

**Lease and Operating Agreement
Between City of Kelowna and
Okanagan Boys and Girls Clubs**

January 2022

Table of Contents

SECTION	HEADING	PAGE
1	Objectives	4
2	General Duties and Obligations	5
3	Term	5
4	Use and Occupation of Buildings	5
5	Fees and Expenses for Use of Buildings	7
6	Financial and Reporting Requirements	8
7	Repairs, Maintenance and Changes to Buildings	11
8	Environmental Matters	15
9	Management of Buildings and Provision of Services	17
10	Society Insurance	19
11	Liability and Indemnification	21
12	Default, Termination and Expiration	21
13	General Terms	23
14	Interpretation	27
 SCHEDULES		
A	Core Programs and Services	29
A-1	Jaycees Downtown Youth Centre Grounds License Area	30
A-2	Rutland Youth Centre Grounds License Area	31
A-3	Martin Avenue Community Centre Grounds License Area	32
B	Cameron Park License Area	33
C	Legal Notices and Encumbrances	34
D	Society Responsibility Checklist	35
E	Operating Requirements	40

Lease and Operating Agreement

THIS AGREEMENT made as of the 12 day of NOVEMBER, 2021

BETWEEN:

CITY OF KELOWNA, a municipality incorporated under the laws of the Province of British Columbia, having an office at 1435 Water Street, Kelowna, British Columbia, V1Y 1J4

(the "City")

AND:

OKANAGAN BOYS AND GIRLS CLUBS, (S-50098) a society duly registered pursuant to the *Society Act* of the Province of British Columbia, having its offices at 1434 Graham Street, Kelowna, British Columbia, V1Y 3A8

(the "Society")

WHEREAS:

A. The City is the registered owner in fee simple of the lands in the City of Kelowna, British Columbia, legally described as:

- PID: 028-277-171
Lot 1, Section 26, Township 26 ODYD Plan KAP91112
("Rutland Youth Centre");
- PID: 008-511-900
Lot A, District Lot 138, ODYD Plan 16898 except Plan KAP82234
("Jaycees Downtown Youth Centre");
- PID: 010-916-466
Lot 1, District Lot 138, ODYD Plan 3163
("Martin Avenue Community Centre");
- PID: 009-756-345
Lot A, District Lot 136, ODYD Plan 9012 Except Plans 9138 and 11487
("Cameron Park");

(collectively, the ("Lands") and the City owns the buildings, except the Childcare Building, located on the Lands (the "Buildings");

- B. The City, through various plans and policies, has committed to improving community health and quality of life for the City's residents, including children, youth and families;
- C. The Society is a not for profit society and wishes to lease the Buildings and the City wishes to grant a lease of the Buildings to the Society, on the terms and conditions set out in this Agreement to support the provision of recreational and support services that serve the needs of the City's children, youth and families; and
- D. In accordance with section 24 and 26 of the Community Charter, the City has published notice in a newspaper of its intention to enter into this Agreement and lease the Buildings to the Society for less than market value.

NOW THEREFORE THIS AGREEMENT is evidence that in consideration of the mutual promises and payments provided for in this Agreement and the payment of one dollar (\$1.00) from the Society to the City and other good and valuable consideration (the receipt and sufficiency of which the City hereby acknowledges) the parties covenant and agree as follows:

1 OBJECTIVES

1.1 Through this Agreement, the City and the Society seek to achieve the following shared objectives:

- a) Provision of a wide range of programs and services described in Schedule A ('Core Programs and Services'), which enable the physical, social and mental health and well-being of children, youth and families through:
 - Recreation
 - Childcare
 - Leadership, growth and empowerment
 - Lifeskills
 - Counselling
 - Harm reduction
 - Restorative justice
 - Learning and career development / employment support
 - Support for parents / foster parents
 - Emergency, supportive and transitional housing
- b) cost-effective, viable, and prudent long-term tenure, operation and maintenance of City-owned lands and buildings;

- c) increased leverage of City resources through development of community partnerships and diverse funding sources including donations, sponsorship, grants, and fees; and
- d) contributing to the City's quality of life and social service ecosystem by addressing the unique needs of children, youth and families, including individuals who are vulnerable and at-risk.

2 GENERAL DUTIES AND OBLIGATIONS

2.1 Society

In addition to the other covenants and obligations to be performed by the Society under this Agreement, the Society covenants and agrees that it will, at all times:

- a) continue to be a society registered and in good standing in the Province of British Columbia;
- b) perform promptly and safely all its obligations under this Agreement;
- c) be just and faithful in the performance of its obligations under this Agreement and in its dealing with the City under this Agreement; and
- d) not make substantive changes to its name and/or purposes in its constitution without the express written consent of the City; such consent not to be unreasonably withheld.

3 TERM

3.1 Term

The term of this Agreement shall be for five (5) years commencing on January 1, 2022 (the "Commencement Date") and expiring on December 31, 2027 (the "Term"), subject to earlier termination as provided herein (the "Term").

4 USE AND OCCUPATION OF BUILDINGS

4.1 Grant of Leases

The City hereby leases all of the Buildings to the Society (the "Lease") for the Term on the terms and conditions of this Agreement and for the purposes set out in this Agreement.

4.2 Licenses

The City hereby:

- a) grants to the Society a non-exclusive right and license to enter onto and use the Lands surrounding the Buildings for the sole purposes of accessing the Buildings, for

the Term, including, without limitation, the parking areas, playing fields and landscaped grounds outlined in yellow on the sketch maps attached hereto as Schedules "A-1", "A-2" and "A-3" (collectively, the "Grounds License Areas"); and

- b) grants to the Society a non-exclusive right and license to enter onto and use that portion of the Lands shown outlined in yellow on the sketch map attached hereto as Schedule "B" (the "Cameron Park License Area"), for the purposes of public vehicle parking for the Term;

(collectively, the "License Areas").

4.3 Permitted Uses

The Society will only use and occupy the Buildings and the License Areas for the purposes of providing the Core Programs and Services outlined in Schedule "A" attached to this Agreement and shall not use the Buildings or the License Areas for any other purposes. Notwithstanding the generality of the foregoing, the Society:

- a) may use only the Jaycees Downtown Youth Centre and not the other Buildings for overnight uses such as short-term shelter;
- b) may use any of the Buildings to provide meals, family support programs and other forms of support to children and youth at risk; and
- c) may use any of the Buildings for the purposes of operating a duly licensed childcare facility.

4.4 Acknowledgement and Agreements of the Tenant

The Society acknowledges and agrees that:

- a) the Society leases the Buildings and licenses the License Areas on an "as is" basis and the City has not made any representations, warranties or agreements as to the environmental condition of the Buildings or the Lands;
- b) it is the sole responsibility of the Society to satisfy itself with respect to the environmental conditions of the Buildings and the Lands, including, without limitation, by conducting any reports, inspections, tests, investigations, studies, audits, surveys and other inquiries as the Society, in its sole discretion, considers necessary in order to satisfy itself as to the environmental condition of the Buildings and the Lands; and

- c) the City has made no representations or warranties with respect to the Lands and the Buildings including, without limitation, with respect to the suitability of the Lands and the Buildings for the Society's intended use; and
- d) by entering into this Agreement, it is satisfied that the Buildings and License Areas are suitable for the Society's purposes.

4.5 Covenant to Operate

The Society shall ensure that, unless prevented by applicable regulatory authorities or for reasons of repair or maintenance, the Buildings and License Areas shall remain open to and accessible by the public throughout the Term, subject to the Society's right to close one or more of the Buildings and License Areas at the Society's discretion in accordance with the Society's published schedules and as the parties otherwise agree in writing.

4.6 Compliance with Laws

The Society shall carry on and conduct its activities on the Lands and in, on and from the Buildings in compliance with any and all statutes, laws, regulations enactments, bylaws and orders from time to time in force, to comply with the terms of any charges registered against title the Lands, and to obtain all required approvals and permits thereunder and not to do or omit to do anything in, on or from the Buildings or on or from the Lands in contravention thereof. The Society shall carry on and conduct its activities in compliance with any applicable Goods and Services Tax ("GST"), Provincial Sales Tax and other taxes as the statutes, laws and regulations in force dictate.

4.7 Public Safety

The Society shall take all reasonable precautions to ensure the safety of all persons using the Buildings.

4.8 No Waste or Nuisance

The Society shall not:

- a) commit, suffer or permit any wilful or voluntary waste, spoil or destruction of the Buildings or the License Areas; or
- b) do or permit to be done anything that may be or become a nuisance or annoyance in on or from the Buildings, License Areas, or on or from the Lands to the owners, occupiers or users of other parts of the Lands, adjoining lands or to the public, including the accumulation of rubbish or unused personal property of any kind.

4.9 Furniture and Equipment

The Society shall provide and purchase, repair and replace, at its sole expense, all furnishings and equipment that the Society considers necessary or desirable for using the Buildings and the License Areas for the purposes of this Agreement, without limitation, computers and licensed computer software.

4.10 Right to Inspect

The City or its authorized representative may enter the Buildings at all reasonable times for the purposes of inspection of the Building.

4.11 Emergency Use

The Society shall make all or part of the Buildings and the License Area available for use as an emergency reception centre in the event of a community emergency, as determined by the City in accordance with applicable enactments. The City shall solely be responsible for determining whether the Buildings and the License Area can safely be used for an emergency reception centre at the time of the emergency, and shall:

- a) be responsible for any direct expense incurred or damage caused to the Buildings and the License Area as a result of such use;
- b) be responsible for any and all liabilities, costs, expenses, suits, or claims arising as a result of such use;
- c) compensate the Society for all increased operating costs incurred during such use by the City; and
- d) compensate the Society for uninsured business losses arising out of such use, provided that the Society must act reasonably in re-arranging bookings and events to minimize the extent of any business losses during such use.

