

COLD LAKE MULTI-USE CAMPUS

7825 – 51 Street

Cold Lake, Alberta

MULTI-USE CAMPUS OPERATING, MANAGEMENT, MAINTENANCE AND USE AGREEMENT

Final as of _____, 2015

THIS AGREEMENT made this ___ day of _____, 2015.

BETWEEN:

THE CITY OF COLD LAKE
(hereinafter referred to as the "City");

-and-

THE BOARD OF GOVERNORS OF PORTAGE COLLEGE
(hereinafter referred to as the "College")

-and-

THE NORTHERN LIGHTS SCHOOL DIVISION NO. 69
(hereinafter referred to as the "School Division")

WHEREAS:

- A. The Parties want to advance, promote, and encourage opportunities and programs for sport, recreation, wellness, culture, and education for the residents of the City and the surrounding communities;
- B. The Parties want to operate the Multi-Use Campus in an efficient and cost effective manner;
- C. The City, the College and the School Division are committed to participating and cooperating in the planning, operation and maintenance of the Multi-Use Campus, and in particular the Shared Areas; and
- D. The Parties have agreed that it would be of general benefit to the Parties, as well as the residents of the City and the surrounding communities, to operate and maintain the Energy Centre, Portage College and Cold Lake High School as an integrated facility to be known as the Cold Lake Multi-Use Campus.

NOW THEREFORE in consideration of the mutual covenants and conditions herein contained, the parties hereto agree as follows:

ARTICLE 1 – DEFINITIONS

1.1 Definitions

All capitalized terms used throughout this Agreement shall have the following meanings, unless otherwise specifically defined:

- a) "Agreement" means this Operating, Management, Maintenance and Use Agreement, together with all schedules attached hereto;
- b) "Capital Replacement Costs" means those costs incurred or to be incurred pursuant to the substantial repair or replacement of the Shared Areas and to be included within the Operating Budget including, without restriction, those amounts to be paid by the Parties pursuant to carrying out the Capital Replacement Plan;

- c) “Capital Replacement Plan” means that plan to be prepared pursuant to Section 8.4 of this Agreement;
- d) “Cold Lake High School” means the secondary school facility, shown more particularly on Schedule “A”, owned and operated by the School Division on lands leased from the City and forming part of the Multi-Use Campus;
- e) “College Ground Lease” means the ground lease between the City and the College dated March 19, 2007;
- f) “College Leased Premises” means all that portion of the Lands leased by the City to the College for the purpose of constructing and operating Portage College, as more particularly described within the College Ground Lease;
- g) “Cost Share” means the schedule of the Parties’ respective proportionate shares of the costs comprising the Operating Budget shown within Schedule “C” attached hereto;
- h) “Dispute Resolution Procedure” means that procedure for the resolution of disputes between the Parties contained within Schedule “D” attached hereto;
- i) “Emergency” means any such work urgently required to be done and failure to do such work would cause personal injury or damage to the Shared Areas or its equipment or contents or could impair the value of the Parties’ investment at any time or significantly causes disruption of business for any Party when the Parties or the Operating Committee members cannot be reasonably located for the purpose of giving approval for such work. Failure to do such work might expose any of the Parties to the impositions of penalties, fines, imprisonment or any other liability;
- j) “Energy Centre” means a flexible multi-use community based recreation facility per Schedule “A” attached hereto;
- k) “Fiscal Year” means the financial or operating year of the City of Cold Lake, which year shall be a calendar year;
- l) “Force Majeure” means any event causing a bona fide delay in the performance of any obligations under this Agreement (other than as a result of financial incapacity) and not caused by an act or omission of any Party, or a person not at arm’s length with such Party, resulting from:
 - (i) an inability to obtain materials, goods, equipment, services, utilities or labour;
 - (ii) any statute, law, bylaw, regulation, order in council, or order of any competent authority other than one of the Parties;
 - (iii) an inability to procure any license, permit, permission, or authority necessary for the performance of such obligations, after every reasonable effort has been made to do so;
 - (iv) a strike, lockout, slowdown, or other combined action of workers; or
 - (v) an act of God;
- m) “Governance Committee” means a committee responsible for the ongoing operations and development, expansion or enhancement issues of the Multi-Use Campus
- n) “Ground Leases” means, collectively, the College Ground Lease and School Division Ground Lease;

- o) “Lands” means those lands located within the City of Cold Lake and legally described in Schedule “B” attached hereto;
- p) “Leased Premises” means, collectively, the College Leased Premises and the School Division Leased Premises;
- q) “Multi-Use Campus” means, collectively, the Energy Centre, Portage College, Cold Lake High School and the Shared Areas;
- r) “Municipal Services” means, collectively, municipally supplied sewer and water utility services together with access to and from the Lands via municipally owned roads, in each case provided by the City to the property line of the Lands;
- s) “Onsite Service Structures” shall mean and include the following services, which are to be designed, constructed, owned and operated by the City within the Leased Premises:
 - (i) All sanitary sewer mains and appurtenances;
 - (ii) All drainage systems, including surface drainage, grading and facilities, storm sewers, storm sewer connections, provisions for weeping tile flow and associated works;
 - (iii) All water mains, including all fittings, valves, and hydrants and looping as required to safeguard and ensure the continuous and safe supply of water;
 - (iv) All concrete curbs, gutters, sidewalks, and sub-grade, based and asphaltic pavement; and
 - (v) All lighting systems for streets, walkways, and parking areas;
 - (vi) All traffic signs, street signs, development identification signs, zoning signs, directional signs and flag poles as may be required for the Development;
 - (vii) All landscaping and land improvements as may be required for the Development;
 - (viii) Such construction or development of streets and lanes as may be required, including, but in no manner limited to, a second or temporary access for construction and vehicular traffic from the Leased Premises; and
 - (ix) All utilities including electricity, natural gas, telephone and cable television services, such utilities to be provided in location and a standard to be approved by the appropriate utility company;in each case located within or upon the Lease Premises, which are required for the construction and operation of the Multi-Use Campus.
- t) “Operating Budget” means the proposed operating budget for the Shared Areas.
- u) “Operating Costs” means all those costs incurred by the Parties in the operation, management, cleaning, maintenance, repair and capital replacement of the Shared Areas (calculated in accordance with generally accepted accounting principles) including, without restriction, a contribution towards current or future Capital Replacement Costs and:

- (i) the cost of interior and exterior landscaping;
- (ii) the cost of exterior window cleaning;
- (iii) the cost of snow removal;
- (iv) the cost of repairing damaged components of the Shared Areas;
- (v) the cost of heating, ventilating and air-conditioning the Shared Areas;
- (vi) the cost of providing warm and cold water to the Shared Areas;
- (vii) the cost of providing electricity to the Shared Areas not otherwise chargeable to the Parties;
- (viii) the cost of insuring the Shared Areas;
- (ix) the cost of repairing or replacing the structure and roof of the Shared Areas;
- (x) the cost of repairing and replacing the asphalt, curb and gutters contained within the Shared Areas;
- (xi) all professional fees and costs related to the operation of the Shared Areas;
- (xii) reasonable property management fees and administration fees relating to the Shared Areas;
- (xiii) all other items defined as Operating Costs as agreed to by the City, the College and the School Division;
- (xiv) interest on debt, capital retirement debt on any joint borrowing initiatives;
- v) "Operational Committee" means a committee appointed by the Governance Committee responsible for the day to day operations of the Shared Areas and the implementation of the policies and guidelines established by the Governance Committee;
- w) "Parties" means, collectively, the City, the College and the School Division, and "Party" means any one of them;
- x) "Portage College" means the college facility, shown more particularly on Schedule "A", owned and operated by the College on lands leased from the City and forming part of the Multi-Use Campus;
- y) "Proportionate Share" means the Parties' respective share of the responsibility for the Shared Areas as more particularly described within Section 7.2 of this Agreement, and within Schedule "C" attached hereto;
- z) "School Division Ground Lease" means the ground lease between the City and the School division dated January 1, 2012, for a Forty year term.
- aa) "School Division Leased Premises" means all that portion of the Lands leased by the City to the School Division for the purpose of constructing and operating Cold Lake High School, as more particularly described in the School Division Ground Lease;
- bb) "Shared Areas" shall mean and include those portions of the Multi-Use Campus designated from time to time as Shared Areas within this Agreement including, without restriction:

- (i) The central hub area, as shown within Schedule “A” attached hereto; and
- (ii) The grounds and surface structures surrounding the campus as identified in Schedule “A”; and
- (iii) The parking areas located upon the Lands and either forming part of the Multi-Use Campus or designated from time to time within this Agreement as parking areas for use by users of the Multi-Use Campus;

OR

The parking areas located upon the Lands and shown within Schedule “E” attached hereto.

