

Bill No. 339  
2012

By-law No. A.-

A By-law to authorize and approve a 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 Agreement.

WHEREAS section 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 section 10 of the *Municipal Act, 2001* provides that the City may provide any service or thing that the City considers necessary or desirable for the public, and may pass by-laws respecting same, and respecting economic, social and environmental well-being of the City, and the health, safety and well-being of persons;

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

1. The Joint Use of Facilities Agreement attached as Schedule "A" to this by-law between The Thames Valley District School Board ("Board") and The Corporation of the City of London regarding access to the City's and the Board's facilities for recreational programs, is hereby authorized and approved.
2. The Mayor and City Clerk are authorized to execute the 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 on August 28, 2012.

Joe Fontana  
Mayor

Catharine Saunders  
City Clerk

First Reading - August 28, 2012  
Second Reading – August 28, 2012  
Third Reading – August 28, 2012

### Schedule A

This Joint Use of Facilities Agreement (the “**Agreement**”) is entered into as of the        day of August, 2012

BETWEEN:

**THE THAMES VALLEY DISTRICT SCHOOL BOARD  
(hereinafter called the “Board”)**

**-and-**

**THE CORPORATION OF THE CITY OF LONDON  
(hereinafter called the “City”)**

**WHEREAS** the Board owns certain classrooms, as well as facilities suitable for recreation, within the geographic boundaries of the City of London and the City wishes to access certain of such facilities;

**AND WHEREAS** the City owns facilities suitable for recreation within the geographic boundaries of the City of London and the Board wishes to access certain of such facilities;

**AND WHEREAS** section 183 of the *Education Act*, R.S.O. 1990, c. E.2 provides, in part, that a school board and the council of a municipality may enter into an agreement in respect of the use of existing facilities;

**NOW THEREFORE THIS AGREEMENT WITNESSES THAT**, for good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the parties agree as follows:

#### **1.0 DEFINITIONS**

**1.1** In this Agreement, the following terms have the following definitions:

**“Board Equipment”** means the recreation equipment the Board typically makes available when allowing community use of its recreational facilities.

**“Board Facilities”** means those indoor and outdoor recreational facilities and normal purpose classrooms owned by the Board, located within the geographic limits of the City of London and which the Board makes available to the City under this Agreement.

**“Board Persons”** means: all persons involved in Board Programs using City Recreational Facilities (including, without limitation, students of the Board, as well as teachers, coaches, advisors and referees employed or contracted by the Board); any family members or friends of persons involved in Board Programs using City Recreational Facilities who attend said City Recreational Facilities in connection with such Board Programs; and, all other persons for whom the Board is otherwise at law responsible.

“**Board Program**” means a program organized and operated by the Board for: its and other students attending schools within the City of London; and, in certain circumstances (e.g. tournaments and playoffs), students attending other schools under the Board’s jurisdiction but outside of the City of London.

“**Business Day**” means a day other than Saturday, Sunday or a statutory holiday in Ontario;

“**City Equipment**” means the recreational equipment the City typically makes available for use in City Recreational Facilities.

“**City Persons**” means all persons involved in City Programs using Board Facilities (including, without limitation, participants in said programs, coaches, referees, instructors and supervisors); any family members or friends of persons involved in City Programs using Board Facilities who attend said Board Facilities in connection with such City Programs; and, all other persons for whom the City is otherwise at law responsible.

“**City Programs**” means recreational programs operated by the City.

“**City Recreational Facilities**” means those indoor and outdoor recreational facilities owned and operated by the City and which the City makes available to the Board under this Agreement.

“**Initial Term**” has the meaning given to it in section 2.1.

“**Renewal Term**” has the meaning given to it in section 2.2.

“**Term**” means either the Initial Term or a Renewal Term, as the context requires.

## **2.0 TERM OF AGREEMENT**

### **2.1 Term**

Subject to Article 7.0 below, this Agreement shall commence on the date first above written and expire on August 31, 2013 (the “**Initial Term**”).

