

Bill No. 532
2014

By-law No. A.-_____

A By-law to approve the Amending Agreement to the Joint Use of Facilities Agreement between The Thames Valley District School Board and The Corporation of the City of London; and to authorize the Mayor and City Clerk to execute the Amending Agreement.

WHEREAS subsection 5(3) of the *Municipal Act, 2001* S.O. 2001, c.25, as amended, provides that a municipal power shall be exercised by by-law;

AND WHEREAS section 9 of the *Municipal Act, 2001* provides that a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under this or any other Act;

AND WHEREAS The Corporation of the City of London and The Thames Valley District School Board entered into a Joint Use of Facilities Agreement dated August 2012, regarding the use of existing recreational facilities;

NOW THEREFORE the Municipal Council of The Corporation of the City of London enacts as follows:

1. The Amending Agreement to the Joint Use of Facilities Agreement entered into between The Thames Valley District School Board and The Corporation of the City of London attached as Schedule "A" to this by-law, is authorized and approved.
2. The Mayor and the City Clerk are authorized to execute the Amending Agreement authorized and approved under section 1 of this by-law.
3. This by-law shall come into force and effect on the day it is passed.

PASSED in Open Council November 25, 2014.

J. Baechler
Mayor

Catharine Saunders
City Clerk

First reading - November 25, 2014
Second reading - November 25, 2014
Third reading – November 25, 2014

SCHEDULE "A"

THIS AMENDING AGREEMENT

BETWEEN:

THE THAMES VALLEY DISTRICT SCHOOL BOARD
(the "Board")

- and -

THE CORPORATION OF THE CITY OF LONDON
(the "City")

WHEREAS the Board and the City entered into a Joint Use of Facilities Agreement dated August, 2012, regarding the use of existing recreational facilities (the "Agreement");

AND WHEREAS the Board and the City wish to amend the Agreement;

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the premises and the mutual covenants contained in the Agreement, and subject to the terms and conditions of this Amending Agreement, the parties agree as follows:

1.0 AMENDMENTS

- 1.1 Schedule 1 contained in the Agreement is hereby deleted and replaced with a new Schedule 1 attached hereto.
- 1.2 For greater certainty, Schedules 1A, 1B, 1C and 1D attached to the Agreement shall remain and are not deleted.

2.0 AGREEMENT BINDING

- 2.1 Except as amended in accordance with the provisions of this Amending Agreement, the Agreement shall remain binding and in full force and effect.
- 2.2 This Amending Agreement shall be binding on the parties and their respective successors and assigns.

3.0 EXECUTION

- 3.1 The City and the Board acknowledge that it has each read this Amending Agreement, understands it and agrees to be bound by its terms and conditions.

IN WITNESS WHEREOF the City has hereunto signed this Amending Agreement by its duly authorized representative and the Board has hereunto affixed its corporate seal under the hands of its duly authorized representatives.

SIGNED, SEALED AND DELIVERED

THE CORPORATION OF THE CITY OF LONDON

Date:

Mayor, J. Baechler

City Clerk, Catharine Saunders

THE THAMES VALLEY DISTRICT SCHOOL BOARD

Date: 11/06/2014

Laura Elliott

Director of Education

Date: 11/06/2014

Per:

Name: ~~Laura Elliott~~

Title: JEFF PRATT, ASSOCIATE DIRECTOR

I/We have authority to bind the corporation.

SCHEDULE 1

1. Base Line Statistics

The parties hereby agree that:

- a) the City's use and projected use of Board Facilities for the period from September 1, 2011 to August 31, 2012 (the "**City's 2011/2012 Usage**") is as set forth in Schedule 1A hereto;
- b) the Board's use and projected use of City Recreational Facilities during the period from September 1, 2011 to August 31, 2012 (the "**Board's 2011/2012 Usage**") is as set forth in Schedule 1B hereto;

2. Rates

Until otherwise agreed by the parties:

