

JOINT USE AGREEMENT
City of West Kelowna and School District 23 No. 23 (Central Okanagan)

THIS JOINT USE AGREEMENT made as of the 1st day of July 2024
(the “Agreement”)

BETWEEN:

THE BOARD OF EDUCATION OF SCHOOL DISTRICT
NO. 23 (CENTRAL OKANAGAN),
A CORPORATION UNDER THE SCHOOL ACT
1040 Hollywood Road South, Kelowna, British Columbia V1X 4N2

(hereinafter called the “Board”)

AND:

THE CITY OF WEST KELOWNA
3731 Old Okanagan Hwy,
West Kelowna, British Columbia, V4T 0G7

(hereinafter called the “City”)

WHEREAS

- A. The Board is established under the British Columbia School Act, with responsibility for the design and delivery of an educational program for school-aged students' resident within the Central Okanagan region.
- B. The Board is the registered owner of the lands as identified in *Schedule A* of this Agreement
- C. The City is the registered owner of the lands as identified in *Schedule B* of this Agreement
- D. The Board and the City desire to use the Facilities, as herein after defined, for community use.

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

1 GENERAL

- 1.1 This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successor and permitted assigns.
- 1.2 Notice given under this Agreement will be deemed to be sufficiently given if delivered to the other Party in writing.
- 1.3 This Agreement does not affect or limit the discretion, rights, duties, or powers of the parties under any statute, bylaw, or other enactment.
- 1.4 The whole agreement between the parties is set forth in this Agreement and no representations, warranties, or conditions, express or implied, have been made other than those expressed.
- 1.5 The parties must do everything reasonably necessary to give effect to the intent of this Agreement, including execution of further instruments.
- 1.6 If any part of this Agreement is held to be invalid, illegal, or unenforceable by a court of competent jurisdiction, that part must be severed and the decision that it is invalid, illegal, or unenforceable must not affect the validity of the remainder of the Agreement.
- 1.7 Every reference to a party is deemed to include their successors, assigns, servants, employees, agents, contractors, officers, licensees, and invitees of such party wherever the context so requires or allows.
- 1.8 This Agreement is governed and construed in accordance with the laws of the Province of British Columbia.
- 1.9 This Agreement may be executed in counterpart with the same effect as if both parties had signed the same document. Each counterpart shall be deemed to be an original. All counterparts shall be construed together and shall constitute one and the same Agreement.

2 PURPOSE

- 2.1 The purpose of this Agreement is to provide a framework within which members of the local community, the Board, the City, the general public, 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.

3 DEFINITIONS

- 3.1 "**Facilities**" as defined in section 7.0.
- 3.2 "**Operating Committee**" is a committee comprised of one member appointed by the Board and one member appointed by the City as defined in section 4.0.
- 3.3 "**Regular School Year**" as determined by the Board of Education in the annual school calendar.
- 3.4 "**Board Facilities**" as defined in section 7.2.
- 3.5 "**City Facilities**" as defined in section 7.3.
- 3.6 "**School Closures**" refers to the date and times the school is not operating any classes or professional development.

4 OPERATING COMMITTEE

- 4.1 The Operating Committee shall be comprised of one representative appointed by the Board, and one representative appointed by the City.
- 4.2 The mandate of the Operating Committee will be to consult and cooperate to develop and maintain an overall annual schedule of approved uses for the Facilities in order to assure maximum use of the Facilities that meet the needs of the Board, the City, local residents and the community at large. The Operating Committee shall work within established policy, guidelines, and operating authorities.
- 4.3 The Operating Committee shall meet as required, to be determined by mutual agreement of the representatives. A record of any decision related to policy changes, operating authority including the provision of services shall be circulated in writing to each party's representative.
- 4.4 The Operating Committee shall monitor the implementation of this Agreement and the participation of staff, students and public in the use of the Facilities. The Operating Committee shall recommend policy changes or operating authority guidelines to the Board and City for improved coordination of programs and the effective use of the Facilities consistent with the mandate of the Operating Committee.
- 4.5 The Operating Committee shall recognize, and adhere to, the Board's requirement that the Board Facility is available for school use from 8:45 A.M. until 3:45 P.M. during school days as well as for special events as scheduled by the School Principal and communicated with the City. The School Principal will give appropriate notice of any special events.
- 4.6 The Operating Committee may negotiate temporary changes in use of each party's space with no changes to the operating costs set out herein. Temporary changes in the use of space will be set out in writing and agreed upon by both parties.
- 4.7 The Operating Committee may authorize invoicing the City or Board for additional services, that may include but are not limited to custodial services, security services, utilities and field costs as related to Board Facilities or field and park maintenance costs as related to City Facilities, as outlined in Clauses 7.2 and 7.3 below, or other matters as a result of the increased usage of the Facilities.
- 4.8 Any changes to the agreed upon schedule, by either the City or the Board, requires a minimum of 10 days' notice prior to the event date.
- 4.9 Annually, the Facilities will undergo a one-week maintenance shut-down, on dates to be determined by the Operating Committee, in consultation with the Director of Operations of School District No. 23 (Central Okanagan).
- 4.10 Both parties recognize that vandalism above normal wear and tear may require immediate costing discussions and decisions for future operation.

5 TERM/RENEWAL

- 5.1 This Agreement shall be for a term of three (3) years commencing July 1, 2024, and terminating June 30, 2027, unless terminated by mutual agreement of both parties hereto.

- 5.2 If no renewal agreement is concluded at the expiration of this agreement and negotiations are continued, this Agreement shall remain in effect up to the time a subsequent agreement is reached.
- 5.3 This Agreement is subject to approval by the Board of Education of School District No. 23 (Central Okanagan) and the City of West Kelowna.
- 5.4 This Agreement shall ensure to the benefit of and be binding upon the parties hereto and their respective successor and permitted assigns.
- 5.5 This agreement will be reviewed annually by the Operating Committee.
- 5.6 That this Agreement shall terminate and be at an end upon the following occurrences:
 - a. Upon the end of the Term unless negotiations for renewal are in progress.
 - b. If at the end of the Term, negotiations are continuing, then thirty (30) days after written notification, that negotiations have ceased.
 - c. At any time for cause.
 - d. Upon ninety (90) days' notice to the City given by the Board in the event that the School has been sold/leased/licensed or is being extensively renovated or is otherwise unavailable for use by the City.

6 SERVICE FEES

- 6.1 The Board agrees the annual costs for the joint use agreement shall be the sum of one (\$1) dollar, annually.

7 JOINT USE OF FACILITIES

- 7.1 For the purpose of this Agreement, the Board Facilities and the City Facilities shall be collectively called the "Facility/Facilities".
- 7.2 For the purpose of this Agreement, the " Board Facilities" shall include the space components as shown on *Schedule A*:
- 7.3 For the purpose of this Agreement, the "City Facilities" shall include the space components as shown on *Schedule B*:
- 7.4 For the purpose of this Agreement, the Board agrees that the City shall have first right of access to the Board Facilities, except for events as may be scheduled by the School Principal and communicated with the City as set out in Clause 7.2 as follows:
 - i. From 7:00 pm to 10:00 pm on weekdays during the Regular School Year. Access may be granted earlier if mutually agreed by the Board and the City.
 - ii. From 8:00 am to 10:00 pm on Saturdays, Sundays, and during School Closures throughout the calendar year, unless mutually agreed by the Board and the City.
 - iii. From 8:00 am to 10:00 pm on weekdays during the school holiday periods, subject to maintenance and security requirements.

- 7.5 Excluding section 7.4 above, for the purpose of this Agreement, the Board agrees that the City shall have first right of access to the following Board Facilities, except for events as may be scheduled by the School Principal and communicated with the City, as described below:
- i. From 4:30 pm to 10:00 pm on weekdays during regular school year:
 - i. Constable Neil Bruce Sports Fields.
 - ii. Other school fields as mutually agreed by the Operating Committee.
- 7.6 For the purpose of this Agreement, the City agrees that the Board shall have first right of access to the following City Facilities, as described below:
- i. From 8:00 am to 4:30 pm on weekdays during regular school year:
 - i. Mount Boucherie Sport Fields (*B1, B2, & Darroch sports fields*).
 - ii. Rose Valley Community Park.
 - iii. Mount Boucherie Complex – Student Parking Area (*Monday thru Friday, during regular school hours*).
 - iv. Other City owned fields as mutually agreed by the Operating Committee.
 - ii. From 12:35 pm to 3:15 pm on weekdays during regular school year:
 - i. Mount Boucherie Pickleball Courts (6 courts).
- 7.7 For the purpose of this Agreement, the City agrees that the Board shall be granted the following hours at City Facilities, at no cost to the Board, on an annual basis, unless otherwise agreed to in writing by the Operating Committee.
- i. Royal LePage Place and / or Jim Lind Arena:
 - i. MBSS Hockey Academy: 50 hours per year (2nd semester)
 - ii. GMS Hockey Academy: 150 hours per year
 - iii. West Kelowna Elementary Schools 115 hours per year
 - ii. West Kelowna Multipurpose Sport Dome:
 - i. MBSS Soccer Academy 70 hours per year
 - ii. MBSS Baseball Academy 30 hours per year

