

INDEBTEDNESS AGREEMENT

THIS AGREEMENT made as of the _____ day of July, 2021.

BETWEEN:

Okanagan Regional Library, an entity incorporated under the laws of the Province of British Columbia and having its head office at 1430 K.L.O. Road, Kelowna, British Columbia

(hereinafter referred to as the "ORL")

OF THE FIRST PART,

-- and --

Regional District of Central Okanagan, an entity incorporated under the laws of the Province of British Columbia and having its head office at 1450 K.L.O. Road, Kelowna, British Columbia,

(hereinafter referred to as the "RDCO")

OF THE SECOND PART.

WHEREAS the ORL has requested the RDCO to borrow, on ORL's behalf, to a maximum sum of Eight Million (\$8,000,000.00) Dollars, for the construction of a new library branch building at 3731 Old Okanagan Highway in the City of West Kelowna, in the Province of British Columbia;

AND WHEREAS the ORL desires to provide the RDCO commitments with respect to obtaining such Loan, Temporary Borrowing, and sufficient security and comfort for undertaking to secure the Loan on behalf of the ORL;

NOW THEREFORE THIS AGREEMENT WITNESSES THAT in consideration of the respective covenants and agreements of the parties contained herein, the sum of ten dollars paid by each party hereto to each other party hereto, and other good and valuable consideration, (the receipt and sufficiency of which is hereby acknowledged by each of the parties hereto), it is agreed as follows:

ARTICLE ONE -- DEFINITIONS AND INTERPRETATION

1.1 **Definitions.** In this Agreement unless something in the subject matter or context is inconsistent therewith:

- (a) "**Business Day**" means any day other than a Saturday or Sunday, or holiday, on which Canadian chartered banks are open for business in Kelowna, British Columbia;
- (b) "**Indebtedness**" means the obligations of the ORL to the RDCO, as detailed in Article 2.2 of, and throughout, this Agreement;
- (c) "**Loan**" means the loan that the RDCO may obtain from the MFA, on behalf of the

ORL, to a maximum principal sum of Eight Million Dollars (\$8,000,000.00), and interest thereon;

- (d) "**Loan Agreement**" means the agreement between the MFA and the RDCO, which sets out all the terms and conditions of the Loan and associated Temporary Borrowing;
- (e) "**MFA**" means the Municipal Finance Authority, whose head office is located in the City of Victoria, in the Province of British Columbia;

ARTICLE TWO -- THE LOAN AND INDEBTEDNESS

2.1 *The Loan.* The RDCO hereby agrees that, on the terms and subject to the conditions set forth herein, and the terms agreed to with the MFA, it will obtain Temporary Borrowing and borrow the Loan from the MFA for the benefit of the ORL, and then advance the Loan to the ORL, for the construction and renovation of library building services in the City of West Kelowna, owned and operated by the ORL.

2.2 *The Indebtedness.* The ORL agrees to be liable to the RDCO for the aggregate of the following obligations:

- (a) Payment of any and all obligations and liabilities owing by the RDCO to the MFA pursuant to the Loan Agreement and any other documents or security granted by the RDCO to the MFA pursuant thereto;
- (b) Payment of any and all costs or outlays, of any nature whatsoever, incurred by the RDCO with respect to the negotiation, preparation, execution and delivery of the Loan Agreement and this Agreement, as well as all actions under the Loan Agreement and this Agreement; and
- (c) The ORL agrees to indemnify and hold the RDCO harmless from any costs, claims, outlays, expenses, and liabilities, of any nature whatsoever, that the RDCO may be responsible for, arising, directly or indirectly, out of this Agreement, or the negotiation, execution and delivery of the Loan Agreement, or the advancement of the Loan;

(all of which obligations, indebtedness and liabilities are herein collectively called the "Indebtedness").

ARTICLE THREE -- REPAYMENT OF THE INDEBTEDNESS

3.1 *Repayment of the Loan.* The ORL shall pay to the RDCO all principal amounts of the Loan, together with any interest or other amounts payable, all in accordance with the terms and conditions of the Loan Agreement. It is the intent of the ORL, that it will share in the costs of the borrowing amongst all its members as per all its other normal operating budget costs. It is also the intent of the ORL, to ensure full payment of the regular repayment amounts of the Loan due, prior to the payment due date set out in the Loan Agreement.

