- 5.02 FACILITIES. To permit construction of three outdoor tennis courts and facilities at the sole cost of the Tenant for recreational purposes only upon the premises, providing the plans and specifications covering such construction receive the prior approval of the City and comply with all applicable Federal, Provincial or Municipal code and regulations. All construction and operational costs are to be the responsibility of the Tenant.
- 5.03.1 OPERATION AND MAINTENANCE. To operate and maintain the courts and facilities which the Premises form a part in a good and reasonable state of repair; subject to the provisions of this agreement concerning destruction or partial destruction by fire or other casualty.
- 5.03.2 GRANT. To provide a grant of \$80,000 to the Tenant toward the construction costs of the tennis courts, paid out on a progress claim basis during the course of construction, upon confirmation of completion of phases of the work as set follows: one quarter of the grant upon completion of site excavation, one quarter upon completion of backfilling and compaction, one quarter upon completion of both asphalt lifts, and one

quarter upon completion of all fencing, security gates, parking spaces, landscaping, and other project elements required to bring the project to a fully complete status satisfactory to the City's Parks Manager. All payments are subject to a 10% deficiency holdback that will be paid after confirmation of satisfactory completion of the project without deficiencies.

6.00 PROVIDED ALWAYS AND IT IS HEREBY AGREED AS FOLLOWS:

6.01 OWNERSHIP. All buildings, fittings, fixtures and other appurtenances upon the premises shall, at the expiration of the term of this Agreement, become the sole property of the City.

6.02 PROVISO FOR RE-ENTRY ON DEFAULT. If and whenever the rent is not paid in full when due or in case of breach of, or non-observance or non-performance by the Tenant of any of the provisions of this agreement, and if the default continues for THIRTY (30) days after written notice thereof to the Tenant, or if the Premises are vacated or remain unoccupied for THIRTY (30) days or if the term shall be taken in execution or attachment for any cause whatever, then, in every such case, the City, in addition to any other remedy now or hereafter provided by law may, at its option, cancel this agreement and re-enter and take possession of the Premises or any part thereof by force if necessary, without any previous notice of intention to re-enter and may remove all persons and property therefrom and may use such force and assistance in making such removal as the City may deem advisable and such re-entry shall not operate as a waiver or satisfaction in whole or in part of any right, claim, or demand arising out of or connected with any breach or violation by the Tenant of any covenant or agreement on its part to be performed.

6.03 ALTERATIONS BY TENANT. The Tenant agrees not to make any alterations, additions or improvements in or to the Premises without obtaining the City's prior written consent and all such work shall be done only by contractor's or tradesmen or mechanics approved in writing by the City and at the Tenant's sole expense and at such time, in such manner as the City may approve.

6.04 REMOVAL OF ALTERATIONS BY TENANT. If any alterations, additions or improvements are made to the Premises by the Tenant, it shall, on the written request of the City, restore the Premises to their condition at the commencement of the term of this agreement not later than FIFTEEN (15) days prior to the termination of this agreement or, if the City would prefer that any alterations, additions and improvements remain, the City may require the Tenant to restore the Premises to such extent as the City may deem expedient although retaining as far as possible the alteration, additions and improvements, without any compensation to the Tenant.

6.05 REMOVAL OF TENANT'S PROPERTY. All Articles of personal property and all business and trade fixtures, machinery and equipment and furniture owned by the Tenant or installed by the Tenant in the Premises at the Tenant's expense shall remain the property of the Tenant and may be removed by the Tenant at any time during the term of this agreement, PROVIDED that the Tenant, at its own expense, shall repair any damage to the Premises or to the building caused by such removal or by the original installation.

6.06 NO WARRANTY OF SERVICES BY CITY. The City does not warrant that any service or facility provided by it in accordance with the provisions of this agreement will be free from interruption caused by any cause beyond the City's reasonable care and control. No such interruption shall be deemed to be a disturbance of the Tenant's enjoyment of the Premises nor render the City liable for injury to or in damages to the Tenant nor relieve the parties from their obligations under this agreement. The City shall without delay take all reasonable steps to remove the cause of any such interruption.

6.07 CITY NOT LIABLE FOR INTERFERENCE. The City shall not be liable to the Tenant for any interference or inconvenience cause by any labour dispute or by damage to the Premises or by repairs,

alterations, improvements or construction in or adjacent to the Premises, or by failure or interruption of any supply of any utility.

- 6.08 CITY NOT LIABLE FOR INJURY TO TENANT. The City shall not be liable for any injury or damage to the Tenant, his agents, employees, customers or invitees as to any of their property while in the Premises or the building, regardless of the cause of such injury or damage, except such injury or damage which may be caused by the negligence of the City, its agents, servants or employees.
- 6.09 HOLD HARMLESS AND INDEMNIFICATION.
The **Tenant** shall be liable for all loss, costs, damages, and expenses whatsoever incurred or suffered by the City, its elected officials, officers, employees and agents (the Indemnitees) including but not limited to damage to or loss of property and loss of use thereof, and injury to or death of a person or persons resulting from or in connection with the performance, purported performance, or non-performance of this **Agreement**, excepting only where such loss, costs, damages and expenses are as a result of the sole negligence of the Indemnitees.
- The **Tenant** shall defend, indemnify and hold harmless the Indemnitees from and against all claims, demands, actions, proceedings, and liabilities whatsoever and all costs and expenses incurred in connection therewith and resulting from the performance, purported performance, or non-performance of this **Agreement**, excepting only where such claim, demand, action, proceeding or liability is based on the sole negligence of the Indemnitees.
- 6.10 NO REPRESENTATION. The Tenant agrees that it has leased the Premises after examining the same and that no representations, warranties or conditions have been made other than those expressed herein, and that no agreement collateral hereto shall be binding upon the City unless it be made in writing and signed on behalf of the City.
- 6.11 DAMAGE OR DESTRUCTION OF PREMISES. Subject to the provisions of Clause 6.12, if the Premises shall be damaged by fire or other casualty against which the City is insured, the damage to the Premises shall be repaired by the City with reasonable diligence at its expense except that repairs to alterations, additions or improvements made by the Tenant shall be performed by the City at the expense of the Tenant and the Tenant shall, at its own expense, make all repairs and replacements of property which belongs to the Tenant.
- 6.12 PREMISES RENDERED UNTENABLE. If the Premises are rendered untenable by fire or other casualty against which the City is insured and if the City shall decide not to restore the same, the City shall, within NINETY (90) days after such fire or other casualty, give to the Tenant a notice in writing of such decision and thereupon the term of this agreement shall expire forthwith and the Tenant shall vacate the Premises and surrender the same to the City. Upon the termination of this agreement under the provisions of this clause, the Tenant's liability for rent shall cease as of the day following the fire or other casualty.
- 6.13 RIGHT OF ENTRY TO MAKE REPAIRS. The Tenant agrees that the City shall have the right to enter the Premises at all reasonable times to examine the same and make such repairs, alterations, improvements or additions as the City may deem necessary or desirable or as the City may be required to make by law or in order to repair and maintain the Premises. The City shall be allowed to take into the Premises all material which may be required for such purpose and the rent reserved shall in no way abate while such repairs, alterations, improvements or additions are being made by reason of interruption of the business of the Tenant. The City will exercise reasonable diligence as to minimize the disturbance or interruption of the Tenant's operations.
- 6.14 DISTRAINT. If the City levies distress against the goods and chattels of the Tenant, such force as may be deemed necessary for the purpose and for gaining admission to the Premises may be used without the City being liable to any action in respect thereof or for any loss or damage occasioned thereby and the Tenant

hereby expressly releases the City, its employees and agents from all actions, proceedings, claims or demands whatsoever for or on account or in respect of any such forcible entry or any loss or damage sustained by the Tenant in connection therewith.