8 EQUIPMENT AND MATERIALS

- 8.1 For the purpose of this Agreement, both parties acknowledge that each are responsible for the purchase and maintenance of their own equipment.
- 8.2 The Board and the City agree that each party may use the other party's equipment, provided that authorized permissions have been granted by the Operating Committee. The party using the equipment shall be responsible for all liability and costs, including any repair or replacement associated with the use of the other party's equipment. The Operating Committee is to develop and maintain a list of equipment that can be shared by both parties.

- 8.3 Both parties recognize that future expansion and/or purchase of equipment may benefit both parties and, as a result, cost sharing agreements between the City and the Board for these expenses may be factored into an annual transfer of money.

9 ADMINISTRATIVE RESPONSIBILITY

- 9.1 The use and operation of the Facilities shall be subject to the policies, regulations, and conditions of the Board and City respectively. Policies, regulations, and conditions are subject to be reviewed from time to time.
- 9.2 The Board and City will ensure that the activities under this Joint Use Agreement are not in conflict with the collective agreement with the Central Okanagan Teachers' Association (COTA), the Canadian Union of Public Employees (CUPE) Local 3523 Union, and the Association of Local Government Employees Union (ALGEU).
- 9.3 The City and the Board will ensure that activities under this Joint Use Agreement are appropriate for an secondary school environment. Either the Board or the City can veto the use of the Facilities for any activity that they deem inappropriate for a secondary school environment, whether during school hours or after school hours.
- 9.4 The City acknowledges that the City Facilities are adjacent to the Board Facilities and the Board acknowledges that the Board Facilities are adjacent to the City Facilities. As such, each party will make all reasonable efforts to ensure that the scheduled activities do not interfere with the operations and safe use of the other party's facilities.

10 SCHEDULING TIME AVAILABILITY

- 10.1 The Operating Committee will work with both City Staff and Board Staff to help schedule City and Board Facilities. Priority for scheduling shall be given as per Section 7.0 of this agreement unless agreed to otherwise by the Operating Committee.
- 10.2 The Board shall provide the City with a draft calendar of special events for the upcoming school year annually, subject always to special events and circumstances that might arise as determined and scheduled by the School Principal and communicated with the City. The School Principal will give appropriate notice of any special events.
- 10.3 Any changes to the agreed upon space allocation by either the City or the Board require a minimum of 10 days' notice prior to the event date, unless mutually agreed upon by both parties, or as required by the School Principal and mutually agreed to by both parties.

11 RENTAL OF FACILITIES

- 11.1 The Board Facilities may be rented to third parties only by the Board, regulated by Board Policy on the Board's Rental Agreement. All rental revenue generated by the Board will remain with the Board.
- 11.2 The City Facilities shall be rented to third parties only by the City on the City Rental Agreement. All rental revenue generated by the City will remain with the City.
- 11.3 All rentals and bookings must be considered appropriate for a Secondary School environment.

- 11.4 Any agreements for use of the Facilities by any third party shall require such third party to obtain commercial liability insurance as specified in the Board's rental agreement and such agreement shall also specify that the third party shall indemnify the Board, its elected officials, 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 Facilities included in the agreement.

12 CUSTODIAL SERVICES

- 12.1 Custodial maintenance of the Board Facilities will be scheduled at a time determined by the Board so that time can be blocked out on the schedule
- 12.2 Custodial maintenance of the City Facilities will be scheduled at a time determined by the City so that time can be blocked out on the schedule.
- 12.3 If additional custodial services are required, they will be discussed and approved by the Operating Committee and invoiced in accordance with the agreed amount

13 INSURANCE/ LIABILITY/ SECURITY

- 13.1 The Board agrees that the use of the City-owned land and Facilities thereon, will be at its own risk and the Board agrees to indemnify and save harmless the City 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 City or those for whom it is in law responsible.
- 13.2 The City agrees that the use of the Board-owned lands and Facilities thereon, will be at its own risk and the City agrees to indemnify and save harmless the Board 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 Board or those for whom it is in law responsible.
- 13.3 The City and the Board, subject to limitations placed on the Board by the Ministry of Education and Child Care, further agree that each party shall maintain comprehensive general liability insurance for their lands and the Facilities thereon, in an amount and form that is common and prudent to their respective activities.
- 13.4 Any agreements for use of the Facilities by 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 the City, and the Board as the case may be, as Additional Insured. Such agreement shall also specify that the third party shall indemnify the City, its elected officials, officers, employees and agents and the Board, 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 Facilities included in the agreement.