- cc) “Shared Physical Plant” means that portion of the physical plant equipment (including, without restriction, the heating, ventilating and air-conditioning system, electrical distribution/metering room and the heat recovery system) contained within the Multi-Use Campus that:
 - (i) services the Shared Areas.; or
 - (ii) services and/or benefits the Energy Centre, Portage College and Cold Lake High School;
- dd) “Shared Surface Structures” means all those areas that are jointly built and funded that are not within the buildings comprising the Multi-Use Campus, such as access roads within the site, parking areas, sidewalks, trails, landscaped areas, fences, earth and concrete swales, street and regulatory signs, and site lighting,
- ee) “Specific Use Areas” means those areas designated as being mainly for use by only one of the Parties, as further identified in Schedule “A”; and
- ff) “Term” means the term of this Agreement as further specified in Section 4.1.

1.2 Schedules

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

- Schedule “A”- The Cold Lake Multi-Use Campus
- Schedule “B”- The Lands
- Schedule “C”- The Cost Share
- Schedule “D”- The Dispute Resolution Procedure
- Schedule “E”- Parking Areas

ARTICLE 2 – SPIRIT, INTENT, AND GUIDING PRINCIPLES

2.1 Application

Unless otherwise specifically provided for within this Agreement, this Agreement applies to:

- a) the operation, management, maintenance and capital replacement of the Shared Areas by the City, the College and the School Division;
- b) the use and enjoyment of the Shared Areas by the City, the College, the School Division and their respective invitees consisting of the general public, and the faculty and students of Portage College and Cold Lake High School, respectively;

- c) the operation, maintenance, use and enjoyment of the Energy Centre, Portage College and Cold Lake High School, to the extent that such operation, maintenance, use and enjoyment is integrated with, or impacts upon, the Shared Areas; and
- d) any agreements respecting the joint use of facilities contained within the Multi-Use Campus between the Parties, as amended from time to time.

2.2 Guiding Principles

The Parties recognize that the following principles should guide future expansion designs and operations, management, maintenance and use of the proposed Shared Areas of the Multi-Use Campus:

- a) Appropriateness – the Shared Areas must be suitable for the broadest spectrum of its users;
- b) Adaptability – the Shared Areas must be multi-dimensional and flexible to change and future growth;
- c) Accessibility – the Shared Areas must be open to all users, regardless of age, skill, income or physical challenges;
- d) Affordability – the Shared Areas should be efficient in design and economical to operate while maximizing synergies for the Parties; and
- e) Accountability – the benefits and burdens of the operation, management, maintenance, and use of the Shared Areas must be shared by the Parties proportionately.

2.3 Consultation

The Parties agree that they shall consult with one another in planning the long-term development of the Multi-Use Campus to ensure maximum use and benefits to education, sport, recreation, wellness, and culture to the City of Cold Lake and surrounding communities.

2.4 Co-operation

The Parties agree to work together on a cooperative basis and to take such steps as may be necessary and to enter into additional agreements as may be required from time to time in order to meet their objectives in operating, maintaining, or using the Multi-Use Campus.

2.5 Compliance with Laws

The Parties shall comply with all applicable statutes and regulations governing tendering and maintenance of the facilities and shall at their expense take all necessary steps to ensure that any separately owned buildings will at all times, be in compliance with all statutes and regulations as may be applicable in that regard.

2.6 Rights of Approval

Except where otherwise specifically provided, each Party will act reasonably in each case where it is entitled to exercise discretion, except where it is specifically provided that the Party's consent may be unreasonably withheld, it will not unreasonably withhold or delay the exercise of any such discretion.

2.7 Further Assurances

The Parties agree that they shall from time to time execute such further assurances and documents as may be required by the Parties and their respective solicitors to give effect to the intent of this Agreement.

2.8 Independent Action

Each Party acknowledges and agrees that it shall not undertake any independent action with respect to the operation or management of the Shared Areas outside of the governance process provided herein. Further, in the event that a Party does undertake independent action and incurs costs or obligations as a consequence of those actions, the Party responsible for undertaking the same shall be solely responsible for all such actions and any costs related thereto and shall be deemed to be in breach of the terms and conditions of this Agreement.

2.9 Conflicting Actions

Each Party acknowledges and agrees that it shall have the ability to undertake independent action, and to enter into agreements, with third parties to this Agreement, with respect to the operation or management of their Specific Use Areas within the Multi-Use Campus. These independent actions and agreements do not supercede this Agreement where any discrepancies exist and this Agreement shall govern in the event of any discrepancies.

ARTICLE 3 – OWNERSHIP, CONTROL AND RESPONSIBILITY

3.1 Recreational and School Buildings

It is acknowledged and agreed between the Parties that:

- a) the City:
 - (i) is the owner of the Energy Centre and the Lands;
 - (ii) for the purposes of maintaining insurance, and operating, managing, maintaining and replacing the Shared Areas pursuant to this Agreement, the co-owner of the Shared Areas; and
 - (iii) shall operate, manage, maintain, and use the Energy Centre located upon or within the Lands in its sole discretion, subject always to the provisions of this Agreement;
- b) the College:
 - (i) is the owner of Portage College, and pursuant to the College Ground Lease is the holder of a leasehold interest in the College Leased Premises upon which Portage College is constructed; and
 - (ii) shall operate, manage, maintain, and use Portage College located upon or within the College Leased Premises in its sole discretion, subject always to the College Ground Lease and the provisions of this Agreement;
- c) the School Division:
 - (i) is the owner of Cold Lake High School, and pursuant to the High School Ground Lease is the holder of a leasehold interest in the High School Leased Premises upon which Cold Lake High School is constructed; and
 - (ii) shall operate, manage, maintain and use Cold Lake High School located upon or within the High School Leased Premises in its sole discretion, subject always to the High School Ground Lease and the provisions of this Agreement.

3.2 Shared Areas

It is acknowledged and agreed between the Parties that, subject to further or other agreements between the Parties, the City shall manage and operate the Shared Areas for the equal benefit of the Parties. In consideration of the grant of use and enjoyment of the Shared Areas and the contribution to the construction and acquisition of the Shared Areas, each of the Parties shall be deemed to acquire an equal right to use and enjoyment of, and responsibility for capital renewal and maintenance costs associated with, the Shared Areas.

3.3 Onsite Services

The City shall be the owner of all Onsite Service Structures, with the exception of those Onsite Service Structures located within the College Leased Premises and the School Division Leased Premises. The College and the School Division shall be the owner of their respective Onsite Service Structures located within the College Leased Premises and the School Division Leased Premises.

The Parties will share responsibility, in accordance with Schedule "C", for the capital renewal, operation, and maintenance of Onsite Service within the Shared Areas. This includes the provision for all remaining infrastructure that shall allow each of the Parties to have access to the franchise utility structures necessary to provide telephone, cable, security, fibre optics, and energy management systems capabilities for each of the Party's respective buildings. Each of the Parties shall be responsible for the provision of such services within their own facilities.

3.4 Emergency Contacts

Each Party shall provide the other Parties with the names and contact information for those persons who are responsible for dealing with an Emergency within each component of the Multi-Use Campus. Immediate notice of any change in this information must be provided to all Parties.

3.5 License

Subject to the terms and conditions of this Agreement, the Parties grant each other a non-exclusive right and license to use their Specific Use Areas of the Multi-Use Campus for the purposes of the operating, management, maintenance and capital renewal of the Shared Areas as contemplated within this Agreement. Further written agreements regarding the use of the Shared Areas may be made from time to time by the Parties.

