

THIS FACILITY USE AGREEMENT made effective the 1<sup>ST</sup> day of January, 2023.

**BETWEEN:**

**UPPER CANADA DISTRICT SCHOOL BOARD**

**Hereinafter “the Board”  
OF THE FIRST PART**

**AND:**

**THE CORPORATION OF THE TOWNSHIP OF SOUTH STORMONT**

**Hereinafter “the Township”  
OF THE SECOND PART**

THIS AGREEMENT WITNESSETH that in consideration of the mutual covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the Board and the Township, the Board and the Township covenant and agree as follows:

**1. DEFINITIONS AND SCHEDULES**

- 1.1. In this Agreement, unless there is something in the context inconsistent therewith:
  - 1.1.1 “Agreement” means this Agreement including the Schedule hereto;
  - 1.1.2 “Arbitrations Act” means the Arbitrations Act, 1991, S.O. 1991, c. 17 as amended;
  - 1.1.3 “Board Guidelines” means the Board’s community use of school procedures in force from time to time, a copy of which is attached hereto as Schedule “A”;
  - 1.1.4 “Dispute” means any dispute between the parties arising from this Agreement including but not limited to disputes relating to the interpretation, breach or enforceability of this Agreement;
  - 1.1.5 “Effective Date” means January 1<sup>st</sup>, 2023;
  - 1.1.6 “Extended Term” means the time or period or periods described in Clause 8 hereof;

- 1.1.7 “Facility” means the multi-use double gymnasium/community centre, mobile stage, municipal recreation office, storage space, change rooms, parking lot and servery located on the School Site;
- 1.1.8 “Force Majeure” means acts of God, strikes, lock-outs, or other labour disturbances, interruptions by governments, Court Orders, orders of any regulatory body having jurisdiction, acts of the public enemy, earthquakes, fire, storm, flood, washout or explosion and any other event or occurrence beyond the reasonable control of the Board, whether or not of the nature of those hereinbefore mentioned;
- 1.1.9 “Former Board” means The Stormont, Dundas and Glengarry County Board of Education;
- 1.1.10 “Former Township” means the Corporation of the Township of Osnabruck;
- 1.1.11 “1990 Agreement” means the written agreement dated December 21<sup>st</sup>, 1990 between the Former Board and the Former Township related to the Facility;
- 1.1.12 “School Site” means the lands and school premises of the Rothwell-Osnabruck School located at 1 College Street, Ingleside, Ontario;
- 1.1.13 “Term” means the time period January 1, 2023 to December 31, 2027.
- 1.2 Schedules: The Schedules to and forming part of this Agreement consist of:
- Schedule “A” – Board Guidelines as of the Effective Date;
- Schedule “B” – Board and Township Facility Usage Times.

## **2. RECITALS**

- 2.1 The Board is the owner of the School Site.
- 2.2 The Facility was constructed by the Former Board on the School Site in 1991.
- 2.3 The Board is the successor in law of the Former Board.
- 2.4 The Township is the successor in law of the Former Township.
- 2.5 The Former Board and the Former Township were the parties to the 1990 Agreement which set out the terms and conditions for cost sharing for the capital constructions costs of the Facility, for cost sharing for the operational costs of the Facility, for cost sharing for the maintenance and repair of the Facility, for the operation, maintenance and caretaking of the Facility, for usage of the Facility,

for payment of fees for usage of the Facility and other matters and things all as set out in the 1990 Agreement.

- 2.6 The Board and the Township agree that the 1990 Agreement is of no further force or effect as of the Effective Date.
- 2.7 The purpose of the within Agreement is to replace the 1990 Agreement and to confirm the terms and conditions whereby the Township shall be permitted by the Board to use the Facility for the Term and for any Extended Term.