### **2.2 Renewal**

The parties are hopeful that they will renew this Agreement for one or more successive twelve month periods, commencing on September 1 and ending on August 31 in the immediately following calendar year (a “**Renewal Term**”), and with the first Renewal Term (should the parties wish to renew this Agreement), commencing on September 1, 2013 and ending on August 31, 2014. In the event the parties wish to renew this Agreement for any particular Renewal Term, they shall undertake the scheduling procedures contemplated in Section 4 of Schedule 1 hereto to be taken prior to the commencement of the applicable Renewal term. In concert with such scheduling discussions, the Co-ordination Committee (as defined in section 4.1 below), with the assistance of such additional staff members of the parties as may be of assistance to the undertaking, shall meet to discuss issues of concern to the parties and to otherwise determine and/or confirm the financial and other arrangements contemplated as between the parties. During such scheduling discussions

and at any time up to the thirtieth (30<sup>th</sup>) day prior to the commencement of the applicable Renewal Term, either party may serve written notice on the other that it does not wish to renew this Agreement for that Renewal Term. Any decision by the City or the Board not to renew this Agreement shall be without compensation, penalty or liability on the part of one party to the other party. Regardless of any of the foregoing, should one party determine, at any time, that it does not wish to renew this Agreement, it shall inform the other, in writing, of same as soon as reasonably practical; provided that, failure to do so shall be without consequence or penalty. In the event neither party serves the other with written notice of its intention to not renew this Agreement as provided for above, this Agreement will be renewed for the next then occurring Renewal Term.

### **3.0 SCHEDULING AND FINANCIAL ARRANGEMENTS**

#### **3.1 Scheduling and Financial Arrangements**

Schedule 1 hereto sets forth the parties agreement with respect to the scheduling and financial particulars set forth therein.

### **4.0 CO-ORDINATION COMMITTEE**

#### **4.1 Formation and Functioning**

For purposes of assisting with the administration of this Agreement, the parties shall form a working committee to be known as the “**Co-ordination Committee**”. The Co-ordination Committee shall: have the responsibilities; be formed; and, otherwise function, on the basis set forth in Schedule 2 hereto.

#### **4.2 Principles**

The arrangements between the parties contemplated by this Agreement and the functioning of the Co-ordination Committee shall be subject to and governed by the principles enumerated in Schedule 3 hereto.

### **5.0 GENERAL AND SPECIFIC OBLIGATIONS OWED BY THE PARTIES**

#### **5.1 General Obligations**

In connection with each party's use of the other's facilities as contemplated by this Agreement, it is agreed by the parties as follows:

- (a) The Board shall use reasonable efforts to ensure that Board Facilities are vacated before the time they are scheduled for use in connection with City Programs. Conversely, the City shall use reasonable efforts to ensure that City Recreational Facilities are vacated before the time they are scheduled for use by the Board.

- (b) The Board shall ensure that the Board Equipment is in good condition and equivalent to the quality of equipment that is provided by it for other community use programs. Conversely, the City shall ensure that the City Equipment is in good condition and equivalent to the quality of equipment that is provided for City Programs.
- (c) The Board shall maintain the Board Facilities to the Board's current operational standards. Conversely, the City shall maintain the City Recreational Facilities to the City's current operational standards.
- (d) The Board shall be responsible for the care and supervision of all Board Persons.
- (e) The City shall be responsible for the care and supervision of all City Persons.
- (f) If a City Recreational Facility or its contents, appurtenances or equipment are damaged by an act, omission or negligence by any Board Person (other than "wear and tear"), the Board shall pay to the City such reasonable amount as may be required to restore, with materials of like kind and quality, damaged property to its pre-damage condition. Conversely, if a Board Facility or its contents, appurtenances or equipment are damaged by an act, omission or negligence by any City Person (other than "wear and tear"), the City shall pay to the Board such reasonable amount as may be required to restore, with materials of like kind and quality, damaged property to its pre-damage condition.

## **5.2. Specific Obligations and Requirements regarding Board Facilities**

In connection with the City's use of the Board Facilities, it is agreed as follows:

- a) The City shall ensure that: (i) its programs do not infringe upon the time scheduled by any other group or program in any Board Facility; and, (ii) it vacates the Board Facility at the end of the time scheduled for the respective City Program. The City acknowledges and understands that the time scheduled for use of any Board Facility is to include the time necessary to assemble, disassemble and put away anything used for the respective City Program.
- b) The City shall ensure that the maximum number of persons using a Board Facility for purposes of a City Program shall not exceed the approved capacity of that Board Facility.
- c) The City shall ensure that, for each City Program within or on a Board Facility, it shall have one or more designated individuals, on site and who shall have the following responsibilities:
  - i) arrive at the Board Facility in advance of the start time scheduled for the City Program;