ARTICLE 4 – TERM AND RENEWAL

4.1 Term

The term of this Agreement shall be effective from the date of execution of this agreement co-terminus with the Ground Lease unless otherwise terminated or amended in accordance with the terms and conditions of this Agreement. This Agreement shall, in any event, terminate upon the expiration or termination of the Ground Lease.

4.2 Renewal

This Agreement automatically renews upon the renewal of the Ground Lease, in each case for an equal period of time so as to be co-terminus with the Ground Lease. This Agreement may, nonetheless, be renewed by the Parties hereto upon the mutual written agreement of each of the Parties hereto, provided that the parties have so expressed their intent in writing by their

authorized representatives. The extension will be subject to the completion of any statutory conditions and the receipts of any required Ministerial approval(s).

ARTICLE 5 – GOVERNANCE

5.1 Governance Committee

The Governance Committee shall be made up of equal representation of senior administrators appointed by the City, the College and the School Division. The Governance Committee will be responsible for the development, expansion and/or enhancement issues of the Multi-Use Campus. In doing so, the Governance Committee shall specifically be involved in the following:

- a) ensuring that all decisions and recommendations are made in accordance with the goals, principles, and spirit of this Agreement;
- b) planning for and ensuring the maximum sport, recreational , wellness, educational, and cultural use and benefit to the public;
- c) ensuring recommendations are within the budget parameters and timelines of each of the Parties;
- d) exploring management options for the Shared Areas, policy development, leases to third parties, and other agreements; and
- e) making all recommendations for approval to the City, the College and the School Division.

5.2 Governance Committee and Chair of the Governance Committee

The Parties hereby establish the Governance Committee to manage the strategic direction and general policies of the Shared Areas. The power and authority of the Governance Committee shall be subject to the terms and provisions of this Agreement. Unless otherwise unanimously agreed to by the Parties, the Chair of the Governance Committee shall be the City of Cold Lake.

5.3 Representatives

The Governance Committee shall consist of three (3) individuals consisting of one (1) representative from each of the City, the College and the School Division. Each representative will have the authority to make decisions on behalf of their respective organizations. The primary Governance Committee member for the College shall be the College President. The primary Governance Committee member for the City shall be the Chief Administrative Officer. The primary Governance Committee member for the School Division shall be the Superintendent. Each of the Parties may at any time and from time to time by written notice replace its representative appointed by it and any representative so replaced shall cease to be a Governance Committee member upon the giving of such notice. Copies of such written notice shall be given to the other Parties and the individual so appointed as a new Governance Committee member and the Governance Committee member so replaced. In addition to the primary members of the Governance Committed noted herein, each party shall appoint an alternate member of the Governance Committee in the event that the primary member is unable to attend a Governance Committee meeting. Each alternative representative will have the authority to make decisions on behalf of their respective organizations.

5.4 Action by the Governance Committee

The powers of the Governance Committee may be exercised by resolution at a meeting of the Governance Committee members, at which all members or their alternates must be in attendance.

5.5 Attendance at Meetings

The Governance Committee members, but not an individual Governance Committee member, may decide to invite the general public, special interest groups, or other private or public bodies and agencies to attend any meeting of the Governance Committee and/or make submissions to the Governance Committee with respect to any matter or question being considered by it. The Governance Committee shall meet at least once a year or more as the Governance Committee determines. Notice of the time, place, and agenda of every meeting shall be given by the Chair with not less than one (1) month's notice.

5.6 Voting Rights

At any meeting of the Governance Committee, each member shall be entitled to vote on each question submitted to the Governance Committee for decision and each such member shall have one vote.

5.7 Records

The Chair shall arrange for proper minute taking of all meetings and decisions of the Governance Committee to be kept and maintained and copies of same shall be sent to each member and the Parties within fifteen (15) business days following each meeting of the Governance Committee. Each Governance Committee member shall be entitled to reasonable access to all files and records of the Governance Committee at all reasonable times and shall be given the opportunity to make copies thereof from time to time.

All records of the Governance Committee will be retained at the City's office.

5.8 Limitation of Liability

No Governance Committee member shall be liable for the acts, neglect or default of such Governance Committee member, any other Governance Committee member, and/or the Governance Committee as a whole, provided that such Governance Committee member has acted, in good faith in the performance or intended performance of any duty or in the exercise or intended exercise of any power or authority granted to such Governance Committee member and the Governance Committee as a whole hereunder.

5.9 Authority of the Governance Committee

A decision of the Governance Committee made in accordance with this Agreement with respect to any matter within the limits of its authority and jurisdiction shall be binding upon all of the Parties.

5.10 Unanimous Approval

The following matters shall require unanimous approval by all members of the Governance Committee entitled to vote at any meeting called to consider such matters, which approval shall be exercised in accordance with the provisions of this Agreement:

- a) The expansion and/or redevelopment of the Shared Areas;
- b) The assignment of this Agreement by any of the Parties as contemplated within this Agreement;

- c) The execution, termination or enforcement of any lease or license (containing a term of greater than one (1) month) of a portion of the Shared Areas to a third party.

5.11 Referral to Dispute Resolution

If at any meeting of the Governance Committee, any matter set out in Section 5. 10 is considered and the matter is neither approved nor adjourned for further consideration by all of the members of the Governance Committee entitled to vote at such meeting, then notwithstanding any intermediate acts or negotiations, any Party shall be entitled to refer the dispute, and, to the extent that it is necessary or reasonable in all of the circumstances, any related question or dispute, to be resolved pursuant to the Dispute Resolution Procedure.

5.12 Remuneration of Committee Representatives

Each Party shall reimburse its members in accordance with its own practices and policies.

5.13 Contractors

Subject to the provisions of this Agreement, in the operation, management, repair and maintenance of the Shared Areas, the Governance Committee may utilize such agents, employees and contractors as may be approved by the Governance Committee. Unless otherwise agreed to by the Parties, the City shall undertake the operation, management, repair and maintenance of the Shared Areas for and on behalf of the Parties, upon and subject to the terms, covenants and conditions contained within this Agreement.

ARTICLE 6 – OPERATIONAL COMMITTEE

6.1 Operational Committee

The Operational Committee shall be made up of equal representation appointed by the Governance Committee. The Operational Committee will be responsible for the day- to-day operations of the Shared Areas based on the principles and guidelines set by the Governance Committee and this Agreement. The Operational Committee will also be responsible for making recommendations to the Governance Committee regarding changes with respect to the principles and guidelines as set out by the Governance Committee.

6.2 Operational Committee Membership

The Operational Committee shall consist of three (3) individuals consisting of one (1) representative from each of the City, the College and the School Division. Each representative will have authority to make decisions on behalf of their organization within the limits of the principles and guidelines as set by the Governance Committee and this Agreement.

6.3 Operational Committee Chair

Unless otherwise unanimously agreed to by the Governance Committee, the Chair of the Operational Committee shall be the City of Cold Lake.

6.4 Vacancies

A vacancy on the Operational Committee shall be filled by the Governance Committee based on recommendations received from the Party for which the vacancy has occurred.

6.5 Action by the Operational Committee

Actions taken by the Operational Committee must be exercised by resolution at an Operational Committee meeting at which all three (3) Operational Committee members are present.

6.6 Operational Committee Meetings

The Operational Committee shall meet a minimum of six (6) times per year. The day, time and place of the meeting shall be determined by the Operational Committee at each meeting. The Operational Committee may change the day, time or place of the meeting by unanimous vote should circumstances require.

The Operational Committee may invite other individuals, groups or organizations that it deems necessary to assist the Operational Committee in addressing the day-to-day operations of the Shared Areas.

6.7 Records

The Chair shall arrange for proper minute taking of all meetings and decisions of the Operational Committee. Copies of the Operational Committee minutes and decisions shall be sent to each member of the Operational Committee, the Governance Committee and the Parties within fifteen (15) business days following each meeting. Each Operational Committee member shall be entitled to reasonable access to all files and records of the Operational Committee at all reasonable times and shall be given the opportunity to make copies thereof from time to time.

All records of the Operational Committee will be retained at the City's office.

6.8 Limitation of Liability

No Operational Committee member shall be liable for the acts, neglect or default of such Operational Committee member, any other Operational Committee member, and/or the Operational Committee as a whole, provided that such Operational Committee member has acted in good faith in the performance or intended performance of any duty or in the exercise or intended exercise of any power or authority granted to such Operational Committee member and the Operational Committee as a whole hereunder.