- 13.5 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 those Facilities.

14 RESOLUTION OF DISPUTES

- 14.1 The Operating Committee shall mediate problems and concerns related to the use of the Facilities and the terms of this Agreement. In the event the Operating Committee is unable to recommend a resolution of any dispute, they shall refer the matter to the City and Board, who shall appoint representatives to meet to resolve the matter. If they fail to come to a resolution within 15 days, the Board and the City shall agree upon a professional mediator in a final attempt to resolve any disputes.

15 SMOKING, VAPING, CANNABIS, TOBACCO, AND ALCOHOL

- 15.1 The Operating Committee shall require that all Policies and Bylaws of the Board and of the City with respect to smoking, vaping and tobacco use and consumption of alcohol in or on the Facilities are adhered to. Such activities are against certain Provincial Laws and City Bylaws.
- 15.2 For clarity, the Board has zero tolerance for smoking, vaping, tobacco use, cannabis use or consumption and consumption of alcohol in or on or at any of the Facilities.

16 DISPOSITION OF INTEREST

- 16.1 Neither party shall dispose of its interest in this Agreement or any renewal thereof or assign without the prior written consent of the other party except as permitted by the Board to third parties for rental or license for use as set out herein. The City shall not assign or license any of its rights hereunder.

17 EARLIER TERMINATION

- 17.1 Notwithstanding anything herein contained, the City may terminate this Agreement upon providing the Board with at least three (3) months' written notice of such termination.
- 17.2 Notwithstanding anything herein contained, the Board may terminate this Agreement upon providing the City with at least three (3) months' written notice of such termination.

18 LICENCE TO OCCUPY

18.1 Board Premises

- i. For the purpose of this Agreement, the "Board Premises" shall include the lands as described in *Schedule C*

18.2 City Covenants

- i. **Maintenance of Board Premises:** At its own expense to maintain and keep the Board Premises in good order and condition and promptly make all needed repairs and replacements and to keep the Board Premises clean as reasonably required by the Board;
- ii. **Condition of Board Premises:** To keep the Board 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 area clean and free of snow and ice.

- iii. **Repair:** To repair any structures and services, including reasonable wear and tear, and to permit the Board to enter and view the state of repair and to repair according to notice in writing as required by this clause, and to leave in good repair, reasonable wear and tear excepted.
- iv. **Assigning or Subletting:** Not to assign, sublet or part with possession of any part of the Board Premises without leave of the Board, which leave may be arbitrarily withheld.
- v. **Rules and Regulations:** That the City and its employees and all persons visiting or doing business with them on the Board Premises shall be bound by and will observe and perform any rules and regulations attached to this agreement and any further reasonable rules and regulations made hereafter by the Board of which notice in writing shall be given to the City and that all such rules and regulations shall be deemed to be incorporated in and form part of this agreement.
- vi. **Observance of Law:** In use and occupation of the Board 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.
- vii. **Waste and Nuisance:** Not to do or suffer any waste or damage, disfiguration or injury to the Board Premises; and not to use or permit the use of any part of the Board Premises for any dangerous, noxious or offensive trade or business and not to cause or maintain any nuisance on the Board Premises
- viii. **Entry by Board:** To permit the Board or its agents to enter the Board Premises at any time and from time to time for the purpose of inspecting and of making repairs to the Board Premises as agreed to in the terms of this agreement.
- ix. **Installations:** Not to make or erect in or on the Board Premises any installation, alteration, addition, or partition without submitting plans and specifications to the Board and obtaining the Board's prior written consent.
- x. **Signs:** 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 Board Premises without the prior consent of the Board.

