

FACILITIES JOINT USE AGREEMENT

This Agreement is entered into this 18 day of September, 2023.

BETWEEN

**THE BOARD OF TRUSTEES OF
BLACK GOLD SCHOOL DIVISION**

(hereinafter referred to as the "*Division*")

- AND -

THE TOWN OF CALMAR

(hereinafter referred to as the "*Town*")

WHEREAS:

It is the responsibility of the Town to plan, develop, construct, operate and maintain park and recreational land and facilities in the Town of Calmar.

It is the responsibility of the Division to develop and deliver educational programs and provide the necessary facilities and sites for these programs.

The Parties support sharing of publicly funded facilities to maximize benefit to students and citizens of the Town of Calmar.

The Town and the Division wish to reaffirm their commitment to the principles of the shared use of Town Facilities and School Facilities.

In such regard, and in recognition of the importance of collaboration, the Parties agree to act openly, fairly, bona fide and in the utmost good faith with each other and accordingly agree, from time to time, as far as each may legally do so, to execute and deliver to each other such documentation and do such acts as may be required to reasonably carry out the principles of this Agreement.

The Parties agree that the foregoing Preambles shall form part of this Agreement.

NOW THEREFORE IN CONSIDERATION of their mutual commitment to the shared use of Town Facilities and School Facilities the Parties agree as follows:

1. DEFINITIONS

1.1. In this Agreement, unless there is something in the context that is inconsistent therewith the following terms shall be interpreted as having the following meanings:

- (a) "Agreement" means this Agreement and Schedule "A" which is attached to and form part of this Agreement.
- (b) "Associate Superintendent" means the Associate Superintendent – Business & Finance of the Division.
- (c) "Board" means the Board of Trustees of Black Gold School Division and any successor board or authority.
- (d) "CAO" means the Chief Administrative Officer of the Town.
- (e) "Council" means the municipal council of the Town of Calmar.
- (f) "Disease Pandemic" means any disease which is considered to be: a global pandemic by the World Health Organization; a national pandemic by the Government of Canada, or a provincial pandemic by the Government of Alberta;
- (g) "Disease Pandemic Guidelines" means all guidelines and regulations published by the Government of Alberta and any other relevant Government Authority regarding mitigation measures taken to reduce transmission of a Disease Pandemic.
- (h) "Effective Date" means the 18 day of September 2023, or such other date as may be mutually agreed in writing by the CAO and the Associate Superintendent.

- (i) "Extraordinary Costs" means costs incurred for vandalism/undue damage repair, to meet special User Group requirements, to meet legislative requirements, and costs associated with bringing a facility up to standard following an intense level of use.
- (j) "Force Majeure" means the occurrence of an event beyond the reasonable control of a party that interferes with, delays or prevents performance of the obligations of a party, provided that the non-performing party is without fault in causing or failing to prevent such occurrence, and such occurrence cannot be circumvented through the use of reasonable alternative sources, workaround plans or other means. Subject to the foregoing, "Force Majeure" includes, (i) explosions, fires, wildfires, flood, earthquakes, catastrophic weather conditions or other elements of nature or acts of God, (ii) acts of federal, provincial or local governmental authorities or courts; (iii) an order, directive, or recommendation of any Government Authority related to a Disease Pandemic, due to changes to the Disease Pandemic Guidelines, or any combination of thereof; (iv) a labour strike of the Town's or Division's employees; and (v) acts of war (declared or undeclared), acts of terrorism, insurrection, riots or civil disorders, but does not include a failure to perform as a result of a party's lack of funds or financial ability or capacity to carry on business;
- (k) "Joint Use Facilities" means those facilities designated by the Parties and listed in Schedule "A".
- (l) "Operating Guidelines" means the joint use guidelines created for the shared use of Town Facilities and School Facilities as set out in Schedule "A".
- (m) "Parties" means the entities signing this Agreement collectively and Party shall mean one (1) of the signatories.
- (n) "School Facilities" shall have the meaning set out in Schedule A-2.
- (o) "Superintendent" means the Superintendent of the Division.
- (p) "Town Facilities" shall have the meaning set out in Schedule A-1.