- ii) inform the participants of emergency evacuation procedures and exit locations, as applicable;
  - iii) ensure the safety of City Persons attending the City Program;
  - iv) liaise with the Board staff on site;
  - v) ensure that no City Persons obstruct any corridors, stairwells or exits in a Board Facility;
  - vi) ensure that all City Persons leave the Board Facilities no later than the end of the time period scheduled with the Board for the respective City Program;
  - vii) ensure that the Board Facility in question is left in an “as found” condition;
  - viii) not leave the Board Facility until all other City Persons have left; and
  - ix) immediately report any readily apparent unsafe conditions to the Board’s custodian on site.
- d) The City shall be responsible for ensuring that law and order is preserved in connection with all City Programs insofar as City Persons are concerned. The City shall be responsible for ensuring that all City Programs conducted in or on any Board Facility are conducted in accordance with all applicable laws, regulations, orders and rules. The City shall ensure that all City Programs in or on Board Facilities are conducted in a manner to ensure that all participants wear appropriate sport specific protective equipment, as applicable.
- e) The City shall ensure that no City Person smokes anywhere on any Board property while attending a City Program.
- f) The City shall ensure that no City Person consumes or has open alcohol anywhere on any Board property while attending a City Program.
- g) The City shall ensure that no Board Facility is changed or altered by any City Person (other than the lining of fields using typical materials and protocols, which is permitted). Without limiting the foregoing, the City shall be responsible for ensuring that no powder, tape, wax or any other preparation is applied to the floors, walls, ceilings or grounds comprising part of a Board Facility, except as may be specifically permitted by the Board. The City shall be responsible for ensuring that all City Persons who are using a Board gymnasium wear clean, non-marking footwear. To the extent that a City Program uses a Board Facility for purposes of indoor soccer, only indoor (FUTSAL) soccer balls may be used. To the extent that a City Program uses a Board gymnasium for purposes of floor hockey, any equipment used must be COSOM type (wooden sticks with plastic blades are not permitted).

- h) No food or beverages (other than water in a sealable container) are permitted in any Board gymnasiums or classrooms.
- i) The sale of goods, food or beverages by City Persons on Board property is prohibited.
- j) The City acknowledges and agrees that parking lots at and entrances to Board Facilities will be subject to winter maintenance according to the Board's regular schedule and to such standards as are determined solely in the Board's discretion and that no special winter maintenance will be undertaken for purposes of City Programs.
- k) The Board has the right reserved to it to maintain and control its facilities in the manner it determines, despite any arrangements contemplated under this Agreement for purposes related to health, safety and general good stewardship. In this regard, the City shall ensure that the reasonable instructions of any custodian at a Board Facility to a City Person are carried out.
- l) To the extent that a Board Facility is not otherwise normally open for access to the public at the time scheduled for a City Program, doors must not be propped open.
- m) The City acknowledges that certain of the Board Facilities contain or may be located within buildings that contain asbestos and/or asbestos containing materials and the City accepts its use of said facilities subject to this caveat.
- n) The City shall ensure that City Persons attending Board Facilities for purposes of City Programs park only in designated parking areas.
- o) The City shall ensure that no City Person uses any open flame, pyrotechnics or fog machines on or in any Board Facility.
- p) No City Person shall provide goods or services with respect to the playing of, or otherwise conduct, a lottery, scheme, draw or game of chance on or in any Board Facility.
- q) The City shall ensure that all refuse produced by City Persons within Board Facilities are placed in the appropriate designated receptacles.
- r) The City acknowledges that the Board shall not be liable for any damage to or loss of any property belonging to the City or City Persons in connection with the use of any Board Facility.
- s) No spitting is permitted within any indoor Board Facility.
- t) The City shall ensure that there is no posting or displaying of offensive material by a City Person at any Board Facility.

- u) The City agrees that, in the event the Board reasonably requests it for purposes of the Board's complying with applicable laws and regulations, the City shall provide the Board with criminal background checks for any person involved in the supervision of any City Program at a Board Facility.

### **5.3 Specific Obligations and Requirements regarding City Recreational Facilities**

In connection with the Board's use of the City Recreational Facilities, it is agreed as follows:

- a) The Board shall ensure that: (i) its programs do not infringe upon the time scheduled by any other group or program for the City Recreational Facility; and (ii) it vacates the City Recreational Facility at the end of the time scheduled for the respective Board Program. The Board acknowledges that the time scheduled for use of any City Recreational Facility includes the time necessary to assemble, disassemble and put away anything used for the Board Program.
- b) The Board shall ensure that the maximum number of persons using a City Recreational Facility for purposes of a Board Program shall not exceed the approved capacity of that City Recreational Facility.
- c) The Board shall ensure that, for each Board Program within or on a City Recreational Facility, it shall have one or more designated individuals, on site and who shall have the following responsibilities:
  - (i) arrive at the City Facility in advance of the start time scheduled for the Board Program;
  - (ii) inform the participants of emergency evacuation procedures and exit locations, as applicable;
  - (iii) ensure the safety of Board Persons attending the Board Program;
  - (iv) liaise with the City staff on site;
  - (v) ensure that no Board Persons obstruct any corridors, stairwells or exits in a City Facility;
  - (vi) ensure all Board Persons leave the City Facilities no later than the end of the time period scheduled with the City for the respective Board Program;
  - (vii) ensure that the City Facility in question is left in an "as found" condition;
  - (viii) not leave the City Facility until all other Board Persons have left; and
  - (ix) immediately report any readily apparent unsafe conditions to the City staff on site.
- d) The Board shall be responsible for ensuring that law and order is preserved in



connection with all Board Programs insofar as Board Persons are concerned. The Board shall be responsible for ensuring that all Board Programs conducted in or on any City Recreational Facility are conducted in accordance with all applicable laws, regulations, orders, rules, municipal by-laws and municipal policies. The Board shall ensure that all Board Programs in or on City Recreational Facilities are conducted in a manner to ensure that all participants wear appropriate sport specific protective equipment, as applicable.

- e) The Board shall ensure that no Board Person attending a Board Program smokes anywhere on any City property that is designated as being a non-smoking area.
- f) The Board shall ensure that no Board Person consumes or has open alcohol anywhere on any City property while attending a Board Program.
- g) The Board shall ensure that no City Recreational Facility is changed or altered by any Board Person. Without limiting the foregoing, the Board shall be responsible for ensuring that no powder, tape, wax or any other preparation is applied to the floors, walls, ceilings or grounds comprising part of a City Recreational Facility, except as may be specifically permitted by the City. The Board shall be responsible for ensuring that all Board Persons who are using a City gymnasium wear clean, non-marking footwear. To the extent that a Board Program uses a City Recreational Facility for purposes of indoor soccer, only indoor (FUTSAL) soccer balls may be used. To the extent that a Board Program uses a City gymnasium for purposes of floor hockey, any equipment used must be COSOM type (wooden sticks with plastic blades are not permitted).
- h) No food or beverages (other than water in a sealable container) are permitted in any City gymnasiums, pools, or arenas.
- i) The sale of goods, food or beverages by Board Persons on City property is prohibited.
- j) The Board acknowledges and agrees that parking lots at and entrances to City Recreational Facilities will be subject to winter maintenance according to the City's regular schedule and to such standards as are determined solely in the City's discretion and that no special winter maintenance will be undertaken for purposes of Board Programs.
- k) The City has the right reserved to it to maintain and control its facilities in the manner it determines in its sole discretion, despite any arrangements contemplated under this Agreement for purposes related to health, safety and general good stewardship. In this regard, the Board shall ensure that the reasonable instructions of any custodian at a City Recreational Facility to a Board Person are carried out.
- l) To the extent that a City Recreational Facility is not otherwise normally open for

access to the public at the time scheduled for a Board Program, doors must not be propped open.

- m) The Board acknowledges that certain of the City Recreational Facilities contain or may be located within buildings that contain asbestos and/or asbestos containing materials and the Board accepts its use of said facilities subject to this caveat.
- n) The Board shall ensure that Board Persons attending City Recreational Facilities for purposes of Board Programs park only in designated parking areas.
- o) The Board shall ensure that no Board Person uses any open flame, pyrotechnics or fog machines on or in any City Recreational Facility.
- p) No Board Person shall provide goods or services with respect to the playing of, or otherwise conduct, a lottery, scheme, draw or game of chance on or in any City Recreational Facility.
- q) The Board shall ensure that all refuse produced by Board Persons within City Recreational Facilities are placed in the appropriate designated receptacles.
- r) The Board acknowledges that the City shall not be liable for any damage to or loss of any property belonging to the Board or Board Persons in connection with the use of any City Recreational Facility.
- s) No spitting is permitted within any indoor City Recreational Facility.
- t) The Board shall ensure that there is no posting or displaying of offensive material by a Board Person at a City Recreational Facility.

## **6.0 DAMAGES, MUTUAL INDEMNIFICATION AND WAIVER AND INSURANCE**

### **6.1 Indemnification**

The City shall indemnify and hold the Board harmless from and against all liability, loss, claims, demands, costs and expenses, including reasonable legal fees, occasioned wholly or in part by: any negligence or acts or omissions by a City Person; or, out of a breach of the City's obligations under this Agreement. Conversely, the Board shall indemnify and hold the City harmless from and against all liability, loss, claims, demands, costs and expenses, including reasonable legal fees, occasioned wholly or in part by: any negligence or acts or omissions by a Board Person; or, out of a breach of the Board's obligations under this Agreement.