- 6.15 COSTS OF RECOVERY OF RENT. If the City shall consider it desirable to retain the services of a lawyer or any other person reasonably necessary for the purpose of assisting the City in enforcing any of its rights hereunder in the event of default on the part of the Tenant, it shall be entitled to collect from the Tenant the cost of all such services as if the same were rent.
- 6.16 INTEREST ADDED TO COSTS OF DEFAULT. Without prejudice to any other remedy of the City, any money payable by the Tenant to the City hereunder, other than the rent referred to in Article 3 of this agreement, shall be deemed to be rent and shall be subject to "Interest Penalty on Overdue Rent" as outlined in Clause 6.17 of this agreement from the date due or the date the City shall have paid out the same, and shall be paid as additional rent and shall be collectable as rent and unless otherwise provided in this agreement, shall be payable with the next ensuing installment of rent.
- 6.17 INTEREST PENALTY ON OVERDUE RENT. Without waiving any right of action of the City in event of late payment or default of payment or rents due herein, the Tenant shall pay a penalty of two percent (2%) per month or any portion thereof compounded monthly (26.82% per annum) effective from the day the amount is due. In order to reflect prevailing interest rates, the City may review and adjust the penalty rate from time to time.
- 6.18 NO WAIVER. The failure of the City to insist upon strict performance of any covenant or condition in this agreement or to exercise any right or option hereunder shall not be construed or operate as a waiver or relinquishment for the future of any such covenant, condition or option and no waiver shall be inferred from or implied by anything done or omitted by the City save only express waiver in writing. The acceptance of any rent or the performance of any obligation hereunder by a person other than the Tenant shall not be construed as an admission by the City of any right, title or interest of such person as a sub-tenant, assignee, transferee or otherwise in the place and stead of the Tenant.
- 6.19 OVERHOLDING. If the Tenant shall continue to occupy the Premises after the expiration of the term hereby granted and the City shall accept rent, the new tenancy thereby created shall be deemed to be a monthly tenancy and shall be subject to the covenants and conditions contained in this agreement insofar as the same are applicable to a tenancy from month to month save and except that the rental payable shall be as determined by the City.
- 6.20 TERMINATION. The City shall have the right to terminate this agreement in any of the following instances:
- (a) In the event the Tenant fails to pay annual rent by the prescribed due date.
 - (b) In the event the Tenant shall be in breach of the provisions of this Agreement and not remedy same after thirty (30) days notice in writing from the City to do so

Upon the termination of this agreement, the Tenant shall leave the Premises tidy and free of all implements or equipment and shall peaceably surrender said Premises to the City.

- 6.21 ENVIRONMENTAL MATTERS.
- (a) Definitions. For the purposes of this Section and Agreement, the following terms shall have the following meanings:
 - (i) **"Contaminants"** means any radioactive materials, asbestos materials, urea formaldehyde, underground or above ground tanks, pollutants, contaminants, deleterious substances, dangerous substances or goods, hazardous, corrosive or toxic substances,

special waste or waste of any kind or any other substance the storage, manufacture, disposal, treatment, generation, use, transport, remediation or Release into the Environment of which is now or hereafter prohibited, controlled or regulated under Environmental Laws;