2. TERM

- 2.1 This Agreement shall be in force and effect as of the Effective Date and shall continue to be in effect until such time as it is terminated by the Parties in accordance with Article 8.

3. JOINT USE COMMITTEE

- 3.1. A Joint Use Committee will be established consisting of one (1) or two (2) representative(s) appointed by each of the respective Parties.
- 3.2. It is acknowledged and agreed that the Joint Use Committee may from time to time invite resource personnel as it deems advisable for the purpose of obtaining necessary information and advice.
- 3.3. The Joint Use Committee shall be responsible to the Town and the Division for carrying out the following duties from time to time during the course of the Agreement.
 - (a) Interpreting the Agreement;
 - (b) Implementing the Agreement;
 - (c) Recommending amendments to the Agreement; and
 - (d) Evaluating the effectiveness of the Agreement annually.
- 3.4. The Joint Use Committee will ensure that the Schedule A is accurate and current on an annual basis.
- 3.5. Changes to policies or practices relating to this Agreement or affecting the use of Joint Use Facilities shall be determined in consultation with the Parties.

4. JOINT USE FACILITIES

4.1. Town Facilities

- (a) The Town shall make available to the Division those Town Facilities identified as Joint Use Facilities on Schedule "A".
- (b) The Town shall determine what activities can be accommodated in these facilities.
- (c) The Town may, if the Division requests services above the normal level, charge for additional costs to meet those requests.
- (d) The Town may also charge the Division for any extraordinary costs the Town incurs due to vandalism, damage or other costs not associated with normal wear and tear as a result of the use of a Town Facility by a school user group.
- (e) The Town shall be responsible for facility utilities, normal wear and tear, and normal staffing costs.

4.2 School Facilities

- (a) The Division shall make available to the Town those School Facilities identified as Joint Use Facilities on Schedule "A".
- (b) The Division shall determine what activities can be accommodated in these facilities.
- (c) The Division may, if the Town requests services above the normal level, charge for additional costs to meet those requests.
- (d) The Division may also charge the Town for any extraordinary costs the Division may incur due to vandalism, damage or other costs not associated with normal wear and tear as a result of the use of a School Facility by a Town user group.
- (e) The Division shall be responsible for facility utilities, normal wear and tear, and normal staffing costs.

5. OPERATING GUIDELINES

- 5.1. The Parties hereby agree to adhere with the Operating Guidelines which are attached to this Agreement as Schedule "A".
- 5.2. The Parties shall not allow use of Joint Use Facilities unless such use respects the Operating Guidelines in effect.
- 5.3. The Parties agree to give a minimum of two weeks (14 days) notice if they wish to book their own facilities, causing the other Party to be "bumped".
- 5.4. The Parties agree to give a minimum of one week (7 days) notice for any cancellation of bookings, unless it is beyond the reasonable control of the other Party.
- 5.5. The Parties agree that they are responsible to provide their own supervision and minor clean-up (leaving the facility as it was found) when using the other Party's facility.
- 5.6. The Parties agree to provide complete janitorial services as required in their own facilities.
- 5.7. Town use of School Facilities will be booked through the Division's Facilities Rental Assistant.
- 5.8. School use of Town Facilities will be booked through the Town's Recreation Coordinator.

6. INSURANCE AND INDEMNITY

6.1. Both Parties shall, at their own expense and without limiting their liabilities provide and maintain the below listed insurance coverage in compliance with the Insurance Act of Alberta, with carriers, on forms and with coverage endorsements satisfactory to the other Party in its sole discretion.

- a) Commercial general liability insurance (including premises/operations liability, contractors liability, contractual liability, products liability, completed operations liability, broad form property damage liability, personal injury liability, and extended bodily injury and death coverage) in a minimum amount of \$5,000,000 per occurrence and \$5,000,000 aggregate combined single limit for bodily injury or death, personal injury or property damage.

The insurance policies mentioned above are to contain, or be endorsed to contain, the following provisions:

- a) Both parties shall have the required insurance in full force and effect prior to execution of this Agreement and shall provide the other Party with evidence satisfactory to the other Party of all required insurance in the form of the Certificate of Insurance.
- b) The insurance to be maintained by each Party shall list the other Party as an additional insured.
- c) All required insurance shall be endorsed to provide the other Party with 30 days advance written notice of cancellation.
- d) Both parties shall require and ensure that each subcontractor provide evidence of comparable insurance to that set forth in the insurance requirements section of the contract and shall provide evidence of same to the other Party upon request.