## **6.2 Board's Insurance**

Throughout the term of this Agreement, the Board shall obtain and maintain the insurance shown below:

- (i) Third party general liability insurance covering all use and occupation of City Facilities by the Board in an amount not less than Ten Million (\$10,000,000.) dollars and shall include the City as an additional insured with respect to the Board's operations and obligations under this Agreement;
- (ii) Standard all risk property insurance covering any and all property of the Board, in an amount not less than the full replacement cost value while in or on City Facilities, such policies to include a waiver of subrogation in favour of the City;
- (iii) The Board shall not do, omit to do, or permit to be done or omitted to be done in or on the City Facilities anything that may void coverage under or increase the premiums on the property insurance policies carried by the City on its facilities; and
- (iv) The Board will provide the City with evidence of the insurance described in clauses (i) and (ii) above and said evidence shall be delivered within 30 days of commencement of this Agreement and thereafter not less than once annually on renewal of such insurance coverage.

## **6.3 City's Insurance**

Throughout the term of this Agreement, the City shall obtain and maintain the insurance shown below:

- (i) Third party general liability insurance covering all use and occupation of the Board Facilities by the City in an amount not less than Ten Million (\$10,000,000.) dollars and shall include the Board as an additional insured with respect to the City's operations and obligations under this Agreement;
- (ii) Standard all risk property insurance covering all property of the City, in an amount not less than the full replacement cost value while in or on Board Facilities, such policies to include a waiver of subrogation in favour of the Board;
- (iii) The City shall not do, omit to do, or permit to be done or omitted to be done in or on the Board Facilities anything that may void coverage under or increase the premiums on the property insurance policies carried by the Board on its facilities; and

- (iv) The City will provide the Board with evidence of the insurance described in clauses (i) and (ii) above and said evidence shall be delivered within thirty (30) days of the commencement of this Agreement and thereafter not less than once annually on renewal of such insurance coverage.

## 7.0 SURVIVAL OF CERTAIN OBLIGATIONS

### 7.1 Survival of Certain Obligations

Notwithstanding any termination of this Agreement (including, at the end of the Initial Term or any Renewal Term):

- (a) the parties' respective obligations under section 6.1 hereof; and
- (b) the parties' obligation to reconcile the usage of each other's facilities and to pay any amount(s) owing as a result thereof, as contemplated in Schedule 1 hereof,

shall survive such termination.

## 8.0 GENERAL

### 8.1 Unforeseen Circumstances

The parties acknowledge, understand and agree that in the event that:

- (i) a facility is the subject of or affected by any labour dispute or disturbance;
- (ii) a party needs to effect repairs and/or upgrades to one of its facilities;
- (iii) a party is unable to provide a custodian or suitable staff person for the particular facility where it would typically require a custodian or suitable staff person to be present at such facility;
- (iv) a facility is closed as a result of weather conditions, epidemics or other acts of God;
- (v) there has been a power outage or other utility failure affecting a facility; or
- (vi) a specific or general emergency has occurred,

the owner (the "**Affected Party**") of such facility may not be able to make that facility available to the other party and may have to cancel already scheduled programs. In such circumstances, the Affected Party shall have no liability or other obligations to the other party (except as specifically contemplated in this Section 8.1), as a result of such circumstances. Each party shall monitor the other's website, on a regular basis, for purposes of determining whether any facilities might not be accessible as a result of the circumstances contemplated above; however, the Affected Party shall use reasonable efforts to advise the other party at the earliest reasonable opportunity of the occurrence or circumstances in question. In addition and if feasible, the Affected Party shall use

reasonable efforts to make available one (or more, as the case may be), of its reasonably similar facilities for such time(s) and date(s) as are reasonable in the circumstances. Regardless and for purposes of the reconciliation exercise(s) contemplated in Sections 3(c)(ii), (iii), (iv) and (v) and Section 5 of Schedule 1, to the extent the party denied access is not provided with an alternative facility or arrangement, it shall be treated as not having booked or used the effected facilities. The parties recognize that prolonged issues might give rise to the need to reconsider certain issues on a renewal of this Agreement.