6.9 Authority of the Operational Committee

A decision of the Operational Committee made in accordance with the principles, guidelines as approved by the Governance Committee shall be binding on all of the Parties.

ARTICLE 7 – FINANCIAL RESPONSIBILITY

7.1 Specific Use Areas

The Parties are responsible for their own Specific Use Areas. This includes payment for all operating maintenance and capital renewal costs.

7.2 Shared Areas

The Parties will be responsible to pay for their respective Proportionate Share of all Operating Costs. The Operating Costs shall be shared equally unless otherwise defined in Schedule "C" or further agreed in writing by the Parties. Any cost obligations of any future shared space or jointly owned areas which may form part of the Shared Areas shall be as agreed upon by the Parties in writing prior to the commencement of the construction of any such facility and subject to the receipt of all such statutory and/or Ministerial approvals that are required.

7.3 Estimate and Payment

Within thirty (30) days of the approval of the Operating Budget and in any event within sixty (60) days of the commencement of each Fiscal Year, the City shall advise the College and the School Division in writing of its estimate of the Proportionate Share of the Operating Costs of the

Shared Areas payable by the College and School Division during the then current Fiscal Year or remaining portion thereof. Such estimate shall be a reasonable estimate and based upon the City billing accrual proportional expense in accordance with Schedule 'C'. The Proportionate Share of the Operating Costs shall be paid in full within 60 days of written notice of the Proportionate Share of Operating Costs from the City.

From time to time the City, subject to approval of the Governance Committee, may re-estimate, on a reasonable basis, the amount of Operating Costs for any Fiscal Year or portion thereof. All adjustments will then be used to recalculate new payment amounts for the remainder of the Fiscal Year.

7.4 Accounting and Adjustment

Within ninety 120 days after the end of each Fiscal Year or portion thereof Schedule 'C' operating summary

7.5 Access to Information

Each Party agrees to share information as may be relevant from time to time, or as may be reasonably required by such Parties subject to the application of the Freedom of Information and Privacy legislation.

7.6 Operation of Energy Centre, Portage College and Cold Lake High School

The Parties each acknowledge and agree that:

- a) they shall operate, maintain, and repair the facilities located in the Multi-Use Campus in accordance with any applicable legislation, regulations and policy that may be established by the Governance Committee;
- b) in order to maintain a consistent appearance and standard of the Shared Areas, Onsite Surface Structures, and exterior finishes, the Parties agree that any ongoing maintenance and upgrades planned to be done on these areas will be reviewed and approved by the Governance Committee.

ARTICLE 8 – MANAGEMENT, BUDGET AND CAPITAL REPLACEMENT

8.1 City's Responsibilities

The City covenants and agrees, and the Parties authorize the City, to operate, manage and maintain the Shared Areas for and on behalf of the Parties in a manner consistent with the operation of a similar facility by a prudent municipality, subject always to the approval and inclusion of all costs of doing so within the Operating Budget, and subject further to direction of the Governance Committee. Without in anyway restricting the forgoing, the City covenants and agrees as follows:

- a) to direct and supervise the operation and maintenance of the Shared Physical Plant, as well as any further or other heating, ventilation, air-conditioning and other equipment servicing the Shared Areas, and to arrange for the proper operation and maintenance of such equipment;
- b) to arrange for the supply, as may be required, of electricity, gas, steam, fuel, water, telephone and other services and to arrange maintenance and repair of the Shared Areas and its equipment (including without limitation, any heating, ventilation, air-conditioning, plumbing, electrical and elevator equipment) as may be required by the

Governance Committee or deemed desirable by the City or so as to comply with the enforcement of any regulations and requirements of which the City is notified by the local board of health, police and fire departments and any other municipal, provincial and federal authorities having jurisdiction which affect the Multi-Use Campus and, without limiting the generality of the foregoing, such arrangements shall include (where applicable to the Shared Areas) those for janitorial service and any other cleaning, including windows, building security and ice removal, landscaping and grounds maintenance, painting and redecoration, alterations and any supervision and maintenance necessary;

- c) generally to do and perform all things desirable or necessary for the proper and efficient management of the Shared Areas (including the giving of proper attention to any complaints and endeavouring as far as is economical to reduce waste and to maximize performance) and to perform every other act whatsoever in or about the Shared Areas to carry out the intent of this Agreement provided, however, that the City shall not authorize any work, repairs, alterations or redecoration estimated to cost in excess of one thousand dollars (\$1,000.00) for any one item or any contract of a duration in excess of one year without first obtaining the Governance Committee's approval to proceed with such work except for charges approved and contained within Schedule 'C' and except in the case of an 8.1 City's Responsibility; and
- d) to provide reports to the Parties and the Governance Committee of the foregoing services from time to time when requested.

8.2 Capital Expenditure Plan and Maintenance, Reports, and Banking

- a) Reports – The City shall prepare and provide to the Governance Committee and the Parties, all reports as may be required and agreed upon by the Governance Committee in order to diligently track the expenditures
- b) Books of Account – The City acknowledges that all moneys received by the City, shall be received by the City and held by the City and tracked separately. All accounts and reports shall be maintained by the City and held and stored in a prudent manner.
- c) Access to Information – The Parties may at reasonable times and intervals obtain information with respect to the Shared Areas and cause inspections and reviews of the books, records and banking statements and records maintained by the City pursuant to this Agreement and relating to the Shared Areas to be performed. The City shall provide all reasonable assistance to the Parties' employees and auditors and the Parties shall be given the opportunity to make copies of such information, books, records and banking statements and records from time to time.

8.3 Limitations and Restrictions

Notwithstanding any provision of this Agreement, the City shall not take any action, expend any sum, make any decision, give any consent, approval or authorization, or incur any obligation on behalf of the Parties with respect to any of the following matters unless and until the same has been approved by the Governance Committee:

- a) Approval of the form or forms of leases and adoption of the terms, conditions and standards for the leasing of space within the Shared Areas, pursuant to which the City shall be authorized to negotiate leases;

- b) Termination or modification of any lease or other arrangement involving the rental, use or occupancy of space in the Shared Areas;
- c) Construction of any improvements or making of any capital improvements, repairs, alterations or changes in, to or of the Shared Areas;
- d) Retention of counsel for or in respect of the Shared Areas pursuant to this Agreement, or institution of any legal action, except for such action as the Governance Committee may have approved.

8.4 Capital Replacement Plan

To enable the City to operate, manage, maintain and repair the Shared Areas in accordance with this Agreement, the following shall apply:

- a) Ninety (90) days prior to the annual meeting of the Governance Committee, the City shall propose or cause to be proposed a Capital Replacement Plan for review by the Governance Committee having a minimum five (5) year horizon consistent with general industry standard practice and designed to continuously meet sound operating practices and the requirements of this Agreement. This review will include detailed plans for the upcoming Fiscal Year to support the annual capital expenditure budget;
- b) In conducting any review and revision to the Capital Replacement Plan from time to time in accordance with Section 8.4 a) the City and the Governance Committee shall have regard to the necessity for:
 - i. the replacement of obsolete equipment or capital replacements or repairs in Shared Areas; and
 - ii. the addition of any new technology;
 - iii. necessary to continuously meet sound operating practices, the level of operation and maintenance contemplated or required within this Agreement, the requirements of all applicable laws, and reduce the costs to the Parties of operating and maintaining the Shared Areas;
- c) Notwithstanding any scheduled time for replacement of any portions of the Shared Areas as may be set forth in the Capital Replacement Plan, the City shall at all times recommend to the Governance Committee the portions of the Shared Areas that may require replacement from time to time so as to ensure the continued operation and maintenance of the Shared Areas as contemplated or required by this Agreement. Such recommendations may be made earlier than contemplated by the schedule for replacement contained within the Capital Replacement Plan, at a cost to be included within the Operating Budget;
- d) If the Governance Committee cannot agree upon the necessity, cost or timing of the replacement of any portion of the Shared Areas, such matter in dispute shall be referred for resolution in accordance with the Dispute Resolution Procedure; and