6.2 Each Party (the "Indemnifying Party") agrees to defend, indemnify and hold the other Party (the "Non-Indemnifying Party") harmless from all loss, cost, expense, judgment or damage on account of injury to persons, including personal injury, death and damage to property, in any way caused by the negligence of the Indemnifying Party, its servants, subcontractors, agents or employees, which relates to (or arises out of) programs or other matters to which this agreement pertains, together with all legal expenses and costs incurred by the Non-Indemnifying Party in defending any legal action pertaining to the above.

7. WITHDRAWAL AND TERMINATION

- 7.1. Either Party may withdraw from this Agreement in any year of the term by providing one (1) year's written notice to the other Party of its intention to withdraw from this Agreement.
- 7.2. This Agreement may be terminated upon the written agreement of the Parties.

8. AMENDMENT

- 8.1. The Agreement shall not be modified, varied or amended except by the written agreement executed by the Parties.
- 8.2. Changes and/or modifications to Schedule "A" may be made from time to time by the Joint Use Committee when necessary. However, final authority is assigned to the owner of the facility where applicable. No other amendments to the Agreement shall be made except by written agreement executed by the Parties.

9. FORCE MAJEURE

- 9.1. Neither party will be held responsible or liable to the other or deemed to be in default or in breach of this Agreement for its delay, failure or inability to meet any of its obligations under this Agreement caused by or arising from a Force Majeure event. Any delay, failure or inability of a Party to perform its obligations under this Agreement will be excused for the reasonable duration of the Force Majeure event.
- 9.2. Where either party is prevented from carrying out its respective obligations hereunder due to a Force Majeure event, such party shall, as soon as possible, give notice of the occurrence of such Force Majeure event to the other party and of the obligations, the performance of which is thereby delayed or prevented, and the party giving notice shall thereupon be excused from the performance of such obligations for the period of time directly attributable to such prevention or delay.

10. DISPUTE RESOLUTION

- 10.1. The Parties acknowledge that it is their intent to resolve all disputes in a private, expeditious and business-like manner through communication, discussion and resolution by negotiation. In furtherance of those objectives, the Parties agree to refer any unresolved dispute to the CAO and Superintendent for resolution.

11. NOTICE

11.1. Whether or not so stipulated herein, all notices, communication, requests and statements (the "**Notice**") required or permitted hereunder shall be in writing.

11.2. Any Notice required or permitted hereunder shall be sent to the intended recipient at its address as follows:

- (i) Black Gold School Division
3rd Floor, 1101 - 5th Street
Nisku, Alberta T9E 7N3
Attention: Associate Superintendent – Business & Finance
E-mail: chelsey.volkman@blackgold.ca

- (ii) Town of Calmar
P.O. Box 750
Calmar, Alberta T0C 0V0
Attention: CAO
E-mail: slosier@calmar.ca

or to such other address as each Party may from time to time direct in writing.

11.3. Notice shall be served by one of the following means:

- (a) by delivering it to the Party on whom it is to be served. Notice delivered in this manner shall be deemed received when actually delivered to such Party;
- (b) if delivered to a corporate Party, by delivering it to the address specified above during normal business hours.
- (c) by fax or email to the Party on whom it is to be served. Notice delivered in this manner shall be deemed received on the earlier of:
 - i. if transmitted before 3:00 p.m. on a Business Day, on that Business Day; or
 - ii. if transmitted after 3:00 p.m. on a Business Day, on the next Business Day after the date of transmission; or

- (d) by mailing via first class registered post, postage prepaid, to the Party to whom it is served. Notice so served shall be deemed to be received five (5) days after the date it is postmarked. In the event of postal interruption, no notice sent by means of the postal system during or within seven (7) days prior to the commencement of such postal interruption or seven (7) days after the cessation of such postal interruption shall be deemed to have been received unless actually received.

12. HEADINGS

- 12.1. The insertion of headings is for convenience of reference only and shall not be construed so as to affect the interpretation or construction of this Agreement.

13. NON-STATUTORY WAIVER

- 13.1. The Town in entering into this Agreement is doing so in its capacity as a municipal corporation and not in its capacity as a regulatory, statutory or approving body pursuant to any law of the Province of Alberta and nothing in this Agreement shall constitute the granting by the Town of any approval or permit as may be required pursuant to the *Municipal Government Act*, R.S.A. 2000 Ch. M-26, and any amendments thereto and any other Act in force in the Province of Alberta. The Town, as far as it can legally do so, shall only be bound to comply with and carry out the terms and conditions stated in this Agreement, and nothing in this Agreement restricts the Town, its Municipal Council, its officers, servants or agents in the full exercise of any and all powers and duties vested in them in their respective capacities as a municipal government, as a municipal council and as the officers, servants and agents of a municipal government.
- 13.2. The Division in entering into this Agreement is doing so in its capacity as a school board and not in its capacity as a regulatory, statutory or approving body pursuant to any law of the Province of Alberta and nothing in this Agreement shall constitute the granting by the Division of any approval or permit as may be required pursuant to the *Education Act*, S.A. 2012 Ch. E-0.3, and any amendments thereto and any other Act in force in the Province of Alberta. The Division, as far as it can legally do so, shall only be bound to comply with and carry out the terms and conditions stated in this Agreement, and nothing in this Agreement restricts the Division, its Board of Trustees, its officers, servants or agents in the full exercise of any and all powers and duties vested in them in their respective capacities as a school board and as the officers, servants and agents of a school board.

14. GENERAL PROVISIONS

- 14.1. This Agreement shall be governed by the laws of the Province of Alberta. The courts of the Province of Alberta have exclusive jurisdiction of any matter related to or touching upon this Agreement.
- 14.2. The Parties agree that the terms and conditions and all documents forming this contract constitute and govern the entire contract between the Division and the Town, superseding, terminating and otherwise rendering null and void any and all prior agreements, understandings, negotiations, whether written or oral between the parties.
- 14.3. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect the remaining provisions of this Agreement and this Agreement shall be construed to the fullest extent possible as if such invalid, illegal or unenforceable provision or provisions had never been contained herein.
- 14.4. Notwithstanding any other provisions of this Agreement, each Party shall continue to control, operate and maintain its respective facilities.
- 14.5. If the date specified in this Agreement for giving any notice or taking any action is not a business day (or if the period during which any notice is required to be given or any action taken expires on a date that is not a business day) then the date for giving such notice or taking such action (and the expiration date of such period during which notice is required to be given or action taken) is the next day that is a business day.
- 14.6. Both parties agree that time is of the essence in this Agreement and all steps, notifications and other actions shall be taken without delay.
- 14.7. The waiver of any covenants, condition or provision hereof must be in writing. The failure of any Party, at any time, to require strict performance by the other Party of any covenant, condition or provision hereof shall in no way affect such Party's right thereafter to enforce such covenant, condition or provision, nor shall the waiver by any Party of any breach of any covenant, condition or provision hereof be taken or held to be a waiver of any subsequent breach of the same or any covenant, condition or provision.

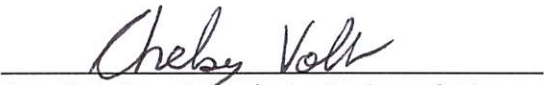
- 14.8. The terms and conditions contained in this Agreement shall extend to and be binding upon the respective heirs, executors, administrators, successors and assigns of the Town and the Division.
- 14.9. This Agreement may be signed in counterparts, each of which so executed is deemed to be an original and such counterparts together constitute one and the same Agreement. Signatures delivered by email or another form of electronic transmission are deemed for all purposes to be original counterparts of this Agreement.

IN WITNESSETH WHEREOF, the parties hereto have affixed their hands and seals by their authorized officer the day and year first above written.

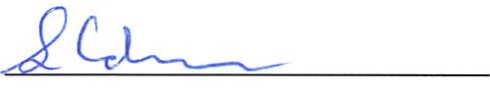
IN WITNESS WHEREOF the parties hereto have duly executed this Agreement as of the day and year first above written.