- (ii) **"Environment"** includes the air (including all layers of the atmosphere), land (including soil, sediment deposited on land, fill and lands submerged under water) and water (including oceans, lakes, rivers, streams, ground water and surface water);
 - (iii) **"Environmental Laws"** means any statutes, laws, regulations, orders, bylaws, standards, guidelines, permits and other lawful requirements of any federal, provincial, municipal or other governmental authority having jurisdiction over the Premises now or hereafter in force with respect in any way to the Environment, health, occupational health and safety, product liability or transportation of dangerous goods, including the principles of common law and equity; and
 - (iv) **"Release"** includes any release, spill, leak, pumping, pouring, emission, emptying, discharge, injection, escape, leaching, migration, disposal or dumping.
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- (b) Condition of Premises. The Tenant acknowledges and agrees that the City has made no representations or warranties with respect to the environmental condition of the Premises and is leasing the Premises to the Tenant under this Agreement on an "as is, where is" basis with respect to their environmental condition. Prior to taking possession of the Premises under this Agreement, the Tenant has performed such investigations of the Premises as it considered appropriate and is satisfied as to their environmental condition.
 - (c) Use of Contaminants. The Tenant shall not use or permit to be used all or any part of the Premises for the sale, storage, manufacture, disposal, handling, treatment, generation, use, transport, refinement, processing, production, remediation, Release into the Environment of, or any other dealing with, any Contaminants, without the prior written consent of the City, which consent may be unreasonably and arbitrarily withheld. Without limiting the generality of the foregoing, the Tenant shall in no event use, and does not plan or intend to use, the Premises to dispose of, handle or treat any Contaminants in a manner that, in whole or in part, would cause the Premises, or any adjacent property to become a contaminated site under Environmental Laws.
 - (d) Compliance with Environmental Laws. The Tenant shall promptly and strictly comply, and cause any person for whom it is in law responsible to comply, with all Environmental Laws regarding the use and occupancy of the Premises under or pursuant to this Agreement, including without limitation obtaining all required permits or other authorizations.
 - (f) Evidence of Compliance. The Tenant shall promptly provide to the City a copy of any environmental site investigation, assessment, audit or report relating to the Premises conducted by or for the Tenant at any time before, during or after the Term (or any renewal thereof). The Tenant shall, at its own cost at the City's request from time to time, obtain from an independent environmental consultant approved by the City an environmental site investigation of the Premises or an environmental audit of the operations at the Premises, the scope of which shall be satisfactory to the City and shall include any additional investigations that the environmental consultant may recommend. The Tenant shall, at the City's request from time to time, provide the City with a certificate of a senior officer of the Tenant certifying that the Tenant is in compliance

with all Environmental Laws and that no adverse environmental occurrences have taken place at the Premises, other than as disclosed in writing to the City.

- (g) Confidentiality of Environmental Reports. The Tenant shall maintain all environmental site investigations, assessments, audits and reports relating to the Premises in strict confidence and shall not disclose their terms or existence to any third party (including without limitation, any governmental authority) except as required by law, to the Tenant's professional advisers and lenders on a need to know basis or with the prior written consent of the City, which consent may be unreasonably withheld.
- (h) Records. The Tenant shall maintain at the Premises all environmental and operating documents and records, including permits, licences, orders, approvals, certificates, authorizations, registrations and other such records, relating to the operations at the Premises, which may be reviewed by the City at any time during the Term on twenty-four (24) hours' prior written notice, except in the case of an emergency, when no prior notice shall be required.
- (i) Access by City. Without relieving the Tenant of any of its obligations under this Agreement, the Tenant shall, at such reasonable times as the City requires, permit the City to enter and inspect the Premises and the operations conducted at the Premises, to conduct tests and environmental investigations, to remove samples from the Premises, to examine and make copies of any documents or records relating to the Premises, to interview the Tenant's employees and to take such steps as the City deems necessary for the safety and preservation of the Premises.
- (j) Authorizations. The Tenant shall promptly provide to the City on request such written authorizations as the City may require from time to time to make inquiries of any governmental authorities regarding the Tenant's compliance with Environmental Laws.
- (k) Notices. The Tenant shall promptly notify the City in writing of:
 - (i) any Release of a Contaminant or any other occurrence or condition at the Premises, or any adjacent property which could subject the Tenant, the City or the Premises to any fines, penalties, orders or proceedings under Environmental Laws;
 - (ii) any charge, order, investigation or notice of violation or non-compliance issued against the Tenant or relating to the operations at the Premises under any Environmental Laws; and
 - (iii) any notice, claim, action or other proceeding by any third party against the Tenant or in respect of the Premises concerning the Release or alleged Release of Contaminants at or from the Premises.