- a) the notional rental rates (the "**City Rates**") to be utilized in respect of City Recreational Facilities for purposes of undertaking the calculations and reconciliations contemplated in the remaining sections of this Schedule 1 are as set out in Schedule 1C hereto; and
- b) the rental/usage rates (the "**Board Rates**") to be utilized in respect of Board Facilities for purposes of undertaking the calculations and reconciliations contemplated in the remaining sections of this Schedule 1 are as set forth in Schedule 1D hereto,

provided that it is understood and agreed that either party, as part of the renewal arrangements contemplated in section 2.2 of the Agreement (but before March 1 of the calendar year during which the applicable Renewal Term is to commence), may advise the other that it wishes to amend its rates for purposes of the then forthcoming Renewal Term, in which case the Co-Ordination Committee shall endeavour to determine whether agreement can be reached with respect to same. For purposes of such discussions and otherwise as part of the underlying basis upon which this Schedule 1 has been developed, the parties are of the view that there is an equivalency of value between:

- (i) the City's 2011/2012 Usage, the payment amount of \$105,565.00 (such dollar amount representing 50% of the Board Rates which would otherwise have been payable in respect of the City's 2011/2012 Usage) the Board's agreement not to charge the City any amount for use of green space at schools in connection with non-revenue generating programs within school facilities, together with the overall benefits realized by the City by virtue of this Agreement; and

- (ii) the Board's 2011/2012 Usage.

Notwithstanding the foregoing, the parties hereby acknowledge and agree that, in respect of the Initial Term and because the City's budget for 2012 has already been determined, the amounts payable by the City under section 3(c)(i) of this Schedule 1 have been made subject to a 1/3 reduction in recognition of the fact that 1/3 of the Initial Term occurs in 2012 and the City does not have available funding for purposes of the 2012 portion of the Initial Term of the Agreement.

3. Scheduling and Financial Issues for Initial Term

a) The Board has provided the City with a schedule indicating the Board Facilities the Board proposes to make available to the City during the Initial Term. The City has advised the Board of its desired usage of the Board Facilities during the Initial Term based on such schedule (the "**Initial Term Booked Usage**"). Notwithstanding the foregoing, the parties recognize and agree that: not all of the City's needs of Board Facilities for the Initial Term are capable of being identified/determined as at the date hereof; and, the City shall be entitled to, from time to time, make additional requests for the use of Board Facilities during the Initial Term and the Board shall use reasonable efforts to accommodate such requests.

b) As at the date of this Agreement, the Board has advised the City of its known needs of City Recreational Facilities, as at the date hereof; however, the parties recognize and agree that: not all of the Board's needs of City Recreational Facilities for the Initial Term are capable of being identified/determined as at the date hereof; and, the Board shall be entitled to, from time to time, make additional requests for the use of City Recreational Facilities during the Initial Term and the City shall use reasonable efforts to accommodate such requests.

c) In terms of financial and other arrangements for the Initial Term, and the Initial Term only and due to the City having already made its budget determinations for 2012, during September 2013, the parties will undertake a reconciliation process in respect of the Initial Term, based on the following principles:

- (i) the City is to make a one (1) time payment of \$78,818.02 for its Initial Term Booked Usage (which payment will not be adjusted if the City's actual usage of Board Facilities during the Initial Term is less than the Initial Term Booked Usage), such payment amount representing two-thirds (2/3) of the sum of: A. the product of 0.5 multiplied by the Initial Term Booked Usage, multiplied by the respective Board Rates (provided that in calculating any respective product for Initial Term Booked Usage involving gymnasiums or activity rooms, such product shall be further multiplied by 0.99); plus, B. the anticipated aggregate amount payable by the City to the Board in respect of the \$50.00 per day per room surcharge which the Board charges for specialty/technology rooms and which

would otherwise apply in respect of the Initial Term Booked Usage (and such payment amount being hereinafter referred to as the “**Base Payment**”);

