

THIS AGREEMENT ENTERED INTO THIS 6 DAY OF July, 2015,
PROVIDING FOR THE COMMUNITY USE OF FACILITIES.

BETWEEN:

CITY OF BRANDON
410 – 9th Street
Brandon, MB
Hereinafter called “the City”

- and -

BRANDON SCHOOL DIVISION
1031 – 6th Street
Brandon, MB
Hereinafter called “the Division”

WHEREAS the City controls certain lands, buildings with related facilities and services, within the City of Brandon which are and may be devoted to educational, recreational and cultural purposes;

AND WHEREAS the Division controls certain lands, buildings with related facilities and services, within the City of Brandon, which are and may be devoted to educational, recreational and cultural purposes;

AND WHEREAS the City and the Division desire to avoid duplication of recreational facilities to maximize use of all existing and future lands and buildings with their related facilities and services, which are or may be devoted to educational, recreational and cultural purposes;

AND WHEREAS it is the desire of the parties hereto to use their existing resources for use and development of facilities in the most efficient manner for the benefit of the community;

AND WHEREAS the City and Division intend for this Agreement to replace the existing Agreement between the parties from 1984;

NOW THEREFORE THIS AGREEMENT WITNESSETH the agreement of the City and the Division to make provision in a manner hereinafter described, for the use of buildings and lands with their related facilities and services, controlled by them which are or may be devoted to recreational/leisure purposes pursuant to The Municipal Act, Sections 232(1)(b), 250(2)(d)(iv) and 253(1), and The Public Schools Act, Section 48(1)(r).

THEREFORE the parties hereto covenant and agree together as follows:

1. VISION STATEMENTS

1.1 Public facilities and grounds, whether owned by the City or Division, shall benefit and be used by children, adults, families of Brandon to the best possible extent.

1.2 The City and Division have mutual interests in helping people of all ages to learn, develop and participate in recreation, culture and leisure activities.

1.3 Every effort will be made by the City and Division to develop a cooperative approach to serve the community's needs in order to foster community and neighbourhood learning and vitality.

2. PURPOSE OF THE AGREEMENT

- a) Effectively and efficiently manage the use of available public facilities for the benefit of the citizens of the Division and City. The Division may use City facilities for educational and recreational purposes and the City/Community may use School Division buildings and land after school hours for educational and recreational purposes.
- b) Provide for community use of facilities and grounds operated by the City and Division.
- c) Establish procedures to encourage cooperative working relationships between the Division and City personnel at all levels.
- d) Encourage joint and cooperative ventures, including facility and grounds development.
- e) Regulate the booking procedures, time allotment, user prioritization and cost of the use of facilities and grounds.

3. AGREEMENT ADMINISTRATION

3.1 This Agreement shall be administered by the City of Brandon Director of Community Services and the Brandon School Division Director of Facilities and Transportation to:

- a) Coordinate implementation of and oversee the Agreement.
- b) Review this Agreement by September 1st of each year, particularly its guidelines, booking procedures, and responsibilities. Operational changes jointly agreed upon in this review will take effect as agreed to in writing.
- c) Invite resource personnel as is required for the purpose of obtaining necessary information and advice.
- d) Initiate special meetings, if required, to discuss problems or propose amendments to this Agreement and report back to their respective Board and Council.

3.2 Nothing in this Agreement shall prevent either of the parties from making agreements with any other party in relation to their facilities, provided any such agreements shall be circulated for information to the other party to this Agreement.

4. GENERAL PROVISIONS

4.1 This Agreement shall remain in force and effect from the date of its execution by the parties involved, continuing until terminated by either party.

4.2 The Division and City shall act in good faith to implement the terms of the Agreement.

4.3 The Division and City acknowledge that:

- a) Public safety shall be a primary consideration.
- b) It is a City and Division objective to increase community access to and use of school facilities and grounds.
- c) This Agreement is intended to address those programs and activities occurring in Division/City facilities or on Division/City grounds that are intended for educational and recreational purposes.
- d) This Agreement is intended to enhance and not interfere with the primary mission of the Division or City.
- e) The ultimate responsibility for the use of facility space will remain with the owner of the facility.
- f) This Agreement is not intended to amend any of the existing leases and other property agreements the parties may have undertaken.
- g) All aspects of the use of facilities by the community shall meet legal requirements.

5. GENERAL GUIDELINES

5.1 Use of City/Division facilities is permitted for any instructional, informational, recreational, athletic, social or community program.

- 5.2
- a) Division facilities and grounds will be accessible for community use during week days from 6:00 p.m. to 11:00 p.m. Permission from 8:00 a.m. to 11:00 p.m. may be granted on Saturday and Sunday. All statutory holidays are excluded unless special arrangements are made. Special arrangements for these times will be considered on an individual basis and at a cost to be determined.
 - b) School buildings and grounds may also be available during winter, spring or summer breaks subject to maintenance/custodial requirements and as approved by the Director of Facilities and Transportation or his/her designate.
 - c) High school gymnasiums will only be available for community use for Monday to Friday bookings from April 1 to June 30 of each year. Special arrangements may be approved by the schools on an individual basis. Saturday and Sunday bookings are on an as available basis.
 - d) A school will have priority in the use of school facilities and grounds upon giving one week's notice to their respective Booking Agent.

