
CITY OF KELOWNA

MEMORANDUM

Date: January 31, 2001
File No.: 7900-20

To: City Manager

From: Director of Parks and Leisure Services

Subject: **Legal Agreements with the YMCA-YWCA of the Central Okanagan for the Athans Aquatic Centre**

RECOMMENDATION:

THAT City Council approve the legal agreements between the YMCA-YWCA of the Central Okanagan and the City of Kelowna for the lease, operation and expansion of the Athans Aquatic Centre as included in the report from the Director of Parks and Leisure Services dated January 31, 2001;

AND THAT the Mayor and City Clerk be authorized to execute the legal agreements on behalf of the City of Kelowna subject to the counter petition process and the adoption of the required bylaws;

AND FURTHER THAT the dates for conducting the counter petition be set out after obtaining the required approval from the Inspector of Municipalities.

BACKGROUND:

The following is a brief chronological history of the changes surrounding the Athans Aquatic Centre, and the City's desire for a new contractual arrangement for the operations, renovation and expansion of the facility:

1. January 1998 – close examination of the existing contract for the operation of the facility resulting in a decision to proceed with a public process to create a new partnership which would include capital expansion and renovations for the facility.
2. July 1998 – Council authorized the issuance of an RFP for the operations and capital expansion of the facility.
3. December 1998 – the RFP process was concluded. Council authorized staff to proceed to negotiate with the YMCA-YWCA to create a new contract for the operations and capital expansion of the facility based on the City's RFP and the YMCA -YWCA's proposal.
4. November 1999 – Council approved the Main Business Terms as the guide to be used for a legal agreement, and council authorized staff to begin concept design planning for renovations and expansion.
5. May 2000 – Council approved revisions to the Main Business Terms to allow the renovations and expansion to be completed as one phase, rather than several phases.

Since that time, staff have been working closely with representatives from the YMCA -YWCA, together with our respective legal counsel to finalize the legal agreements and the detailed design for the renovation and expansion of the facility. A tender call has been completed for the construction project and we are ready to commence construction immediately upon final adoption of these agreements.

DISCUSSION:

This agreement signifies an important achievement for the City of Kelowna and our partner, the YMCA -YWCA of the Central Okanagan. This is a very innovative approach and signifies new direction for the delivery of leisure services in our community. There are benefits for the City, the YMCA -YWCA, and especially the community, as we maximize both the efficient use of tax dollars, as well as the services and facilities available to the community.

This agreement is a comprehensive document that addresses in considerable detail our partnership with the YMCA -YWCA. The content is substantially the same as that in the Main Business Terms (revised) which has already been approved by City Council. Certain matters not addressed in the Main Business Terms have been included in the legal agreement. Examples of such articles include detailed clauses on insurance, term, disputes/dispute resolution, termination and renewal.

The YMCA -YWCA of the Central Okanagan has agreed to borrow \$1.8 million as their investment in the Athans Aquatics Centre renovation and expansion. The YMCA -YWCA also assumes total financial responsibility for the annual operations (including debt servicing). In the unlikely event that the agreement is terminated, the City will assume the debt of the YMCA-YWCA as it relates to this agreement only. It is important to note however, that any investment by the YMCA-YWCA as part of this agreement is towards a City owned facility.

The full agreement comprises the following components:

1. Main agreement including a lease, purchase of service, and capital development program;
2. Tripartite Agreement involving the City of Kelowna, the YMCA -YWCA of the Central Okanagan, and the Toronto Dominion Bank;
3. General Security Agreement between the YMCA -YWCA of the Central Okanagan and the Toronto Dominion Bank as an addendum to the Tripartite Agreement, and
4. The Borrowing Agreement between the YMCA -YWCA of the Central Okanagan and the Toronto Dominion Bank as an addendum to the Tripartite Agreement.

In order to satisfy the requirements of the Local Government Act, the City must conduct a counter petition due to:

- The term of this agreement of thirty (30) years,
- The capital loan that the City is providing to the YMCA -YWCA of the Central Okanagan in the amount of \$475,000, referred to as "bridge financing" in the agreement, and
- The tripartite financial agreement in which the City of Kelowna agrees to assume the debt of the YMCA-YWCA of the Central Okanagan in the event of termination.

While the overall agreements are complex, the following outline captures the key ingredients in simple terms:

- A thirty year lease of the Athans Aquatic Centre to the YMCA – YWCA.
- A purchase of service agreement whereby the YMCA – YWCA operates the Facility and provides service to the public over the thirty year period.
- A capital expansion program resulting in a \$2.5 million addition and \$300,000 in new equipment.
- The costs of the capital program are shared with the City paying \$1 million and the YMCA –YWCA paying \$1.8 million.
- An interest free capital repayable loan of \$475,000 from the City to the YMCA – YWCA.
- City and YMCA –YWCA responsibilities for maintenance and maintenance costs are set out.
- For its share of the capital expansion costs, the YMCA – YWCA is borrowing \$1.75 million from a bank and is fully responsible for the borrowing except in the event of default.
- The City is responsible for the bank loan if the agreement is terminated.
- The YMCA –YWCA is fully responsible for all day to day operations and management decisions for the Facility.
- Full public access to the Facility is assured over the life of the agreement.
- The City and the YMCA –YWCA are partners in the delivery of public leisure services and will jointly plan for future initiatives.

The YMCA -YWCA of the Central Okanagan has reviewed and approved this legal agreement, and the necessary signatures now appear on the original copy.

David L Graham
Director of Parks and Leisure Services

Encl.

DG/so

Cc: