

**JOINT USE AGREEMENT  
(South Kelowna Elementary School)**

THIS AGREEMENT made as of the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_.

BETWEEN:

**CITY OF KELOWNA**  
1435 Water Street,  
Kelowna, British Columbia

(hereinafter called the "City")

OF THE FIRST PART

AND:

**THE BOARD OF EDUCATION OF  
SCHOOL DISTRICT NO. 23 (CENTRAL OKANAGAN)**  
1940 Underhill Street  
Kelowna, British Columbia

(hereinafter called the "Board")

OF THE SECOND PART

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

Parcel Identifier: 004-831-195  
Lot 1, Section 4, Township 26  
Osoyoos Division Yale District  
Plan 27480

(hereinafter called the "City Lands" shown on schedule "A");

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

Parcel Identifier: 004-831-209  
Lot 2, Section 4, Township 26  
Osoyoos Division Yale District  
Plan 27480

Parcel Identifier: 023-334-045  
Lot b, Section 4, Township 26  
Osoyoos Division Yale District  
Plan KAP56356

(hereinafter called the "Board Lands" shown on schedule "A");

**AND WHEREAS** the Board and the City have agreed to joint use of the School Facilities and City Facilities located on the Board Lands and City Lands (collectively referred to as the "Facilities") as described herein in accordance with specific funding allocation responsibilities for the joint benefit and ultimate use of the Site.

**AND WHEREAS** the Board and the City desires to use the Facilities for community use;

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

**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 Board, the public generally and students of the School can cooperate to maximize the development potential and use of recreational and educational facilities provided by the Board and the City for efficient and effective management and administration of the School and City Facilities.

2.0 FACILITIES

2.01 Development

The responsibility for various Facilities improvements by the Board and by the City, 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.

2.02 MAINTENANCE

Unless otherwise agreed between the Board and the City maintenance of the School Facilities (as defined in 3.01) shall be undertaken and paid for by the Board. Maintenance of the City Facilities (as defined in 3.02) shall be undertaken and paid for by the City. Joint site maintenance responsibilities will be in accordance with Schedule "B" as amended from time to time by mutual agreement of the parties. Such maintenance requirements shall be consistent with the provisions of the collective agreements entered into by the Board and the City with their respective unions.

3.0 JOINT USE OF FACILITIES

3.01 For the purposes of this Agreement, the "School Facilities" shall include the following components as shown on Schedule "A":

- (a) The School playfields including the leased lands and the parking facilities; and
- (b) The gymnasium, kitchen, multi-purpose area, library, storage area, common public areas and any other areas as approved by the administrative officer located within the School building.

3.02 For the purposes of this Agreement, the "City Facilities" shall include the following as shown on Schedule "A":

- (a) All facilities and improvements within the area referred to as Centennial Park including:
  - i) outdoor multipurpose court;
  - ii) playfields;
  - iii) picnic areas;
  - iv) other passive activity areas;
  - v) field washroom.

3.03 The City and the Board agree that the playfields within the Site shall be open and accessible areas without fences or other physical separation.

3.04 For the purpose of this Agreement, in consideration and prior agreement of the financial commitment 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 2:35 P.M. to 10:00 P.M. on weekdays during the regular school year, except as previously scheduled by the school Principal.
- 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 Principal;
- c) From 7:30 A.M. to 10:00 P.M. on weekdays during the school holiday periods subject to maintenance or security requirements.

3.05 Any additional maintenance or security requirements for any planned activity by the City outside of the time outlined in Clause 3.04 and the costs thereof shall be agreed to in advance by the Operating Committee. Such maintenance and security requirements shall be consistent with the provisions of the collective agreements entered into by the Board and the City from time to time with their respective unions.

3.06 The purchase or replacement of joint used program equipment by the Board and the City thereof shall be agreed to in advance by the Operating Committee.

#### 4.0 ADMINISTRATIVE RESPONSIBILITY

4.01 For the purposes of implementing and administering the 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 the Superintendent of Schools or their designates ("the Designated Representatives"). These two persons shall be responsible for determining operating parameters affecting the Facilities and for the delegation of operating authority within those parameters to the Operating Committee subject to Clause 4.02 following.