8.5 Capital Replacements under the Capital Replacement Plan

Throughout the Term, the City shall provide or cause to be provided the services necessary to perform repairs or replacements in accordance with the Capital Replacement Plan, subject always to the availability of funds necessary. All costs associated with carrying out the Capital Replacement Plan are the responsibility of the Parties in accordance with their Proportionate

Share, and all additional or increased costs that are not contemplated within the Capital Replacement Plan relating to the capital repairs or replacements of the Shared Areas shall similarly be the Parties joint responsibility subject always to approval of the additional costs by the Governance Committee

ARTICLE 9 – INSURANCE AND INDEMNITY

9.1 Insurance

Except for Shared Areas, each Party will be responsible at its own cost to maintain comprehensive general liability insurance and property insurance respecting the buildings and any and all improvements owned by that Party against loss, damage, or destruction, whether caused by fire or extended perils, on such terms and conditions as would be carried by a prudent owner in at least the following amounts:

- a) legal and public liability and property damage insurance in an amount not less than \$5,000,000 per occurrence or such greater amount as the Parties may reasonably agree from time to time; and
- b) other insurance as the Parties may consider necessary or prudent, or as may be required pursuant to the ;

9.2 Shared Areas

For the Shared Areas the City will maintain throughout the Term of this Agreement legal and public liability and property damage insurance that cover both the City, the College and the School Division interests in the same amounts, and under the same policies, as the City maintains in respect of the Energy Centre.

9.3 Certificates

Each Party acknowledges and agrees that it shall provide to the other Parties proof of insurance, upon being requested to do so in writing.

9.4 Indemnity

Each Party shall indemnify and save harmless the other Parties and their board members, trustees, councillors, officers, employees, agents, volunteers, and invitees, to the extent permitted by law, of and from any and all liabilities, damage costs, expenses (including legal fees and disbursements) claims, suits and actions arising out of the following:

- a) any breach, violation or non-performance of any term or condition in this Agreement on the part of the indemnifying Party to be fulfilled, observed and performed;
- b) death or injury to any person or damage or destruction of any property resulting from the negligence of the indemnifying party, its trustees, councillors, officers, employees, agents, licensees, invitees, or any other person for whom that party is legally responsible;
- c) the indemnifying Party's use or occupation of any portion of the Lands or the Multi-Use Campus; and
- d) any damage or destruction of any property or any injury or death occurring to any permittee, invitee, employee, or agent of the indemnifying Party or any other person for whom the indemnifying Party is in law responsible;

This indemnity shall survive the expiration or termination of this Agreement.

9.5 Limitation of Liability

No Party or its representative shall be liable for the acts, representations, neglects or defaults of any other Party's representative or for joining in any representation of other acts or for any loss, damage or expenses happening to the other Parties through the insufficiency or deficiency of title to any property acquired by order of the Parties.

9.6 Interruption of Utilities and Services

Each Party shall not be liable to the other Parties or any third party engaged in business on the site for any liability or damages arising from the interruption or failure of any utilities or other municipal services supplied or used in connection with the Multi-Use Campus.

ARTICLE 10 – DAMAGE OR DESTRUCTION

10.1 Damage or Destruction

Subject to all Parties agreeing to do otherwise, the Parties agree as follows:

- a) in the event of damage to or partial destruction of the Shared Areas, the Parties shall repair, replace, restore and/or reconstruct the damaged portions of the Shared Areas unless the Parties would be unable to repair, replace, restore or reconstruct the damage by reason of Force Majeure within eighteen (18) months following such damage and destruction; and
- b) all repairs, replacements, restoration, and/or reconstruction shall be commenced as expeditiously as possible in the circumstances and the Parties shall co-operate with each other and will proceed to complete the work continuously and expeditiously in order that it be completed as soon as reasonably possible and in a good and workmanlike manner, subject to Force Majeure.

10.2 Force Majeure

Whenever and to the extent that any Party shall be unable to perform, or shall be delayed or restricted in the full performance of, any obligation within this Agreement (other than any financial or payment obligation under this Agreement) by reason of an event of Force Majeure, such Party shall, so long as any such impediment exists, be relieved from the performance of such obligation to the extent restricted or prevented by that event of Force Majeure, and the other Parties shall not be entitled to compensation for any damage, inconvenience, nuisance, or discomfort caused by such delayed or restricted performance provided always that such relief shall in any event be limited to a maximum period of one hundred and eighty (180) days. In the event that any of the Shared Areas are impacted by an event of Force Majeure the Parties agree to meet within ninety (90) days to determine remedies required.

ARTICLE 11 – GENERAL

11.1 A Compliance with Laws

Each Party will obtain and keep current any licenses that may be required in connection with its operations and functions. Each Party will promptly pay all assessments and payments as required by the Workers' Compensation Act and other applicable legislation. Each Party will carry on its operations and activities on the Lands and in the Multi-Use Campus in compliance at all times with all applicable laws, bylaws, and regulations.

11.2 Environmental

The Parties will ensure that no hazardous substances, contaminants or pollutants are deposited or brought onto the Lands or into the Multi-Use Campus, except in a lawful and prudent manner. Each Party shall be responsible for all costs associated with any clean-up or removal of such hazardous substances, contaminants or pollutants.

11.3 Conduct

Each Party shall not at any time use, exercise, or carry on or prevent or suffer to be used, exercised or carried on in or upon the Lands or the Multi-Use Campus any act, activity or thing that may disrupt a Parties ability to carry out their business.

11.4 Dispute Resolution

In the event of the disagreement between the Parties with respect to an issue, matter or thing arising from this Agreement (other than default in payment of the financial obligation) the Parties shall refer such dispute to be resolved pursuant to the Dispute Resolution Procedure as outline in Schedule "D" attached hereto.

11.5 Notice

The address for service of notices and other documents or payments owed are as follows:

City of Cold Lake

5513 – 48 Ave
Cold Lake, Alberta
T9M 1A2
Attention: Chief Administrative Officer
Phone: (780) 594-4494
Fax: (780) 594-3480
Email: knagoya@coldlake.com

Portage College

PO Box 417
9531 – 94 Ave
Lac La Biche, Alberta
T0A 2C0
Attention: President
Phone: (780) 623-5551
Fax: (780) 623-5663
Email: trent.keough@portagecollege.ca

Northern Lights School Division No. 69

6005 – 50 Avenue
Bonnyville, Alberta
T9N 2L4
Attention: Superintendent
Phone: (780) 826-3145
Fax: (780)826-4600
Email: rick.cusson@nlsd.ab.ca

or such other address as the Parties may respectively designate from time to time. Any notice required or permitted by this Agreement may be served on the Parties by hand-delivery or by mail. Notices sent by mail will be deemed to have been received three (3) business days after mailing. In the event of a general postal disruption, notice shall not be attempted by mail. Notices sent by email will be deemed received one (1) day after sending.

11.6 New Parties

In the event that a new party wishes to join the Multi-Use Campus, the Governance Committee will review the request along with its merits, implications, and recommended method of joining. A new agreement may be required to adjust Shared Areas and the respective Parties' Proportionate Share, and a contribution to the original Parties for the construction of the Shared Areas.

11.7 Assignment

The Parties shall not assign this Agreement and shall not grant any rights to any person, firm or corporation to use the Shared Areas or the Multi-Use Campus except as permitted by this Agreement.

11.8 Severable

If any portion of this Agreement is unenforceable for any reason, that portion shall be severed, and the balance of the Agreement shall remain and be binding.

11.9 No Partnership

Nothing contained in this agreement or in any acts of the Parties hereto shall be deemed to create any relationship or partnership other than that of licensees and common usage as set forth.

11.10 Interpretation and Amendments

This Agreement as and from its effective date supercedes and extinguishes all prior agreements (other than the Ground Leases) between the Parties in relation to the Multi-Use Campus. Agreements that follow this effective date will be considered as enhancements and not replacements. The Ground Leases and this Agreement represent the entire Agreement between the Parties in respect to the issues contained herein related to the Multi-Use Campus and it and shall not be amended or altered in any way other than by an amending agreement in writing duly executed by the Parties and expressly and by its terms referable to this Agreement and the provisions so amended. In the event of a dispute between the Ground Leases and this Agreement, the Ground Leases are to be considered the overriding Agreements. No verbal agreements, courses of conduct or documents that have not been so executed shall apply or be asserted at any time in such respects.

