

**THE CORPORATION OF THE TOWN OF AMHERSTBURG**

**BY-LAW NO. #2008-62**

**A by-law to authorize the execution of a Joint Use Agreement between  
The Town of Amherstburg and the Conseil Scolaire De District Des Ecoles  
Catholiques Du Sud-Ouest**

**WHEREAS** the Town of Amherstburg has agreed to allow the Conseil Scolaire De District Des Écoles Catholiques Du Sud-Ouest to jointly use and operate Parklands at the Saint-Jean Baptiste Elementary School site in Amherstburg for school use;

**AND WHEREAS** the Corporation deems it expedient to enter into an Agreement with the Board in that regard on certain terms and conditions;

**NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE TOWN OF AMHERSTBURG HEREBY ENACTS AS FOLLOWS:**

1. That the Corporation of the Town of Amherstburg enter into a Joint Use Agreement with the Conseil Scolaire De District Des Écoles Catholiques Du Sud-Ouest regarding the use of Parklands at the Saint-Jean-Baptiste Elementary School by the school, in the Town of Amherstburg in the County of Essex, a copy of which Agreement is attached hereto and forms a part of this by-law.
2. That the Mayor and the Clerk be and the same are hereby authorized to execute the said Joint Use Agreement on behalf of the Corporation and affix the Corporate seal thereto, as well as any and all other documents that may be necessary to give effect to the terms of the said Agreement.
3. This by-law shall come into force on the final passing thereof.

**FINALLY PASSED** this 24th day of November, 2008

1<sup>st</sup> Reading November 24<sup>th</sup>, 2008

2<sup>nd</sup> Reading November 24<sup>th</sup>, 2008

3<sup>rd</sup> Reading Novemebr 24<sup>th</sup>, 2008

  
Mayor Wayne Hurst

  
Pamela Malott, Clerk

**JOINT USE AGREEMENT**

This Agreement made this 24th day of November, 2008.

BETWEEN:

THE CORPORATION OF THE TOWN OF AMHERSTBURG

Hereinafter called "the Town"

OF FIRST PART

-and-

CONSEIL SCOLAIRE DE DISTRICT DES ECOLES CATHOLIQUES DU  
SUD-OUEST

Herein called "the School Board"

OF THE SECOND PART

**WHEREAS** the School Board has undertaken the construction of St. Jean Baptiste Elementary School ("the School") within the geographic boundaries of the Town of Amherstburg;

**AND WHEREAS** THE Town and the School Board wish to enter into an Agreement with regard to making Parklands in and around the School available for school use;

**NOW THEREFORE WITNESSETH THAT** in consideration of the covenants and premises contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto covenant and agree one with the other as follows:

**1. DEFINITIONS**

In this Agreement:

(1) **"community use"** shall mean use by such members of the public as the Town may designate from time to time for sports, recreational or leisure purposes or opportunities, but shall not include use for any academic or athletic program or activity provided by or sponsored by the School Board for the faculty, staff or students of the School or the School Board;

(2) **“neighbouring parkland”** shall mean the lands owned by the Town as shown on Schedule “A”;

(3) **“non-school time”** shall mean:

(a) From 6:00 p.m. to 12:00 a.m. midnight on any day in the school year in which classes are in session,

(b) From 7:00 a.m. to 12:00 a.m. midnight on any weekday in the school year in which classes are not in session and on all Saturdays and Sundays; and

(c) From 7:00 a.m. to 12:00 a.m. midnight on every day in the summer recess and school holiday periods;

(4) **“school time”** shall include:

(a) From 7:00 a.m. to 6:00 p.m. on any weekday in the school year in which classes are in session;

### **NEIGHBOURING PARK**

11. Subject to the provisions of paragraph 13 of this Agreement, the Conseil Scolaire De District Des Ecoles Catholiques Du Sud-Ouest shall maintain the neighbouring park, at no cost to the Town.

12. The Town hereby agrees to consult the principal of the School and the parent/teacher association of the School in any future planning the types of structures, sporting fields and facilities, and the location thereof, in the said park.

13. The parties hereto acknowledge it is their intention that the use of the neighbouring parks shall be primarily dedicated to the use of the School Board and the School during school time. However, the School Board specifically acknowledges herein that the neighbouring park is a public resource, and the Town shall not be obligated or required in any way to restrict the use of the neighbouring park by the general public at any time, including during school time.

14. The Town, its representatives, employees, contractors, invitees and licensees shall have the exclusive right to enter on and use all of the structures, sporting fields and

facilities in the neighbouring park for sports and recreational purposes during non-school time without interference from the School Board.

15. The School Board shall not have the right to erect any fixture or install any service, structure or facility on or in the neighbouring park, without the prior written consent of the Town.

16. The School Board shall not be required to pay to the Town any user fees of any kind prior to being in a position to make use of the neighbouring park.

### **EQUIPMENT**

17. The parties hereto acknowledge and agree that:

(1) The School Board shall be responsible to provide, at its own expense, all sports and recreation equipment required for the proper and appropriate use of the Park by the School Board and the school during school time.

(2) The Town shall be responsible to provide, at its own expense, all sports and recreation equipment required for the proper and appropriate use of the neighbouring park by its representatives, employees, contractors, invitees and licenses during non-school time.