## **8.2 Priority of Board Students**

The City recognizes that the Board must be in a position to ensure that the activities of its students always enjoy priority with respect to the use of Board Facilities. In this regard, it is understood that occasion may arise where the City has booked the usage of a Board Facility and such usage will need to be rescheduled due to an unforeseen need for the use of such facility on behalf of the Board. In such circumstances, the Board shall use reasonable efforts to advise the City of same at the earliest reasonable opportunity. In addition, the Board shall use reasonable efforts to make available one of its reasonably similar facilities for the time and date that the booked facility is not available. In the event an alternative facility is not available, there shall be no charge to the City in respect of the facility which is not available and appropriate adjustments shall be made in the context of the arrangements and processes contemplated in Sections 3(c)(ii), (iii), (iv) and (v) and Section 5 of Schedule 1 hereto

## **8.3 Waiver**

The failure of any party hereto at any time or times to require performance of any provisions hereof shall in no manner affect the right of such party to require such performance at a later time. No waiver by a party of any breach by the other party of any of its covenants, agreements or obligations contained in this Agreement shall be or be deemed to be a waiver of any subsequent breach thereof.

## **8.4 Headings**

The headings in this Agreement are for convenience only and shall not in any way limit or be deemed to construe or interpret the terms and provisions of this Agreement

## **8.5 Entire Agreement**

This Agreement and the Schedule(s) hereto embody the entire agreement of the parties with regard to the matters herein, and no other agreement shall be deemed to exist, except as entered into in writing by both parties to this Agreement. For purposes of certainty, this Agreement supersedes and replaces all prior agreements the parties may have entered into with respect to the subject matter hereof and which might otherwise apply to any period after August 31, 2012.

**8.6 Amendments**

No subsequent alteration, amendment, change or addition to this Agreement shall be binding on the City or the Board unless in writing signed by each of them.

**8.7 Assignment**

Neither the City nor the Board shall assign this Agreement or any part of it without obtaining the prior written consent of the other party, which consent may at their sole discretion be withheld.

**8.8 Enurement**

This Agreement shall enure to the benefit of and be binding on the parties and their respective successors.

**8.9 Nature of Arrangement**

The parties acknowledge and agree that the relationship between them is solely that of independent contractors and nothing herein shall be construed to constitute the parties as partners, joint venturers, co-owners or otherwise as participants in a joint or common undertaking. No one party, nor its employees, agents or representatives shall have any right, power or authority to act or create any obligation, express or implied, on behalf of the other.

#### **8.10 Notice**

Any notices to a party under this Agreement shall be in writing and, unless this Agreement specifies otherwise, it shall be sent by email, facsimile transmission, delivery service or mail, as follows:

- (a) To the Board:  
Thames Valley District School Board  
1250 Dundas Street East, P.O. Box 5888  
London, Ontario N6A 5L1  
Attention: Business Services Officer  
Email: j.berkin@tvdsb.on.ca  
Facsimile: 519-452-2254
  
- (b) To the City:  
Corporation of the City of London  
300 Dufferin Ave.  
London, Ontario N6A 4L9  
Attention: Managing Director, Parks and Recreation  
Facsimile: 519-661-5797

A party may change its notice particulars for purposes of this section 8.10, from time to time, by notice in writing.

#### **8.11 Governing Law**

This Agreement shall be construed and enforced in accordance with the laws of the Province of Ontario.

**IN WITNESS WHEREOF** the parties have executed this Agreement as of the date set forth above.

THE CORPORATION OF THE CITY OF LONDON

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Per:

Name:

Title:

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Per:

Name:

Title:

THAMES VALLEY DISTRICT SCHOOL BOARD

---

Per:

Name:

Title:

---

Per:

Name:

Title:



## 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 1<sup>st</sup> 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 15<sup>th</sup> 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 greater of:

- (i) the City’s 2011/2012 Usage multiplied by the respective Board Rates; or,

- (ii) the City's hourly usage of Board Facilities during the twelve (12) month period prior to the Subject Renewal Term, 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 greater of:

- (i) 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; or
- (ii) the Board's actual hourly usage of City Recreational Facilities during the twelve (12) month period prior to the Subject Renewal Term, multiplied by 0.63 of the applicable City Rates, plus the Renewal Term Credit Amount for the Subject Renewal Term,

in which case, 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; and

- (ii) The City shall provide the Board with access to the same types of City 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.
  
- 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.

**SCHEDULE 1A  
CITY'S 2011/2012 USAGE**

**SCHEDULE 1A  
CITY'S 2011/2012 USAGE**

<b><u>Space type</u></b>	<b><u>Applicable Hours</u></b>
<u>Activity Room</u>	<u>914.25</u>
<u>Any Classroom</u>	<u>349.25</u>
<u>Auditorium</u>	<u>2.50</u>
<u>*Baseball Diamond</u>	<u>1,478.00</u>
<u>*Outdoor Basketball Court</u>	<u>247.50</u>
<u>Cafeteria</u>	<u>398.00</u>
<u>Classroom – Elementary</u>	<u>1,476.50</u>
<u>Classroom – Secondary</u>	<u>2,173.25</u>
<u>*Football Field</u>	<u>592.00</u>
<u>*Green Space</u>	<u>5,921.25</u>
<u>Gymnasium</u>	<u>15,115.00</u>
<u>Gymnasium – Multipurpose Room</u>	<u>77.00</u>
<u>Kitchen</u>	<u>948.75</u>
<u>Library – Resource</u>	<u>403.50</u>
<u>Mezzanine</u>	<u>13.00</u>
<u>Music Room</u>	<u>1.25</u>
<u>*Soccer Field (N/C)</u>	<u>1,946.00</u>
<u>Special Education / Resource Withdrawal</u>	<u>20.00</u>
<u>*Sports Field</u>	<u>1,130.00</u>
<u>Staff Room</u>	<u>550.00</u>
<u>Stage</u>	<u>2,171.25</u>
<u>Technology/Specialty Rooms</u>	<u>393.75</u>
<u>Total Permitted Hours</u>	<u>36,322.00</u>

*\*If the City uses same in connection with a non-revenue generating program, which also uses facilities within the related school, there will be no charge for the related use of these facilities.*



**SCHEDULE 1B  
BOARD'S 2011/2012 USAGE**

	<b>TVDSB 2011/2012 Usage</b>
<b>Gymnasium Rentals (hourly)</b>	
Large	21
Medium	
Small	
<b>Meeting Rooms Rentals (hourly)</b>	
Standard	84
Large	
<b>Court Rentals (hourly)</b>	
Volleyball court	
Badminton Court	
<b><u>AQUATICS</u></b>	
<b>South London</b>	
Corporate	
Note: School rents 1/2 of pool	300
<b>Canada Games Aquatic Centre</b>	
Corporate	
Note: School Board uses 1/8 of pool	615
Major Meets (Per Council Directive)	
<b>CHOCC</b>	
Corporate	
Note: School Board uses 1/2 of pool	160
<b>Arena - Ice Rates (Per Hour):</b>	
Winter Rental: Minor, Contract	1,815
<b>Park Rentals (fees based on 8 hour event):</b>	
Gibbons	7
Springbank	19
Various others	20
<b>Ball Diamond Permit Fees (Per 2 Hours):</b>	
Minor - Baseball - Irrigated	70
<b>Soccer Fees (Per 2 Hours):</b>	
Minor Non Irrigated	
Minor Irrigated	160
Minor Lighted Irrigated	
North London Stadium Minor Rate	
North London Stadium Minor Rate - Lighted	
<b>Total Hours</b>	<b>3,271</b>

**SCHEDULE 1C  
CITY RATES**

	<b>City Rates for TVDSB</b>
<b>Gymnasium Rentals (hourly)</b>	
Large	\$44.56
Medium	\$20.15
Small	\$16.97
<b>Meeting Rooms Rentals (hourly)</b>	
Standard	\$12.20
Large	\$16.97
<b>Court Rentals (hourly)</b>	
Volleyball court	\$16.97
Badminton Court	\$11.00
<b><u>AQUATICS</u></b>	
<b>South London</b>	
Corporate	\$70.58
Note: School rents 1/2 of pool	\$35.29
<b>Canada Games Aquatic Centre</b>	
Corporate	\$113.26
Note: School Board uses 1/8 of pool	\$14.16
Major Meets (Per Council Directive)	\$89.28
<b>CHOCC</b>	
Corporate	\$40.84
Note: School Board uses 1/2 of pool	\$20.42
<b>Arena - Ice Rates (Per Hour):</b>	
Winter Rental: Minor, Contract	\$74.60
<b>Park Rentals (fees based on 8 hour event):</b>	
Gibbons	\$48.00
Springbank	\$48.00
Various others	\$48.00
<b>Ball Diamond Permit Fees (Per 2 Hours):</b>	
Minor - Baseball - Irrigated	\$7.88
<b>Soccer Fees (Per 2 Hours):</b>	
Minor Non Irrigated	\$8.53
Minor Irrigated	\$26.79
Minor Lighted Irrigated	\$38.98
North London Stadium Minor Rate	\$32.88
North London Stadium Minor Rate - Lighted	\$48.11