5.3 The City and Division employees and/or agents and contractors shall provide the security and custodial services for the buildings and facilities/grounds.

5.4 Fees charged for use of the facilities are to offset the regular and additional costs incurred by the facility owner for the specific activity being undertaken (eg. security, lifeguards, etc.)

5.5 City facilities will be accessible for Division use during week days from 9:00 a.m. to 4:00 p.m.

5.6 A responsible adult of the user group is responsible for supervision of its participants and spectators.

5.7 Admission may be charged for an activity sponsored by a non-profit and non-commercial organization when this admission charge does not conflict with other commercial organizations. Facilities shall not be used for private or commercial gain except if specifically approved under the permit.

5.8 Smoking at any facility is prohibited.

5.9 Consumption of alcohol at any facility is prohibited.

5.10 Non-alcoholic beverages (non-glass containers only) and food may only be brought into the building with the permission of the security/custodial staff on duty and may only be served in designated areas.

5.11 Either party may, in their sole discretion, refuse access to a group who seeks to use a facility for activities incompatible with the policies, mission and public purposes of the owner of the facility; or due to past circumstances by the user related to payment of charges, facility damage etc.

6. BOOKING ARRANGEMENTS

6.1 Divisional facility booking priority

- a) School functions;
- b) City of Brandon functions;
- c) Provincial/National Sport Organization Championships;
- d) Reciprocal Agreements or special arrangements;
- e) Community functions:
 - i. Youth activities;
 - ii. Organized club activities;
 - iii. City/Division residents;
 - iv. Other non-profit groups.

6.2 City facilities booking priority

- a) International, National or Provincial events;
- b) Programs and events managed by the City of Brandon;
- c) Programs and events managed by the Brandon School Division;
- d) Nonprofit organizations youth and adults;

- e) Recreation and commercial groups.

NOTE: The City of Brandon reserves the rights to adjust any of, or the entire facility schedule to maximize the use of the facility space.

6.3 Responsibilities of the City will be:

- a) To communicate with the public regarding procedures to be undertaken to access Division facilities.
- b) To provide booking services for Division facility requests and manage all bookings.
- c) To advise name and contact information of the Booking Agent.
- d) To have user permits completed and a copy forwarded to the applicable school principal and Division Maintenance Department designate.
- e) To collect and remit booking rental fees to the School Division upon receipt of billing.
- f) To inform regular user groups of any changes to the rates or conditions of the permit.
- g) To provide maintenance and security services for Division use of City facilities.
- h) To conduct timely inspections of facilities for which a user permit has been issued. Any damage to the facility will be reported in writing to the Director of Facilities and Transportation within 24 hours following inspection.
- i) To establish City user fees for Division use and advise the Secretary-Treasurer or designate by January 1 of each year for September 1 implementation.
- j) To submit billings for Division use of City facilities to the Secretary-Treasurer or designate on at least a monthly basis.

6.4 Responsibilities of the School Division in relation to Division owned facilities will be:

- a) To confirm what facilities are available to book.
- b) To confirm their priority bookings:
 - i. School Use
 - ii. Reciprocal Agreements
 - iii. Special Arrangements
- c) To submit facility use billings to the Booking Agent on at least a monthly basis.
- d) To provide security and custodial services for the confirmed bookings in Division buildings.
- e) To conduct timely inspections of the facilities for which a user permit has been issued. Any damage to the facility will be reported in writing to the Booking Agent within 24 hours after inspection. The Booking Agent will release the user contact information to the Division for their recuperation of damage or loss. Abuse of the facilities may result in cancellation of future bookings.
- f) To identify specific field use for school ground facilities, i.e. only soccer or only football.
- g) To establish the Division user charge and advise the Booking Agent by May 1st of each year for September 1st implementation.
- h) To confirm any changes of school contacts (principals) to the Booking Agent by October 1st of each year.

7. CANCELLATIONS AND PENALTIES

The City of Brandon will establish cancellation procedures and penalties with same stated on the user permit. Penalties in relation to cancellation of user permits for Division facilities will be collected by the City.

8. EXPENDABLE EQUIPMENT

The user groups shall supply all expendable materials and equipment (balls, racquets, etc.) necessary to carry out their activity. Application shall be made for use of owner equipment to be listed on the permit. Owner equipment shall not leave the premises.

9. MAINTENANCE

- a) The owner shall be responsible for on-going maintenance of their facilities;
- b) Each user shall be responsible for litter control during their activities;
- c) The parties to this Agreement agree to provide a minimum annual budget allocation of \$20,000 for the purpose of joint maintenance or improvements;
- d) On an annual basis, on or before September 1, a meeting will be held to determine what projects will be approved in allocating these funds.