- (ii) to the extent that the City’s actual usage of specialty/technology rooms during the Initial Term exceeds 255 instances for which the Board’s \$50.00 per day per room surcharge applies, the parties shall calculate the amount (the “**Specialty Excess Amount**”) derived by multiplying such excess number of instances by \$50.00, and the City shall owe the Board an amount equal to the Specialty Excess Amount;
- (iii) to the extent that the City’s actual usage of Board Facilities during the Initial Term multiplied by the respective Board Rates (and applying a 1% discount in respect of the usage of gymnasiums and activity rooms), exceeds \$210,954.00, the City shall (in addition to the Base Payment and the Specialty Excess Amount): owe the Board an amount (the “**Excess Usage Amount**”) equal to 50% of such excess; and, extend a notional credit (the “**Usage Credit**”) to the Board also equal to 50% of such excess for purposes of the reconciliation process herein described;
- (iv) to the extent the Board’s actual usage of City Recreational Facilities during the Initial Term, multiplied by the respective City Rates and multiplied further by 0.63, does not exceed \$105,565.00, no further calculations need be undertaken, and the City shall forthwith pay to the Board the Base Payment, the Specialty Excess Amount and the Excess Usage Amount; and,
- (v) should the amount calculated by multiplying the Board’s actual usage of City Recreational Facilities during the Initial Term, by 0.63 of the respective City Rates exceed \$105,565.00 (such excess being hereinafter referred to as the “**Board Excess Amount**”), the parties shall proceed as on the following basis. The sum of the Specialty Excess Amount and the Excess Usage Amount is hereinafter referred to as the “**City Excess Amount**”. If the Board Excess Amount is less than the City Excess Amount, the City shall forthwith pay the Board the Base Payment and an amount equal to the City Excess Amount minus the Board Excess Amount. If the Board Excess Amount is greater than the City Excess Amount, but less than the combined dollar amount of the City Excess Amount and the Usage Credit (together the “**Combined Amount**”), the City shall forthwith pay the Board the Base Payment. If the Board Excess Amount exceeds the Combined Amount, but such excess is less than the Base Payment, the City shall forthwith pay the Board the Base Payment, less the amount by which such

excess exceeds the Combined Amount. If the Board Excess Amount exceeds the sum of the Combined Amount and the Base Payment (the amount of such excess being hereinafter referred to as the “**Superordinary Excess**”), the Board shall forthwith pay to the City the Superordinary Excess.

4. Scheduling for Renewal Term

Assuming the parties wish to renew the Agreement, it is anticipated that:

a) by March 14 of the calendar year in which the Renewal Term is to commence, the Board shall provide the City with a schedule indicating those Board Facilities which the Board proposes to make available to the City during the Renewal Term and which reflect the availability of Board Facilities taking into account Board Facilities and its planning with respect to the age and wear of its facilities; provided that, it is anticipated that the Board will make available to the City at least the same number of hours per type of Board Facility as the Board did in the prior term. The City shall then have a period of thirty (30) days to advise the Board, in writing, of the City's desired usage of Board Facilities so made available. The City understands that following such thirty (30) day period, the Board will be making those Board Facilities which the City has not indicated an interest in available to the public at large. Notwithstanding the foregoing, the parties recognize and agree that: not all of the City's need of Board Facilities for the Renewal Term are capable of being identified/determined within the thirty (30) day period referred to above; and, the City shall be entitled to, from time to time, make additional requests for the use of Board Facilities during the Renewal Term and the Board shall use reasonable efforts to accommodate such requests.

b) the parties recognize and agree that the Board organizes and schedules its proposed usage of City Recreational Facilities in a different manner than the City schedules its use of Board Facilities, and that the Board will make requests for use of City Recreational Facilities from time to time and on an ongoing basis both before the commencement of and during the applicable Renewal Term. Notwithstanding the foregoing and with a view to reducing the administrative burden on the City, the Board shall use reasonable efforts to:

(i) in respect of TVRA Contests and Practices:

A. make its request for usage of City baseball facilities and soccer fields by March 1st of the calendar year in which the applicable Renewal Term commences; and

B. make its request(s) for usage of City ice hockey arenas by September 15th of the calendar year in which the applicable Renewal Term

commences (i.e. by one month after the applicable Renewal Term commences); and

- (ii) provide the City with a listing, from time to time, of those persons entitled to book City Recreational Facilities on behalf of the Board.

