

# **CORPORATION OF THE TOWNSHIP OF ESQUIMALT**

## **BYLAW NO. 2208**

**A Bylaw to authorize the execution of the School District No. 61  
Theatre Facility Joint Use Agreement.**

**WHEREAS** Council may by bylaw pursuant to Section 682(2) of the *Municipal Act* enter into an agreement with one or more public authorities for the purposes of jointly constructing, conserving, maintaining, operating or using facilities for community uses, that are on a site owned or held by a party to the agreement;

**AND WHEREAS** it is deemed expedient that the Corporation of the Township of Esquimalt enter into an agreement with the Board of School Trustees of School District No. 61 (Greater Victoria) for the aforesaid purpose;

**NOW, THEREFORE, THE MUNICIPAL COUNCIL OF THE CORPORATION OF THE TOWNSHIP OF ESQUIMALT**, in open meeting assembled, enacts as follows:

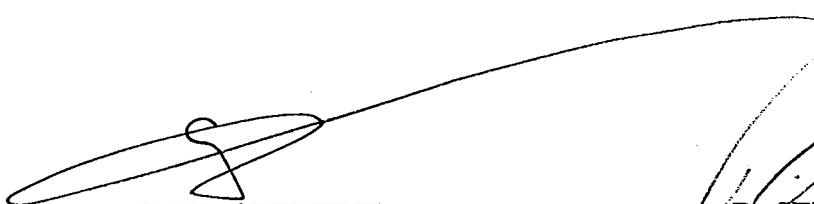
- 1. This bylaw may be cited as the "JOINT USE AGREEMENT - SCHOOL DISTRICT NO. 61 - THEATRE FACILITY 1995, NO. 2208".**
- 2. The Corporation of the Township of Esquimalt is hereby authorized and empowered to enter into an agreement with the Board of School Trustees of School District No. 61 (Greater Victoria) in the form attached hereto as Schedule "A".**
- 3. The Mayor and Municipal Clerk of the Corporation of the Township of Esquimalt are hereby authorized to execute the Joint Use Agreement under the seal of the Corporation.**

**Read a first time by the Municipal Council on September 25, 1995.**

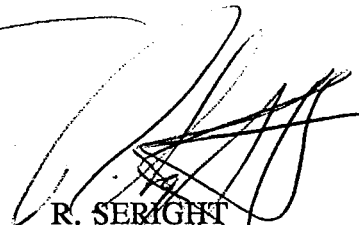
**Read a second time by the Municipal Council on September 25, 1995.**

Read a third time by the Municipal Council on September 25, 1995.

ADOPTED by the Municipal Council on October 16, 1995.



C.J.E. CLEMENT  
MAYOR



R. SERIGHT  
MUNICIPAL CLERK

THIS JOINT USE AGREEMENT made the <sup>23</sup> day of <sup>October</sup>, 1995.

BETWEEN:

**THE CORPORATION OF THE TOWNSHIP OF ESQUIMALT**, a Municipal Corporation, duly constituted under the laws of the Province of British Columbia and having an office c/o 1229 Esquimalt Road, the City of Victoria, Province of British Columbia V9A 3P1

(hereinafter referred to as "Esquimalt")

OF THE FIRST PART

AND:

**THE BOARD OF SCHOOL TRUSTEES OF SCHOOL DISTRICT NO. 61 (GREATER VICTORIA)**, a School District duly constituted under the laws of the Province of British Columbia, having an office c/o 556 Boleskine Road, City of Victoria, Province of British Columbia V8W 2R1

(hereinafter referred to as the "School District")

OF THE SECOND PART

WHEREAS the School District is constructing as an addition to the Esquimalt Secondary School, a theatre facility (hereinafter called the "Facility");

AND WHEREAS Esquimalt has agreed to contribute the sum of ONE HUNDRED THOUSAND DOLLARS (\$100,000.00) to the School District to assist the School District with the construction costs of the Facility;

AND WHEREAS the School District and Esquimalt have agreed on certain matters with respect to the joint use of the Facility and have agreed to reduce the same to writing;

AND WHEREAS the *Municipal Act* and the *School Act* provide that Esquimalt and the School District may enter into agreements for the joint use of properties such as the Facility;

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the mutual covenants and agreements hereinafter contained, the parties hereto agree as follows:

#### FINANCIAL AND MANAGEMENT ISSUES

1. On the execution of this agreement Esquimalt will pay to the School District the agreed financial contribution in the amount of ONE HUNDRED THOUSAND DOLLARS (\$100,000.00).
2. The School District shall construct at its expense (except as provided in paragraph 1 hereof) the Facility.
3. The Facility will be under the management and control of the School District, and the School District will have the sole authority to charge fees for the use of the Facility and any fees generated from the Facility shall be the sole property of the School District without any obligation in the School District to account to Esquimalt for the same and except as set out herein the School District shall retain all the proceeds from the use of the Facility and shall be responsible for all losses. For clarity, the contribution of Esquimalt under paragraph 1 is the sole financial obligation of Esquimalt.