- 3.2 *Prepayments and Early Payments.*** The ORL shall be entitled to prepay any of the outstanding principal amount of the Loan, subject to the terms and conditions of the Loan Agreement, provided the ORL also pays whatever penalties or restrictions on repayment are set out therein. However, any gains calculated by MFA, such as the early repayment of MFA gains earned through the investment of proceeds, shall be for the benefit of ORL.
- 3.3 *Repayment of other Indebtedness.*** If there are any payments required to be made by the ORL to the RDCO in addition to payments on the Loan, then the ORL shall make such payments to the RDCO within thirty (30) days of receipt of an invoice from the RDCO detailing such obligations of the ORL.
- 3.4 *Type and Place of Payment.*** All payments by the ORL, shall be made or delivered to the RDCO at the following address:

1450 K.L.O. Road
Kelowna, BC, V1W 3Z4.

ARTICLE FOUR - CONDITIONS PRECEDENT

- 4.1** The obligations of the parties with respect to the consummation of any arrangements under this Agreement are subject to the waiver or fulfillment, in writing, of the arrangement of the Loan Agreement between the RDCO and the MFA, on terms and conditions that are acceptable to the RDCO and the ORL, in their sole respective discretions, on or before November 30, 2021.

In the event that the foregoing conditions precedent are not waived or declared fulfilled, in writing by both parties, by the applicable dates set out above, then all obligations of the RDCO and the ORL hereunder shall be null and void.

- 4.2** The obligations of the RDCO with respect to the consummation of any arrangements under this Agreement are subject to the waiver or fulfillment, in writing, of the RDCO obtaining the necessary approval from its electors and from the supervising ministries of the Provincial Government, on terms and conditions that are acceptable to it in its sole discretion, on or before December 31, 2021.

In the event that the foregoing conditions precedent are not waived or declared fulfilled, in writing by the RDCO, by the applicable dates set out above, then all obligations of the RDCO and the ORL hereunder shall be null and void.

ARTICLE FIVE - REPRESENTATIONS AND WARRANTIES

5.1 Representations and Warranties of the ORL. To induce the RDCO to enter into this Agreement and to make the Loan, the ORL makes the following representations and warranties which shall survive the execution and delivery of this Agreement:

- (a) Neither the execution and delivery of this Agreement nor compliance with the terms, conditions and provisions hereof, will conflict with or result in a breach of any of the terms, conditions or provisions of:
 - (i) any agreement, instrument or arrangement to which the ORL is now a party or by which it is or may be bound, or constitute a default thereunder;
 - (ii) any judgment or order, writ, injunction or decree of any court; or
 - (iii) any applicable law or governmental regulation.
- (b) No action of, or filing with any governmental or public body or authority is required to authorize, or is otherwise required in connection with, the execution, delivery and performance of this Agreement by the ORL.

ARTICLE SIX -- ORL COVENANTS

6.1 Covenants of the ORL. From the date of this Agreement and thereafter until the Indebtedness is paid in full:

- (a) The ORL will notify the RDCO immediately if the ORL shall default in a material manner in the payment of any of its indebtedness for borrowed money, whether such indebtedness now exists or shall hereafter be created. The ORL also shall notify the RDCO immediately if there shall occur a material event of default under any indenture or instrument (including without limitation this Agreement) under which there may be issued, or by which there may be incurred or evidenced, any indebtedness of the ORL for borrowed money, whether such indebtedness now exists or shall hereafter be created;
- (b) The ORL will comply with the requirements of all applicable laws, rules, regulations and orders of any governmental authority, a breach of which would materially and adversely affect the financial condition or businesses of the ORL, except where contested in good faith and by proper proceedings;
- (c) The ORL will promptly give the RDCO notice in writing of all litigation and all proceedings before any governmental or regulatory agencies or arbitration authorities affecting the ORL, except those which, if adversely determined, would not have a material adverse effect on the financial condition or business of the ORL; and
- (d) The ORL shall use all portions of the Loan advanced to it, solely for the purpose of constructing a new library branch building at 3731 Old Okanagan Highway in the City of West Kelowna, British Columbia.