18.3 City Premises

- i. For the purpose of this Agreement, the "City Premises" shall include the lands as described in *Schedule C*

18.4 Board Covenants

- i. **Maintenance of City Premises:** At its own expense to maintain and keep the City Premises in good order and condition and promptly make all needed repairs and replacements and to keep the City Premises clean as reasonably required by the City;

- ii. **Condition of City Premises:** To keep the City 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 area clean and free of snow and ice.
- iii. **Repair:** To repair any structures and services, including reasonable wear and tear, and to permit the City to enter and view the state of repair and to repair according to notice in writing as required by this clause, and to leave in good repair, reasonable wear and tear excepted.
- iv. **Assigning or Subletting:** Not to assign, sublet or part with possession of any part of the City Premises without leave of the City, which leave may be arbitrarily withheld.
- v. **Rules and Regulations:** That the Board and its employees and all persons visiting or doing business with them on the City Premises shall be bound by and will observe and perform any rules and regulations attached to this agreement and any further reasonable rules and regulations made hereafter by the City of which notice in writing shall be given to the Board and that all such rules and regulations shall be deemed to be incorporated in and form part of this agreement.
- vi. **Observance of Law:** In use and occupation of the City 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.
- vii. **Waste and Nuisance:** Not to do or suffer any waste or damage, disfiguration or injury to the City Premises; and not to use or permit the use of any part of the City Premises for any dangerous, noxious or offensive trade or business and not to cause or maintain any nuisance on the City Premises.
- viii. **Entry by City:** To permit the City or its agents to enter the City Premises at any time and from time to time for the purpose of inspecting and of making repairs to the City Premises as agreed to in the terms of this agreement.
- ix. **Installations:** Not to make or erect in or on the City Premises any installation, alteration, addition, or partition without submitting plans and specifications to the City and obtaining the City's prior written consent.
- x. **Signs:** 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 City Premises without the prior consent of the City.

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 BOARD OF EDUCATION OF SCHOOL DISTRICT NO. 23 (CENTRAL OKANAGAN)



Delta Carmichael, CPA, CA
Secretary-Treasurer/CFO
School District No.23 (Central Okanagan)

June 27, 2024

Date

CITY OF WEST KELOWNA

Gord Milsom
Mayor
City of West Kelowna

Date

Corinne Boback
Corporate Officer
City of West Kelowna

Date

Schedule A

List of Board Facilities

Access to these spaces will be determined in advance by the Operating Committee.

1. Mount Boucherie Secondary School 2751 Cameron Rd, West Kelowna, BC

- a. Gymnasiums (including change rooms, washrooms, and storage areas).
- b. Identified classrooms, including Multipurpose Room and Dance Studio.
- c. Pickleball courts.

2. Constable Neil Bruce Middle School 2010 Daimler Rd, West Kelowna, BC

- a. Gymnasium (including change rooms, washrooms, and storage areas).
- b. Identified classrooms and other facility spaces.
- c. Sport fields.

3. Glenrosa Middle School 2974 Glen Abbey Pl, West Kelowna, BC

- a. Gymnasium (including change rooms, washrooms, and storage areas).
- b. Identified classrooms and other facility spaces.
- c. Sport fields.

4. Shannon Lake Elementary School 3044 Sandstone Dr, West Kelowna, BC

- a. Tennis courts.

5. Chief Tomat Elementary School 3365 E Boundary Rd, West Kelowna, BC

- a. Gymnasium (including change rooms, washrooms, and storage areas).
- b. Sport fields.

List of City Facilities

2760 Cameron Rd, West Kelowna, BC

- 2. West Kelowna Multipurpose Sport Dome 2139 McDougall Rd, West Kelowna, BC**

- ### 3. Mount Boucherie Sport Fields

1735 Pike Rd, West Kelowna, BC

- a. Access to three baseball fields at no cost to the Board (*B1, B2, & Darroch fields*).
- b. Maintenance of these fields will be completed by the City during hours the fields are not booked. As a result, all field use needs to be booked through the City facility booking process.

4. Mount Boucherie Pickleball Courts

1735 Pike Rd, West Kelowna, BC

- a. Access to pickleball courts at no cost to the Board.
- b. Operating Committee needs to schedule access to the pickleball courts through the City.

5. Rosewood Sport Field

2135 McDougall Rd, West Kelowna, BC

- a. Access at no cost to the Board.
- b. Access in accordance to MJE Joint Use Agreement.
- c. All access outside MJE Joint Use Agreement must be scheduled through the City.

6. Rose Valley Community Park

West Kelowna Road, West Kelowna, BC

- a. Access in accordance as per section 7.5.

Schedule C

License to Occupy Maps

Board Premises

Constable Neil Bruce Sport Fields

2010 Daimler Rd
West Kelowna, BC
Lot A, Plan KAP63632



Shannon Lake Elementary School Tennis Courts

3044 Sandstone Dr
West Kelowna, BC
Lot 111, Plan KAP27602



Mount Boucherie Pickleball Courts

2751 Cameron Rd
West Kelowna, BC
Lot A, Plan KAP26784



City Premises

Rose Valley Community Park

West Kelowna Road, West Kelowna, BC

