



## Summary Table of Feedback and Recommendations - Amended April 4, 2017

The table below provides a summary of legal issues received in response to the draft Joint Operating Agreement (JOA) including recommendations. For a full discussion of legal issues identified by Community Centre Associations (CCAs), please see the *Discussion of Legal Issues Identified to Park Board by CCAs - Amended April 4, 2017* document.

Issue	Recommendation
<b>1) Constitution and Bylaws</b>	
a) Current constitution and bylaws of a CCA may not be consistent with permitting the proposed activities and expenditures under the new JOA	To allow CCAs time to review their constitutions or bylaws and put any amendments to the membership for vote, staff recommend that the date by which the CCAs must sign the JOA be set as September 30, 2017 and the Effective Date of the Agreement be amended to January 1, 2018.
b) Certain governance requirements in the JOA (for example, ensuring that the bylaws are not changed or a director who runs for office steps down) are not strictly in the control of the directors of the Association	Governance requirements in Section 4 of the JOA be converted into events of default such that that the Association has an opportunity to attempt to rectify any governance changes that are not in compliance with the JOA.
<b>2) Community Centre Investment Fund</b> <ul style="list-style-type: none"> <li>• Purpose of society must allow for distribution of funds</li> <li>• For registered charities, concern that payment is a “gift” to an entity that is not a qualified donee.</li> <li>• Concerns re name of fund and increases over time.</li> </ul>	<ul style="list-style-type: none"> <li>• Purpose of society to align per issue 1.</li> <li>• Park Board is a qualified donee for the purposes of the <i>Income Tax Act</i> as an administrative body of the City.</li> <li>• Suggest change of name to “Operations Fee.”</li> <li>• Increases to fund during renewal term only permitted if approved by the Commissioners.</li> </ul>
<b>3) Indemnity</b> <ul style="list-style-type: none"> <li>• indemnity is a separate document</li> <li>• Prefer term to align with term of JOA</li> </ul>	<ul style="list-style-type: none"> <li>• No change to terms of indemnity.</li> <li>• Current form of indemnity to be attached as Appendix.</li> <li>• Indemnity unique - City does not usually indemnify non-profits operating in City buildings.</li> <li>• Indemnity is jurisdiction of the City.</li> </ul>



Issue	Recommendation
<p><b>4) Employer Risks</b>            Clarify responsibilities of CCAs and what they are indemnifying Park Board/City for OR delete indemnity given by CCAs.</p>	<ul style="list-style-type: none"> <li>• Have clarified responsibility of CCAs.</li> <li>• Have amended wording so Park Board solely responsible for all items delegated to it (not just in the event of negligence).</li> <li>• Deleting indemnity not possible.</li> <li>• Staff to prepare delegation form and summary of risks, responsibilities and insurance requirements as implementation tools.</li> </ul>
<p><b>5) Ownership</b>            Claim of ownership still asserted by Sunset</p>	<p>No change.</p>
<p><b>6) Removal of directors</b>            Change language regarding removal of directors in event of conflict of interest (running for office)</p>	<p>Language amended to suggestion provided by Dunbar.</p>
<p><b>7) Term and Termination</b>            Most CCAs have requested a single term of 15 years. Some have also expressed concern about the potential of Park Board staff requesting unreasonable changes to the JOA at each renewal period.</p>	<ul style="list-style-type: none"> <li>• Suggesting initial term of 7 years, with one 8 year renewal term.</li> <li>• At renewal, if either party wishes to propose changes to the body of the JOA, the process for considering changes must be established by the Park Board Commissioners, be in a public forum and any changes to the body of the JOA will be subject to the approval of the Park Board Commissioners. If the changes are not finalized before renewal, the JOA will stay in effect until the changes are finalized.</li> </ul>

