

LEASE AGREEMENT

THIS AGREEMENT made as of the ____ day of _____, 2020.

BETWEEN:

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

(hereinafter called the "Board")

OF THE FIRST PART

AND:

CITY OF WEST KELOWNA
2760 Cameron Road, West Kelowna, British Columbia V1Z 2T6

(hereinafter called the "City")

OF THE SECOND PART

WHEREAS

A. The Board is the registered owner of certain lands and improvements known as the Constable Neil Bruce Middle School situate at or near the City of West Kelowna, Province of British Columbia and legally described as:

Parcel Identifier: 024-367-745
Lot A, District Lot 2601
Osoyoos Division Yale District
Plan KAP63632
(the "Lands");

- B. The parties have entered into a Joint Development and Joint Use Agreement as of even date (the "Joint Use Agreement") whereby the parties have agreed to jointly undertake the development and joint use of recreational playing fields and other facilities on the Lands (the "Joint Use Lands");
- C. The Board has agreed to lease to the City a portion of the Joint Use Lands consisting of three recreational playing fields including two soccer fields, one soccer/multi- purpose field, a field house and parking areas as shown on the site plan attached hereto as Schedule A (the "Leased Lands");
- D. Pursuant to section 96(3) of the School Act the Board, with the Minister's prior approval, may enter into a lease agreement;

NOW THEREFORE in consideration of the mutual promises contained in this Lease Agreement and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1.0 LEASE

- 1.01 The Board hereby leases to the City that portion of the Lands shown outlined in bold and described as Leased Lands on the site plan attached hereto as Schedule A (the "Leased Lands").

- 1.02 The term of this Lease shall be for a term commencing the 1st day of November, 2020 and terminating the 1st day of July, 2024.

2.0 RENT

- 2.01 The rental payable by the City for the Leased Lands shall be the sum of \$1.00 annually.

3.0 CITY COVENANTS

The City covenants with the Board:

- 3.01 **Maintenance** - To maintain the Leased Lands and the Joint Use Lands throughout the term of this Lease in a neat and tidy condition including mowing and fertilizing all grassed areas and maintaining improvements. The Leased Lands shall be maintained to a standard agreed upon annually between the Board and the City.

- 3.02 **Utilities** - To pay promptly as the same become due, all utilities of whatever description that may at any time during the term of this Lease be lawfully payable in connection with the Leased Lands, which share of the City shall be determined pro rata in the proportion that the area of the Leased Lands bears to the total area of the Lands.

- 3.03 **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 Leased Lands or to any fixtures or improvements, including but not limited to, any sidewalk, curb, gutter, road surface and/or landscaped boulevard bordering the Leased Lands, nor any act which may be or become a nuisance to or interference with any one who occupies or has access to any part of the Leased Lands, or which may render the Leased Lands or any part thereof less desirable or injure the reputation thereof.

- 3.04 **Assignment** - Not to assign or sub-let in whole or in part the Leased Lands without the prior written consent of the Board, which consent may be arbitrarily withheld.

- 3.05 **Abide by Laws** - To abide by and comply with at its expense all laws, rules and regulations of all authorities having jurisdiction which in any manner relates to or affects the Leased Lands, or the use of the Leased Lands by the City, and to indemnify and save harmless the Board from all costs, charges or damages which may occur by reason of any breach by the City of any such laws, rules or regulations.

4.0 INSURANCE

- 4.01 **General Insurance Provisions** - The City agrees to maintain and keep in force during the term of this Lease, the insurance coverage listed in this article.
- 4.02 **Proof of Insurance** - The City shall at the time the contract is signed, submit to the Board, certificates for all insurance policies required under this article and shall also provide to the Board from time to time, as may be required, satisfactory proof that such policies are still in full force and effect.
- 4.03 **Notice of Change or Cancellation** - Each insurance policy required under this article shall contain an endorsement to provide all named insureds with prior notice of changes and cancellations. Such endorsement shall be in the following form:
- "It is understood and agreed that the coverage provided by this policy will not be changed or amended in any way or cancelled until thirty days after written notice of such change or cancellation shall have been given or sent by registered mail to all insureds."
- Whenever the word "Board" is to appear in the insurance policies, the legal name shall be inserted.
- 4.04 **Liability Insurance** - The City shall be responsible for a policy of public liability and property damage insurance in an amount of no less than two million dollars (\$2,000,000.00) against liabilities or damages in respect of injuries to persons (including injuries resulting in death) and in respect of any damage arising out of the exercise of the rights granted by this Lease.
- 4.05 **Additional Insured** - The Board shall be an additional insured on the policy. The policy shall preclude subrogation claims by the insurer against anyone insured thereunder. In addition, such insurance policy shall include the following 'Cross Liability' clause:
- "The insurance afforded by this policy shall apply in the same manner as though separate policies were issued to any action brought against any of the named insured by or on behalf of any other named insured."
- 4.06 **Automotive Insurance** - The City shall license and insure for business purposes insurance coverage of a minimum of two million dollars (\$2,000,000.00) public liability and property damage, for all automotive equipment used by the City in the conduct of the City's activities provided for in this Lease.
- 4.07 **Not to Void Insurance** - The City agrees not to do or permit anything to be done which would render any policy of insurance maintained by either party or any part thereof void or voidable, or which would cause an increase in the insurance premiums. In the event that the City does anything that would cause an increase in the insurance premiums, the City shall pay to the Board that amount which represents the increase in the insurance premium by virtue of the City's use or occupation of the Leased Lands.

5.0 CLEANLINESS

5.01 The City agrees not to permit the Leased Lands to become untidy, unsightly or hazardous or to permit unreasonable quantities of waste or refuse to accumulate on the Leased Lands.

6.0 USE OF THE LEASED LANDS

The City agrees:

6.01 Not to use the Leased Lands for any purpose other than three recreational playing fields including two soccer fields, one soccer/multi-purpose field, a field house and parking areas, for use by the parties to this Lease, and the general public in accordance with any conditions as may from time to time be agreed upon between the parties including, without limitation, the Joint Use Agreement.

6.02 To pay for all works and improvements associated with the Joint Use Lands including all maintenance and repair that may be required from time to time.

6.03 Not to use the Leased Lands between the hours of 8:00 a.m. through 3:30 p.m. during school days, and for special events scheduled by the Board, and except for days that may, upon request of the Board, be agreed upon in writing by the City.

7.0 CONSTRUCTION OF IMPROVEMENTS

7.01 The parties agree that the City shall at all times consult with and seek the agreement of the Board as to the design and specifications of construction on the Joint Use Lands, and all improvements, and not to initiate any construction without the prior written approval of the Board.

8.0 ENTIRE AGREEMENT

8.01 The parties agree that this Lease, the Joint Use Agreement and any agreements made pursuant to the Joint Use Agreement, are the only agreements between the parties concerning the Leased Lands and the Joint Use Lands, and that there are no other terms, conditions, warranties or representations. Amendments to the agreements must be in writing and agreed to by both parties.

9.0 BOARD COVENANTS

9.01 The Board covenants with the City that the City shall enjoy quiet enjoyment of the Leased Lands during the term of this Lease.

10.0 EXCLUSION OF LIABILITY

10.01 The City shall not be liable for and shall not be required to indemnify and save harmless the Board, its officials, officers, employees, agents, students or other persons using the Joint Use Lands or the Leased Lands at the invitation or with the express or implied permission of the Board as to any property or injury or damage, including death, caused by the negligence of the Board, its officials, officers, employees, agents or other representatives.

11.0 IMPROVEMENTS VESTING

11.01 That parties agree that at the expiry of this Lease all improvements to the Leased Lands shall become the property of the Board.

12.0 ENUREMENT

12.01 This Lease shall enure to the benefit of and be binding upon the parties hereto and their respective permitted assigns and successors at law. 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.

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

Board of Education of School District No. 23 (Central Okanagan)

Ryan Stierman, Secretary-Treasurer/CFO

Date: _____

City of West Kelowna

Gord Milsom, Mayor

Date: _____

Tracey Batten, Deputy CAO/Corporate Officer

Date: _____

SCHEDULE "A"