4.12 Vacant Building

If directed to cease services and operations by an applicable regulatory authority for public safety reasons such as natural disaster, pandemic, or other significant public concern, the Society shall continue to maintain responsibility of the Buildings and endeavour to take the necessary steps to ensure the Buildings are kept safe. This may include, but is not limited to, routine internal and external inspections of the Buildings. The Society may seek direction and support from the City as required.

4.13 Access for Telecommunication Antenna Systems

Upon request from the City, the Tenant shall grant access to the Buildings and the License Area for the installation and maintenance of Telecommunication Antenna Systems.

5 FEES AND EXPENSES FOR USE OF BUILDINGS

5.1 Rent

The Society shall pay to the City:

- a) annual rent in the amount of \$1.00, plus any and all applicable taxes, payable on the first day of the Term and each anniversary thereafter (the "Base Rent"); and
- b) all sums of money to be paid by the Society to the City under this Agreement (the "Additional Rent"),

(collectively, the "Rent"). The Society shall pay Additional Rent monthly, plus any and all applicable taxes, within 15 days of the Society's receipt of an invoice from the City.

5.2 Contributions to Reserve Fund

In addition to the Rent, the Society shall make monthly contributions to a building contingency reserve fund (the "Reserve Fund") in the amount of \$3,000 (\$36,000/year), to be adjusted annually starting January 1, 2023 by the BC CPI Annual average for the prior year. In any calendar year, should the CPI be a negative, no change shall occur (the "Reserve Fund Contribution"). The Reserve Fund Contribution will be held by the City in a reserve account and collected monthly from the Society using Pre-Authorized Debit (PAD).

The Reserve Fund will be used only by the City to fulfill its responsibility as a Landlord to perform capital improvements and maintain the building envelope.

Reserve funds collected and held by the Society for their obligations under previous agreements with the City for the Buildings will be transferred to the City's Reserve Fund at the time of executing this Agreement.

5.3 No Deductions

The Society shall pay the Base Rent, the Reserve Fund Contribution and the Additional Rent without deduction, abatement, set-off or withholding whatsoever, despite any law or statute now or in the future to the contrary. The Society's obligation to pay the Base Rent, the Reserve Fund Contribution and the Additional Rent survives the expiry or earlier termination of this Agreement.

5.4 Payment of Taxes, Utilities and other Expenses

The Society covenants and agrees with the City to pay all charges, costs, duties, expenses, rates, sums, assessments, taxes (including property taxes), telephone, electrical, gas water, sewage and garbage disposal and other utility charges and

payments for work and materials in any way relating to the Buildings and the License Areas and that to the extent of any such amounts remain unpaid after they come due, such amounts shall be deemed as Additional Rent and may be collected by the City as Rent. In addition, the Society agrees to pay the City any and all applicable taxes in respect of Base Rent, Additional Rent or any other services that may be paid from time to time.

6 FINANCIAL AND REPORTING OBLIGATIONS

6.1 Operating Grant from the City

The City will pay to the Society during the Term an annual operating grant of \$363,000.00 to be adjusted annually starting January 1, 2023 by the BC CPI Annual average for the prior calendar year (the "Operating Grant"). In any calendar year, should the CPI be a negative, no adjustment will occur. The Operating Grant will be payable in quarterly instalments. The City and the Society acknowledge and agree that the Operating Grant is provided to support the Society's programs and services which are delivered for a public purpose and the public good as set out in this Agreement.

6.2 Additional Funds

The Society will not seek or request additional operating grant funds from the City, except in accordance with Section 6.3, or in the case of unanticipated exceptional need or emergency the reason for which is to be fully stated. The Society is not precluded from applying for other City grants through established programs, provided that it meets program eligibility requirements.

6.3 Funding Increases Through Annual Budget Process

Through submission of a business case, the Society may seek from the City supplemental operating grant funds, in addition to the Operating Grant, for the purpose of delivering the Core Programs and Services. The City will, at its sole discretion, consider the business case in support of the supplemental funding request as part of its annual financial planning process for the following calendar year. The City has no obligation to approve the request for supplemental funds and approval of the request is at the sole discretion of City Council.

6.4 Annual Reporting – Format & Content

By March 31 of each year during the Term, the Society will provide to the City an annual report, in the City's prescribed format, which includes (but is not limited to) the following information relating to the prior calendar year (the "Annual Report"). The City will provide to the Society the prescribed format of the Annual Report no later than January 31.

- a) Professionally prepared audited annual financial statements, approved by the Society's Board of Directors, for the most recent fiscal year end.

- b) Internal financial statements containing a segmented schedule for the City of Kelowna-based programs and services;
- c) Proof of insurance as specified in Section 10;
- d) Current year revenue and expenditure budget, as approved by the Society's Board of Directors, with actuals or forecast to March 31;
- e) Program information, in a form acceptable to the City which includes;
 - i. List of City of Kelowna locations and programs and services
 - ii. Statistical summary of people served by the Society in the prior year which may take the form of registration, attendance, visitation, participation, membership or a combination thereof
 - iii. Highlights of particular achievements and successes in the prior calendar year with a focus on the impact of the Society's programs in the community
 - iv. Identification of active partnerships or collaborations, and the beneficial outcomes of same
- f) Governance and planning information which includes:
 - i. A list of the Society's directors
 - ii. An organizational chart indicating key management and staff roles and staffing levels
 - iii. Objectives for the current calendar year
 - iv. A realistic self-assessment, including identification of areas where improvements can be made in the areas of programming, organization governance and financial oversight, along with strategies and processes to achieve improvements. This may be in the form of a strategic plan, program evaluation, or consultant's report and may include information about trends, external threats or other factors which influence the Society's planning and results.
- g) For each of the Buildings, provide a:
 - i. Summary of operational expenses for gas, water and electrical utility data (as applicable) indicating consumption and costs;
 - ii. Summary of janitorial costs;
 - iii. List of maintenance and repair tasks carried out by the Society with costs and contractors/trades identified;
 - iv. Inspection reports as listed in Section 7.3 along with upcoming capital expenses/projects that the Society intends to undertake in the coming year;

- v. Inspection reports as listed in Schedule D;

The City may request, at its sole discretion, that the Society provide a public-in-attendance report to the City's Council in a prescribed format, which will reflect the reporting information listed in this section.

6.5 City Feedback on Reporting

Upon reviewing the Annual Report, in each calendar year the City may, at its sole discretion, make specific recommendations and requests to be fulfilled by the Society, which the Society shall implement within a reasonable period of time, upon receipt of such recommendations and requests. The City's feedback is intended to be constructive and offered in the spirit of learning and improvement. In the event the Society does not implement the said recommendations and requests, the City may at its sole discretion adjust any payments owed to the Society, including the Operating Fund, or terminate this Agreement in accordance with Section 12.

Recommendations and requests made by the City under this section or during the course of other discussions, meetings or communications between the Society staff, officers or board members and the City do not constitute direction or instructions by the City staff, agents or council. The Society is responsible for the direction and governance of all its operations.

6.6 Accounts

The Society shall, at all times during the Term:

- a) keep or cause to be kept true and accurate records and accounts, in accordance with generally accepted accounting principles, regarding management and operation of the Buildings, including without limitation:
 - Core Programs and Services records: financial reports and records, accident and incident reports, and program registration reports, customer comments,; and
 - Buildings record: any WorkSafeBC safety inspection records, energy consumption logs, emergency lighting inspection records, annual building inspection reports, health department inspections and reports, preventative maintenance records, fire and emergency drill records or other such similar records that the Society may acquire from time to time.

- b) on 72 hours' notice, permit the City, its accountants and other representatives, at the City's expense and at all reasonable times, to examine and make copies of any and all documents listed in this section, and any other documents under the control of the Society that relate to the Buildings and to audit the same; and

- c) upon termination or expiration of this Agreement and within the limitations of privacy legislation, surrender all records, except those relating to the Society's staff, to the City.

7 REPAIRS, MAINTENANCE AND CHANGES TO BUILDINGS

7.1 Routine Maintenance and Repairs

Throughout the Term, the Society shall, at its sole expense, clean, maintain and keep the Buildings and the License Areas, and all fixtures and appurtenances thereon, in good repair consistent with standards of repair generally accepted in British Columbia with respect to comparable premises. Maintenance and repair costs are defined as the costs incurred to bring an asset back to an earlier condition or to keep the asset operating at its present condition. The Society is responsible for and must do all routine maintenance, inspections and repairs according to Schedule D, and adhere to all Technical Safety BC regulations, with respect to the Buildings and the License Areas necessary for the Society's use, occupation and operation of the Buildings and the License Areas. Upon written notice from the City, the Society must make such repairs as are required by the City in the notice within a timely manner. If the Society fails to fulfil its maintenance responsibilities in accordance with any provision in this Agreement, the City may, at its sole discretion declare the Society to be in default of this agreement. At the end of the Term, the Society must surrender the Buildings and the License Areas to the City in good repair, excepting reasonable wear and tear.

7.2 Substantial Maintenance and Repairs

The City, in consultation with the Society, will maintain and repair the Leased Building's structural members, foundations, roofs, external facades, and windows using funds from the Reserve Fund described in Section 5.2 at the time of the proposed maintenance or repair.

7.3 Inspections Performed by the Society

The Society covenants and agrees to conduct, at a minimum, the inspections for the Buildings as outlined below:

a) Electrical

The Society shall act as the Field Safety Representative (FSR) and provide the City with an annual inspection report from the FSR or designate, as defined in Section 7.4, as part of the annual reporting process. The report should document the observed status of the electrical system, confirmation of completed preventative maintenance, and any recommended capital repairs.

b) **Plumbing**

The Society shall provide an annual inspection report from a contractor, as defined in Section 7.4, documenting the observed status of the plumbing systems, confirmation of completed preventative maintenance, and any recommended capital repairs.

c) **HVAC**

The Society shall provide an annual inspection report from a contractor, as defined in Section 7.4, documenting the observed status of the HVAC systems, confirmation of completed preventative maintenance, and any recommended capital repairs.

d) **Fire and Life Safety Inspection Reports**

The Society shall provide the Fire and Life Safety inspection reports as outlined in Schedule D.