NOTE: Any other City Facilities to be booked at applicable Council approved by-law rates

**SCHEDULE 1D  
BOARD RATES**

<u>SCHEDULE 1D</u> <u>BOARD RATES</u>	
<u>Space type</u>	<u>Rate</u>
<u>Activity Room</u>	8.40
<u>Any Classroom</u>	6.30
<u>Auditorium</u>	42.00
<u>*Baseball Diamond</u>	8.40
<u>*Outdoor Basketball Court</u>	8.40
<u>Cafeteria</u>	21.00
<u>Classroom – Elementary</u>	6.30
<u>Classroom – Secondary</u>	6.30
<u>*Football Field</u>	8.40
<u>*Green Space</u>	8.40
<u>Gymnasium</u>	8.40
<u>Gymnasium – Multipurpose Room</u>	8.40
<u>Kitchen</u>	6.30
<u>Library – Resource</u>	6.30
<u>Mezzanine</u>	0.00
<u>Music Room</u>	6.30
<u>*Soccer Field</u>	8.40
<u>Special Education / Resource Withdrawal</u>	6.30
<u>*Sports Field</u>	8.40
<u>Staff Room</u>	8.40
<u>Stage</u>	6.30
<u>Technology/Specialty Rooms (additional daily surcharge of \$50.00 applies)</u>	6.30
<i>*If the City uses same in connection with a non-revenue generating program, which also uses facilities within the related school, there will be no charge for the related use of these facilities.</i>	

**SCHEDULE 2**  
**CO-ORDINATION COMMITTEE**

**1. Function**

The role of the Co-ordination Committee shall be to:

- a) assist with the administration of the Agreement, including serving as a discussion group through which concerns and conflicts between the parties and arising from the Agreement might be discussed and resolved; and
- b) provide a conduit for the sharing of information.

In the event that the Co-ordination Committee is unable to resolve a matter of concern or conflict between the parties and arising from the Agreement, the matter shall be referred to the City of London's City Manager and the Director of Education with a view to seeing whether such individuals might be able to resolve same.

**2. Composition**

The Co-ordination Committee shall be comprised of six (6) persons with each party being entitled and required to appoint three (3) representatives to represent it. It is intended that the persons appointed shall hold senior levels of management within their organization, with the objective that they will be in a position to provide meaningful input and direct any agreed to courses of action within their respective organizations.

**3. Number of Meetings**

Either party shall be entitled to request (on not less than twenty-one (21) days prior written notice), that a meeting of the Co-ordination Committee be convened. The Co-ordination Committee shall meet not less than three (3) times during the Initial Term or any Renewal Term, said meetings to be held on the second (2<sup>nd</sup>) Wednesday in each of September, January and April of the applicable term. The parties shall endeavour to select a mutually convenient location with the potential for alternating venues as between the parties. The parties shall endeavour, in good faith, to select dates and times for such meetings which are mutually satisfactory. The Co-ordination Committee shall be a non-voting body and operate on a consensus basis.

## **SCHEDULE 3**

### **CO-OPERATION PRINCIPLES**

1. Notwithstanding anything contained in the Agreement or the Schedules thereto, the Board shall have complete discretion as to which Board Facilities will be made available to the City under the Agreement, taking into account such factors as the lifespan of the facility, general wear and tear and other relevant factors relating to the stewardship and care of the facility. Conversely, notwithstanding any of the foregoing, the City shall have complete discretion as to which City Facilities will be made available to the Board under the Agreement, taking into account such factors as the lifespan of the facility, general wear and tear and other relevant factors relating to the stewardship and care of the facility. In addition, each party shall have the right to control its respective facilities in such a manner as enable it to exercise proper stewardship over its facilities in a reasonable manner. For example, a party shall be entitled to limit access to its playing fields in order to allow grass to grow or to otherwise adequately address weather and drainage issues.
2. The Board acknowledges that the City has the right to establish and enforce policies and rules of use for the City Facilities that are being used by the Board; provided that, such policies and rules are applied consistently in respect of all users of City Facilities and not in a manner which is intended to affect the Board alone on an unreasonable or unwarranted basis. Conversely, the City acknowledges that the Board has the right to establish and enforce policies and rules of use for the Board Facilities that are being used by the City; provided that, such policies and rules are applied consistently in respect of all users of Board Facilities and not in a manner which is intended to affect the City alone on an unreasonable or unwarranted basis.
3. Under no circumstances shall one party attempt to enjoy a profit from the scheduling and/or use of the other's facilities.