IN WITNESS WHEREOF the Parties hereto affixed their corporate seals, duly attested by the hands of their proper signing authorities in that behalf on the day and year first written above.

THE CITY OF COLD LAKE

Mayor

Chief Administrative Officer

PORTAGE COLLEGE

Board Chair

President

NORTHERN LIGHTS SCHOOL DIVISION NO. 69

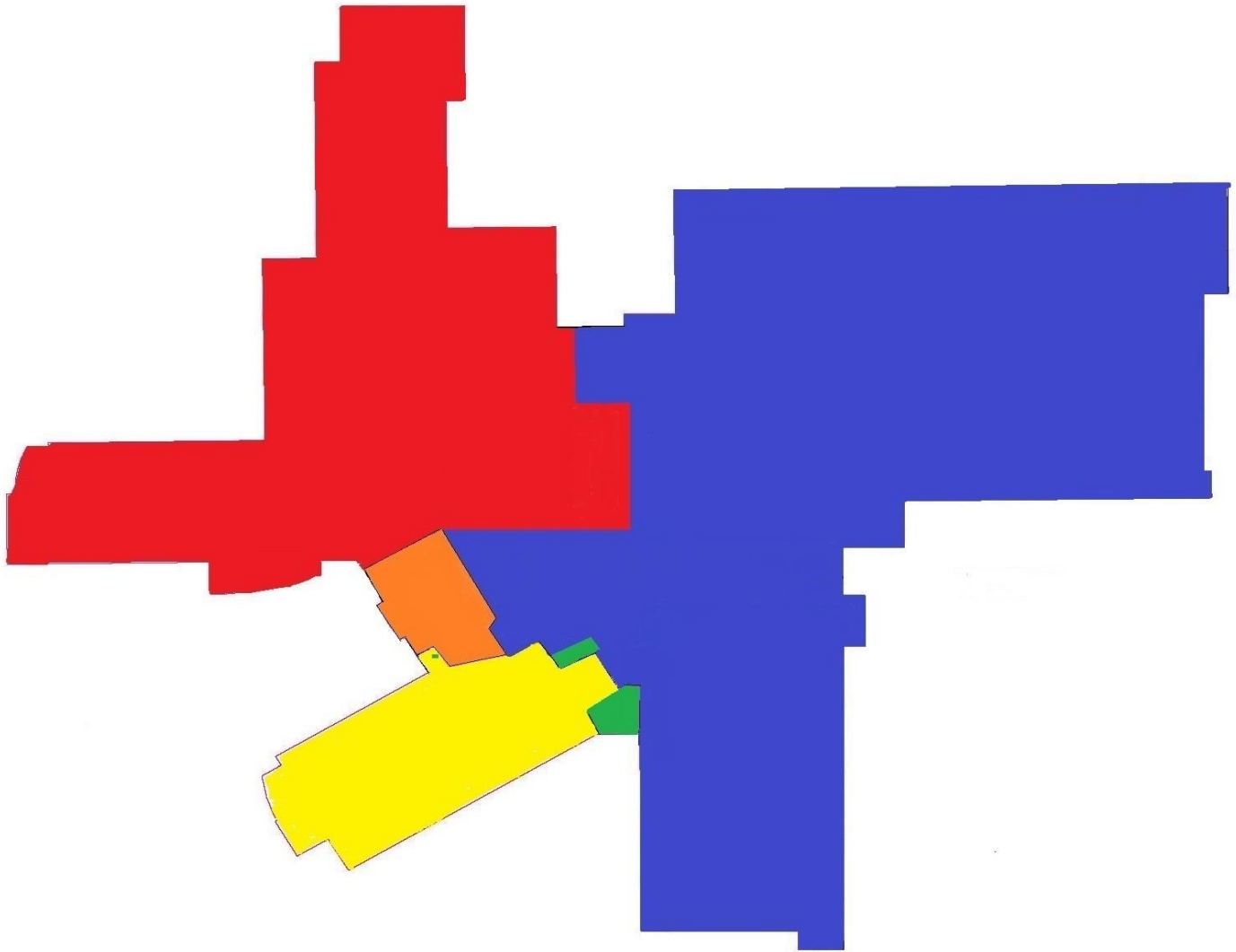
Superintendent

Secretary Treasurer

SCHEDULE "A"

MAIN FLOOR

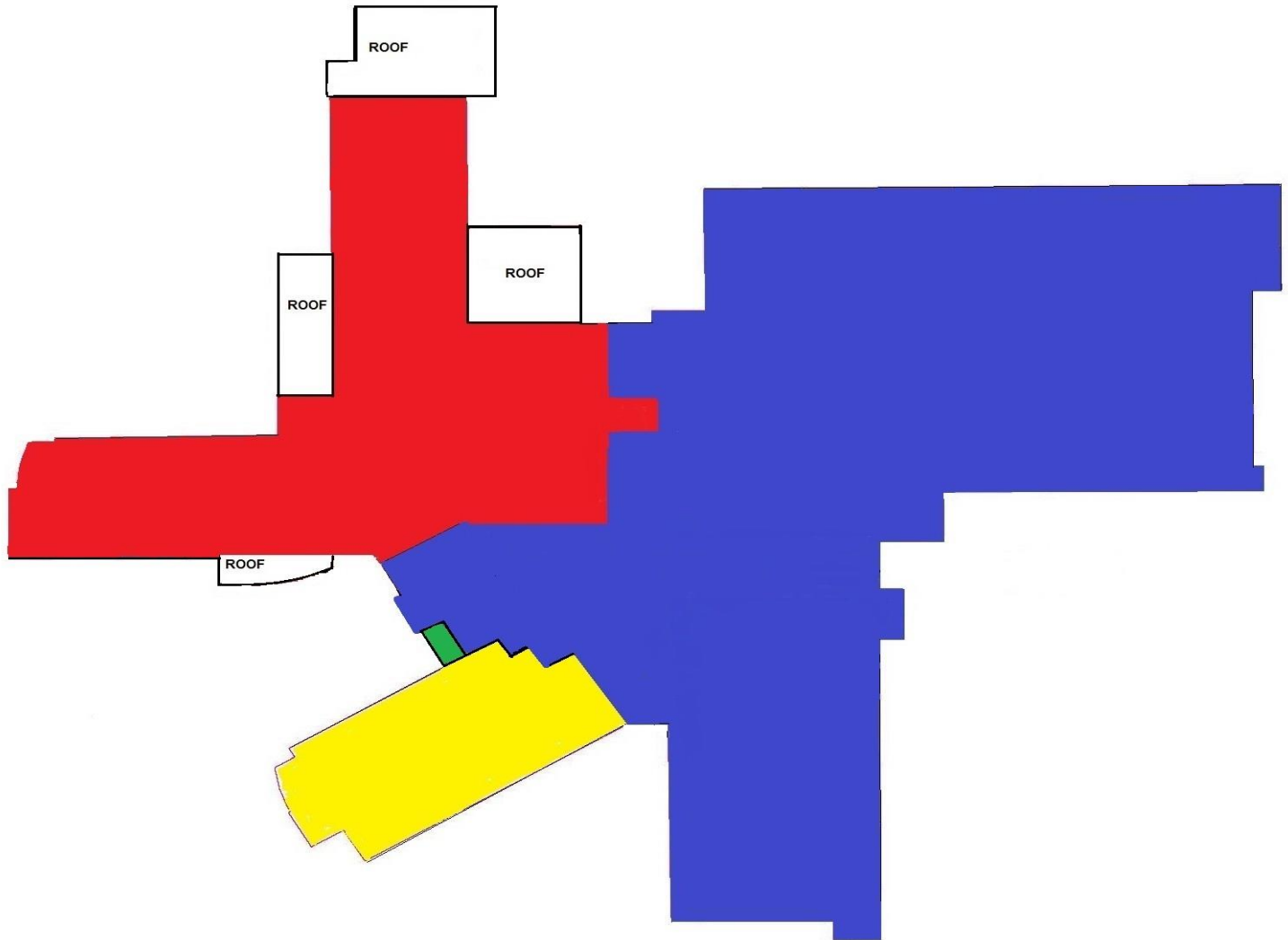
Multi-Use Campus



-  ENERGY CENTRE
-  SCHOOL DIVISION - COLD LAKE HIGH SCHOOL
-  PORTAGE COLLEGE
-  SHARED AREAS - CITY AND COLLEGE
-  SHARED AREA - HUB