All completed inspection reports under this section must be submitted to the City upon receipt by the Society and are also required to be submitted as part of the annual reporting process.

7.4 Contractors

The Society commits to engaging maintenance and repair contractors that have been selected by the City for Electrical, Plumbing and HVAC work. The City will provide an update list of the selected contractors annually.

Other contractors must be approved by the City and:

- a) be qualified to perform such work;
- b) carry a minimum of two million dollars of commercial liability insurance; and
- c) act as the Prime Contractor for all work to be done.

7.5 Restoration Work / Non-Fire Building Emergencies

The Society agrees to contact the City regarding a building emergency, for example, but not limited to, flooding or structural concerns. A City representative can be reached by calling the non-emergency line at fire department 250-469-8577, 24 hours a day, 7 days a week.

7.6 Minimum Work Standards

The Society must ensure that any repairs or work with respect to the Buildings and the License Areas done by or on behalf of the Society:

- a) do not affect any structural or foundation elements of the Buildings and the License Areas;
- b) meet or exceed the standards of material and construction employed in the original construction of the Buildings and the License Areas; and
- c) comply with all applicable laws, statutes, enactments, regulations, bylaws and orders from to time in force, including the applicable building code and bylaws of the City of Kelowna.

7.7 Annual Onsite Meeting

The Society and the City shall meet annually to conduct an inspection of each of the Buildings to identify items that require maintenance and future capital replacement.

7.8 Keys and Access

The Society is to provide the City access to each Building upon request within a reasonable time frame. The Society is to also provide the City with key(s) and necessary security information to each Building.

If in the City's sole opinion, the Society does not provide adequate Building access, the City reserves the right to take over the management of the keys and access to the Buildings. Should the City take over the management of the Building keys, the Society covenants that it will not change the locks on the building, copy the keys or hand them out. The City will maintain a record of the keys and who they have been issued to. If the locks need repair or replacement, the Society will inform the City.

7.9 Environmental Stewardship and Sustainability

The Society must strive to operate the building in an environmentally sensitive manner and implemented "green" initiatives and programs as expected by a reputable Society.

The Society covenants with the City:

- a) That the Society will co-operate with the City in the conservation of all forms of energy in the Buildings;
- b) that the Society will comply with all laws, bylaws regulations and orders relating to the conservation of energy and affecting the Buildings; and
- c) that the Society will at its own cost and expense comply with reasonable request and demand of the City made with a view of such energy conservation.

7.10 Energy Expense Reporting

The Society agrees to grant permission to the utility providers, ie FortisBC, to provide the City with all utility billing reporting information pertaining to the Buildings that are being managed by the Society under this agreement.

7.11 Capital Improvements and Use of the Reserve Fund

The Society and the City agree that the Reserve Fund may be used for capital improvements including maintenance or repair costs incurred by the City. The City agrees that it is obligated to consult with the Society for use of the Reserve Fund for the following purposes:

- a) any substantial maintenance or repair to the Leased Buildings to be performed by the City under Section 7.2;
- b) demolition of the Martin community Centre and site rehabilitation; and
- c) and landlord responsibilities.

7.12 Society's Construction of Buildings, Structures and Other Improvements

The Society must not construct, erect or install or cause to be constructed, erected or installed any buildings, structures, improvements, extensions, installations, alterations, additions, renovations or other constructions in, on, over, under, around and to the Buildings or the License Areas, or alter the existing state of the Buildings in any way, without the prior written consent of the City, which consent may be withheld for any reason at the City's sole discretion. If the City gives such consent, the Society must obtain the City's prior approval of drawings and specifications for such work, must do such work strictly in accordance with the approved drawings and specifications and must comply with any conditions the City imposes with that approval. The Society is responsible for applying for the required permits and requesting the necessary construction inspections, including the final sign off. The cost of construction and design of the improvements are solely the Society's.

7.13 Childcare Building and Cameron Park Licence Area

Notwithstanding Section 7.12, the City acknowledges and agrees that the Society has erected a prefabricated building on the Cameron Park Licence Area for the purpose of operating a childcare facility (the "Childcare Building"). The Society must keep the Childcare Building and all fixtures and appurtenances thereon, in good repair consistent with standards of repair generally accepted in British Columbia with respect to comparable premises and, the Society is responsible for and must do all routine inspections, maintenance and repairs with respect to the Childcare Building necessary for the Society's use, occupation and operation of the Childcare Building and upon written notice from the City the Society must make such repairs as required by the City in the notice.

The Society must not make any improvements to the building that would change the footprint of the building without the prior written consent of the City. If the City gives such consent, the Society must obtain the City's prior approval of drawings, must do such work strictly in accordance with the approved drawings and specifications and must comply with any conditions the Landlord imposes with that approval.

Upon expiry of the term or earlier termination of this Agreement, the Society will remove the Childcare Building on the Cameron Park License Area, unless the City and Society agree otherwise, in writing. Failing to do so, the City may, without notice or compensation to the Society, dispose of the Childcare Building as it sees fit and the Society shall reimburse the City for its costs of doing so (including a 15% administration fee plus any and all applicable taxes) within 21 days of receipt of an invoice from the City. The City's rights and the Society's obligations under this section shall survive the expiry or earlier termination of this Agreement.

7.14 Ownership of Improvements at Termination

At the expiry of the Term or earlier termination of this Agreement, any improvements, extensions, installations, alterations, renovations or additions to the Buildings, and the License Areas, whether done by or on behalf of the Society or not, are forfeited to and become the permanent property of the City.

7.15 Builders Liens

The Society shall promptly discharge any builders' lien or other lien or claim of lien which may be filed against title to the Lands relating to any improvements, work or construction that the Society undertakes on the Lands and to comply at all times with the *Builders Lien Act* (British Columbia) in respect of any improvements, work or construction undertaken on the Lands.

7.16 Demolition of Martin Avenue Community Centre

- a) The parties acknowledge and agree that the City's future plan for the Martin Avenue Community Centre on the Lands is to demolish all buildings and structures therein and repurpose the site for community use, which may or may not include construction of new buildings.
- b) The Society hereby acknowledges and agrees that at any time during the Term, the City may, in its sole discretion and upon providing at least twelve (12) months written notice to the Society, demolish the Martin Avenue Community Centre notwithstanding any other provision of this Agreement.
- c) If the City exercises its right to demolish in accordance with this section:

- the City will work collaboratively with the Society to review options for alternative locations but is under no obligation to provide the Society with alternative space;
- the Society will fully vacate and cease occupation of the facility to be demolished as per the date specified on the letter in Section 7.16(b);
- this Agreement will automatically be amended by deleting all references to the demolished facility, thereby terminating associated rights and obligations relating to the demolished facility, and provision of programs in the demolished facility; and
- all other terms and conditions of this Agreement shall remain in force and binding on the parties.

7.17 City's Construction of Buildings, Structures and Other Improvements

The Society acknowledges and agrees that the City may, in consultation with the Society, construct or cause to be constructed certain leasehold improvements in, on, over, under, around or to the Buildings ("Future Construction"), the design, construction and performance of which is in the sole discretion of the City. If the City undertakes any Future Construction, the Society:

- a) acknowledges and agrees that the Future Construction may be performed during the Term;
- b) shall grant full access to the Buildings by the City and its elected officials, officers, employees, contractors, agents and others for purposes relating to the Future Construction; and
- c) acknowledges and agrees that the Future Construction may result in the temporary closure, in whole or in part, of one or more of the Buildings and/or the License Areas and may require the interruption, disruption, rescheduling or cancellation of regularly scheduled programs and services offered at the Buildings.

7.18 Damage or Destruction of the Buildings

If during the Term one or more of the Buildings shall be damaged or destroyed by any cause whatsoever or if a major building system in one or more of the Building fails such that in the opinion of the City one or more of the Buildings is rendered unfit for use by the Society, the City may or may not, in its sole discretion, repair, rebuild or replace the building system or Buildings. If the City chooses not to repair, rebuild or replace the building system or Buildings then the City will work collaboratively with the Society to review options for alternative locations. If the City and the Society cannot come to an agreement regarding an alternative location, then the City may, in its sole discretion:

- a) provide three (3) months written notice to the Society that this Agreement is terminated, and the Society shall vacate all the Buildings as if this Agreement had expired or been terminated for cause; or
- b) negotiate the continuation of this Agreement deleting all references and obligations related to one or more of the destroyed Buildings and program provision.

7.19 No Capital Liabilities

Despite any other provision of this Agreement, nothing in this Agreement obligates the City to make any expenditure of a capital nature and nothing in this Agreement shall be interpreted in a manner that results in the City having expressly or implicitly incurred a 'liability of a capital nature' as that phrase is used in the *Municipal Liabilities Regulation*, B.C. Reg. 254/2004.

8 ENVIRONMENTAL MATTERS

8.1 Definitions

In Section 8, the following terms shall have the following meanings:

- a) **"Contaminants"** means
 - i. as defined in the *Environmental Management Act*: any biomedical waste, contamination, effluent, pollution, recyclable material, refuse, hazardous waste or waste and 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;
- b) **"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);
- c) **"Environmental Laws"** means any past, present or future common laws, enactments, statutes, laws, regulations, orders, bylaws, standards, guidelines, permits and other lawful requirements of any federal, provincial, municipal or other governmental authority having jurisdiction relating in any way to the Environment, environmental protection, health, occupational health and safety, product liability or transportation of dangerous goods, including the principles of common law and equity; and

- d) "Release" includes any release, spill, leak, pumping, pouring, emission, emptying, discharge, injection, escape, leaching, migration, disposal or dumping.

8.2 Society's Representations and Warranties

The Society represents and warrants to the City, and acknowledges that the City is relying on such representations and warranties in entering into this Agreement, that as of the date of this Agreement:

- a) except as disclosed to the City in writing, the Society is not, and has never been, subject to any charge, conviction, notice of defect or non-compliance, work order, pollution abatement order, remediation order or any other proceeding under any Environmental Laws; and
- b) except as disclosed to and approved in writing by the City, the Society's business at the Buildings, the License Areas or the Lands does not involve 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.
- c) that all resolutions and other corporate prerequisites for this Lease and Operating Agreement have been duly passed and the persons executing this Lease and Operating Agreement on its behalf are authorized to do so.

