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## City of Kelowna

# MEMORANDUM

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**DATE:** May 30, 2001  
**FILE:** 5500-03  
**TO:** City Manager  
**FROM:** Director of Finance & Corporate Services  
**SUBJECT: FRANCHISE AGREEMENT – LEGACY FUND OPPORTUNITY**

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### **RECOMMENDATION:**

**THAT** Council receive an information update contained in this report, outlining the Public Communications steps taken since introduction of the Legacy Fund Opportunity on April 30, 2001, including public response to-date.

**AND THAT** Council authorize the Mayor and City Clerk to execute the Agreement to Lease with BC Gas Utility Ltd. prior to formal introduction of the necessary Loan Authorization Bylaw, Agreement Authorization Bylaws and Counter Petition opportunity as required by the Local Government Act.

### **BACKGROUND & COMMENTS:**

Council approved, in principle, the negotiated Agreements between the City of Kelowna and BC Gas Utility Ltd. (BC Gas) in accordance with terms generally outlined in the Director of Finance & Corporate Services report of April 30, 2001 and detailed in the Transaction Agreements.

Council also approved the Public Communication Process at the April 30, 2001 meeting of Council, **a copy of which is attached**, prior to the introduction of the necessary Loan Authorization and Security Issuing Bylaws and prior to commencement of the required Counter Petition Opportunity.

The following steps have been taken to assist Kelowna citizens and other interested parties to gain a better understanding of this relatively complex financial transaction with BC Gas Utility Ltd., which requires a borrowing of approximately \$49 Million over a seventeen-year period. In return, future City taxpayers will be the benefactors of a Legacy Fund equal to approximately \$20 Million in Year 17. The existing Franchise Agreement with BC Gas will be extended for a further seventeen years and, for purposes of future certainty for BC Gas, the City's right to acquire BC Gas' distribution assets will be removed.

- A media briefing was held immediately following City Council meeting on Monday, April 30, 2001 where the media were provided with an opportunity to ask questions to assist them with filing of their respective reports.

- The City posted a series of documents related to this transaction on the City's Web Page ([www.city.kelowna.bc.ca](http://www.city.kelowna.bc.ca)) including:
  - The **complete and detailed report** from the Director of Finance & Corporate Services to Council, dated April 27, 2001.
  - A **legal opinion** from the legal firm of **Owen Bird** confirming the City's right to enter into this transaction and the risk mitigation efforts contained in the legal agreements.
  - A **report** from the accounting firm, **Deloitte & Touche**, analyzing the transaction.
  - An **opinion** from the consulting firm, **Consolidated Management Inc.**, outlining the minimal risks related to natural gas supply and pricing related to this transaction with BC Gas.
  - A copy of the "**News Release**" dated May 1, 2001, subsequent to consideration by Council.
  - A copy of a "**Background Paper**" that was developed to provide an overview of the transaction from a non-technical perspective.
  - A copy of a "**Questions and Answers**" document, which was prepared to assist the general public in their understanding of the agreement with BC Gas.
- There were a number of "inquiries", otherwise known as "hits" on the City's Web Page related to this transaction. Because there are a number of different documents that can be accessed through the Internet, the actual number of inquiries varies from document to document. On average, there were approximately 30 inquiries through this information source.
- A "hotline" telephone number was advertised where citizens could leave their name along with any questions they had relative to this transaction. There were no inquiries directed to the hotline, however, there were approximately a half-dozen calls that were fielded directly by staff related to this matter.
- An "email" address was also advertised where citizens could seek responses to questions they had related to this transaction. There were no inquiries directed to staff through the email address.
- A brief description of the transaction was provided in the Council Highlights section of the Kelowna Daily Courier and the Capital News on May 4, 2001.
- Public Information packages, consisting of the News Release, Background Paper and Questions and Answers document were printed and made available in the City Clerk's office. A total of fifteen (15) information packages were picked up from the City Clerk's office to May 29, 2001.
- Public Information Packages were direct mailed to all Community Associations, Downtown Kelowna Association, Chamber of Commerce, and the Economic Development Commission.
- The Director of Finance & Corporate Services was invited to participate in an "Open Line" broadcast on Wednesday, May 2, 2001 on CKOV related to this transaction.
- A series of advertisements were posted in the Kelowna Daily Courier and the Capital News notifying citizens of Public Information Meetings, which were held on Thursday, May 3, 2001 at 3:00 p.m., Wednesday, May 9, 2001 at 7:00 p.m. and Thursday, May 17, 2001 at 7:00 p.m.