18. The parties hereto agree to review, on request, the equipment needs of each party for the neighbouring park for the purposes of determining any changes in the equipment that may be necessary or appropriate from time to time, and determining a cost-sharing arrangement in that regard.

### **PARKING LOTS**

19. The School Board shall make available to the Town, its representatives, employees, contractors, invitees or licensees any and all parking lots at the School for the purpose of providing parking for vehicles being used in conjunction with the neighbouring park.

20. The School Board shall be responsible, at its own expense, for the operation, maintenance and repair of all parking lots at the school, including snow removal services

to the said parking lots at all times to ensure full access to and use of the said parking lots are available during non-school time.

### **CHANGE IN USER TIMES**

21. The parties hereto acknowledge and agree it may be necessary or appropriate from time to time to make changes to the scheduled user times of the neighbouring park to accommodate the changing needs of each party. In the event one party wishes to request a change in the user times as set out in this Agreement, a written request shall be sent to the other party at least two weeks in advance of the date for which the change is being requested.

It is understood and agreed that although each party should try to accommodate such a request if at all possible, neither party is under any obligation to grant the request in the event a hardship to the changing party may be caused. Any change to the scheduled user time may be made by the Principal of the School and the Manager of Recreational Service of the Town, and their decision shall be binding upon the parties hereto.

### **INABILITY TO PERFORM**

22. (1) The School Board hereby acknowledges and agrees that at no time will the Town's access to the neighbouring park be restricted by any union contract, strike or other labour problem.

(2) The Town hereby acknowledges and agrees that at no time will the School Board's access to the neighbouring park be restricted by a union contract, strike or other labour problem.

23. Neither part to this Agreement shall be deemed to be in default for failing to perform any of the terms and conditions of this Agreement so long as performance is prevented during the term of this Agreement by virtue of riots, civil disorders, wars or belligerent or terrorist activities, fires, floods, storms, or other casualties; or by any other force or act beyond the control of that party; provided the party concerned shall use due diligence to remedy or remove the circumstances or cause in an adequate manner and with all reasonable dispatch.

## **INSURANCE AND INDEMNITY**

24. (1) The School Board hereby indemnifies and hold harmless the Town from and against all liability, losses, harm or claims whatsoever arising in respect of the School Board's use of the neighbouring park pursuant to the Terms of this Agreement, or in respect of any rights and obligations of the School Board contained in or arising from this Agreement, except where such liability, losses, harm or claims are caused by virtue of the negligence of the Town, its employees, agents, subcontractors or licensees.

(2) The Town hereby indemnifies and holds harmless the School Board from and against all liability, losses, harm or claims whatsoever arising in respect of the Town's use of the neighbouring park pursuant to the Terms of this Agreement, or in respect of any rights and obligations of the Town of Amherstburg contained in or arising from this Agreement, except where such liability, losses, harm or claims are caused by virtue of the negligence of the School Board, its employees, agents, subcontractors or licensees.

## **BREACH**

25. In the case of breach or non-performance on the part of the School Board or the Town of Amherstburg of any covenant, promise, agreement, condition or stipulation contained herein, and if such default shall continue and not be remedied upon notice thereof being given by the other party for a period of 60 days from the date of delivery of the notice, then, without restricting any other remedy to which either party may be entitled.

## **TERM**

26. This Agreement shall be effective as of and from the date hereof, which date shall be date upon which the Agreement was finally signed by both parties, and shall remain in full force and effect until such time either party should give notice in writing requesting a change or end to the Agreement.

**GENERAL**

27. Any notice to be given pursuant to the Terms of this Agreement shall be delivered, or sent by registered mail or by facsimile transmission to the parties as follows:

(a) Conseil Scolaire De District Des Ecoles Catholiques Du Sud-Ouest  
7515 Forest Glade Promenade,  
Windsor, On N8T 3P5

ATTENTION: Carolyn Miljan

(b) Town of Amherstburg,  
271 Sandwich St. S.,  
Amherstburg, ON N9V 2A5

ATTENTION: Chief Administrative Officer

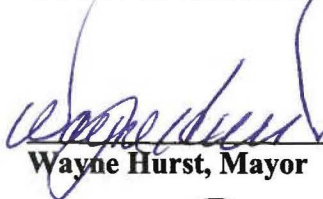
28. This Agreement may be amended from time to time by an Agreement in writing duly executed by the parties hereto.

29. The parties hereto agree that this Agreement shall be enforceable by and against the parties herein, their successors and assigns.

30. The parties hereto acknowledge and agree that the doctrine of contra preferentum shall not apply to the Terms of this Agreement.

IN WITNESS WHEREOF, the parties have unto affixed their corporate seals,  
duly attested by the hands of the appropriate signing officers in that behalf.

**THE CORPORATION OF THE  
TOWN OF AMHERSTBURG**

  
Wayne Hurst, Mayor

  
Pamela Malott, Chief Administrative Officer

**CONSEIL SCOLAIRE DE DISTRICT  
DES ECOLES CATHOLIQUES DU  
SUD-OUEST**

  
Carolyn Miljan  
Surintendant Adjoing Des Affairs  
(Assistant Superintendent of Business)