Lastly, it is anticipated that the City will use reasonable efforts to make available to the Board at least the same number of hours per type of City Recreational Facility as the City did in the prior term, recognizing that if the Board requests use of the respective facilities after the dates specified in section 4(b)(ii) of this Schedule 1, it may become more difficult for the City to accommodate certain of such requests for the dates and/or times requested.

5. Reconciliation Process in Respect of Renewal Terms

During the month of September immediately following the termination of any Renewal Term, the parties will undertake a reconciliation process based on the following principles:

- a) In all circumstances, the City shall have a payment obligation to the Board (subject to the remaining reconciliation principles set forth below), equal to the sum (such sum being hereinafter referred to as the “**City Renewal Term Payment Obligation**”), of:

- (i) The amount calculated by multiplying the City's actual usage of Board Facilities during the Renewal Term which is the subject of the reconciliation (the “**Subject Renewal Term**”), by the respective Board Rates (provided that in calculating any respective product for the usage of specialty/technical rooms during the Subject Renewal Term, such product shall be multiplied further by 0.99), multiplied further by 0.5; and
- (ii) The amount owing in respect of the City's usage of the Board's specialty/technology rooms during the Subject Renewal Term based on the \$50.00 per day per room fee payable to the Board in connection therewith (such amount being hereinafter referred to as the “**Renewal Term Specialty Amount**”).

- b) In addition, to the extent that the City's actual usage of Board Facilities during the Subject Renewal Term, multiplied by the respective Board Rates, exceeds the City's 2011/2012 Usage multiplied by the respective Board Rates, the parties shall calculate and determine the dollar amount of such excess. Fifty percent (50%) of the dollar amount of such excess is hereinafter referred to as the “**Renewal Term Credit Amount**”.

- c) The Board shall not owe any amount to the City in respect of its usage of City

Recreational Facilities during the Subject Renewal Term, unless the dollar amount calculated by multiplying such hourly usage by 0.63 of the applicable City Rates exceeds the Board's 2011/2012 Usage multiplied by 0.63 of the applicable City Rates, plus the respective Renewal Term Credit Amount for the Subject Renewal Term. In the event there is an excess, such excess amount shall be owing by the Board to the City. For purposes of clarity, if no amount is calculated as being owing by the Board to the City under this Section 5(c), the City shall forthwith pay to the Board the amounts owing pursuant to section 5(a) above.

d) To the extent that an amount is owing by the City to the Board pursuant to subsection 5(a) above and an amount is owing by the Board to the City by virtue of subsection 5(c) above, such obligations shall be set off as against one another and the party with the greater obligation shall forthwith pay the remaining amount (after such set-off), to the other party.

6. Additional Miscellaneous Concepts and Agreements

a) In completing the reconciliation exercises contemplated under either sections 3(c)(ii), (iii), (iv) and (v) and section 5 of this Schedule 1:

- (i) should the City book access to a Board Facility and the Board subsequently denies access thereto (and the Board does not provide the City with a reasonable, alternative arrangement in respect of such booking), the calculations shall be adjusted in such a manner to reflect that the City did not use and did not have access to such space and should therefore not be charged for such space in the context of such reconciliation;
- (ii) should the Board book access to a City Recreational Facility and the City subsequently denies access thereto (and the City does not provide the Board with a reasonable, alternative arrangement in respect of such booking), the calculations shall be adjusted in such a manner to reflect that the Board did not use and did not have access to such space and should therefore not be charged for such space in the context of such reconciliation;
- (iii) the City may cancel its bookings of Board facilities for purposes of a City Program by providing the Board written notice thereof at least ten (10) Business Days prior to the commencement of the program in question and, in such circumstances, the City will be treated as if it never booked or used such facilities for purposes of the calculations and reconciliations contemplated under sections 3(c)(ii), (iii), (iv) and (v) and Section 5 of this Schedule 1. Absent receipt of such written notice within the time parameters specified above, the City will be treated

as having booked and used the facilities in question for purposes of the calculations and reconciliations contemplated under sections 3(c)(ii), (iii), (iv) and (v) and Section 5 of this Schedule 1; and

- (iv) the Board may cancel any of its bookings of City Recreational Facilities by providing the City written notice thereof at least ten (10) Business Days prior to the date the particular facility is booked and, in such circumstances, the Board will be treated as if it never booked or used such facility for purposes of the calculations and reconciliations contemplated under sections 3(c)(ii), (iii), (iv) and (v) and Section 5 of this Schedule 1. Absent receipt of such written notice within the time parameters specified above, the Board will be treated as having booked and used such facility for purposes of the calculations and reconciliations contemplated under sections 3 and 5 of this Schedule 1.

b) The parties recognize that in addition to the financial arrangements contemplated in respect of City Rates, Board Rates and Board charges for its specialty/technical rooms (and which inform the subject matter of Sections 1 through 5 of this Schedule 1), the parties shall and intend to continue to charge and invoice one another, in accordance with their respective normal practices, amounts for services and/or personnel which are not typically provided as part of the parties' respective usage rates. By way of examples:

- (i) The Board shall charge and invoice the City for the provision of a custodian at times when the Board would not normally have a custodian assigned to the Board Facility in question; and
- (ii) The City shall charge and invoice the Board for arena attendants and lifeguards.

Such charges shall be invoiced by one party to the other in accordance with such party's normal practices (and paid in accordance with the terms of the respective invoice), and will not be subject to the reconciliation processes contemplated in sections 3 and 5 of this Schedule 1.

c) It is understood and agreed that the following City Facilities are not subject to the arrangements contemplated by the Agreement or this Schedule 1: Citywide Artificial Turf Fields; Labatt Park; Storybook Gardens; City of London Golf Courses; North London Community Centre Indoor Tennis Facilities.

d) In addition, in terms of the parties arrangements for Renewal Terms:

- (i) the Board shall provide the City with access to the same types of Board Facilities (and for at least the same aggregate number of hours based on type), as was the

case in respect of: the City's 2011/2012 Usage; or, the City's usage of Board Facilities during the twelve (12) month period prior to the Renewal Term in question, whichever is greater; and

- (ii) the City shall provide the Board with access to the same types of City Recreational Facilities (and for at least the same aggregate number of hours based on type), as was the case in respect of: the Board's 2011/2012 Usage; or, the Board usage of City Recreational Facilities during the twelve (12) month period prior to the Renewal Term in question, whichever is greater; provided that, in circumstances where:

- A. the City's usage of Board Facilities in the twelve (12) month period (the "**Prior Term**") prior to the Renewal Term in question multiplied by the respective Board Rates, exceeds the City's 2011/2012 Usage multiplied by the respective Board Rates (such excess being hereinafter referred to as the "**Value Excess for Entitlement**"); and

- B. the Board's usage of City Recreational Facilities during the Prior Term multiplied by 0.63 of the applicable City Rates does not exceed the Board's 2011/2012 Usage multiplied by 0.63 of the applicable City Rates,

during the Renewal Term in question, the City shall provide the Board with access to the same types of City Recreational Facilities (and for at least the same aggregate number of hours based on type), as was the case in respect of the Board's 2011/2012 Usage, plus such additional usage of City Recreational Facilities, if multiplied by 0.63 of the applicable City Rates, as would equal the Value Excess for Entitlement.

For purposes of certainty, the provision of this section 6(d) of this Schedule 1 are intended to address the parties' respective entitlements to usage of one another's facilities and are not intended to affect or change the results of the reconciliation process contemplated in section 5 of this Schedule 1.

- e) The City has agreed to track, and report on a monthly basis, the usage of one another's facilities, including, the group or party using the respective facilities, the types of facilities used and the respective hours of usage.