ARTICLE SEVEN -- GENERAL CONTRACT PROVISIONS

7.1 Notices. All notices, requests, demands or other communications (collectively, "Notices") by the terms hereof required or permitted to be given by one party to any other party, or to any other person shall be given in writing by personal delivery or by registered mail, postage prepaid, to such other party as follows:

- (a) To the ORL at: 1430 K.L.O. Road
Kelowna, BC, V1W 3P6
- (b) To the RDCO at: 1450 K.L.O. Road
Kelowna, BC, V1W 3Z4

or at such other address as may be given by such person to the other parties hereto in writing fromtime to time.

All such Notices shall be deemed to have been received when delivered, or, if mailed, 48 hours after 12:01 a.m. on the day following the day of the mailing thereof. If any Notice shall have been mailed and if regular mail service shall be interrupted by strikes or other irregularities, such Notice shall be deemed to have been received 48 hours after 12:01 a.m. on the day following the resumption of normal mail service, provided that during the period that regular mail service shall be interrupted all Notices shall be given by personal delivery.

7.2 Additional Considerations. The parties shall sign such further and other documents, cause such meetings to be held, resolutions passed and by-laws enacted, exercise their vote and influence, do and perform and cause to be done and performed such further and other acts and things as may be necessary or desirable in order to give full effect to this Agreement and every part thereof.

7.3 Counterparts. This Agreement may be executed in several counterparts, each of which when executed shall be deemed to be an original and such counterparts together shall be but one and the same instrument.

7.4 Time of the Essence. Time shall be of the essence of this Agreement and of every part hereof and no extension or variation of this Agreement shall operate as a waiver of this provision.

7.5 Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to all of the matters herein and its execution has not been induced by, nor do any of the parties rely upon or regard as material, any representations or writings whatever not incorporated herein and made a part hereof and may not be amended or modified in any respect except by written instrument signed by the parties hereto.

7.6 Enurement. This Agreement shall enure to the benefit of and be binding upon the parties and their respective successors and assigns.

7.7 Currency. Unless otherwise provided for herein, all monetary amounts referred to herein shall refer to the lawful money of Canada.

- 7.8 Headings for Convenience Only.** The division of this Agreement into articles and sections is for convenience of reference only and shall not affect the interpretation or construction of this Agreement.
- 7.9 Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the Province of British Columbia and the federal laws of Canada applicable therein and each of the parties hereto agrees irrevocably to conform to the exclusive jurisdiction of the Court of such Province as located in Kelowna, British Columbia.
- 7.10 Gender.** In this Agreement, words importing the singular number shall include the plural and vice versa, and words importing the use of any gender shall include the masculine, feminine and neuter genders and the word "person" shall include an individual, a trust, a partnership, a body corporate, an association or other incorporated or unincorporated organization or entity.
- 7.11 Calculation of Time.** When calculating the period of time within which or following which any act is to be done or step taken pursuant to this Agreement, the date which is the reference date in calculating such period shall be excluded. If the last day of such period is not a Business Day, then the time period in question shall end on the first business day following such non-business day.
- 7.12 Legislation References.** Any references in this Agreement to any law, by-law, rule, regulation, order or act of any government, governmental body or other regulatory body shall be construed as a reference thereto as amended or re-enacted from time to time or as a reference to any successor thereto.
- 7.13 Severability.** If any Article, Section or any portion of any Section of this Agreement is determined to be unenforceable or invalid for any reason whatsoever, that unenforceability or invalidity shall not affect the enforceability or validity of the remaining portions of this Agreement and such unenforceable or invalid Article, Section or portion thereof shall be severed from the remainder of this Agreement.
- 7.14 Transmission by Email.** The parties hereto agree that this Agreement may be transmitted by email or such similar electronic means and that the reproduction of signatures by email or such similar electronic means will be treated as binding as if originals. Each party hereto undertakes to provide each and every other party hereto with a copy of the Agreement bearing original signatures forthwith upon demand.

IN WITNESS WHEREOF the parties have duly executed this Indebtedness Agreement this _____ day of July, 2021.

REGIONAL DISTRICT OF CENTRAL OKANAGAN:

Per:

Gail Given, Chair

Per:

Brian Reardon, CAO

OKANAGAN REGIONAL LIBRARY:

Per:

[Authorized Signing Officer]

Per:

[Authorized Signing Officer]