

THIS AGREEMENT made the _____ day of _____ 2004.

BETWEEN:

CITY OF KELOWNA
A municipal corporation having offices at
1435 Water Street, Kelowna, British Columbia

(hereinafter called the "City")

OF THE FIRST PART

AND:

THE BOARD OF SCHOOL TRUSTEES OF
SCHOOL DISTRICT NO. 23 (CENTRAL OKANAGAN)
Having an office at 1940 Haynes Road
Kelowna, British Columbia

(hereinafter called the "Board")

OF THE SECOND PART

WHEREAS the Board is the registered owner of lands located in the City of Kelowna, Province of British Columbia and legally described as:

Lot 30, Sec. 32, Twp. 26, Plan KPA44247, O.D.Y.D.

(hereinafter called the "Board Lands" shown on Schedule "A")

AND WHEREAS the City wishes to expand and enhance school facilities for community use;

AND WHEREAS the City and Board endeavor to maximize the use of public funds for community and educational purposes;

AND WHEREAS the Board has paid for certain servicing requirements concerning the construction of an Elementary School on the Board Lands.

RECITES

- A. The Board has contracted an Elementary School (the "School") on lands owned by the Board and the City has contributed funds (\$150,000) towards the capital construction of the school to enhance the facility for community use (as outlined on Schedule "B").
- B. The Board and the City have agreed to joint site development responsibility as more particularly described herein in accordance with specific funding allocation responsibilities for the joint benefit and ultimate use of the completed school and City facilities more particularly described in clauses 3.01 and 3.02 herein.

- C. Section 98 (2) of the School Act and Section 23 of the Community Charter provide that the Board and the City may enter into an agreement, subject to the prior approval of the Minister of Education, for the purposes of constructing, maintaining, operating and using jointly, community facilities on sites, the title to which is held or administered by the respective parties. The Board and the City have agreed to enter into this Agreement to define their respective rights and obligations with respect to the expansion of the school, and its future joint use and operation.

NOW THEREFORE THIS AGREEMENT WITNESS, the Board and the City, in consideration of the covenants and agreements herein contained, agree as follows:

1.0 PURPOSE

The purpose of this Agreement is to provide a framework within which members of the local community, the public generally and students of the school can cooperate to maximize the development potential and use of educational and recreational facilities provided by the Board and the City for the efficient and cost effective management and administration of school and City Facilities.

2.0 SITE DEVELOPMENT

The responsibility for future site improvements, including the capital costs thereof, shall be allocated in accordance with Schedule "B" subject to such adjustments from time to time as the Board and the City may mutually agree.

2.01 Removed

2.02 Removed

3.0 JOINT USE OF FACILITIES

3.01 For the purpose of this Agreement, the School Facilities shall include the following components:

- (a) The school playfields including the parking facilities;
- (b) The gymnasium, kitchen, multi-purposes area, media tech center, storage area, and common public areas locate within the school building.

3.02 For the purposes of this Agreement, the City Facilities shall include the following:

- (a) The community room, office and adjacent storage;
- (b) The single use washroom accessible only from the exterior.

- 3.03 For the purposes of this Agreement, in consideration of the financial contribution made by the City, the Board agrees that the City shall have first right of access to the School Facilities as set out in Clause 3.01 as follows:
- (a) From 4:30 p.m. to 10:00 p.m. on weekdays during the regular school year, except as previously scheduled by the school Administrative Officer;
 - (b) From 8:00 a.m. to 10:00 p.m. on Saturdays and Sundays throughout the calendar year, with consideration for closing security needs and custodial services, except as previously scheduled by the school Administrative Officer;
 - (c) From 8:00 a.m. to 10:00 p.m. on weekdays during the school holiday periods, subject to maintenance requirements.

- 3.04 For the purposes of this Agreement, in consideration of the financial contribution made by the City, the Board agrees that the City shall have first right of access to the City Facilities as set out in Clause 3.02 as follows:
- (a) From 8:00 a.m. to 10:00 p.m. on weekdays during the regular school year;
 - (b) From 8:00 a.m. to 10:00 p.m. on Saturdays and Sundays throughout the calendar year;
 - (c) From 8:00 a.m. to 10:00 p.m. on weekdays during the school holiday periods, subject to maintenance requirements.

4.0 ADMINISTRATIVE RESPONSIBILITY

- 4.01 For the purposes of implementing and administering this Agreement, the administrative authority of the City shall be exercised by the City Manager and the administrative authority of the Board shall be exercised by Superintendent of Schools. These two persons shall be responsible for determining operating parameters affecting the facilities and for the delegation of operating authoring within those parameters to the Operating Committee subject to Clause 4.02 following.

- 4.02 The use and operation of the School and City Facilities shall be subject to the policies, regulations and conditions of the Board and City Council respectively as they shall, from time to time determine.

5.0 OPERATING COMMITTEE

- 5.01 The Operating Committee shall be comprised of the following members:
- (a) One representative appointed by the Superintendent of Schools.
 - (b) One representative appointed by the City Manager.

5.02 Other representatives from the School Parent Advisory Council, the South Glenmore Residents' Association, the North Glenmore Residents' Association and any other local residents may at any time be invited to participate at the Operating Committee's request.

5.03 OPERATING COMMITTEE MANDATE

The Operating Committee's mandate shall be to work in partnership with local residents, the Resident's Association, School Parent Advisory, the City and the Board to provide an inclusive and coordinated community based approach to the planning, programming and scheduling of the School and the City Facilities. The Operating Committee shall consult, amend and cooperate to develop, maintain and coordinate an overall annual schedule of approved uses for the School and City Facilities in order to assure maximum use of the facilities meeting the needs of the school, the City, local residents and the community at large.