If any of the representations and warranties contained in this section are untrue or incorrect in any material respect, the same shall constitute a breach of this Agreement by the Society and shall be subject to the provisions of Section 12 of this Agreement.

8.3 Condition of Buildings

The Society acknowledges and agrees that the City has made no representations or warranties with respect to the environmental condition of the Buildings, the License Areas or the Lands and is leasing the Buildings to the Society under this Agreement on an "as is, where is" basis with respect to their environmental condition. Prior to taking possession of the Buildings under this Agreement, the Society has performed such investigations of the Buildings, the License Areas and the Lands as it considered appropriate and is satisfied as to their environmental condition.

8.4 Compliance with Environmental Laws and Use of Contaminants

The Society covenants and agrees with the City to:

- a) carry on and conduct its activities in, on and from the Buildings, the License Areas and the Lands in compliance with all Environmental Laws;

- b) not permit the storage, use, handling, manufacture, unloading, loading, treatment, disposal or introduction into the environment of any Contaminants in, on, under or from the Buildings, the License Areas or the Lands, except in compliance with all Environmental Laws;
- c) immediately notify the City of the occurrence of any of the following and provide the City with copies of all relevant documentation in connection therewith:
 - i. a release of Contaminants in, on or about the Buildings, the License Areas, the Lands or any adjacent land; or
 - ii. the receipt of any citation, directive, order, claim, litigation, investigation, proceeding, judgment, letter or other communication from any person that is related to any Environmental Law;
- d) promptly provide to the City a copy of any environmental site assessment, audit, report or test results relating to the Buildings, the License Areas or the Lands conducted at any time by or for the Society;
- e) if the City suspects that the Society has not complied with its obligations under this section, obtain from an independent environmental consultant approved by the City an environmental site assessment, audit, report or testing of the Buildings or the License Areas and conduct or cause to be conducted any additional investigations that the environmental consultant may recommend all in order to determine compliance of the Buildings, the License Areas or the Lands with Environmental Laws; and
- f) promptly remove any Contaminants arising from the Society's use or occupation of the Buildings, the License Areas or the Lands in a manner that conforms to Environmental Laws governing their removal.

8.5 Confidentiality of Environmental Reports

The Society shall maintain all environmental site investigations, assessments, audits and reports relating to the Buildings, the License Areas or the Lands 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 Society'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.

8.6 Authorizations

The Society 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 Society's compliance with Environmental Laws.

8.7 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 Buildings, the License Areas or the Lands by the Society or any person for whom it is in law responsible shall be and remain the sole and exclusive property of the Society and shall not become the property of the City, notwithstanding the degree of their affixation to the Buildings, the License Areas or the Lands and notwithstanding the expiry or earlier termination of this Agreement. This section supersedes any other provision of this Agreement to the contrary.

8.8 Survival of Society's Obligations

The obligations of the Society under this Section 8 (including, without limitation, the Society's indemnity, its obligation to remove and remediate Contaminants and its covenant of confidentiality) shall survive the expiry or earlier termination of this Agreement.

9 MANAGEMENT OF BUILDINGS AND PROVISION OF SERVICES

9.1 No Discrimination

The Society acknowledges and agrees that it is in the community's best interest that recreation and community services be provided in a non-discriminatory manner. The Society hereby covenants and agrees to provide the Core Programs and Services and other services offered at the Buildings in accordance with the *Human Rights Code* (British Columbia).

9.2 Employee Standards

The Society shall hire, train, supervise and remunerate or cause to be hired, trained, supervised and remunerated, all employees, contractors and volunteers required for the provision of the Core Programs and Services. The Society must immediately discharge or cause to be discharged any employee, contractor or volunteer whose conduct or health is contrary to the provision of the Core Programs and Services in accordance with this Agreement or is detrimental to members of the public patronizing the Buildings or upon reasonable demand in writing from the City.

9.3 WorkSafe BC Coverage

The Society shall, in its use of and activities on the Buildings and the Lands, comply with the *Workers Compensation Act* (British Columbia) and all regulations and orders from time to time in force thereunder, including Occupational Health and Safety Regulations, and, upon request from the City, provide evidence of any required registration under that Act and evidence of compliance with any requirement under that Act to make any payments or pay assessments. In addition, the Society shall be the “prime contractor” for the Buildings under the *Workers Compensation Act* (British Columbia) and fulfill all of the “prime contractor’s” obligations under that Act, including by ensuring that the activities of any employers, workers and other persons on the Buildings relating to occupational health and safety are coordinated and by doing everything that is reasonably possible to establish and maintain a process that shall ensure compliance with that Act and regulations thereunder, including the Occupational Health and Safety Regulations.

9.4 City Use of Buildings

The City may book space at the Buildings at no charge, for City functions and staff and Council social activities, where and when space is available.

9.5 Incidental Rights

The Society may:

- a) offer programs and services at the Buildings in addition to the Core Programs and Services to reflect community needs or respond to unique market opportunities, provided that such programs and services are compatible with City policies and priorities;
- b) rent rooms within the Buildings to other non-profit organizations for periods not to exceed seven (7) consecutive days at rates approximate to market rents;
- c) rent rooms within the Buildings to organizations other than non-profit organizations or for periods in excess of seven (7) consecutive days only with the prior written consent of the City;
- d) rent a portion of the Martin Avenue Community Centre to the Society for Learning in Retirement (SLR) on a month to month basis provided that SLR conducts its activities and cares for its rented space in a manner consistent with this Agreement and that the Society provides appropriate oversight;

- e) enter into sponsorship, media or advertising agreements (“Endorsements”) involving the Buildings or the Core Programs and Services provided that the Endorsements are:
- appropriate for families and children;
 - consistent with the parties’ joint values of equality, accessibility, health, respect and the dignity of the individual;
 - respectful of the neighbourhoods surrounding the Buildings and all scheduled programs and services at the Buildings;
 - appropriate to the aesthetics of the Buildings; and
 - the Society is required to consult with the City and adhere to the requirements of Council Policy 376 – Corporate Sponsorship and Advertising and Council Policy 343 – Civic Community Facility Naming Policy, as amended from time to time, prior to entering into any naming agreement for any portion of any Buildings. This requirement does not apply to any interior room in any facility which was named prior to execution of this Agreement.
- f) undertake fundraising activities at the Buildings for the Society’s benefit only; and
- g) use the Buildings for the Society’s Kelowna office and headquarters during the Term.

9.6 City Acknowledgement

The Society will acknowledge the facility and/or operating support of the City based on the following:

- a) **Building contribution:** The City’s contributions to the Buildings or ownership of the Buildings as an asset will be acknowledged in the form of an external plaque or signage as determined and produced by the City. All costs associated with production and placement of external recognition signage is to be incurred by the City.

- b) **Operational grant contribution:** Financial contributions from the City funding operational needs of the Society (i.e. Operating Grants) should be recognized at a consistent level with all other major funding contributors on any internal collateral that is used to recognize financial contributors (i.e. donor wall, plaque or signage at information desk). The City can also work with the Society and discuss what is appropriate based on funding levels and available space within the each of the Buildings.

Example: The _____ gratefully acknowledges the financial assistance of City of Kelowna.

In addition, operational funding contributions from the City should be recognized on the organization's primary website as well as principal collateral (such as the organization's annual report, main brochure and any materials that would not otherwise be produced without the City's funding).

- c) **Project or program grant contribution:** Financial contributions from the City funding specific programs or projects (i.e. Project Grants) should be recognized at a consistent level with all other project or program funding contributors. This includes City recognition on any materials that are exclusively or primarily produced because of the funding that the City provides.

Example: This program/project is made possible from financial support from the City of Kelowna.

10 SOCIETY INSURANCE

10.1 Society to Provide

The Society shall procure and maintain during the Term, at its own expense and cost, the insurance policies listed in Section 10.2 of this Lease. For clarity, the insurance requirements set out in Section 10.2 are minimum requirements and are not to be interpreted in a manner that limits the Society's obligations under this Lease and the Society shall be responsible for obtaining and maintaining such additional insurance as would a prudent tenant having similar obligations to those of the Society under the terms of this Lease. Further, all insurance policies held pursuant to this Lease shall contain an undertaking by the insurer to notify the City in writing not less than 30 days before any material change, cancellation, or termination.

10.2 Society's Insurance Obligations

As a minimum, the Society shall, without limiting its obligations or liabilities under any other contract with the City, procure and maintain, at its own expense and cost, the following insurance policies:

- a) Directors and Officers Liability Insurance

- b) Comprehensive General Liability Insurance
 - i. providing for an inclusive limit of not less than \$5,000,000.00 for each occurrence or accident;
 - ii. providing for all sums which the Society shall become legally obligated to pay for damages because of bodily injury (including death at any time resulting there from) sustained by any person or persons or because of damage to or destruction of property caused by an occurrence or accident arising out of or related to this agreement, services and/or occupancy or any operations carried on in connection with this agreement;
 - iii. including coverage for Products/Completed Operations, Blanket Contractual, Contractor's Protective, Personal Injury, Contingent Employer's Liability, Broad Form Property Damage, and Non-Owned Automobile Liability;
 - iv. including a Cross Liability clause providing that the inclusion of more than one Insured shall not in any way affect the rights of any other Insured hereunder, in respect to any claim, demand, suit or judgement made against any other Insured.

- c) All risks (including flood and earthquake, as required by the City) property insurance (contents, tenant improvements, etc) in an amount equal to 100% of the full replacement cost.
 - i. insuring all property owned by the Society, or for which the Society is legally liable, or installed by or on behalf of the Society, and located within the Buildings including, but not limited to, fittings, installations, alterations, additions, partitions, and all other leasehold improvements;
 - ii. insuring the Society's inventory, furniture, and movable equipment to the extent that such insurance is commercially available; and
 - iii. naming the City as a loss payee as the City's interest may appear.

- d) Insurance upon all plate glass in or which forms a boundary of the Building in an amount sufficient to replace all such glass.

The policy(s) set out in Section 10.2 shall contain a waiver of any subrogation rights which the Society's insurer may have against the City. The Society hereby waives its rights of subrogation against the City.

10.3 City's Insurance Obligations

The City shall maintain, through the Term, in those reasonable amounts and with those reasonable deductions that a prudent owner of a similar property would maintain, having regard to the size, age, and location:

- a) All risks insurance on the Buildings and the License Area and machinery, boilers, and equipment contained in it and owned by the City (excluding property that the Society is required to insure pursuant to this Lease);
- b) General liability insurance with respect to the City's operations at the Buildings; and
- c) Whatever other forms of insurance the City considers advisable.

10.4 Automobile Liability Insurance

The Society shall procure and maintain insurance policies covering all motor vehicles, owned, operated and used or to be used by the Society directly or indirectly in the performance of this agreement, services and/or occupancy. The limit of liability shall not be less than \$5,000,000 inclusive, for loss or damage including personal injuries and death resulting from any one accident or occurrence.

10.5 The City Named As Additional Insured

The policies required by Section 10.2 shall provide that the City is named as an "Additional Insured" thereunder and that said policies are primary without any right of contribution from any insurance otherwise maintained by the City.

10.6 Society's Sub-contractors

The Society shall require each of its sub-contractors to provide comparable insurance to that set forth under Section 2 of Schedule E.

10.7 Certificates of Insurance

The Society agrees to submit Certificates of Insurance in the form attached as Schedule D for itself and all of its sub-contractors to the City prior to the commencement of this agreement, services and/or occupancy. No review or approval of any insurance certificate or insurance policy by the City derogates from or diminishes the City's rights under this Lease.

10.8 Other Insurance

After reviewing the Society's Certificates of Insurance, the City may require other insurance or alterations to any applicable insurance policies in force during the period of this contract and will give notifications of such requirement. Where other insurances or alterations to any insurance policies in force are required by the City and result in increased insurance premium, such increased premium shall be at the Society's expense.

10.9 Additional Insurance

The Society may take out such additional insurance, as it may consider necessary and desirable. All such additional insurance shall be at no expense to the City. The Society shall ensure that all of its sub-contractors are informed of and comply with the City's requirements set out in this Schedule E.

10.10 Insurance Companies

All insurance, which the Society is required to obtain with respect to this agreement, shall be with insurance companies registered in and licensed to underwrite such insurance in the Province of British Columbia.

10.11 Failure to Provide

If the Society fails to do all or anything which is required of it with regard to insurance, the City may do all that is necessary to effect and maintain such insurance in the name and at the expense of the Society and the Society shall repay any and all costs expended by the City within 21 days of receipt of an invoice. For clarity, the City has no obligation to obtain any insurance required to be maintained by the Society under this Lease.

10.12 Non-Payment of Losses

The failure or refusal to pay losses by any insurance company providing insurance on behalf of the Society or any sub-contractor shall not be held to waive or release the Society or sub-contractor from any of the provisions of the Insurance Requirements or this Lease, with respect to the liability of the Society otherwise. Any insurance deductible maintained by the Society or any sub-contractor under any of the insurance policies is solely for their account and any such amount incurred by the City will be recovered from the Society as stated in Section 10.11.

11 INDEMNITY

11.1 Society Indemnity

The Society must save harmless, release and indemnify the City against and its elected and appointed officials, officers, employees, agents, successors and assigns, from any and all liabilities, actions damages, claims, losses, costs and expenses whatsoever (including without limitation, the full amount of all legal fees, costs, charges and expenses whatsoever) in any way directly or indirectly arising from the occupation, use, activities or actions of the Society in, on or from the Buildings, License Areas or the Lands or any act or omission of the Society. The obligations of the Society under Section 11 shall survive the expiry or earlier termination of this Agreement.

12 DEFAULTS, TERMINATION AND EXPIRATION

12.2 City May Cure Default

If the Society fails to observe, comply with, keep or perform any of its covenants, agreements or obligations under this Agreement, the City may, but is not obliged to, at its discretion and without prejudice, take all steps considered necessary to rectify or cure the default and all costs of so doing, including the costs of retaining professional advisors, shall be payable immediately by the Society upon receipt of an invoice. Nothing in this Agreement obligates the City to rectify or cure any default of the Society but should the City choose to do so, the City shall not be liable to the Society for any act or omission in the course of rectifying or curing or attempting to rectify or cure any default.

12.3 Termination Due to Default

If and whenever:

- a) the Society does not fully observe, perform and keep each and every term, covenant, agreement, stipulation, obligation, condition and provision of this Agreement to be observed, performed and kept by the Society, and persists in such default for 30 days after written notice by the City;
- b) the Society ceases to exist as a non-profit society in good standing in the records of the British Columbia Corporate Registry;
- c) any proceedings towards dissolution or winding up of the Society;
- d) the term or any of the goods or chattels in the Buildings are at any time seized or taken in execution or attachment by any creditor of the Society or under bill of sale or chattel mortgage;
- e) a writ of execution issues against the goods and chattels of the Society;
- f) the Society makes any assignment for the benefit of creditors or becomes insolvent or bankrupt;
- g) the Society is in default in the payment of Rent, the Reserve Fund Contributions or any other amount payable under this Agreement and the default continues for 30 days after written notice by the City to the Society;

- h) the Buildings or the Lands, or any part of it, is destroyed or damaged by any cause so that in the opinion of the City the Buildings are no longer reasonably fit for use by the Society for the purposes set out in this Agreement for any period in excess of 60 days; or
- i) the Society vacates or abandons the Buildings or any part of it, or uses or permits or suffers the use of the Buildings for any purpose other than the purposes permitted by this Agreement, and such default persists for 14 consecutive days after written notice by the City,

then the City may, in its sole discretion, terminate this Agreement and the Rent, the Reserve Fund Contributions and all outstanding levies and charges shall become immediately due and payable and the Term shall immediately become forfeited and void and the Tenant must immediately cease all use and occupation of the Buildings and vacate and deliver up possession of the Buildings and the City may without notice or any form of legal process and without any adherence to public law duties or procedural fairness or the principles of natural justice, forthwith re-enter the Buildings and take possession of the Buildings.

12.4 Distress

If the Rent or Reserve Fund Contributions payable by the Society are in arrears, the City or a person authorized in writing by the City may enter upon or into the Buildings and seize any goods or chattels and may sell the same.

12.5 Termination Without Cause

Notwithstanding the rest of this Agreement, either party may terminate this Agreement upon at least six (6) months' written notice to the other party.

12.6 Return of Operating Grant

The Society shall immediately upon expiration of the Term or the earlier termination of this Agreement, release, relinquish and return any unused portion of the Operating Grant to the City.

12.7 Overholding

If the Society continues to occupy any or all of the Buildings after the expiration of the Term or the earlier termination of this Agreement, such holding over will not constitute a renewal of this Agreement. In such case, the City, at its option, may elect to treat the Society as one who has not vacated at the end of the Term and to exercise all of its remedies in that situation, or may elect to construe such holding over as a tenancy from

month to month subject to all the terms and conditions of this Agreement except as to the Term. For clarity, this section does not authorize or permit the Society to overhold.

12.8 Compensation Upon Termination

The Society shall not make any claim for compensation, in damages or otherwise, upon the termination or expiry of this Agreement. If the City terminates this Agreement, the City retains the right to proceed at law against the Society for all of the Rent and Reserve Fund Contributions and other loss or damage and costs, including all prospective losses or prospective damages suffered or to be suffered by the City arising from the default of the Society under this Agreement.

12.9 State of Buildings and Lands at Termination

If the Tenant fails to leave the Buildings, the Licence Areas, and the Childcare Building in a condition required by this Agreement, the City may do so on behalf the Society and the Society must, on demand, compensate the City for all costs incurred by the City.

12.10 Remedies Cumulative

No reference to or exercise of any specific right or remedy by the City prejudices or precludes the City from any other remedy, whether allowed at law or in equity or expressly provided for in this Agreement.

13 GENERAL TERMS

13.1 Assignment and Subleasing or Sublicensing

The Society shall not assign or sub-licence the Society's interest in or rights under this Agreement in whole or in part, without the prior written consent of the City, nor may the Society charge, mortgage, or encumber or purport to charge, mortgage or encumber the Society's interest in the Buildings, the License Areas or any part of the Buildings, the License Areas or this Agreement without the prior written consent of the City. The City may withhold such consents for any reason whatsoever. If the City consents to a sublease of the Buildings or any part of the Buildings, the City may grant such approval on condition that the Society and the proposed sublessee execute a sublease agreement in a form satisfactory to the City.

13.2 Society's Representations and Warranties

The Society represents and warrants that it:

- a) is a not for profit society validly incorporated and in good standing under the laws of British Columbia and does not conduct its activities with a view to obtaining, and does not distribute, profit or financial gain to its members;

- b) has the power and capacity to enter into and carry out its obligations under this Agreement; and
- c) has completed all necessary resolutions and other preconditions to the validity of this Agreement.

13.3 No City Representations or Warranties

The Society acknowledges and agrees that the City makes no representations or warranties with respect to the Buildings or the Lands including, without limitation, the suitability of the Buildings or the Lands for the Society's intended use or the condition of the Buildings or the Lands.

13.4 City's Powers Unimpaired

Nothing contained or implied in this Agreement affects or prejudices the City's rights, powers, duties or obligations in the exercise of its functions pursuant to the *Local Government Act* (British Columbia), the *Community Charter* (British Columbia) or its rights and powers under any enactment to the extent the same are applicable to the Lands or the Buildings, all of which may be fully and effectively exercised in relation to the Lands or the Buildings as if this Agreement had not been fully executed and delivered.