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

4.03 The Board 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) and the Canadian Union of Public Employees (CUPE), Local 3523.

## 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;
- (c) Other representatives from the parent advisory council, local residents and the local residents association may at any time be invited to participate at the Operating Committee's request.

## 5.02 OPERATING COMMITTEE MANDATE

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

## 5.03 OPERATING COMMITTEE GUIDELINES

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

### (a) MEETINGS/REPORTING

The Operating Committee shall meet as required to be determined by mutual agreement. Minutes shall be taken of all matters discussed at each meeting.

### b) BUDGET/OPERATING COSTS

- i) The Board agrees that annual costs relating to the operations and maintenance of the School Facilities (as detailed in 3.01) will be charged back to the City (as detailed in schedule C). These are limited to: custodial services, security services and utilities.
- ii) By June of each year the representative appointed by the Superintendent of Schools shall meet with the representative appointed by the City Manager to review the budget (as detailed in schedule C) and to discuss any additional anticipated operation, maintenance and equipment costs pertaining to the joint use of the Facilities as set out in Clause 3.05 and 3.06.
- iii) By June of each year the representative appointed by the City Manager shall provide the representative appointed by the Superintendent of Schools an annual report pertaining to the joint use of the Facilities.

c) SCHEDULING/TIME AVAILABILITY

The Operating Committee shall develop criteria for the priority of uses and access to the Facilities in order to maintain a schedule that meets the needs of the Board and the City.

The Operating Committee shall recognize the School's requirement for the Facilities and playfields located on both Board Lands and City Lands from 8:00 A.M. until 2:35 P.M. during school days as well as special events as scheduled by the School Principal.

The Operating Committee shall allocate the remaining time for the Facility for public programs. If there is still available time at the Facility the owner of that facility will be notified and the owner may book the Facility to other parties, if so desired. If the owner of that facility does book it to another party not associated with the Operating Committee, the term shall be the lesser of one year, or the start of the school year following in July. After that time allocation shall be returned to the Operating Committee for their allocation.

The Operating Committee will agree upon space allocation, as outlined in 3.04 prior to each season.

- By the end of June for the following September through December
- By the end of September for the following January through March
- By the end of December for the following April through June
- By the end of March for the following July and August

Any changes to the agreed upon space allocation, by either the City or the School District requires a minimum of 10 days notice prior to the event date.

d) RENTAL OF FACILITIES

Agreements for use of the School Facility shall be regulated by Board Policy on the Board's form of Rental Agreement. Agreements for use of the City Facility shall be regulated by City Policy on City's form of Rental Agreement. All revenues for use of the City Facility shall be payable to the City and all revenues for use of the School Facility shall be payable to the Board. 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 Board shall determine the level of service required for the custodial maintenance of the School Facilities. Should the City require additional custodial service the additional service will be invoiced accordingly.

Annually the School Facilities will undergo a one-week maintenance shutdown, dates to be determined by the Operating Committee.

f) INSURANCE/LIABILITY/SECURITY

- i) The Board agrees that the use of the City Lands 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.

- ii) The City agrees that the use of the Board 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 of omissions of the Board or those for whom it is in law responsible.
- iii) The City and the Board, subject to limitations placed on the Board by the Ministry of Education, further agree that each party shall maintain liability insurance for their Lands and the Facilities thereon, in an amount and form that is common and prudent to their respective activities.
- iv) 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 Additional Insured's there under. 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.
- v) 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.

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 Site. The Operating 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 Site consistent with the mandate of the Operating Committee as defined in paragraph 5.02 herein.

h) **RESOLUTION OF DISPUTES**

The Operating Committee shall mediate problems and concerns related to use of the Site. In the event the Designated Representatives are unable to resolve the dispute, they shall refer the dispute to the Board and City. In the event the Board and City are unable to resolve the dispute, the dispute shall be referred to arbitration pursuant to the Commercial Arbitration Act, as applicable at time of referral, of British Columbia for a final and binding decision on the parties.

i) **SMOKING AND TOBACCO USE/ALCOHOL**

The Operating Committee shall require that all policies of the Board and of the City with respect to smoking and tobacco use and consumption of alcohol in or on the Site are adhered to.