The Tenant shall notify the appropriate regulatory authorities of any Release of any Contaminants at or from the Premises in accordance with Environmental Laws and failure by the Tenant to do so shall authorize, but not obligate, the City to notify the regulatory authorities.

- (k) Removal of Contaminants. Prior to the expiry or earlier termination of this Agreement or at any time if requested by the City or required by any governmental authority pursuant to Environmental Laws, the Tenant shall, promptly at its own cost and in accordance with Environmental Laws, remove from the Premises any and all Contaminants, and remediate any contamination of the Premises, or any adjacent property resulting from Contaminants, in either case brought onto, used at or Released from the Premises by the Tenant or any person for whom it is in law responsible. [For greater certainty, the foregoing obligations of the Tenant shall include, without limitation, the

treatment of water (including surface and ground water) and the remediation by removal of any soils containing Contaminants at levels exceeding the standards set as acceptable at the time of remediation by the applicable governmental authority, being with respect to soils, the standard applicable to property used for [commercial/industrial] purposes and with respect to water, as determined by the governmental authority given the character and use of water in the area of the Premises. Any soil so removed shall be promptly replaced by soil free of Contaminants at concentrations above the standard described in the preceding sentence.] The Tenant shall provide to the City full information with respect to any remedial work performed pursuant to this section and shall comply with the City's requirements with respect to such work. The Tenant shall use a qualified environmental consultant approved by the City to perform the remediation. The Tenant shall, at its own cost, obtain such approvals and certificates from the B.C. Ministry of Environment, Lands & Parks in respect of the remediation as are required under Environmental Laws or required by the City, including without limitation a certificate of compliance evidencing completion of the remediation satisfactory to the Ministry. The Tenant agrees that if the City reasonably determines that the City, its property, its reputation or the Premises is placed in any jeopardy by the requirement for any such remedial work, the City may, but shall be under no obligation to, undertake itself such work or any part thereof at the cost of the Tenant.

- (m) Ownership of Contaminants. Notwithstanding any rule of law to the contrary, any Contaminants or leasehold improvements or goods containing Contaminants brought onto, used at, or Released from, the Premises by the Tenant or any person for whom it is in law responsible shall be and remain the sole and exclusive property of the Tenant and shall not become the property of the City, notwithstanding the degree of their affixation to the Premises and notwithstanding the expiry or earlier termination of this Agreement. This section supersedes any other provision of this Agreement to the contrary.
- (n) Indemnity. The Tenant shall indemnify and save harmless the City and its directors, officers, shareholders, employees, agents, successors and assigns, from any and all liabilities, actions, damages, claims, remediation cost recovery claims, losses, costs, orders, fines, penalties and expenses whatsoever (including without limitation, the full amount of all consulting and legal fees and expenses on a solicitor-client basis and the costs of removal, treatment, storage and disposal of Contaminants and remediation of the Premises, and any adjacent property) which may be paid by, incurred by or asserted against the City or its directors, officers, shareholders, employees, agents, successors or assigns, during or after the Term (or any renewal thereof), arising from or in connection with any breach of or non-compliance with the provisions of this Section by the Tenant or arising from or in connection with:
- (i) any legal or administrative action, proceeding, investigation, demand, claim or notice of any third party, including without limitation any governmental authority, against any one or more of them pursuant to or under Environmental Laws; or
 - (ii) any Release or alleged Release of any contaminants at or from the Premises into the Environment,
- related to or as a result of the use and occupation of the Premises by the Tenant or those for whom it is in law responsible or any act or omission of the Tenant or any person for whom it is in law responsible.
- (o) Survival of Tenant's Obligations. The obligations of the Tenant under this Section (including, without limitation, the Tenant's indemnity, its obligation to remove and remediate Contaminants and its covenant of confidentiality) shall survive the expiry or earlier termination of this Agreement. The obligations of the Tenant under this Section are in addition to, and shall not limit, the obligations of the Tenant contained in other provisions of this Agreement.