4. The School District shall provide access to the Facility to qualified community groups (as described herein), without charge except as provided in paragraph 18 herein.

#### ADVISORY COMMITTEE

5. The School District shall establish and maintain an advisory committee regarding the Facility to be known as "Esquimalt Secondary School Theatre Advisory Committee" (hereinafter called the "Advisory Committee").

6. The Advisory Committee shall be made up of seven appointees, and each member of the Advisory Committee shall be appointed for a two year term with the option for renewal for each appointee of one additional two year term, such members to be appointed as follows:

- (a) a member of the Municipal Council of Esquimalt, to be appointed by the Municipal Council of Esquimalt;
- (b) a member of the Board of School Trustees of the School District, to be appointed by the School District;
- (c) a representative from the School, to be appointed by the School District;
- (d) a representative from the Facility Services Department of the School District, to be appointed by the School District;

- (e) a representative from the Esquimalt Parks and Recreation Commission, to be appointed by the Municipal Council of Esquimalt;
- (f) two (2) residents of Esquimalt, to be appointed by the five members of the Advisory Committee described in sub-paragraphs (a) through (e) of this paragraph, acting jointly;

7. The Advisory Committee shall establish procedural rules for the conduct of its meetings and shall, from time to time, appoint a member to serve as Chair of the Committee, who shall be neither the member appointed under paragraph 6(a) or 6(b)..

8. The Advisory Committee shall provide to the School District advice from time to time on policy matters with respect to the use and operation of the Facility. The Advisory Committee's role in the establishment of policy with respect to the use and operation of the Facility shall be advisory only, and the School District is obliged only to consider and is not obliged to effect policy in accordance with the recommendations of the Advisory Committee.

9. The Advisory Committee shall develop and provide to the School District recommendations of criteria for the qualifications of community groups who wish to utilize the Facility. After receiving the recommendations the School District shall establish and provide to the Advisory Committee the criteria for such qualified community groups. The determination of whether a particular community group meets with the established criteria shall be a function performed by the administrative staff of the School District.

10. The Advisory Committee shall consider from time to time and provide advice to the School District on the following issues:

(a) The feasibility, timing, financial considerations (including possible sources of funding) and implementation of a program to retain a professional full or part time manager for the Facility; and

(b) The appropriate blend of users of the Facility, including commercial users, with a view to maximizing the usage of the Facility; such recommendations should address the methodology of scheduling priorities among the various users of the Facility with a view to ensuring that appropriate access to the Facility for qualified community groups is preserved.

#### FACILITY USAGE AND PRIORITIES

11. The Facility will be utilized by the School District, by community groups which meet the established criteria and by those users described in paragraph 12(d) herein.

12. The use of the Facility shall be governed as follows:

(a) Between the hours of 8:00 a.m. and 6:00 p.m. on School days, exclusive use of the Facility will be given to the School District for its designated users;

(b) On weekends, school holidays, and between the hours of 6:00 p.m. and 10:30 p.m. on School days, priority for use of the Facility shall be shared between qualified community groups and School-related users designated by the School District, and between these two groups of users, priority in booking shall be assigned on the basis of the date of the first application;

(c) During the last School week in December of each year the Facility shall be reserved for the exclusive use of School-related users designated by the School District, but if the Facility is not required during that week by the School for School-related uses, it may be utilized by qualified community groups or others in accordance with sub-paragraphs (d); and

(d) In order to utilize the Facility to the greatest possible extent, it is agreed that the School District may arrange bookings for the Facility for up to seven (7) days in each calendar month from a user or users who are neither qualified community groups nor School-related users designated by the School District.

#### FACILITY BOOKINGS

13. The day to day management, operation, and bookings of the Facility shall be under the direction of the Facility Services Department of the School District and that Department shall from time to time keep the Esquimalt Parks and Recreation Department informed of such matters.



14. All bookings of the Facility shall be subject to the policies and regulations established by the School District from time to time with the advice to the Advisory Committee.