### **3. USE AND OPERATION OF FACILITY**

- 3.1 The Board covenants and agrees that the Township may use the Facility for the benefit of the Township during the Term and any Extended Term subject to the terms and conditions of this Agreement.
- 3.2 Use and operation of the Facility by the Township shall:
  - (a) be at the sole risk and expense of the Township;
  - (b) be supervised by at least one (1) Township employee or at least one (1) qualified designate of the Township supervising the Facility and the individuals using the Facility; and
  - (c) be in accordance with the Board Guidelines.
- 3.3 The Township acknowledges and agrees that during the periods of time during the Term and any Extended Term when school is in session the Board shall have exclusive usage priority of the Facility during the Board's designated usage times set out in Schedule "B" hereof.
- 3.4 The Board acknowledges and agrees that during the periods of time during the Term or any Extended Term when school is not in session the Township shall have exclusive usage priority of the Facility during the Township's designated usage times set out in Schedule "B" hereof.
- 3.5 Each of the Board and the Township shall designate an employee or nominee who shall be responsible for the scheduling of events during each party's designated usage times set out in Schedule "B" and for booking procedures.
- 3.6 The Board and the Township acknowledge and agree that all members of the public who agree to abide by the Board Guidelines may be permitted to book time in the Facility on a first come first serve basis.
- 3.7 The Township covenants and agrees that on three (3) weeks written notice by the Board to the Township given in accordance with Clause 10 hereof the Facility may

be closed for the purpose of maintenance and repair, emergency maintenance excepted.

- 3.8 The Board covenants and agrees that subject to Clause 3.7 hereof and except for delays or interruptions caused by or arising out of events of a Force Majeure and subject to normal wear and tear the Board shall at all times during the Term and any Extended Term keep the Facility in operation and good condition.
- 3.9 The Board and the Township shall each be responsible for the provision, supervision, costs and expenses of program staff and volunteers during each of the Board and the Township's respective programs and designated times for use of the Facility.

#### **4. FEES**

- 4.1 The Township covenants and agrees to pay the Board fees at the rate of forty-four (\$44.00) dollars per hour for the use of the Facility for adult programs offered by the Township during the Term and any Extended Term.
- 4.2 The Township and the Board covenant and agree that the fees referred to in Clause 4.1 hereof may be changed from time to time during the Term and any Extended Term by mutual agreement of the Township and the Board evidenced in writing.
- 4.3 The Township acknowledges and agrees that all other community users of the Facility will pay fees to the Board in accordance with fee rates established in the Board Guidelines.
- 4.4 The Township acknowledges and agrees that in the event the Township wishes to use some part of the School Site other than the Facility and provided the Board consents to such use, the Township shall pay to the Board such fee for such use in accordance with the fee rates established in the Board Guidelines.
- 4.5 The Township and the Board acknowledge and agree that revenues received by the Township for programs using the Facility which programs are presented and administered by the Township shall be the sole property of the Township and revenues received by the Board for all other programs using the Facility, subject to Clause 4.6 hereof, shall be the sole property of the Board.
- 4.6 Notwithstanding Clause 4.5 hereof, in the case of the Board and the Township jointly presenting and administering a program or event, fees or other revenues received by the Township and the Board for such program or event shall be shared equally between the Board and the Township.

## **5. MAINTENANCE AND REPAIR OF FACILITY**

- 5.1 The Board shall be solely responsible for the performance of repair and maintenance of the Facility during the Term and any Extended Term.
- 5.2 Any and all repairs and maintenance of the Facility undertaken by the Board during the Term and any Extended Term shall be at the sole cost and expense of the Board.

## **6. INSURANCE**

- 6.1 The Township covenants and agrees that on or before the commencement of the Term the Township shall cause to be taken out with an insurance company or companies authorized to do business in Ontario and thereafter to be maintained for the balance of the Term and any Extended Term a comprehensive public liability insurance policy, including contractual liability on an occurrence basis against claims for personal or bodily injury, death or property damage suffered by others arising in connection with the Township's use of the Facility, indemnifying and insuring the Township and all others for whom the Township is at law responsible in an amount of not less than five million (\$5,000,000.00) dollars for any personal or bodily injury, death, property damage or other claim in respect of any one accident or occurrence.
- 6.2 The policy of insurance referred to in Clause 6.1 shall:
- (a) contain a cross-liability clause endorsement of standard wording;
  - (b) name the Board as an additional insured with respect to any claim arising out of the negligent act or omission of the Township or another person for whose negligence the Township is responsible in law;
  - (c) be primary and be fully exhausted before calling into contribution any insurance available to the Board; and
  - (d) contain an agreement by the insurer to the effect that the insurer will not cancel or alter or refuse to renew such policy prior to its expiration for other than non-payment of premium except after ninety (90) days prior written notice to the Township and to the Board.
- 6.3 The Township shall provide to the Board on or before January 1<sup>st</sup>, 2023 a valid Certificate of Insurance satisfactory to the Board, acting reasonably, that references this Agreement and confirms the coverage identified in Clauses 6.1 and 6.2 hereof.
- 6.4 The Board covenants and agrees that on or before January 1<sup>st</sup>, 2023 the Board shall cause to be taken out with an insurance company or companies authorized