- 6.22 ENUREMENT. This agreement and everything herein contained shall enure to the benefit of and be binding upon the parties and their heirs, executors, administrators, successors and permitted assigns. Wherever the singular or masculine is used the same shall be construed as meaning the plural or feminine or body corporate or politic as the context may require.
- 6.23 SEVERABILITY. If any term or condition of this Lease or the application thereof to any person or circumstance shall, to any extent, be held to be invalid or unenforceable, the remainder of this Lease and the application of that term or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term and condition of this Lease shall be valid and enforced to the fullest extent permitted by law.
- 6.24 CONSIDERATION OF A LAND EXCHANGE. The Tenant agrees that in consideration for entering into this lease agreement, that it relinquishes any further claim for compensation of any kind with respect to the previously completed lot line adjustment between Lot 1 DL 358 ODYD Plan KAP69898 owned by the Tenant and Lot 2 DL 358 ODYD Plan KAP 69898 owned by the City of Kelowna.
- 6.25 NOTICES. All notices provided hereunder to be given in writing shall be deemed given when delivered to or mailed and addressed to the other party as follows:

If to the City:

City of Kelowna
1435 Water Street
Kelowna, BC V1Y 1J4

If to the Tenant:

OKANAGAN MISSION COMMUNITY HALL ASSOCIATION
4409 Lakeshore Road
Kelowna, BC V1W 1W7

IN WITNESS WHEREOF the parties hereto have hereunto affixed their corporate seals in the presence of their officers duly authorized in that behalf, or have hereunto set their hands and seals, as the case may be, on the day and year first above written.

THE Corporate Seal of the CITY OF)
KELOWNA was hereunto affixed in the)
presence of:)
)
)
)
)
_____)
Mayor)
)
)
)
_____)
City Clerk)

Okanagan Mission Community Hall Association)
)
)
)
Per: _____)
)
)
Per: _____)
)

SCHEDULE "A"

PREMISES

The premises is the land located on part of Lot 2, District Lot 358 ODYD, Plan KAD 69898 and part of Lot A, District Lot 358 ODYD, Plan 21520 ODYD, all located on Dehart Road in Kelowna, BC, as shown in bold black on the drawing below and the drawing attached as Figure 1.

(hereinafter called the "Premises").

SCHEDULE "B"

CERTIFICATE OF INSURANCE

This is to certify that policies of insurance as described below have been issued to the Insured named below and are in force at this time. It is understood and agreed that thirty (30) days' notice of any material alteration, transfer, assignment or cancellation of any of the policies listed below, either in part or in whole, will be given to the holder of this certificate.

This Certificate is issued to:

**The City of Kelowna
1435 Water Street
Kelowna, BC V1Y 1J4**

Insured

Name:

Address:

Broker

Name:

Address:

Location and nature of operation or contract to which this Certificate Applies:

--

Type of Insurance	Company & Policy Number	Policy Dates		Limits of Liability/Amounts
		Effective	Expiry	
Section 1 Commercial General Liability including: <ul style="list-style-type: none"> • Participant Injury; • Blanket Contractual; • Broad Form Property Damage; • Products & completed Operations; • Cross Liability Clause; • Non-Owned Automobile • Tenant's Legal Liability 				Bodily Injury and Property Damage \$ Inclusive \$ Aggregat \$ Deductibl
Section 2 Umbrella/Excess Liability				\$ Excess of General Liabili \$ Excess of Automobile
Section 3 Property Insurance (All Risks)				\$ Amount \$ Deductible

It is understood and agreed that the policy/policies noted above shall contain amendments to reflect the following:

1. **Any Deductible or Reimbursement Clause** contained in the policy shall not apply to the City of Kelowna and shall be the sole responsibility of the party named above.
2. **The City of Kelowna is added as an Additional Insured under Sections 1 and 2.**
3. Under Section 3, Property Insurance, the policy will indicate the City of Kelowna as the **"Sole Loss Payee"**

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January 15, 1999

(Authorized to Sign on Behalf of Insurers)