15. All bookings of the Facility shall be governed by the terms and conditions of the School Facilities Rental Agreement (hereinafter called the "Rental Agreement") as established by the School District from time to time, and a form of which Rental Agreement is attached to this Agreement as Schedule "A".

16. Notwithstanding the terms and conditions contained in Schedule "A", the Rental Agreement may be modified or amended by the School District from time to time with advice to Esquimalt and the Advisory Committee, provided that the Rental Agreement shall at all times be consistent with the terms and conditions of this Agreement and that in the event of any conflict or inconsistency between the terms and conditions of this Agreement and the terms and conditions of a Rental Agreement, the terms and conditions of this Agreement prevail to the extent of the conflict or inconsistency.

17. Rental Agreements may be cancelled by the School District without notice if in the opinion of the School District, acting reasonably, the Facility is unfit for the intended use.

18. The School District, when operating the Facility for use by qualified community groups, may recover from such qualified community groups only the actual additional direct operating costs which are incurred by the School District as a direct result of such qualified community groups' use of the Facility and any such

additional operating costs shall be detailed in each Rental Agreement where liability for such costs is anticipated.

#### FACILITY MAINTENANCE

19. The School District shall provide for the Facility, including its constituent lighting and sound systems, all repair, maintenance, heating and lighting at its sole cost, and the School District shall repair and maintain the Facility to the same standard as the School District repairs and maintains its other facilities, and in a clean and safe condition and fit for its designed uses.

#### INSURANCE

20. The School District shall insure and keep insured the Facility in accordance with its insurance policies in effect from time to time, including insurance against loss or damage to or of the Facility and for public liability insurance against claims for personal injury, death, or property damage occurring upon, in or about the Facility.

21. The parties agree that it is a requirement of the Rental Agreement that each group utilizing the Facility shall, prior to issuing a Rental Permit for the Facility, be obliged to provide proof of appropriate insurance for personal injury, death or property damage occurring in or about the Facility.

## GENERAL CONDITIONS

22. This Agreement shall be in force and effect from the date of execution of the same, and shall remain in effect until cancelled by either party hereto by six (6) months' written notice of such cancellation to the other party.

23. Should the School District terminate this Agreement at any time between the date of the execution of this Agreement and ten (10) years thereafter, the School District shall pay to Esquimalt a pro-rata share of the \$100,000 financial contribution referred to in Section No. 1 of this Agreement, with such rebate being calculated by multiplying the number of months remaining in the 10 year period by \$100,000, and dividing the product of that multiplication by 120.

24. In the event of any dispute arising as to the interpretation of this Agreement or as to any matter arising from this Agreement, the same shall be referred to the decision of a sole arbitrator appointed pursuant to the provisions of the *Commercial Arbitration Act*, SBC 1986 and amendments thereto.

25. This Agreement shall be binding upon the parties hereto, their respective heirs, executors, administrators, successors and assigns.

IN WITNESS WHEREOF the parties have hereunto affixed their hands and seals the day, month and year first above written.

The Corporate Seal of THE CORPORATION )  
OF THE TOWNSHIP OF ESQUIMALT )  
was hereunto affixed in the presence )  
of: )

\_\_\_\_\_  
Mayor C. E. KLEWENT )

\_\_\_\_\_  
Clerk R. SERVA )

c/s

The Corporate Seal of THE BOARD OF )  
SCHOOL TRUSTEES OF SCHOOL DISTRICT )  
NO. 61 (GREATER VICTORIA) )  
was hereunto affixed in the presence )  
of: )

Loiselle James )  
Authorized signatory )

R. Whitmore )  
Authorized signatory )

c/s

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# School Facilities

## RENTAL AGREEMENT

SCHEDULE "A"

This Agreement is made between Greater Victoria School District (herein called the School District), and \_\_\_\_\_, of \_\_\_\_\_, (herein called the Tenant). The School District hereby grants to the Tenant a licence to utilize the School District premises described below (herein called the Premises), on the terms and conditions contained on both sides of this Agreement, all of which are hereby accepted and agreed to by the Tenant. If the Tenant cancels all or a part of this Agreement the Tenant must notify the School District at least 72 hours prior to the events date to be eligible for a refund of prepaid fees. The Tenant understands that there will be a cancellation fee of \$50.00 for any cancelled ONE TIME booking.