5.04 OPERATING COMMITTEE GUIDELINES

The Operating Committee shall work within policy guidelines and operating authorities established from time to time by the Board and City Council, which shall include the following:

(a) MEETINGS / REPORTING

The Operating Committee, shall meet as required, to be determined by mutual agreement. The Operating Committee shall determine and circulate a schedule of meeting dates, times and places to all interested members of the community. Minutes shall be taken of all matters discussed at each meeting.

(b) BUDGET / OPERATING COSTS

First paragraph removed

Annually, the Operating Committee shall estimate the operating and maintenance costs and capital costs and the allocation thereof for approval by the Board and City respectively.

The Board agrees that only incremental costs above the normal costs the School would incur to operate and maintain the facility will be charged back to the City. These are limited to: custodial services, utilities, electrical, structural and plumbing fixture maintenance as well as a usage fee for sports and recreational equipment, and minor sports community use of the playfields.

(c) SCHEDULING / TIME AVAILABILITY

The Operating Committee shall develop guidelines for priority, access and use of the School and City Facilities in order to develop, maintain and coordinate an overall usage which meets the needs of the school, the City, Glenmore Residents and the community at large.

The Committee shall recognize the School's requirement for the School Facility and in particular the playfields located on Board Lands from 8:00 a.m. until 4:30 p.m. during school days as well as special events as scheduled by the School Administrative Officer. Scheduling of remaining time for the School playfields shall be within the operating authority of the City.

(d) RENTAL OF FACILITIES

Rental of the School Facility shall be regulated by Board Policy on the Board's form of Rental Agreement. Rental of the City Facility shall be regulated by City Policy on the City's form of Rental Agreement, and subject to School District approval. All revenues shall be payable to the party responsible for the activity. In cases of joint sponsorship of activities, the Board and the City shall mutually agree on a division of the revenues.

(e) CUSTODIAL SERVICES

The Operating Committee shall have the right to determine the level of service required for the custodial maintenance of the City Facilities. The Operating Committee shall be responsible for these incremental costs based on the level of service.

(f) INSURANCE / LIABILITY / SECURITY

The Board and the City agree that the use of the School and City Facilities and all related improvements will be at their own risk and agree to indemnify, protect and save the other harmless 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 and to maintain Public Liability Insurance or other form of liability coverage in sufficient amounts in support of such indemnity and protection.

Rental of the facilities to any third party shall require such third party to obtain insurance as specified in the parties Rental Agreements of the party responsible for the activity. Such renter's insurance shall hold harmless the City and the Board, its officers, agents, servants and employees 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 of such facility.

The security provisions established by the Board or by the City from time to time with respect to their respective facilities shall be set out in the Rental Agreement and shall be strictly enforced and adhered to by all parties using the facilities.

(g) MONITORING / EVALUATING / RECOMMENDATIONS

The Operating Committee shall monitor the implementation of this Agreement and the participation by staff of the City and Board in the implementation of the joint use of the facilities. The Committee shall recommend policy changes or operating authority guidelines to the Board and City for the better coordination of programs and the

effective use of the facilities consistent with the mandate of the Operating Committee as defined in paragraph 5.01 herein.

(h) RESOLUTION OF DISPUTES

The Operating Committee shall mediate problems and concerns related to the use of the facilities. In the event the Operating Committee is unable to resolve such disputes, the issues in dispute and any recommendations of the Operating Committee shall be referred to the Board and City who shall determine the issues and advise the Operating Committee of such determination. In the event the Board and City Representative are unable to resolve the dispute, they shall refer the dispute to the City Manager and the Superintendent of Schools are unable to resolve the dispute, the dispute shall refer the dispute to the Board and City Council. In the event that the Board and City Council are unable to agree on a resolution of such dispute, the dispute shall be referred to arbitration pursuant to the Commercial Arbitration Act of British Columbia for a final and binding decision on the parties.

(i) SMOKING / ALCOHOL

The Operating Committee shall strictly enforce all Policies of the Board and of the City with respect to smoking and use of alcohol in or on the facilities.

6.0 DISPOSITION OF INTEREST

6.01 Neither party shall dispose of its interest in this Agreement or any renewal thereof without the prior written consent of the other party.

7.0 TERM / RENEWAL

7.01 This Agreement shall be for a term of five (5) years, unless terminated by the mutual agreement of both parties hereto. The parties agree that, provided that the Board is not in breach of any of the terms and conditions set out in this Agreement or its Schedules, the Board shall have the right to renew this Agreement for three (3) consecutive five (5) year terms on the same terms and conditions unless either party gives notice to the other, within one year of the expiration of any term hereof of its intention not to renew. Any such notice shall be in writing and shall be delivered, in the case of the City, to the City Clerk, and in the case of the Board, to the Superintendent of Schools at the addresses contained on page one of this Agreement.

8.0 This Agreement is subject to approval by the Trustees of the School Board and the City Council.

9.0 This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successor and assigns.

IN WITNESS WHEREOF the parties have hereunto executed this Agreement by their duly authorized signing officers on the day and year first above written.

THE CORPORATE SEAL OF THE BOARD)
OF SCHOOL TRUSTEES OF SCHOOL)
DISTRICT NO. 23 (CENTRAL OKANAGAN))
was hereunto affixed in the presence of:)
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_____)
Authorized Signatory)

THE CORPORATE SEAL OF THE)
CITY OF KELOWNA was hereunto affixed)
In the presence of:)
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Authorized Signatory)
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Authorized Signatory)