13.5 Freedom of Information

The parties acknowledge, agree and consent to the disclosure of this Agreement as a matter of public record and further acknowledge and agree that applicable laws may require disclosure of information provided by one party to the other pursuant to or in connection with this Agreement.

13.6 Entire Agreement

The provisions in this Agreement constitute the whole of the agreement between the parties and supersede all previous communications, representations, warranties, covenants and agreements, whether verbal or written, between the parties with respect to the subject matter of this Agreement.

13.7 Amendment

This Agreement may not be modified or amended except in writing signed by the City and the Society.

13.8 Enurement

This Agreement shall enure to the benefit of and be binding upon the City and the Society and their respective successors and permitted assigns, if any.

13.9 City Interests

The Society acknowledges and agrees that the City may assign, transfer, mortgage, subdivide and otherwise deal with its interests in the Buildings, the License Areas, Lands or any portion thereof, whether land or improvement, without the consent of the Society.

13.10 Attornment

If any person shall through the City succeed to the rights of the City under this Agreement or to ownership of the Buildings then, upon the request of the party succeeding to the City's rights hereunder, the Society shall attorn to and recognize the new owner(s) as the landlord of the Society under this Agreement and shall promptly execute and deliver any instrument that such party may reasonably request to evidence the attornment. In the event of any other transfer of interest of the City hereunder, upon the written request of the transferee and the City, the Society shall attorn to and recognize the transferee as the landlord of the Society under this Agreement and shall promptly execute and deliver any instrument that the transferee and the City may reasonably request to evidence the attornment provided that the transferee agrees with the Society to become the landlord hereunder and to assume the obligations of the City hereunder that are to be performed by the transferee after the transfer.

13.11 Certificates

The City and the Society agree that at any time and from time to time upon not less than thirty (30) days prior request by the other party, each will execute, acknowledge and deliver to the other a statement in writing certifying:

- a) that this Agreement is unmodified and in full force and effect or if there have been modifications that the same are in full force and effect as modified and identifying the modifications;
- b) the dates to which the Rent, Reserve Fund Contributions and other charges or fees have been paid;
- c) that, so far as the maker of the statement knows, without having conducted any searches or made any particular enquiries, the party who requests the statement is not in default under any provisions of this Agreement or, if in default, the particulars thereof; and
- d) any other reasonable information which is requested.

13.12 Not in Registrable Form

The Society acknowledges and agrees that the City is under no obligation to at any time to deliver this Agreement or any instrument creating this Agreement to the Society in a form registrable in the Land Title Office.

13.13 Notice

Any notice, request, direction or other communication (any of which is a "Notice") that is to be given or made by a party under this Lease, shall be in writing, and if to the City, either delivered to an executive officer of the City or delivered or mailed (by prepaid registered mail) to the City at the address set out on page 3 of this Agreement, or if the City has given the Society Notice of another address in Canada to which notices to the City under this Lease are to be given, then to the last such address of which the Society has been given Notice or sent by e-mail; and if to the Society, either delivered to the Society personally (or to a partner or officer of the Society if the Society is a firm or corporation) or delivered or mailed (by prepaid registered mail) to the Society at the Buildings or sent by email, addressed as follows:

- a) To the City:
City of Kelowna
E-mail Address: Propertymanagement@kelowna.ca
Attention: Manager, Property Management

- b) To the Society:
Boys and Girls Clubs
E-mail Address: jwelder@boysandgirlsclubs.ca
Attention: Jeremy Welder

Every such Notice shall be deemed to have been given when delivered or, if mailed as aforesaid, upon the third business day after the day of mailing thereof in Canada provided that if mailed, should there be a mail strike, slowdown, or other labour dispute which might affect delivery of such notice between the time of mailing and the actual receipt of notice, then such notice shall only be effective if actually delivered. Any Notice sent by e-mail is to be considered given on the day it is sent, if that day is a business day and if that day is not a business day, it is to be considered given on the next business day after the date it is sent.

13.14 Waivers

Waiver by a party of any default by the other party shall not be deemed to be a waiver of any subsequent default. A waiver is effective only if it is in writing.

13.15 Further Assurances

The parties shall execute and do all such further deeds, acts, things and assurances as may be reasonably required to carry out the intent of this Agreement.

13.16 Own Cost

The Society shall perform all of its obligations, covenants and agreements under this Agreement solely at its own cost.

13.17 Joint Venture

Nothing in this Agreement creates the relationship of principal and agent or partnership, joint venture or business enterprise or entity between the parties or gives the Society any power or authority to bind the City in any way.

13.18 Independent Contractor

The parties have entered into an arm's length contract for the provision of the services set out in this Agreement and the Society is an independent contractor, not an employee, of the City.

13.19 Legal Advice

The Society acknowledges and agrees that the City has recommended that it receive independent legal advice with respect to this Agreement, and that the City has provided the Society with adequate time to do so.

13.20 Time is of the Essence

Time is of the essence of this Agreement.

14 INTERPRETATION

14.1 Headings and Table of Contents

The division of this Agreement into sections, the insertion of headings and the provision of a table of contents are for convenience only and do not form a part of this Agreement and will not be used to interpret, define or limit the scope, extent or intent of this Agreement.

14.2 Schedules

The following schedules are attached to and form part of this Agreement:

- a) Schedule A – Core Programs and Services;
- b) Schedule "A-1"—Sketch Plan of Jaycees Downtown Youth Centre Grounds Licence Area

- c) Schedule "A-2"—Sketch Plan of Rutland Youth Centre Grounds Licence Area
- d) Schedule "A-3"—Sketch Plan of Martin Avenue Community Centre Grounds Licence Area
- e) Schedule "B"—Cameron Park Licence Area
- f) Schedule "C"—Legal Notations and Encumbrances
- g) Schedule "D"—Society Responsibility Checklist
- h) Schedule "E" – Insurance Certificate

14.3 Number and Gender

Unless otherwise specified, words importing the singular include the plural and vice versa and words importing gender include all genders.

14.4 Use of the Word "Including"

The word "including" when following any general term or statement will not be construed as limiting the general term or statement to the specific matter immediately following the word "including" or to similar matters, and the general term or statement will be construed as referring to all matters that reasonably could fall within the broadest possible scope of the general term or statement.

14.5 Governing Law

This Agreement and each of the documents contemplated by or delivered under or in connection with this Agreement are governed exclusively by, and are to be enforced, construed and interpreted exclusively in accordance with the laws applicable and in force in British Columbia.

14.6 Severability

If any portion of this Agreement is held invalid by a court of competent jurisdiction, the invalid portion shall be severed and the decision that it is invalid shall not affect the validity of the remainder of this Agreement.

IN WITNESS WHEREOF the City and the Society have executed this Agreement on the date first above written.

CITY OF KELOWNA)
by its authorized signatories)
)
)
_____)
Mayor)
)
)
_____)
City Clerk)
)

OKANAGAN BOYS AND GIRLS CLUBS)
by its authorized signatories)
)
)
)
)
_____)
Authorized Signatory)
)
)
_____)
Authorized Signatory)
)

Schedule A – Core Programs and Services

At the time of entering into the lease, the Society's provide programs and services are summarized below. These programs may evolve as the Society responds to community need.

Early Years	<ul style="list-style-type: none"> • Childcare Programs • Family Resource Programs • Preschool Programs
Middle Childhood	<ul style="list-style-type: none"> • Breakfast Clubs • After school clubs • Summer, Spring and Winter Break Daycamps • Recreation Programs • Programs for Children with Special Needs
Youth	<ul style="list-style-type: none"> • Drop In Recreation Programs • Leadership Programs • Lifeskills Programs (Social Emotional Learning) • Lifeskills Programs for Youth with Special Needs • Specialized Services including: <ul style="list-style-type: none"> ○ Downtown Youth Centre- Drop In ○ Outreach Mental Health Program ○ Reconnect – Youth Counselling ○ Cultivate- Youth Justice ○ Youth Restorative Justice ○ Foster Parent Support/Emergency Placement Support ○ Employment Support ○ Upstream • Housing and Shelter <ul style="list-style-type: none"> ○ Emergency Overnight Shelter ○ Supportive Housing Program • Technology Labs <ul style="list-style-type: none"> ○ RBC Raise the Grade ○ Urban Systems Learning Lab
Families	<ul style="list-style-type: none"> • Family Support and Counselling • Parents Together • Community Kitchens <ul style="list-style-type: none"> ○
Boys and Girls Clubs of Canada Programs	<ul style="list-style-type: none"> • Physical health and safety including: <ul style="list-style-type: none"> ○ Jayscare, Cool Moves, Dunk for Diabetes, Kid Food Nation, Flex Your Head, Mind Over Mood, Tennis Canada Jr. League, Bounce Back League • Leadership, growth and empowerment <ul style="list-style-type: none"> ○ Lead Up, Torch Club • Learning and career development <ul style="list-style-type: none"> ○ Power Up, RBC Raise the Grade, Skilled for Success, Kid Tech Nation

SCHEDULE "A-1"

Jaycees Downtown Youth Centre Lease and License Area



SCALE: N.T.S.

MAILING ADDRESS: 1633 RICHTER ST

LEGAL DESCRIPTION: LOT NO. A PLAN NO. 16898

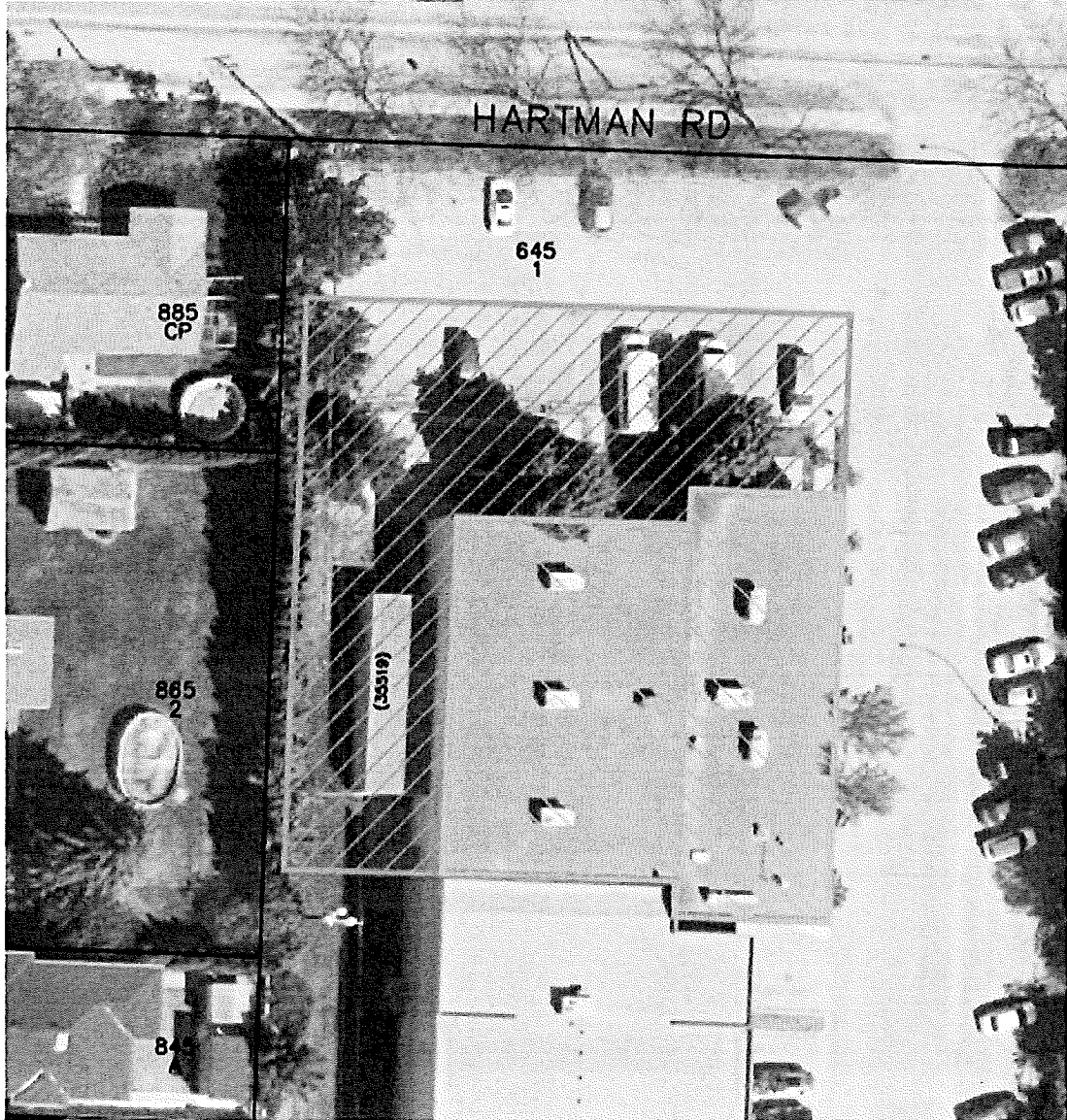
TWP. 25 SEC. 24

 PREMISES AREA - ±760m²

 LICENSE AREA - ±2820m²

SCHEDULE "A-2"

Rutland Youth Centre Grounds License Area





SCALE: N.T.S.

MAILING ADDRESS: 645 0000 RD

LEGAL DESCRIPTION: LOT NO. 1 PLAN NO. 91112

TWP. 26 SEC. 26

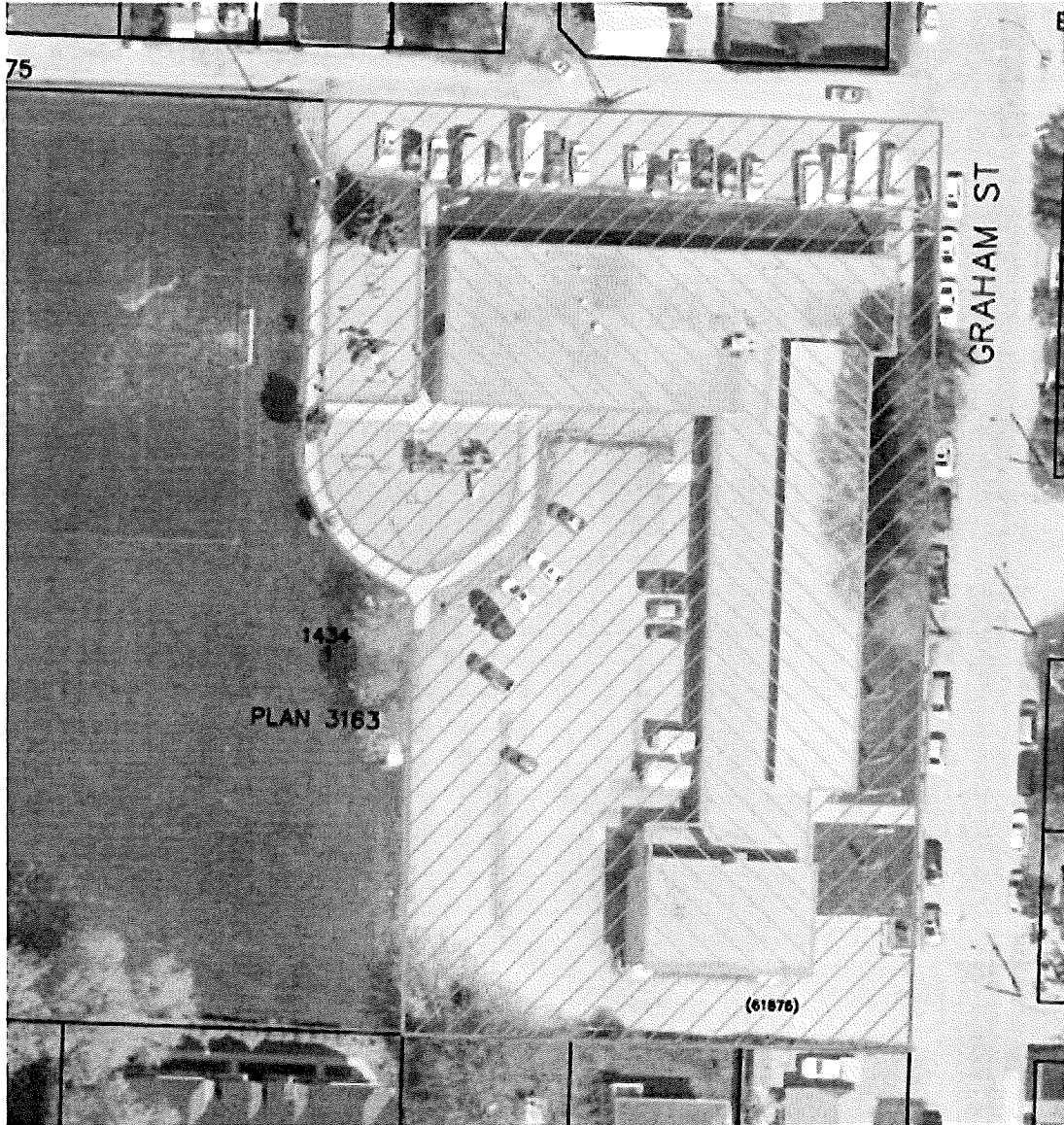
 PREMISES AREA = $\pm 890m^2$

 LICENSE AREA = $\pm 1014m^2$

PLEASE NOTE THAT THIS SKETCH IS FOR ILLUSTRATIVE PURPOSES ONLY. THE DEGREE OF ACCURACY OF THE AREA IS LIMITED

SCHEDULE "A-3"

Martin Avenue Community Centre Lease and License Area




SCALE: N.T.S.