- Public Information Meetings were held at City Hall, in Council Chambers, on dates noted above, for the purpose of providing citizens with a brief presentation and responding to questions.

The public information meetings were sparsely attended. There were a total of 3 attendees at the May 3<sup>rd</sup> meeting, there were 2 attendees at the May 9<sup>th</sup> meeting and 3 attendees at the May 17<sup>th</sup> meeting. Representatives from a number of community and residents' associations attended the public information meetings including Okanagan Mission, North End, Clifton Highlands, and KLO Central.

- The Clifton Highlands Community Association have written a letter addressed to Council (**a copy of which is attached to this report**), suggesting that City Council consider recommending, to future Councils, that the Legacy Fund created at the end of the transaction be earmarked for parks and cultural purposes. Representatives from this association are aware that it is not possible to fetter the discretion of future Councils in this regard. However, this association feels that current taxpayers are assuming risks, however minor, and as a result should have some input into how legacy funds may be used in the future.

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## Agreement to Lease

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The Agreement to Lease is the master agreement that contains the terms and conditions of the various transactions.

The purpose of the Agreement to Lease is to detail the scope of the transaction as acknowledged and agreed by both parties. In addition the Agreement to Lease details the representations and warranties of both the City of Kelowna and BC Gas Utility Ltd., and outlines the covenants of both parties between signing of the Agreement to Lease and the Time of Closing.

The Agreement to Lease obligates the City to prepay the rent due under the Capital Lease at **\$47.5 Million** or 95% of the value of the City's rights in the Capital Lease on the Closing Date, which payment is a condition of the Capital Lease becoming effective.

The Agreement to Lease also outlines mutual conditions such as when the City will have approved the transaction in principle and when the BC Gas Utility Board of Directors approve the transaction. This agreement also provides for an exchange of legal opinions at Closing and details the closing procedures relative to this transaction. The following are key mutual conditions within the Agreement to Lease:

- On or before **June 4, 2001**, BC Gas' Board of Directors and Kelowna City Council shall have approved in principle the Transactions and the Transaction Documents, the City shall have received satisfactory opinions from the City's advisors, and the City shall have approved commencement of the appropriate approval processes required by the Local Government Act
- On or before **July 31, 2001**, BC Gas shall have obtained the approval of the BC Utilities Commission and all other necessary governmental authorities for the Transaction and Transaction Documents, including regulatory treatment respecting the Transactions, on terms and conditions satisfactory to both BC Gas and the City.

The City shall have successfully completed the Counter Petition process, pursuant to the Local Government Act.

- On or before **September 10, 2001**, the BC Gas Board of Directors shall have authorized the execution of the Transaction documents. Kelowna City Council shall have received satisfactory opinions from the City's advisors and shall have obtained a certificate of the Inspector of Municipalities pursuant to section 1025 of the Local Government Act. In addition, the City of Kelowna will have obtained all other consents and taken any other steps required under the Local Government Act to authorize execution of the Transaction Documents.

### **Conclusion**

At this point in the Legacy Fund Opportunity process staff believes that there are no major impediments to moving forward with the next step, which is to execute the Master Agreement (Agreement to Lease). The following processes will have already commenced or will commence as a result of the execution of the Agreement to Lease:

1. BC Gas will have made application to the BC Utilities Commission, specifically seeking approval for the Lease-In, Lease-Out transaction.
2. Should the BCUC application not require a public process, the City would be in a position to commence the required process to obtain the Inspector of Municipality's approval for this transaction. The required actions on the part of the City are the introduction and first three readings of a Loan Authorization Bylaw and Security Issuing Bylaw on Monday, **June 11, 2001**.
3. Subject to approval of bylaws by Municipal Affairs during the week of June 15, 2001, a report will be brought before Council on **June 18, 2001** to establish a deadline for receipt of Counter Petitions.
4. It is, however, staff's recommendation that the City not commence its own public process concurrent with a BCUC public process should that be a requirement unless it is confirmed by BC Gas that a parallel process would result in confusion for the general public. In this event, the City would commence its public process immediately after the BCUC process has been successfully completed.
5. In accordance with the execution of the Agreement to Lease, final adoption of bylaws is to occur prior to **July 30, 2001**.

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C. P. Kraft

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Encls.

cc: City Clerk

cc: Deputy Director of Finance

