
CITY OF KELOWNA

MEMORANDUM

Date: January 4, 2007
File No.: 7780-01

To: City Manager
From: Development Manager, Recreation Parks and Cultural Services
Subject: Kelowna Art Gallery Lease and Operating Agreement

RECOMMENDATION:

THAT Council approve the Kelowna Art Gallery Lease and Operating Agreement as attached to the report from the Development Manager, Recreation Parks and Cultural Services dated January 4, 2007;

AND THAT the Mayor and City Clerk be authorized to execute the legal agreements on behalf of the City of Kelowna;

AND THAT an alternative approval process opportunity open to all electors within the City of Kelowna be initiated subject to the report from the Development Manager, Recreation Parks and Cultural Services dated January 4, 2007;

AND FURTHER THAT 4:00 p.m. Monday, February 26, 2007 be set as the deadline for receipt of elector responses in the form attached to the report from the Development Manager, Recreation Parks and Cultural Services as Schedule "A" in relation to the City of Kelowna proceeding with a lease and operating agreement between the City of Kelowna and the Kelowna Art Gallery Association for a period of 10 years with two 5-year renewal options as outlined in the report from the Development Manager, Recreation Parks and Cultural Services dated January 4, 2007.

Background:

The City and the Kelowna Art Gallery Association (KAG) embarked on a multi-year, three phase collaborative plan in 2001 to redefine the relationships and responsibilities of the organizations for the delivery of art gallery services and the management of the facility;

- Phase 1 - Comprehensive Management Survey and Review examined the current status and financial performance of the KAG operations as well as the management - maintenance of the facility. Completed in the winter of 2002, this investigation demonstrated a stable and productive association and identified some issues of relatively inconsistent financial results and the need for a financial plan.
- Phase 2 – Production and Presentation of a 5 year Business Plan for KAG, 2002 – 2006. Through this process, KAG developed a financial strategy which places more emphasis on generating additional new revenues through admission fees, better cost recovery for registered programs and increased sponsorship for high calibre exhibits. The City and

KAG has basically followed this business plan very closely and that plan is now completed at the end of 2006.

- Phase 3 - Create an Operating and Lease Agreement to address issues of the City's relationship with KAG based on common principles, establish a legal framework for responsibility and accountability by both parties, and establish a maintenance procedure for the facility.

All three phases are now completed. Although the work to complete the Lease and Operating Agreement has taken considerably longer than originally anticipated, the parties have consistently acted in good faith. From the onset of the negotiations, there has been an agreement in principle, and the parties have behaved as if there was an agreement in place. Notwithstanding the collegial approach to the agreement, we now have a comprehensive legal agreement which has undergone considerable legal review with modern language for these types of agreements, and will be used as a basis for similar situations in the future.

Discussion:

One of the most fundamental principles of this Agreement is that the Kelowna Art Gallery Facility is leased to KAG to be operated and maintained "for the perpetual benefit of the City and the citizens of the City of Kelowna".

The Lease and Operating Agreement is for a term of ten (10) years with an option for an additional 2 five (5) year extensions. It is because of the length of the term that the AAP as noted in the recommendation is required. There are benefits for the City, KAG, and especially the community, as we maximize the efficient use of financial resources, as well as the services and facilities available to the community.

The Agreement is a comprehensive set of documents that address in considerable detail the City's need to have the civic asset protected, while at the same time providing KAG with the ability to manage and operate an exciting and vibrant facility in the heart of the Cultural District.

A complete list of documents contained in this Agreement is:

Lease and Operating Agreement

List of Schedules

Schedule A	List of the Collection (to be updated annually)
Schedule B	Certificate of Insurance
Schedule C-i	Plan of the Lands
Schedule C-ii	Plan of the Gallery on the Lands
Schedule C-iii	Floor plan of the Gallery Facility
Schedule D	Kelowna Art Gallery Association Constitution and Bylaws

While the overall agreements are complex, the following points capture the key ingredients;