MAILING ADDRESS: 1434 GRAHAM ST

LEGAL DESCRIPTION: LOT NO. 1 PLAN NO. 3163

TWP. 26 SEC. 19

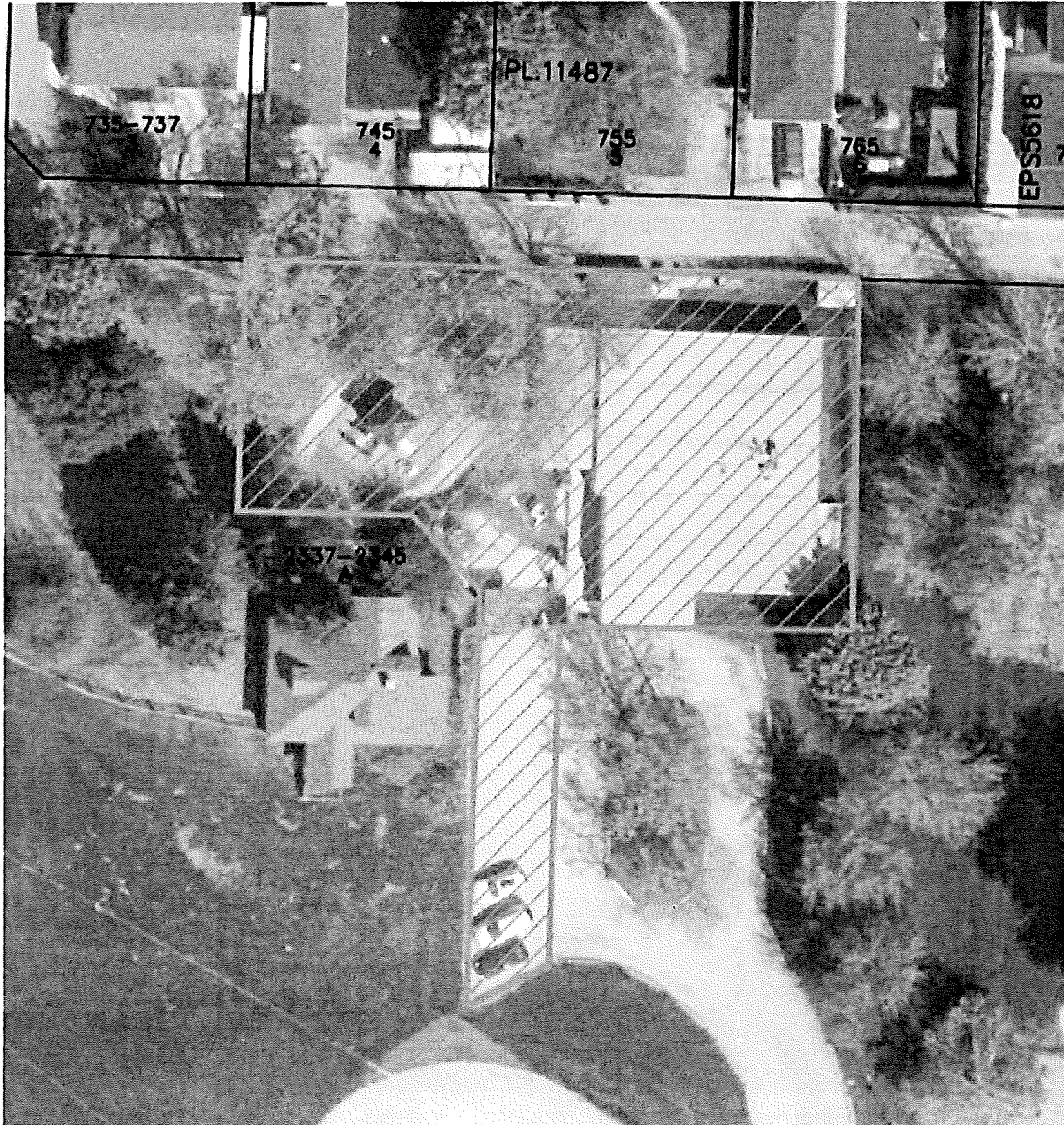
 PREMISES AREA = ±1914m²

 LICENSE AREA = ±4575m²

PLEASE NOTE THAT THIS SKETCH
IS FOR ILLUSTRATIVE PURPOSES
ONLY. THE DEGREE OF ACCURACY
OF THE AREA IS LIMITED

SCHEDULE "B"

Cameron Park License Area



SCALE: N.T.S.

MAILING ADDRESS: 2337-2345 RICHTER ST

LEGAL DESCRIPTION: LOT NO. A PLAN NO. 9012

TWP. 26 SEC. 18



LICENSE AREA = $\pm 1404m^2$

PLEASE NOTE THAT THIS SKETCH IS FOR ILLUSTRATIVE PURPOSES ONLY. THE DEGREE OF ACCURACY OF THE AREA IS LIMITED

SCHEDULE "C" Legal Notices and Encumbrances

Jaycees Downtown Youth Centre

Heritage Status Notice KT21341

Statutory Right of Way KD63959

Statutory Right of Way LA145302

Rutland Youth Centre

Agricultural Land Commission Act Notification, Plan M11328

Local Government Act Part 26 Permit LA97693

Right of Way N49032

Statutory Right of Way X27104

Statutory Right of Way V54721

Statutory Right of Way LB426812

Statutory Right of Way LB426813

Martin Avenue Community Centre

Statutory Right of Way KM47176

Right of First Refusal KR122989

Cameron Park

Right of Way 101445E

Statutory Right of Way LB273038

SCHEDULE "D" Building Maintenance and Operations Responsibility Checklist

<p align="center">Building Maintenance and Operations Responsibility Checklist</p> <p align="center">OKANAGAN BOYS AND GIRLS CLUBS</p>	<p align="center">Rutland Youth Centre, Jaycees Downtown Youth Centre Martin Ave Community Centre</p>		
	<p align="center">Provided by the <u>City</u>, Cost borne by the <u>City</u></p>	<p align="center">Provided by the <u>Society</u>, Cost borne by the <u>Society</u></p>	<p align="center">Does Not Apply</p>
Backflow Preventor testing – Repair / Replacement		X	
Boiler operating permits		X	
Camera Systems		X	
Card Access		X	
Electrical Field Safety Representative (FSR)		X	
Electrical operating permit		X	
Electrical system – annual inspection report		X	
Electrical system - preventative maintenance		X	
Electrical system - repairs		X	
Electrical/lights - lamp & tube replacement		X	
Elevator equipment repairs		X	
Elevator maintenance contract		X	
Elevator operating permits		X	
Emergency lighting testing & repairs		X	
Exterior doors, windows, facades, etc.	X		

<p style="text-align: center;">Building Maintenance and Operations Responsibility Checklist</p> <p style="text-align: center;">OKANAGAN BOYS AND GIRLS CLUBS</p>	<p style="text-align: center;">Rutland Youth Centre, Jaycees Downtown Youth Centre Martin Ave Community Centre</p>		
	<p style="text-align: center;">Provided by the <u>City</u>, Cost borne by the <u>City</u></p>	<p style="text-align: center;">Provided by the <u>Society</u>, Cost borne by the <u>Society</u></p>	<p style="text-align: center;">Does Not Apply</p>
Fire alarm system repairs		X	
Fire alarm system testing & inspection contracts		X	
Fire extinguisher monthly & annual inspections		X	
Fire safety plan		X	
Fire safety drills		X	
Fire sprinkler system repairs		X	
Fire sprinkler system testing & inspection contracts		X	
Furnishings (maintain & replace)		X	
Garbage & recycling program		X	
Grease trap annual service		X	
HVAC – annual inspection report		X	
HVAC - preventative maintenance		X	
HVAC - repairs		X	
Insurance - automotive		X	
Insurance - liability		X	
Insurance - property, building	X		
Insurance - Society owned furnishings & fixtures		X	
Insurance - Society owned operational equipment, computers		X	

<p align="center">Building Maintenance and Operations Responsibility Checklist</p> <p align="center">OKANAGAN BOYS AND GIRLS CLUBS</p>	<p align="center">Rutland Youth Centre, Jaycees Downtown Youth Centre Martin Ave Community Centre</p>		
	<p align="center">Provided by the <u>City</u>, Cost borne by the <u>City</u></p>	<p align="center">Provided by the <u>Society</u>, Cost borne by the <u>Society</u></p>	<p align="center">Does Not Apply</p>
Interior walls, flooring, doors, ceilings, etc		X	
Internet		X	
Janitorial services & supplies in leased spaces		X	
Janitorial services & supplies in public washrooms		X	
Keys – providing City with master keys and emergency access contact information		X	
Keys & locks - repair & maintenance		X	
Kitchen equipment repair & maintenance - Landlord Owned			X
Kitchen equipment repair & maintenance - Tenant Owned		X	
Kitchen exhaust hood annual cleaning		X	
Kitchen exhaust hood repairs		X	
Kitchen hood fire suppression system preventative maintenance		X	
Kitchen hood fire suppression repairs		X	
Kitchen hood fire suppression testing		X	
Landscape maintenance	X		
Licences			
Business License		X	
Liquor License			X

Building Maintenance and Operations Responsibility Checklist OKANAGAN BOYS AND GIRLS CLUBS	Rutland Youth Centre Jaycees Downtown Youth Centre Martin Avenue Community Centre		
	Provided by the <u>City</u> , Cost borne by the <u>City</u>	Provided by the <u>Society</u> , Cost borne by the <u>Society</u>	Does Not Apply
IHA Food Operating Permit/ Food safe Certification		X	
Overhead Doors		X	
Painting - Exterior	X		
Painting - Interior		X	
Parking lots – parking lines, sweeping, asphalt, signage, etc.	X		
Pest control		X	
Playground Equipment – Maintenance (Martin Ave Community Centre only)	X		
Plumbing system – annual inspection report		X	
Plumbing system - preventative maintenance		X	
Plumbing system - repairs		X	
Property taxes		X	
Roof – annual inspection report	X		
Roof preventative maintenance and repairs	X		
Security system		X	
Signage		X	
Site drainage	X		

Building Maintenance and Operations Responsibility Checklist	Rutland Youth Centre Jaycees Downtown Youth Centre Martin Avenue Community Centre		
	OKANAGAN BOYS AND GIRLS CLUBS	Provided by the <u>City</u> , Cost borne by the <u>City</u>	Provided by the <u>Society</u> , Cost borne by the <u>Society</u>
Snow removal Society responsible for sidewalks and entrances at Martin Ave and Rutland Youth Centre, and inside the fence area of Jaycees Downtown City responsible for everything else	X	X	
Telephone		X	
Tenant improvements		X	
Tenant improvements – repair, maintenance & replacement		X	
Tree removal	X		
Utilities – electricity		X	
Utilities – natural gas		X	
Utilities – propane		X	
Utilities – water, sewer		X	
Vandalism (exterior)		X	
Vandalism (interior)		X	
Window cleaning (exterior)		X	
Window cleaning (interior)		X	

SCHEDULE "E"

Insurance Certificate

CERTIFICATE OF INSURANCE



<i>City staff to complete prior to circulation</i>	
City Dept.:	_____
Dept. Contact:	_____
Project/Contract/Event:	_____

Insured

Name:	_____
Address:	_____

Broker

Name:	_____
Address:	_____

Location and nature of operation and/or contract reference to which this Certificate applies:

Type of Insurance	Company & Policy Number	Policy Dates		Limits of Liability/Amounts
		Effective	Expiry	
Section 1 Comprehensive General Liability including: <ul style="list-style-type: none"> • Products/Completed Operations; • Blanket Contractual; • Contractor's Protective; • Personal Injury; • Contingent Employer's Liability; • Broad Form Property Damage; • Non-Owned Automobile; • Cross Liability Clause. 				Bodily Injury and Property Damage \$ <u>5,000,000</u> Inclusive \$ _____ Aggregate \$ _____ Deductible
Section 2 Automobile Liability				Bodily Injury and Property Damage \$ <u>5,000,000</u> Inclusive

- 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 Insured named above.
 2. The City of Kelowna is named as an Additional Insured.
 3. 30 days prior written notice of material change and/or cancellation will be given to the City of Kelowna.

Print Name	Title	Company (Insurer or Broker)
Signature of Authorized Signatory		Date