**THE BOARD OF TRUSTEES OF
BLACK GOLD SCHOOL DIVISION**


Board Chair


Associate Superintendent – Business & Finance

TOWN OF CALMAR


Mayor


CAO

JOINT USE FACILITIES & OPERATING GUIDELINES

School Use of Town Facilities

Town Facilities

Dates and times that specific facilities will be available for use is determined on an annual basis. The Town will determine what activities can be accommodated in each location.

- Mike Karbonik Arena
- Program Centre
- Centre Park Tennis Courts
- Ball Diamonds

Eligible User Groups

For use of Town facilities, school user groups must:

- Be operating under the auspices of the school or Division, AND
- Have school staff participating in, or supervising, the activity, AND
- Be covered by the Division's liability insurance.

Eligible Activities

Activities accommodated include:

- Curriculum activities
- Inter-school events
- Extra-curricular activities

Priorities for Use

1. Recreation activities within the Town mandate, including community use.
2. Joint Use by schools

Expectations of Users

To retain the right to book and use facilities, user groups must:

- Meet the criteria in these Operating Guidelines.
- Make booking requests according to established procedures.
- Respect the facilities they are using and the authority of the staff person in charge of the facility.

Available Dates & Times

Eligible user groups may utilize Town facilities at no cost from 8:30 am to 4:00 pm Monday to Friday. Requests for use of Town facilities outside of these hours will be considered and approval will be based on space and resources.

JOINT USE FACILITIES & OPERATING GUIDELINES

Town Use of School Facilities

School Facilities

Dates and times that specific facilities will be available for use is determined on an annual basis. The Division will determine what activities can be accommodated in each location.

All Division policies & procedures, specifically Administrative Procedure 548, are in effect during Town use of School Facilities.

- Calmar Elementary School
 - Gymnasium
- Calmar Secondary School
 - Gymnasium
 - Classrooms (as determined by the Division)

Eligible User Groups

For use of school board facilities under the Joint Use Agreement, user groups must:

- Be a Town-sponsored or operated program/group, AND
- Be covered by the Town of Calmar's insurance.

Eligible Activities

Activities accommodated include:

- Organized league sports
- Instructional recreation/sport activities (structured learning)
- Casual sport/recreation use (drop in and/or occasional use)
- Occasional business meetings of eligible user groups with a primary mandate in recreation

Priorities for Use

1. Activities within the School Board's mandate, including all aspects as described under the *Education Act*
2. Joint Use

Expectations of Users

To retain the right to book and use facilities, user groups must:

- Meet the criteria in these Operating Guidelines.
- Make booking requests according to established procedures.
- Respect the facilities they are using and the authority of the staff person in charge of the facility.

Available Dates & Times

Eligible user groups may utilize school facilities at no cost from 6:00 p.m. to 10:00 p.m Monday to Friday.

As per the Division's Administrative Procedure 548 Community Use of School Facilities, school facilities are available to be booked on weekends from 8:00 a.m. to 10:00 p.m. Bookings on weekends must be for a minimum of three (3) hours. A fee will be charged to recover the cost of the Division facility supervisor and any additional custodial support required for any weekend bookings.

Generally, school facilities are not available to be booked when schools are closed as per the Division School Year Calendar (i.e. Midterm Break, PD days, Christmas Break, Spring Break, statutory holidays) and during the summer months. Any exceptions to this require approval by the Associate Superintendent.

JOINT USE FACILITIES & OPERATING GUIDELINES

Endorsement Process for Facility Based Criteria
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Permitted Use

Definition: An activity held in a facility or on a site that is specifically designed for that purpose.

Examples: Volleyball or basketball in a gymnasium, skating lessons in the arena, tennis in the tennis courts.

Approval:

Approvals are not required as long as the use meets the Eligible Activities requirements in parts A-1 or A-2 of the Operating Guidelines.

Special Use

Definition:

An activity proposed for a facility or site that is not specifically designed for that purpose.

Examples:

Community markets in gymnasium, carnivals on school fields and non-sport related activities.

Approval:

A written request, which describes in detail the proposed event, is submitted to the affected partner at least 28 days prior to the event or activity. Consultation among affected JUA parties is held in a timely fashion such that the applicant would receive notice of approval or refusal at least 14 days prior to event.