Tenant contact person: \_\_\_\_\_

Phone # \_\_\_\_\_

Fax # \_\_\_\_\_

### Premises:

School: \_\_\_\_\_ Facility: \_\_\_\_\_

Proposed activity: \_\_\_\_\_

Start Date: \_\_\_\_\_

End date: \_\_\_\_\_

Hours of use: \_\_\_\_\_

### Special Instructions:

### Charges:

Make cheques payable to Greater Victoria School District

Date: \_\_\_\_\_

Signed on behalf of the Tenant:

Permit # \_\_\_\_\_

\_\_\_\_\_

Client # \_\_\_\_\_

Authorized Representative

Terms of Agreement on Reverse

556 Boleskine Road, P.O. Box 700  
Victoria, British Columbia V8W 2R1  
Phone: (604) 360-4178 / 360-4174  
Fax: (604) 360-4111

On Behalf of the School District \_\_\_\_\_

#### CONDITIONS OF RENTAL

1. This Agreement is not valid until signed by the Tenant and the white copy of this Agreement is returned to the School District with the payment indicated herein.
2. The Tenant agrees to comply with all applicable Municipal Fire Regulations and By-laws.
3. The Tenant agrees to maintain at its own expense public liability insurance in such amounts and upon such terms and in such companies as may be reasonably satisfactory to the School District, insuring against claims for personal injury, death, or property damage occurring upon, in or about the Premises. The Tenant shall provide the School District with a copy of any and all insurance policies on request.
4. The Tenant agrees to indemnify and save harmless the School District from and against any and all claims by any person or persons arising out of any act or neglect of the Tenant, its agents or servants, in respect of the Premises, their use or the non repair thereof.
5. The Tenant agrees that there will be no alcoholic beverages brought onto or consumed on the Premises without prior written permission of the Superintendent of Schools for the Greater Victoria School District No. 61.
6. The Tenant agrees that this Agreement grants a licence to occupy only the Premises and the Tenant agrees to provide adult supervision to confine its activities, participants and spectators to the Premises.
7. The Tenant accepts full responsibility for all activities conducted in the Premises and agrees to return the Premises to the School Board in the condition in which they were received by the Tenant; more specifically, the Tenant is responsible for any damage that may be caused to the Premises during the term of this Agreement.
8. The Tenant represents that the Premises will be used only for the purposes indicated in this Agreement, and not for any personal or private purposes or gain.
9. The Tenant agrees to accept reasonable direction from School District employees with respect to the Premises.
10. If a gymnasium is included in the Premises the Tenant agrees:
  - (a) that the games of soccer, lacrosse, softball, baseball, football or grass hockey will not be played or practiced;
  - (b) that balls for these named sports will not be permitted in the gymnasium - nerf balls only are permitted for exercise;
11. The Tenant acknowledges that the equipment specified in this written Agreement is the only equipment that will be provided.
12. The Tenant acknowledges that the times specified in this Agreement includes time for setting up, changing, showering and taking down.
13. The Tenant acknowledges and agrees that games of chance, including lotteries, raffles and bingos will not be held on the Premises unless the proper permits are obtained.
14. If professional musicians are used during the course of this Agreement the Tenant agrees to hold the School District harmless in any action to collect copyright royalties through the Copyright Act of Canada.
15. The Tenant agrees that no connection to electrical panels will be made without prior authorization from the School District. All work must be completed by a qualified electrician and the work performed to all applicable codes and regulations. The costs will be paid by the Tenant.
16. The switchboard, lighting and any other related equipment shall only be operated by persons qualified to do so.
17. The Tenant acknowledges the School District's right to establish maximum occupancy for the Premises.
18. The Tenant agrees that the Premises will not be used for band practices and/or performances unless this Agreement specifically authorizes these activities.
19. The Tenant agrees that this Agreement can not be assigned and that the Premises may not be sublet by the Tenant without the express written approval of the School District. Such approval may be arbitrarily withheld by the School District.
20. A custodian/janitor must be on duty at all times when the Premises are used after school hours, except when otherwise approved by the Board District. School hours are 7 a.m. to 11 p.m. - Monday to Friday.
21. When custodial services are provided outside of school hours, as required in Section 20, the Tenant will pay, in addition to the fees described herein, the actual cost of providing this service. This cost will be based upon overtime or double time rates and minimum hours requirements as provided in the School District's contract with its employees.
22. This Agreement may be cancelled by the School District without notice if the Premises are deemed by the School District, acting reasonably, to be unfit for the intended use.
23. No advertising or promotional material is to be displayed on or affixed to any part of the School lands or buildings of which the Premises forms a part, without the prior written consent of the School Principal.
24. The Tenant acknowledges that the School District makes no representation, express or implied, that the Premises are suitable or appropriate for the Tenant's intended use, and the Tenant accepts the Premises at its sole risk.