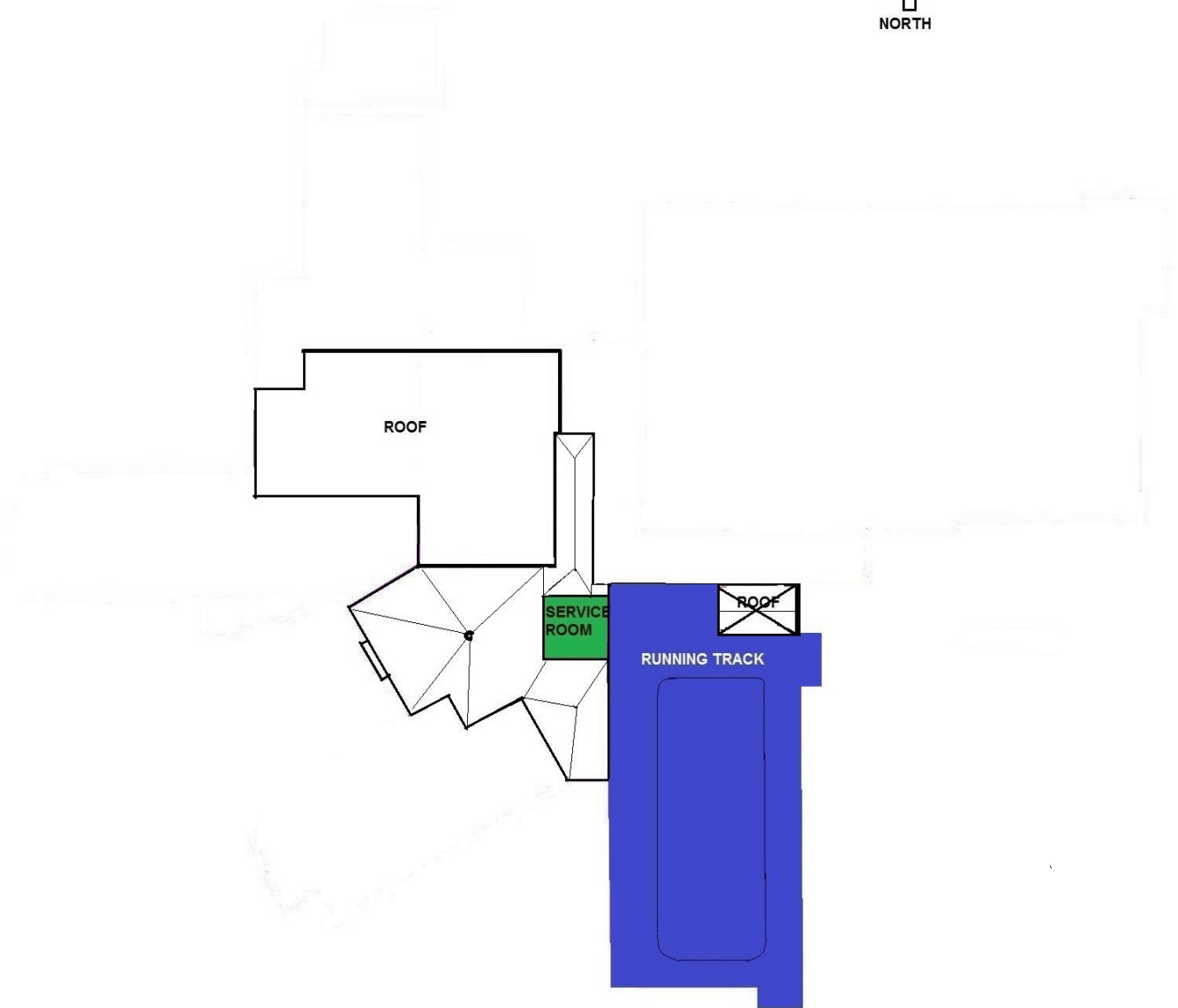
SCHEDULE "A" Page 1 of 3

SCHEDULE "A"
SECOND FLOOR
Multi-Use Campus



-  ENERGY CENTRE
-  SCHOOL DIVISION - COLD LAKE HIGH SCHOOL
-  PORTAGE COLLEGE
-  SHARED AREAS - CITY AND COLLEGE
-  SHARED AREA - HUB

SCHEDULE "A"
THIRD FLOOR
The Multi-Use Campus



-  ENERGY CENTRE
-  SHARED AREAS - CITY AND COLLEGE

SCHEDULE "B"

The Lands

Firstly:

**THE SOUTH WEST QUARTER OF SECTION FOURTEEN (14)
TOWNSHIP SIXTY THREE (63)
RANGE TWO (2)
WEST OF THE FOURTH MERIDIAN
CONTAINING 64.7 HECTARES (160 ACRES) MORE OR LESS.
EXCEPTING THEREOUT:
(A) 1.46 HECTARES, (3.61 ACRES), MORE OR LESS, AS SHOWN ON
ROAD PLAN 7820960.
(B) ALL THAT PORTION DESCRIBED AS FOLLOWS: COMMENCING AT THE
INTERSECTION OF THE EAST LIMIT OF ROAD PLAN 7820960 AND THE
SOUTH BOUNDARY OF THE SAID QUARTER SECTION; THENCE EASTERLY ALONG
THE SAID SOUTH BOUNDARY 237 METRES;
THENCE NORTHERLY AND AT RIGHT ANGLES THERETO 171 METRES; THENCE WESTERLY
AND PARALLEL WITH THE SAID SOUTH BOUNDARY TO THE EAST LIMIT OF THE SAID
ROAD PLAN; THENCE SOUTHERLY ALONG THE SAID EAST LIMIT TO THE POINT OF
COMMENCEMENT, CONTAINING 4.05 HECTARES (10 ACRES), MORE OR LESS.
(C) PLAN 1222380 – ROAD 1.85 HECTARES OR 4.57 ACRES EXCEPTING THEREOUT ALL
MINES AND MINERALS**

Secondly:

**THE NORTH WEST QUARTER OF SECTION FOURTEEN (14)
TOWNSHIP SIXTY THREE (63)
RANGE TWO (2)
WEST OF THE FOURTH MERIDIAN
CONTAINING 64.7 HECTARES (160 ACRES) MORE OR LESS AS
EXCEPTING THEREOUT:
(A) 0.486 HECTARES (1.20 ACRES) MORE OR LESS AS
SHOWN ON ROAD PLAN 5714AU
(B) 0.757 HECTARES (1.87 ACRES) MORE OR LESS, FOR
ROAD, AND 0.291 HECTARES (0.72 ACRES) MORE OR LESS
FOR CUT-OFF, BOTH SHOWN ON ROAD PLAN 4725EU
(C) 3.86 HECTARES (9.54 ACRES) MORE OR LESS, FOR
ROAD, AS SHOWN ON ROAD PLAN 3321PX
(D) ALL THAT PORTION WHICH LIES TO THE SOUTH AND WEST OF THE SOUTHERLY AND
WESTERLY LIMIT OF THE ROAD AS SHOWN ON ROAD PLAN 3321PX, AND WHICH LIES
GENERALLY EAST OF THE EASTERLY LIMIT OF THE ROAD AS SHOWN ON ROAD PLKAN
4725EU; CONTAINING 2.11 HECTARES OR 5.22 ACRES EXCEPTING THEREOUT ALL MINES
AND MINERALS.**

SCHEDULE "C"
THE COST SHARE

CAPITAL EXPENSES

Capital Renewal expenses shall be as in accordance with Item 8.4 "Capital Renewal Plan"

OPERATING EXPENSES

	CITY OF COLD LAKE	PORTAGE COLLEGE	NORTHERN LIGHTS SCHOOL DIVISION
ELECTRIC	Actual KWH plus 1/3 of HUB @ fixed rate which we buy KWH (currently .05347/KW) plus rate for Admin Retail Service charge; Plus 40.22% of actual wire charges	Actual KWH plus 1/3 of HUB @ fixed rate which we buy KWH (currently .05347/KW) plus rate for Admin Retail Service charge; Plus 17.38% of actual wire charges	Actual KWH plus 1/3 of HUB @ fixed rate which we buy KWH (currently .05347/KW) plus rate for Admin Retail Service charge; Plus 42.4% of actual wire charges
GAS	70%	30%	Billed directly
WATER	69.6% of water	30.4% of water	3Billed directly – have their own meter
JANITORIAL	1/3 HUB/Shared Space	1/3 HUB/Shared Space	1/3 HUB/Shared Space
JANITOR SUPPLIES	75%	25%	excluded
PARKING LOT MAINTENANCE as per shared areas in Schedule "E"	1/3	1/3	1/3
OTHER EXPENSES as agreed upon in advance (per expense)			

Operating Costs shall exclude interest on debt, capital retirement of debt, depreciation, and the cost of work done under warranty for which and to the extent any credit is received by the Parties for such costs.

