



September 27, 2017

Dear CCA Presidents and Directors,

Re: Changes to JOA Appendices to address outstanding issues - At the option of each CCA

This information is in response to the many CCAs who wrote to the Park Board regarding the six issues which have been pointed out as barriers to us achieving a JOA.

Thank you for the productive conversations over the past few weeks. We have had some very healthy and open dialogue, and I believe our conversations have led me to a deeper understating of your challenges with the JOA and how it will define our working relationship moving forward. Through conversations with you, I have had the opportunity to explore how we provide you and your communities with the assurance you need to move forward, given the body of the JOA has been finalized.

Appendices Language to Address Outstanding Concerns

A key learning I have taken from our conversations is there are unique aspects of your support of the community that may not be fully addressed in the JOA. Through the JOA Appendices, we are exploring how to better reflect current practices unique to your CCA and provide you with assurance that your involvement in the community is understood, respected and preserved.

To that end, on Monday I provided wording for greater assurances about the legal standing of the JOA Appendices and allocating the system-wide planning sessions in the final year of the term for fulsome, good faith discussions about the JOA. Below you will find potential wording that can be added to your appendices to address those concerns. Aside from the issues from the letter the proposed wording also addresses two other concerns that are applicable to all CCAs and brought forward during my discussions.

As a reminder, appendices are living documents and can be updated by mutual agreement at any time so CCAs who have already signed off on their appendices can also incorporate any of these additions.

CCA Concern "Park Board infringement on the autonomy of the CCAs": Section 4.2(c) limits the CCAs ability to be involved in the community in ways outside of the scope of the JOA. The Park Board recognizes that the purposes of a CCA may include activities in addition to providing programming and services under the JOA, and supports the wider involvement of the CCA in the community.

Optional change: Add to the Appendices "The Park Board recognizes that the Association is involved in its community in many ways, and confirms that Section 4.2(c) of the Agreement does not limit the right or ability of the Association to carry out other activities in addition to the provision of Programming and other services within the Community Centre Network."

CCA Concern “Use of Retained Earnings”: CCAs may have other specific community focused uses for Retained Earnings that are current practice (e.g., existing little league investment or scholarships), and it may not be practical/necessary to seek approval for use of Retained Earnings every time.

Optional change: Add a list of specifics for a CCA’s current use of Retained Earnings that are for the benefit of the community so that we don’t need to revisit that use every time. For example, in the Appendices we could explore including “little league scholarships” or broadening the scope to “community sports scholarships” so that if a CCA offers a similar investment or scholarship for a related (but different) program we aren’t having to discuss this every time.

CCA Concern “Term and renewal”: Process at the end of the Term. Some CCAs would like to see a more specific commitment for fulsome, good faith discussions at the end of the Term.

Optional change: Add to the Appendices “The Park Board and the Association agree that, during the last year of the Term, the System-wide Planning Sessions will be used by the parties to discuss the ongoing relationship of the parties after the Term and what changes may be required to this Agreement prior to the parties entering into a new joint operating agreement for a new term, should both parties wish to continue joint operation of the Jointly Operated Facilities after such discussions. If the parties consider it prudent, they may schedule additional sessions in addition to the System-wide Planning Sessions to ensure fulsome good faith discussions about the continuing relationship of the parties after the Term.”

CCA Concern “Ability of the Park Board to terminate the JOA”: The 90-day notice period and 60-day cure period are too short to allow for a proper remedy of a material breach by a CCA. Furthermore, the proposed JOA allows the Park Board to unilaterally determine whether a CCA is “continually and diligently” working to resolve the breach.

Optional change: Add to the Appendices “The Park Board confirms that the termination provisions in Section 21.1 apply only in the case of a sustained, material, un-remedied breach of the Agreement. If the Association disagrees whether or not a breach meets these criteria, they may invoke the dispute resolution mechanism set out in Section 18.1 of the Agreement. The Park Board further confirms that the Association has a cure period of 60 days (as more specifically set out in Section 21.1) to remedy such breach (except in the case of emergency) and that if more than 60 days is required to remedy the breach (using reasonable resources and acting diligently), then the Association will not be considered to be in breach after 60 days provided the Association is making reasonable and diligent efforts to resolve the breach in a timely manner (as more specifically set out in Section 21.1). For additional clarity, the Park Board confirms that “reasonable and diligent efforts” must be objectively reasonable and it is not in the sole discretion of the Park Board whether efforts to remedy a breach are “reasonable and diligent”. If the parties disagree with whether efforts have been reasonable and diligent, either party may invoke the dispute resolution mechanism set out in Section 18.1.”

CCA Concern: How will differences between the JOA and the Appendices be handled if there were a contradiction? How do the Appendices have equal force when we have said that CCAs can sign the JOA and finish the Appendices later (and they can be updated during the Term)?

Optional change: Add to the Appendices "This Appendix forms part of the Agreement, and in the event of any conflict between the terms of the Agreement and the terms of this Appendices, the terms of the Appendices will prevail."

CCA Concern: Any beneficial changes to one CCA's Appendices would not apply to all CCA Appendices.

Optional change: Add to the Appendices "The Park Board agrees that if, prior to the Effective Date, the Park Board agrees to include wording in the appendices of another CCA that would have the effect of modifying or amending a section of the body of the Agreement, the Park Board agrees that it will provide such wording to the Association and such wording may be added to this Appendix C at the election of the Association. The foregoing will not apply in the case of modifications to the appendices of a CCA which are intended to address current practice or unique operations of a particular CCA."

Summary of Further Clarification on JOA

After better understanding the concerns of some CCAs, we have provided the following clarifications to address some other questions we have received from some CCAs. We have included these concerns and responses below for everyone's information.

CCA Concern "Park Board infringement on the autonomy of CCAs": A CCA may have existing policies and standards with respect to their community involvement outside of the scope of the JOA.

Clarification: Adopting and adhering to corporate policies and standards "commensurate with the Association's roles and responsibilities under this Agreement and to the public" only applies to the CCAs activities under the JOA, not in their dealings with the public in any other ways they are involved in the community outside of the JOA. The JOA only applies to the relationship between the Park Board and the CCA, it doesn't require a CCA to act in any particular way when carrying out its other activities that are outside the scope of the JOA.

CCA Concern "Use of Retained Earnings": CCAs may need to pay for legal fees resulting from dispute resolution.

Clarification: CCAs can use Facility Generated Revenue or revenue from other streams to pay for Dispute Resolution costs or legal fees, if they did not wish to seek approval from Park Board to use their Retained Earnings. A reminder that any money in the bank generated outside of the facilities isn't considered Retained Earnings so does not have the same restrictions. If Facility Generated Revenue does not cover a CCA's legal

costs, there is also the option to pay for programming out of Retained Earnings and to pay for Dispute Resolution costs out of Facility Generated Revenue.

CCA Concern “Ability of the PB to evict a CCA”: If a CCA were ever in breach (even if the breach were remedied) that new space may not be included in the scope of Jointly Operated Facilities.

Clarification: We know that CCAs are keenly interested in addressing potential breaches. We are also aware that the CCAs operate very reasonably. This section is for discussing “worst-case” scenarios, and the reason we use “sustained” rather than “unremedied” is because a sustained breach must be something that was going on for a long time, unremedied. In addition, a CCA could be in unremedied breach for a short time and working to remedy it, and that would not be considered “sustained.” By using the wording “sustained” we aim to address only the serious long-term breaches. It would not be in good faith if a breach were sustained and then could possibly be quickly remedied for a CCA to be compliant before new space is added, even if they were in sustained breach up until that point in time. It’s important to note that a CCA being in sustained breach does not preclude the CCA from operating new space, it prompts a discussion about whether or not that sustained breach indicates major issues that need to be addressed before that new space is added to the Jointly Operated Facilities.

We have all been working toward a JOA that works for the community and the Park Board. You, the many volunteers, have been working on this for hundreds of hours. I admit I am new to the process; however, I feel that our candid dialogue in the last week has truly allowed me, and the Park Board, to better understand the underlying concerns with this JOA. I understand that a lack of trust is at the root of our issues. These words need to provide a base for us to build trust again if we are ever going to have a harmonious model in Vancouver. Together we have demonstrated some trust, and good faith, by not shutting the door and by continuing to seek a solution. I hope that we can continue to move in a healthy direction together.

Sincerely,



Donnie Rosa
Director of Recreation - Vancouver Board of Parks and Recreation

Copy to: PB Senior Management Team
PB Commissioners
PB Communications