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, commencing July, 1 2015 and terminating June 30, 2020 unless terminated by the mutual agreement of both parties hereto.

7.02 Six months prior to the termination of the agreement, the parties can enter into discussion to renew the agreement. If no 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 or until negotiations are discontinued by either party.

7.03 This Agreement is subject to approval by the Board of Education of School District No. 23 (Central Okanagan) and the City Council of the City of Kelowna.

7.04 This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted 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.

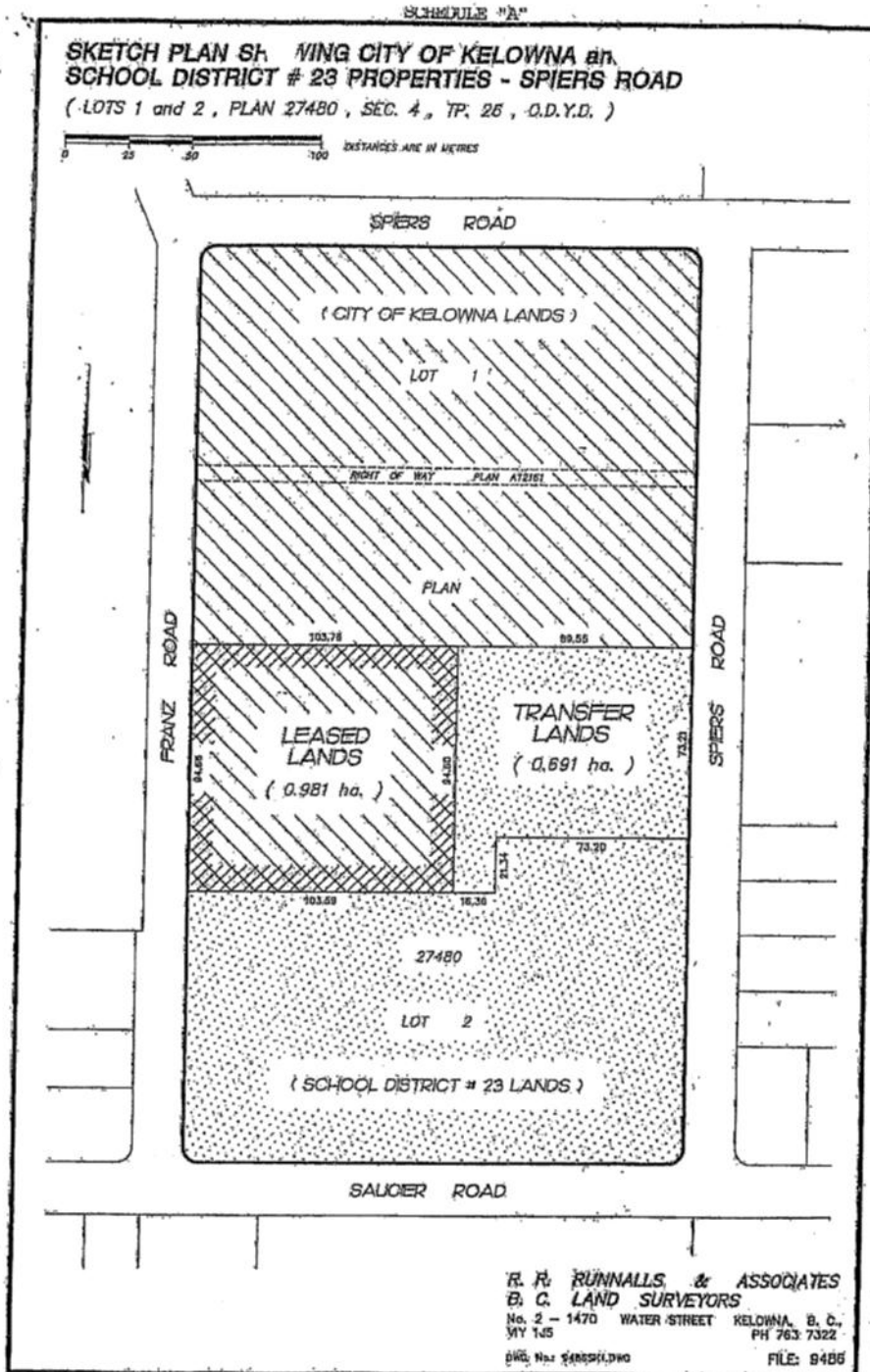
**THE BOARD OF EDUCATION OF SCHOOL DISTRICT NO. 23 (CENTRAL OKANAGAN)**  
by its authorized signatories:

**CITY OF KELOWNA** by its authorized signatories:

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Secretary Treasurer

\_\_\_\_\_  
City Clerk





## SCHEDULE 'B'

### JOINT USE AGREEMENT - MAINTENANCE RESPONSIBILITY

#### SOUTH KELOWNA ELEMENTARY - SOUTH KELOWNA CENTENNIAL PARK

TENANT INFORMATION				
Partner Agency: City of Kelowna				
Original Agreement Date: April 28, 1994				
Updated: October 26, 1995 & May 2011				
Updated: July 2015				
Expiry Date: June 2020				
Lease Description: South Kelowna Elementary & City of Kelowna South Kelowna Centennial Park - Joint Use and Maintenance				
Exclusions:				
MAINTENANCE ITEM	MAINTENANCE RESPONSIBILITY		FINANCIAL RESPONSIBILITY	
	SD 23	CITY	SD23	CITY
<b>Grounds Maintenance</b>				
Site Litter Control - Garbage Collection		✓		100%
Grass Cutting - All Fields (City Fields 2x per week)	✓		100%	
String Trimming associated with mowing		✓		
Grass Maintenance: Fertilize, Weed Control, Aeration & Vandalism - All Fields		✓		100%
Landscape Maintenance -Full Site except perimeter around school		✓		100%
Landscape Maintenance -Within perimeter of sidewalk (around school)		✓	100%	
Field Lining -School Fields	✓		100%	
Field Lining -City Fields		✓		100%
Shale Area Maintenance (Ball Diamonds)		✓		100%
Tree Maintenance - City Lands & leased lands		✓		100%
Tree Maintenance – School Lands	✓		100%	
<b>Site Services &amp; Equipment Maintenance</b>				
Septic Field Maintenance	✓		100%	
Services in school building (water supply, electrical services etc)	✓		100%	
Goal Posts	✓		100%	
Backstops		✓		100%
Irrigation System (in accord with areas of installation)		✓		100%
Irrigation seasonal blowout		✓		100%
Central controls for irrigation system		✓		100%
Fencing -Chain link	✓		100%	
Fencing - Barriers		✓		100%
Traffic Control Pipe Gates	✓		100%	
Adventure Playground	✓		100%	
Other Playground Equipment	✓		100%	
Site Parking Lot Maintenance (including lighting)	✓		100%	
Vandalism - Parking Lot	✓		100%	
Site Snow Removal	✓		100%	
Site Sidewalk cleaning and sanding	✓		100%	
Field House -All maintenance		✓		100%
Multi-Purpose Sports Court		✓		100%
Vandalism - Field House & Sports Court		✓		100%
<b>Utilities</b>				
Electrical				
Water				

SCHEDULE C

SOUTH KELOWNA  
ELEMENTARY

Below are the Community School Annual Operating Costs:

Year 1	July 1, 2015-June 30, 2016	\$5,300
Year 2	July 1, 2016-June 30,2017	\$5,500
Year 3	July 1, 2017-June 30,2018	\$5,750
Year 4	July 1, 2018-June 30,2019	\$6,000
Year 5	July 1, 2019-June 30,2020	\$6,250

Cost based on:

- 1) \$ 35.00/custodial hour in 2015
- 2) \$ 14.00/sq meter average utility cost
- 3) 4% annual increase in costs