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<p><b>8) Use of Revenue</b></p> <ul style="list-style-type: none"> <li>Some object to restrictions placed on the accumulation or use of funds by a CCA.</li> <li>Some CCAS requested that all restrictions on how funds are used be deleted.</li> </ul>	<ul style="list-style-type: none"> <li>Delete “As a registered society, the Association acknowledges that its goal and purpose is not to generate and retain large financial surpluses.”</li> <li>Do not delete remainder of 14.1(c). This is a contractual requirement and does not create a conflict under the <i>Societies Act</i>. Ensuring funds generated using the Community Centre Network are used within the Network is a critical requirement to ensure that public assets are used for the best interests of the public.</li> </ul>
<p><b>9) Financial Statements</b></p> <p>Concern over requirement to have separate statements for activities in vs out of the network.</p>	<p>Either separate statements or statements with revenue and expenses separated by notes are acceptable, at the CCA’s choice.</p>
<p><b>10) Employment Practices Liability Insurance</b></p> <p>Request amendment so that CCA is only required to <i>use commercially reasonable efforts</i> to obtain and maintain such coverage <i>if it can be purchased for a reasonable cost</i></p>	<ul style="list-style-type: none"> <li>No change.</li> <li>Liability for employment risks is a key issue for the City.</li> </ul>
<p><b>Miscellaneous Requests - changes made</b></p>	<ul style="list-style-type: none"> <li>(a) Change from referring to “registered Society” to “society incorporated under the <i>Societies Act</i>” (Recital E, Section 4).</li> <li>(b) Amendments to section 4 so that it reads “the Association ...will conduct itself at all times in accordance with its constitution and bylaws and the requirements of the <i>Societies Act</i>.”</li> <li>(c) Deleted requirements that the CCAs have audit and responsible use of funds policies (section 6.1).</li> <li>(d) Amended Section 6.1 to specify that training sessions on good governance are <i>optional</i>.</li> <li>(e) Change wording in section 12.4 regarding the Recreation Supervisors role in assisting Boards with their function.</li> </ul>

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<p><b>Miscellaneous Requests - changes not made (most business issues, not legal)</b></p> <ul style="list-style-type: none"> <li>(a) Delete the concept of “surplus revenue”</li> <li>(b) Change membership to be opt-in or opt-out at the Association’s choice</li> <li>(c) Delete concept of the community centre investment fund</li> <li>(d) Remove requirement to use ActiveNet</li> <li>(e) Remove the right of the Park Board to audit the Association</li> <li>(f) Concern about risk to Association from offering system-wide programs</li> <li>(g) Dispute resolution clause too broad and favours Park board</li> <li>(h) Staffing and group one payment section contains unacceptable elements</li> <li>(i) Amend Recital K to remove wording programs being offered in support of the overall goals of the Park Board and the Associations</li> <li>(j) Delete concept of Community Centre Investment Fund and replace it with Operations Fee paid on a scale previously proposed by WECCA</li> <li>(k) Add clause that states that if the Park Board enters into a binding agreement with any CCA with alters any provision of the JOA, then any other Association may require the Park Board to enter into a similar agreement with them</li> <li>(l) Delete the requirement that the CCAs demonstrate financial transparency and good corporate governance</li> <li>(m) Include a requirement that any new public policy not result in any additional expenditure by the CCAs</li> <li>(n) Delete clause that states Park Board may use funds from the Community Center Investment Fund for the purposes of paying for costs to offer System-wide Programs for free</li> <li>(o) Delete requirement for books of account be kept in accordance with sound financial policies and procedures be deleted</li> </ul>	<ul style="list-style-type: none"> <li>• Changes not made</li> <li>• Business issues, not legal.</li> </ul>



Issue	Recommendation
<p>(p) Delete requirement for Association to publicly report on anything other than audited financial statements (section 14.3 (d) requires more detailed reporting)</p> <p>(q) Amend arbitration provision so that matters not subject to arbitration include policies and standards established by the Park Board or City that do not directly contradict this Agreement, instead of do not directly contradict <i>the express terms of</i> this Agreement</p> <p>(r) Amend section 20.1 and 20.3 to remove the clause that says the Park Board may not offer new space, additions or replacement space to an Association if the Park Board holds reasonable concerns regarding the Association’s ability to operate the new space in a safe, professional and compliant manner</p> <p>(s) Amend section 20.2 so that the Park Board may not remove space that is “unused by the Association for the purposes contemplated under this Agreement for a sustained period” from the scope of the Jointly Operated Facilities</p> <p>(t) Amend the breach section of the agreement so that “breach” no longer includes failure to comply with the Public Policy or use of funds for purposes not permitted under the JOA</p>	