1. The City appoints KAG to operate the facility and provide defined services to the public over a ten (10) year period, with an option for an additional 2 five (5) year extensions;
2. The City provides a ten (10) year lease of the facility to KAG, with an option for an additional 2 five (5) year extensions;
3. KAG and the City of Kelowna are jointly responsible for the maintenance of the facility, the City contracts KAG to provide the maintenance services, and the City providing the funds for maintenance costs;
4. KAG is fully responsible for all day-to-day operations, management decisions, and staffing the Facility;
5. Public access to the Facility is defined and assured over the life of the agreement;
6. The City may appoint a City Councillor and the Director of Recreation Parks and Cultural Services (or designate) to act as liaison to the Board of Directors and attend meetings;
7. KAG will provide comprehensive reports to the City on many operational and financial issues on a regular basis;
8. The City and KAG will have an annual formal meeting to review the Agreement, the Facility and all relevant business issues, including the preparation of the annual budget and any changes KAG may seek. KAG will follow the City's annual budget cycle, except under highly unusual or emergent situations;
9. The City provides operating funds to KAG annually based on the proposed annual operational budget which is in two (2) parts:
 - a. Administration & Programming – KAG will use the administration & programming fund for the general purpose of administering and programming the Gallery;
 - b. Maintenance – KAG will use the maintenance fund for maintenance only;
10. The City always remains the legal owner of all property, the Facility, all major equipment, and the beneficial owner of the Collection;
11. KAG will provide appropriate support and work in collaboration with the many stakeholders, to ensure the success of the Cultural District.

This Agreement does not address a capital development plan or the acquisition of new works of art. The Kelowna Art Gallery does have the ability to contribute towards such initiatives from funding sources separate from the funds identified in this Agreement.

As Kelowna's Cultural District continues to grow and flourish, the Kelowna Art Gallery will provide a significant focal point for the development of arts and culture in our community. Staff is pleased to present this comprehensive legal agreement for Council's consideration.

Category "A" Status:

Also, we would like to recognize the Kelowna Art Gallery for a recent achievement. The Department of Canadian Heritage has approved the designation Category "A" institution status for Canadian public museums and galleries for the Kelowna Art Gallery.

Only one of six such designations in BC, KAG is now formally recognized for its ability to exhibit, collect, store and preserve all works of art entrusted to its care. "A" status enables KAG to apply on behalf of donors to the Canadian Cultural Property Export Review Board throughout the year to acquire new works of art for KAG's permanent collection.

KAG's application for "A" status has been an in-depth process over six years, which included site visits and inspections by the Canadian Conservation Institute. KAG achieved this status because of its high standard of museum practices, the preparation of an emergency

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preparedness manual, as well as addressing upgrades to the building and storage of the permanent collection.

The collection is acquired and cared for in trust for the City of Kelowna as a legacy for the citizens of Kelowna.

JWR Oddleifson
Development Manager, Recreation Parks and Cultural Services

P/c Director of Recreation Parks and Cultural Services
 City Clerk
 Cultural Services Manager

Attachments

Kelowna Art Gallery Lease & Operating Agreement

SCHEDULE A

ALTERNATIVE APPROVAL PROCESS ELECTOR RESPONSE FORM

I am **OPPOSED** to the City of Kelowna proceeding with the Kelowna Art Gallery Lease & Operating Agreement. The Lease & Operating Agreement is between the City of Kelowna and the Kelowna Art Gallery Association for a period of 10 years with two 5 – year renewal options. The Agreement leases the Kelowna Art Gallery, located at 1315 Water Street to the Association and provides terms and conditions for the operation by the Association, including administration, management, and programming of the facility. Further information and a copy of the Agreement are available by contacting the Development Manager, Recreation Parks and Cultural Services, Reid Oddleifson at 469-8821 or Polly Palmer, Acting Legislative Coordinator at 469-8681.

I, the undersigned, hereby certify that:

- I am eighteen years of age or older; and
- I am a Canadian citizen; and
- I have resided in British Columbia for at least six months; and
- I have resided in, OR have been the registered owner of real property (and have been designated as the elector in regard to that property) in, the City of Kelowna for at least thirty days; and
- I am not disqualified by the *Local Government Act* or any other enactment or otherwise disqualified by law from voting in local elections; and
- I am entitled to sign this alternative approval process elector response form and have not previously signed an alternative approval process elector response form for the proposed Agreement.

All alternative approval process elector response forms must be received by the City Clerk, 3rd Floor, City Hall, 1435 Water Street, Kelowna, B.C., V1Y 1J4 on or before 4:00 p.m. on Monday, February 26, 2007.

ELECTOR'S FULL NAME (Print – NO initials)	RESIDENTIAL ADDRESS (or address of real property in Kelowna owned by elector if not resident)	SIGNATURE ELECTOR OF

NOTE: A person must not sign any alternative approval process elector response form more than once and may not withdraw his or her name from the alternative approval process elector response form after the deadline for submission of the petitions has passed.

The number of electors of the City of Kelowna is estimated to be 84,360. If 10% (8,436) of the estimated number of electors of the City of Kelowna sign an alternative approval process elector response form opposing the noted transactions, City Council will not be able to proceed without then receiving the assent of the electors by referendum.