10. IMPROVEMENTS/REFURBISHMENTS

- a) Subject to written approval of the Secretary-Treasurer or his/her designated representative, the City may improve Division facilities for City or a supported organization use;
- b) Subject to the written approval of the City Manager or his/her designate the Division may improve City facilities for Division use;
- c) It is further agreed that the plans, specifications and standards for the placement of all equipment, facilities and improvements upon said premises (whether permanent or temporary) shall be approved in writing by the party owning the premises prior to any installation thereof;
- d) The party requesting the improvements/refurbishments are totally responsible for the associated costs.
- e) Each of the parties will provide a minimum annual budget allocation of \$30,000 for joint playground structure replacement.
- f) On an annual basis, on or before September 1, a meeting will be held to determine the projects to be undertaken with the allocated funding.

11. FACILITIES DEVELOPMENT

- a) The City and Division will work cooperatively in planning facility, grounds or equipment improvements in order to make the most efficient and effective use of public resources;
- b) Where feasible, both parties will work together to support public/private partnerships to provide community use facilities and grounds;

- c) Formal approval by City Council and the School Board of Trustees is required for participation in these projects;
- d) The City and Division will involve each other in the planning and design development of new construction or a significant remodel of existing facilities available for community use activities. The City Manager and Division Secretary-Treasurer shall serve or designate a representative to participate in the project planning process;

12. EMERGENCY OPERATIONS

In an emergency situation where either of the party requires use of the other party's facilities, all costs will be the responsibility of the user.

13. FORCE MAJEURE

- a) Neither party shall be held responsible or be considered in breach of this Agreement based upon events beyond their control or reasonably unforeseeable including, but not limited to, natural disasters, mechanical or structural failure or unusual user success.
- b) Each party shall endeavour to notify the other party as early as possible should such an event occur or the likelihood of occurrence increases. The parties shall work to minimize the impact of such an event on the rights and obligations articulated in this Agreement.

14. TERMINATION

Either party may terminate this Agreement, as to any or all facilities, upon giving to the other party twelve (12) months advance written notice of intention to terminate.

15. INDEMNIFICATION

Each party agrees to indemnify and save harmless the other including but not limited to their respective officers, officials, employees and volunteers from any and all claims for injury or property damage that arise out of the negligence or omission of their employees, agents, contractors, or officers as a result of this Agreement.

16. INSURANCE

- a) The City and the Division shall each purchase and maintain General Liability Insurance for the duration of the Agreement for a minimum amount of \$5,000,000 per occurrence.
- b) The insurance policies shall contain, or be endorsed to contain, that the insurance coverage of the party using the other's facility shall be the primary insurance for liability arising from such use.
- c) Individual user groups shall purchase and maintain liability insurance for their activities as Division liability insurance does not extend to user groups.
- d) The City and Division shall each purchase and maintain property insurance for their facilities.

17. NON-DISCRIMINATION

Subject to paragraph 5.10, no person shall be denied or subjected to discrimination on the grounds of sex, race, colour, creed, national origin, age (except minimum age and retirement provisions) marital status or in the presence of any sensory, mental or physical handicaps in the receipt of the benefit of any services or activities made possible by or resulting from this Agreement.

18. DISPUTE RESOLUTION

a) In the event that a dispute arises as a result of the implementation of this Agreement, resolution shall be addressed as identified below in the following sequential order (as needed):

- i. Site-Based Supervisors;
- ii. City Director of Community Services and Division Director of Facilities and Transportation;
- iii. The Superintendent and the City Manager;
- iv. Division Board of Trustees and the City Council;
- v. An Arbitration Committee in accordance with the provisions of *The Arbitration Act* of Manitoba.

19. NOTICES

Any notice required under this Agreement will be in writing, addressed to the appropriate governing body at the address which appears below (as modified in writing from time to time by such governing body) and delivered either personally, by prepaid registered post or by facsimile transmission. Such notice shall be deemed to have been given if by personal delivery, on the date of delivery; if by facsimile transmission, on the date of delivery with electronic confirmation of receipt obtained; and if by post, on the fifth business day following the posting thereof (which for the purposes of this Agreement shall be deemed to exclude Saturdays, Sundays, and statutory holidays).

THE DIVISION

Brandon School Division
1031 – 6th Street
Brandon, MB R7A 4K5
Attention: Secretary-Treasurer

THE CITY

City of Brandon
410 – 9th Street
Brandon, MB, R7A 6A2
Attention: City Manager

20. SEVERABILITY

Any provision or part of the Agreement held to be void or unenforceable under any law or regulation shall be deemed stricken and all remaining provisions shall continue to be valid and binding upon the City and the Division, who agree that the Agreement may be reformed to replace such stricken provisions or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provisions.

21. ENTIRE AGREEMENT

This agreement, including Addenda, contains the entire Agreement between the governing bodies hereto and no other agreements, oral or otherwise, regarding the subject matter of this agreement, shall be deemed to exist or bind any of the governing bodies hereto. Either governing body may request changes in the agreement. Proposed changes which are mutually agreed upon shall be incorporated by written amendment or Addenda to this agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on their behalf:

THE CITY OF BRANDON

BRANDON SCHOOL DIVISION

Mayor

Board Chairperson

City Manager

Secretary-Treasurer