to do business in Ontario and thereafter to be maintained for the balance of the Term and any Extended Term a comprehensive public liability insurance policy, including contractual liability on an occurrence basis against claims for personal or bodily injury, death or property damage suffered by others arising in connection with the School indemnifying and insuring the Board and all others for whom the Board is at law responsible in an amount of not less than five million (\$5,000,000.00) dollars for any personal or bodily injury, death, property damage or other claim in respect of any one accident or occurrence.

The policy of insurance referred to in Clause 6.4 shall:

- (a) contain a cross-liability clause endorsement of standard wording;
- (b) name the Township as an additional insured with respect to any negligent act or omission of the Board or another person for whose negligence the Board is responsible in law;
- (c) be primary and be fully exhausted before calling into contribution any insurance available to the Township; and
- (d) contain an agreement by the insurer to the effect that the insurer will not cancel or alter or refuse to renew such policy prior to its expiration for other than non-payment of premium except after ninety (90) days prior written notice to the Township and to the Board.

6.5 The Board shall provide to the Township, upon request a valid Certificate of Insurance satisfactory to the Township, acting reasonably, that references this Agreement and confirms the coverage identified in Clauses 6.4 and 6.5 hereof.

## **7. INDEMNITY**

7.1 The Township hereby agrees to indemnify and hold harmless the Board, its Trustees, officers, agents, and employees ("Indemnified Parties") from and against all liability, loss, costs, damages and expenses (including legal, expert and consultant fees), causes of action, actions, claims, demands, lawsuits or other proceedings (collectively, "Claims"), by whomever made, sustained, incurred, brought or prosecuted, including for third party bodily injury (including death), personal injury and property damage, arising out of any negligent act or omission of the Township or another person for whose negligence the Township is responsible in law. The obligations contained in this Clause 7.1 will survive the expiry or termination of this Agreement.

7.2 The Board hereby agrees to indemnify and hold harmless the Township, its Mayor, Councillors, officers, agents, volunteers and employees ("Indemnified Parties") from and against all liability, loss, costs, damages and expenses (including legal, expert and consultant fees), causes of action, actions, claims,

demands, lawsuits or other proceedings (collectively, "Claims"), by whomever made, sustained, incurred, brought or prosecuted, including for third party bodily injury (including death), personal injury and property damage, arising out of any negligent act or omission of the Board or another person for whose negligence the Board is responsible in law. The obligations contained in this Clause 7.2 will survive the expiry or termination of this Agreement.

## **8. EXTENDED TERM**

- 8.1 The Term of this Agreement shall be automatically extended for further five (5) year periods (hereinafter an "Extended Term"). Either of the parties shall have the right to terminate the Lease upon giving one hundred and eighty (180) days written notice to the other.

## **9. DISPUTE RESOLUTION**

- 9.1 In the event of a Dispute between the parties with respect to the interpretation of this Agreement or their obligations thereunder, the parties shall make good faith efforts to resolve the Dispute by negotiation.
- 9.2 In the event that negotiations do not lead to a resolution of the Dispute, the parties agree that alternative dispute resolution processes such as mediation, appointment of a neutral third party evaluator or arbitration are preferable to litigation as a way to resolve Disputes that may arise under this Agreement and they agree to give good faith consideration to having resort to an alternative dispute resolution process before initiating legal proceedings to deal with any such Disputes.
- 9.3 Either party may, at any time, give written notice of a Dispute to the other.
- 9.4 No later than ten (10) days after the delivery of a notice of a Dispute, the parties shall meet and attempt, in good faith, to resolve the Dispute.
- 9.5 If the Dispute is not resolved within thirty (30) days of the delivery of a notice of a Dispute any party may, by giving written notice to the other party, require that the Dispute be submitted to mediation or arbitration and the parties agree that notice requiring arbitration may be given whether or not a mediation is ongoing. If notice requiring arbitration is given while mediation is ongoing, the parties shall cease all mediation activities and proceed with arbitration.
- 9.6 Mediation of a Dispute shall be subject to the following terms and conditions:

- (a) the party giving a notice of mediation shall include the names of two (2) individuals to act as mediator in the notice. After receiving the notice of mediation, the other party shall within five (5) business days submit the names of two (2) individuals to act as mediator. If the party fails to submit names within five (5) business days that party shall be deemed to accept as a mediator, the persons selected by the other party. Individuals submitted to act as mediator shall be qualified and experienced professional mediators whose mediation practice is based in Eastern Ontario.
- (b) a single individual shall be unanimously chosen by the parties from the names submitted, provided however that if the parties are unable to reach agreement on the selection of a mediator within five (5) days after the last party has provided the names of its proposed mediators, the mediator shall be selected at random by draw from among the mediators proposed by the parties;
- (c) not more than ten (10) days after the date of the appointment of the mediator, each party shall submit to the mediator and to the other party a without prejudice written mediation brief of not more than ten (10) pages in length setting out the party's position concerning the matters involved in the Dispute;
- (d) the mediation shall be attended by the representatives of the parties with full authority to settle the Dispute. A party may be accompanied to the mediation by its lawyer provided that it gives the other party written notice at least three (3) business days in advance of its intention to do so;
- (e) any party or the mediator shall be entitled to withdraw from the mediation at any time;
- (f) the mediation shall end on the earlier of (a) the date that the parties enter into a binding settlement agreement with respect to the Dispute (b) the date that any party or the mediator withdraws from the mediation, or (c) at 5:00 p.m. (Eastern time) on the day that is the 30<sup>th</sup> day after the notice of mediation was received in accordance with the terms of this Agreement; and
- (g) the fees and expenses of the mediation shall be borne as specified in a settlement, if a settlement is obtained. If no settlement is obtained, the mediator's fees and expenses shall be as specified in the notice issued by the mediator stating that the mediation has failed. Each



party shall bear its own expenses of the mediation whether or not it is successful.

9.7 Arbitration of a Dispute shall be subject to the following terms and conditions:

- (a) The Dispute shall be determined by the provisions of the *Arbitrations Act* by a sole arbitrator agreed upon by the parties, or failing agreement, appointed by a judge of the Ontario Superior Court of Justice upon the application of either of the parties; and
- (b) any determination by arbitration shall include a determination as to payment of the costs of the arbitration and shall be binding upon the parties, who shall not have any right of appeal from such determination.

9.8 The negotiations and other settlement efforts of the parties shall, in all respects, be kept confidential and shall be strictly without prejudice. All information provided, documents disclosed or statements made in the course of those negotiations and settlement efforts, including without limitation, any admission, view, suggestion, notice, response, discussion, position or settlement proposal, shall be held in strict confidence by the parties and, unless there is a legal requirement that such information be revealed, it shall not be subject to disclosure through discovery or any other process or relied upon by any party and shall not be admissible into evidence for any purpose, including impeaching credibility, in any subsequent proceedings except as required by law.

## 10 **NOTICE**

10.1 Any demand or notice to be given pursuant to this Agreement shall be properly made and given if made in writing and either delivered to the party for whom it is intended to the address as set out below or sent by prepaid registered mail addressed to such party as follows:

- (a) where the Board is the intended recipient:

Upper Canada District School Board  
225 Central Avenue West  
Brockville, Ontario  
K6V 5X1

Attention: Executive Superintendent of Business

(b) where the Township is the intended recipient:

P.O. Box 84  
2 Mille Roches Road  
Long Sault, Ontario  
K0C 1P0

Attention: Chief Administrative Officer

Or such other addresses as the parties may from time to time notify in writing, and any demand or notice so made or given shall be deemed to have been properly made or given and received on the day on which it shall have been so delivered or, if mailed, then, in the absence of any interruption in postal service affecting the delivery or handling thereof, on the day following five business days following the date of mailing.

## **11 FURTHER ASSURANCES**

11.1 Each party shall execute and deliver such further documents and do such other things as reasonably may be required from time to time to give effect to this Agreement.

## **12. WAIVER**

12.1 The failure of any party to this Agreement to enforce any provision or any rights in respect thereof or to insist upon strict compliance or adherence to any term of this Agreement shall not be considered a waiver of such provision, right, term, covenant or obligation or in any way affect the validity of this Agreement or deprive the applicable party of the right to insist upon strict compliance or adherence to that provision, right term, covenant or obligation.

12.2 The exercise of any right under this Agreement shall not preclude or prejudice any party from exercising any other right it may have under this Agreement, irrespective of any previous action or proceeding taken by it hereunder.

12.3 Any waiver by any party of the performance of any provision, right, term, covenant or obligation in this Agreement shall be effective only if it is in writing and notice is provided in accordance with Clause 10 hereof.

## **13. NON-REGISTRATION**

13.1 The Township covenants and agrees that neither this Agreement nor notice of this Agreement may be registered on title to the School Site.

**14. NON-ASSIGNMENT**

- 14.1 The Township shall not assign or transfer its interest or obligations in this Agreement without the prior written consent of the Board, which consent may be unreasonably withheld.

**15. NO JOINT VENTURE OR PARTNERSHIP**

- 15.1 Nothing contained herein shall create or be deemed to create a joint venture or partnership between the parties hereto.

**16. SEVERABILITY**

- 16.1 If any provision of this Agreement is illegal or unenforceable, such provision shall be deemed to be severable from the remaining provisions of this Agreement and shall not invalidate or render unenforceable the remainder of this Agreement.

**17. AMENDMENTS. MODIFICATION BY WRITTEN AGREEMENT**

- 17.1 No amendment, supplement, waiver or consent provided for by the provisions of this Agreement shall be effective unless in writing and signed by the party against whom enforcement of the amendment, supplement, waiver or consent is sought.

**18. TIME OF ESSENCE**

- 18.1 Time shall be of the essence of this Agreement.

**19. GOVERNING LAW**

- 19.1 This Agreement shall be construed under the laws of the Province of Ontario.

**20. ENTIRE AGREEMENT**

- 20.1 The parties acknowledge and agree that this Agreement constitutes the entire agreement between the parties hereto and there are no representations or warranties, oral or otherwise, except as are herein contained.

**21. SUCCESSORS AND ASSIGNS**

- 21.1 This Agreement shall bind and benefit the parties hereto and their respective successors and permitted assigns.

21.2 Despite any permitted assignment of this Agreement by the Township, the Township shall remain liable under this Agreement unless released in writing by the Board.

**22. CAPTIONS**

22.1 The captions and headings of this Agreement are for convenience and reference only and shall not affect the interpretation of this Agreement.

**23. INTERPRETATION**

23.1 In this Agreement, unless the context requires otherwise, words imputing the singular include the plural, any reference to the Township includes the servants, employees, agents, officers, members and invitees of the Township and all others over whom the Township might reasonably be expected to exercise control; any reference to the Board includes the servants, employees, agents, officers and invitees of the Board and all others over whom the Board might reasonably be expected to exercise control; person includes any individual, firm or corporation; hereof, herein, hereunder and similar expressions used in any Clause relate to the whole of this Agreement and not that Clause only.

IN WITNESS WHEREOF the parties hereto have duly executed this Agreement.

Dated at Brockville, Ontario this      day of                      2023.

**UPPER CANADA DISTRICT SCHOOL BOARD**

Per: \_\_\_\_\_  
Name: Jeremy Hobbs  
Title: Executive Superintendent of Business  
I have authority to bind the Board

Dated at Long Sault, Ontario, this      day of \_\_\_\_\_ 2023.

**THE CORPORATION OF THE TOWN OF SOUTH STORMONT**

Per: \_\_\_\_\_  
Name: Bryan McGillis  
Title: Mayor

Per: \_\_\_\_\_  
Name: Loriann Harbers  
Title: Clerk

We have authority to bind the Township

**SCHEDULE "A"**

Please refer to policy 435 and procedure 435.1

<http://www.boarddocs.com/can/ucdsb/Board.nsf/goto?open&id=9YWL9L5576B9>

**SCHEDULE "B"****PART A**

The Board's designated Facility usage time shall be:

From 7:30 a.m. to 6:00 p.m. Monday through Friday.

**PART B**

The Township's designated Facility usage time shall be:

From 6:00 p.m. to 10:00 p.m. Monday through Friday;

From 8:00 a.m. to 10:00 p.m. Saturday;

From 8:00 a.m. to 10:00 p.m. Sundays

**PART C**

The Township and the Board agree that by mutual agreement between the designated employees or nominees of each party in charge of scheduling, the above-noted designated times may be changed from time to time.