SCHEDULE "D"

Dispute Resolution Process

1. **Definitions** – In this Schedule, the following words and phrases have the following meaning:
 - a) "Arbitrator" means the person appointed to act as such to resolve any Dispute;
 - b) "Arbitration" means a process whereby each of the Parties, with or without legal counsel, agrees to jointly engage and meet with an Arbitrator who will render a binding decision in respect of any Disputes;
 - c) "Dispute" means any disagreement or controversy between the Parties concerning any matter arising out of this Agreement;
 - d) "Disclosed Information" means the information disclosed by a Party for the purpose of settlement, negotiation, Mediation or Arbitration;
 - e) "Mediation" means a process whereby a Representative of each Party, with or without legal counsel, agrees to jointly engage the services and meet with a Mediator to participate in a mediation, conciliation or similar dispute resolution process;
 - f) "Mediator" means the person appointed to facilitate the resolution of a Dispute between the Parties;
 - g) "Party" means a Party to the Agreement to which this Dispute Resolution Procedure is attached, and "Parties" means more than one of them; and
 - h) "Representative" means an individual who has no direct operational responsibility for the matters comprising the Dispute who holds a senior position with a Party and who has full authority to settle a Dispute.

2. **Dispute Process** – In the event of any Dispute, the Parties agree that prior to commencing litigation, they shall undertake a process to promote the resolution of a Dispute in the following order:
 - a) first, by negotiation;
 - b) second, by way of Mediation; and
 - c) third, by Arbitration, if mutually agreed to in writing at the time of the Dispute, by the Parties;Negotiation, Mediation or Arbitration shall refer to, take into account, and apply the intentions and principles stated by the Parties within the Agreement to which this Schedule is attached.

3. **Negotiation** – A Party shall give written notice ("Dispute Notice") to the other Party of a Dispute and outline in reasonable detail the relevant information concerning the Dispute. Within seven (7) days following receipt of the Dispute Notice, the Parties shall each appoint a Representative, who shall meet and attempt to resolve the Dispute through discussion and negotiation. If the Dispute is not resolved within thirty (30) days of receipt of the Dispute Notice, the negotiation shall be deemed to have failed.

4. **Mediation** – If the Representatives cannot resolve the Dispute within such thirty (30) day period, then the Dispute shall be referred to Mediation. Any one of the Parties shall provide the other Parties with written notice (“Mediation Notice”) specifying the subject matters remaining in Dispute, and the details of the matters in Dispute that are to be mediated. If the Mediation is not completed within sixty (60) days from the date of receipt of the Dispute Notice, the Dispute shall be deemed to have terminated and failed to be resolved by Mediation.
5. **Arbitration**
- a) If the Mediation fails to resolve the Dispute and if both Parties so agree in writing, at the time of the dispute, the Dispute shall be submitted to binding Arbitration. One of the Parties may provide the other Party with written notice (“Arbitration Notice”) specifying the subject matters remaining in Dispute and the details of the matters in Dispute that are to be arbitrated. If the other Party agrees to proceed to Arbitration, such Dispute shall proceed to Arbitration. A failure to respond to the Arbitration Notice shall be deemed to constitute a refusal to proceed with Arbitration;
 - b) The Arbitrator shall conduct the Arbitration in accordance with the commercial arbitration rules (the “Rules”) established from time to time by the ADR Institute of Canada Inc., unless the Parties agree to modify the same pursuant to any arbitration agreement. The Arbitration Act (Alberta) shall apply to all Arbitrations but if there is a conflict between the Rules and the provisions of the Act, the Rules shall prevail. Notwithstanding the foregoing, any such Arbitration shall be conducted in the English language;
 - c) The Arbitrator shall proceed to hear and render a written decision concerning any Dispute within:
 - (i) forty-five (45) days, if the subject matter of the Dispute is less than \$50,000; or
 - (ii) one hundred and twenty (120) days, if the subject matter of the Dispute is greater than \$50,000;
 - d) The Arbitrator has the right to award solicitor-client costs against the unsuccessful Party and to award interest but does not have the right to award punitive, consequential or other exemplary damages;
 - e) The Arbitrator’s decision is final and binding but is subject to appeal or review by any court of proper jurisdiction only with respect to an allegation of fraud.
6. **Participation** – The Parties and their Representatives will participate in good faith in the negotiation, Mediation and, if applicable, Arbitration processes and provide such assistance and Disclosed Information as may be reasonably necessary and notwithstanding that litigation may have commenced as contemplated in this Schedule.
7. **Location** – The place for Mediation and Arbitration shall be Edmonton, Alberta.
8. **Selection of Mediator and Arbitrator** – If the Parties are unable to agree upon the appointment of a single Mediator or Arbitrator within ten (10) days after receipt of the Mediation Notice or Arbitration Notice, either of the parties may request that a single Mediator or Arbitrator, as the case may be, of suitable training, experience and independence, and who in respect of the subject matter of the Dispute has a reasonable practical understanding, be appointed by the

executive director or other individual fulfilling that role for the ADR Institute of Canada Inc. The executive director shall be requested to make this determination within five (5) days of receipt of the request.

9. **Costs** – Subject to clause 5. d) of this Schedule in the case of an Arbitration, the Parties shall bear their respective costs incurred in connection with the negotiation, Mediation and if, applicable, Arbitration except that the Parties shall equally share the fees and expenses of the Mediator and Arbitrator and the cost of the facilities required for Mediation and Arbitration.
10. **Disclosed Information** – All Disclosed Information shall be treated as confidential and neither its delivery nor disclosure shall represent any waiver of privilege by a Party disclosing such Disclosed Information. Subject only to the rules of discovery, each Party agrees not to disclose the Disclosed Information to any other Person or for any other purpose. Such Disclosed Information cannot be used in any subsequent proceedings without the consent of the party who has made the disclosure. The Parties agree that any Representative, Mediator and, if applicable, Arbitrator shall not be subpoenaed or otherwise compelled as a witness in any proceedings for the purpose of testifying with respect to the nature or substance of any dispute resolution process that may arise in relation to any matter that is the subject of this Agreement. Nothing in this shall require a Party to disclose information that is subject to confidentiality provision with third parties.
11. **Litigation and Limitations Act** – No Party shall commence litigation concerning the Dispute until the negotiation and Mediation processes have concluded. The Parties agree that during the time any Dispute is subject to the negotiation and Mediation processes, the limitation periods set forth in the Limitations Act (Alberta) shall be stayed. The limitation periods shall be reinstated once the Mediation terminates or is deemed terminated so that each of the Parties shall have the respective rights and remedies that were available to them before the commencement of these processes. Any Party may commence litigation on any date, if necessary, to preserve its legal rights and remedies if the commencement of litigation after that date would otherwise be banned by any applicable limitation period or if the commencement of litigation is otherwise necessary to prevent irreparable harm to that Party.
12. **Confidentiality** – The Parties agree that there is a real risk that substantial damage to a Party's commercial interests may result if Disclosed Information or Confidential Information is obtained by third parties because a Dispute becomes the subject matter of litigation. The Parties agree not to contest or oppose, directly or indirectly, an application by a Party to the court, that the court's file relating to such litigation, including this Agreement and supporting financial information, be sealed upon commencement of the litigation.

