

## MEMORANDUM

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**Date:** October 20, 2008  
**File No.:** 6240-20  
**To:** City Manager  
**From:** Development Manager, Recreation Parks and Cultural Services  
**Subject:** **Aquatic Centre Management and Operating Agreement -  
YMCA-YWCA of the Central Okanagan**

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### RECOMMENDATION:

**THAT** Council approve the Management and Operating Agreement (MOA) between the City and the YMCA-YWCA of the Central Okanagan (the Y) for the MRP Aquatic Centre as attached to the report from the Development Manager, Recreation Parks and Cultural Services dated October 20, 2008;

**AND THAT** the Mayor and City Clerk be authorized to execute the MOA in order to carry out the duties, obligations and intentions as outlined in the MOA;

**AND THAT** Council appoint the Director of Recreation Parks and Cultural Services, or designate, as the City representative for the purpose of coordinating all matters and obligations as required in the MOA;

**AND FURTHER THAT** Council consider the City's financial obligations in this MOA during its review of the 2009 Financial Plan.

### BACKGROUND:

On April 30, 2007 Council authorized staff to commence negotiations with the Y for management services and operation of the new Aquatic Centre in Mission Recreation Park.

On October 1, 2007 Council approved the Memorandum of Understanding (MOU) between the City and the Y for the parties to complete the planning and preparation work required to ensure the subsequent successful management and operation of the MRP Aquatic Centre by the Y, and to provide the basis for further negotiation by identifying the operational responsibilities and conditions to be negotiated between the parties toward the development of a final management and operating agreement for the Facility.

The City and the Y have now completed negotiations and have developed a comprehensive Management and Operating Agreement. The MOA establishes a high standard of operations for the new Aquatic Centre, and defines the ongoing cooperation and collaboration between the parties during the Term. Goals and objectives for both parties are well defined, and demonstrate a positive, common theme of providing high calibre public services in the recreation, sport and health fields.



Some key components of the MOA include:

1. Term – the Term of this MOA is for 39 months, commencing with the 6 month Start Up Phase followed by the Initial Operating Period (33 months) terminating December 31, 2011. There is no lease as part of this MOA. The intent is to utilize this Term to gain specific experiences in the many aspects of managing and operating this brand new, relatively complex Facility. The City is obligated to negotiate exclusively with the Y during the Initial Operating Period with the intention of entering into a longer term agreement in the future.
2. Financial Payments - the total operating costs of the new facility and the funding obligations for this MOA are detailed below. The City will forward the funds to the Y on a monthly basis in advance during the Start Up Phase, and on a quarterly basis in advance during the Initial Operating Period. However, the final quarterly payment may be adjusted based on a financial statement submitted by the Y to confirm funding requirement.

Notwithstanding the budget projections as defined below, the Y will submit full operating budgets for 2010 and 2011 as part of the City's typical budget preparation procedures; therefore any adjustments to an annual budget requires City Council approval.

3. Communications – There is a requirement for the parties to meet on a monthly basis throughout the term to discuss key aspects of the operations, specifically financial circumstances, actual and anticipated revenue and expenses, budgetary shortfalls, Facility maintenance, Facility programs & schedules and Facility attendance. This is an important and critical requirement to ensure successful operations as well as to ensure that any adjustments to the program or budget are completed cooperatively and collaboratively.
4. Maintenance – considering that this Facility utilizes sophisticated technology for the energy management systems, the City has retained considerable responsibilities for maintenance. The City and the Y each have specific responsibilities well defined in the MOA, which are generally categorized as;

City Maintenance responsibilities

- Heating, ventilation and air conditioning systems including supplies
- Electrical Systems including supplies
- Digital controls and energy management systems
- Facility exterior – lighting, parking lots, landscaping, glazing
- Utilities and pool chemicals
- Major items and warranties

The Y maintenance responsibilities

- Swimming pool water circulation and chemical treatment systems including equipment and testing
- Janitorial Services including materials and supplies
- Natatorium and fitness equipment and apparatus,
- Facility interior - furnishings, audio visual systems
- Operational materials and supplies
- Routine and minor items

5. Certified personnel - the MOA details required qualifications, certifications and experience for appropriate staff, consistent with regulations and standards in BC for the operation of facilities in this field, most notably lifeguards, aquatic and fitness instructors, and maintenance personnel.

The Council approved MOU contained a provision for an Aquatic Staff Training and Recruitment Strategy to ensure an adequate number of trained and qualified staff for the aquatic field. It is anticipated that ~60 individuals will be required to sufficiently support and lead all program, administration and maintenance aspects of the new facility. The City and the Y worked collaboratively to implement this strategy and are pleased to report considerable success. Some statistical details as of August 31, 2008 are;

- 110 individuals completed or re-certified the National Lifeguard Service Award in 2008,
- 112 individuals completed or re-certified an Aquatic Instructor Award in 2008,
- 39 individuals acquired a BCRPA or YMCA Fitness certification in 2008.

Approximately 120 individuals will be qualified as "job ready" by January 2009. In addition, there are approximately 30 individuals currently enrolled in a NLS or Aquatic Instructor program and 20 individuals will complete a BCRPA Aquatic Supervisors Program prior to the Spring of 2009.

6. Furnishings and equipment – comprehensive lists of required furnishings and equipment have been developed and are categorized on Schedule E in the MOA. A process is established whereby the Y, who will operate, maintain, insure and otherwise be responsible for this equipment, will submit final lists for City approval to purchase.
7. Fees and charges – The Council approved MOU contained a provision for a Market Study to be completed in 2008 to determine anticipated usage of the new Facility, and establish admission fees that patrons are willing to pay to use the Facility. Ipsos Reid was contracted to complete a comprehensive, statistically valid marketing study. The information from this study has been incorporated into the operating budget. The admission fee schedule will be based on:

<i>Single Admission fee to entire Facility</i>		<i>Monthly membership fee to entire Facility</i>	
<i>Adult</i>	<i>\$9.00</i>	<i>Adult</i>	<i>\$45.00</i>
<i>Senior</i>	<i>\$7.00</i>	<i>Senior</i>	<i>\$35.00</i>
<i>Youth</i>	<i>\$6.00</i>	<i>Youth</i>	<i>\$30.00</i>
<i>Child</i>	<i>\$5.00</i>	<i>Child</i>	<i>\$25.00</i>

8. Accessibility – There are three techniques to ensure that the Facility is accessible;
  - Financial Assistance Program - The Y will provide access to its Membership Financial Assistance Program, for those who cannot afford the full fee for programs and services at the Facility, including those persons with a disability.
  - Recreation Opportunities Coupon - The Y will honour the Recreation Opportunities Coupon as developed and distributed by the City for access to drop in swimming, and fitness.
  - Everyone Gets to Play Network - The Y will participate on the Everyone Gets to Play Network (EGTP) as established by the City, and participate in developing and implementing new programs and techniques to ensure the Facility is accessible to the disadvantaged.

#### **INTERNAL CIRCULATION TO:**

Director of Recreation Parks and Cultural Services  
 Financial Planning Manager  
 City Clerk  
 Risk Manager  
 Sport and Recreation Manager  
 Civic Properties Manager

**FINANCIAL/BUDGETARY CONSIDERATIONS:** The Financing Plan for the Aquatic Centre approved by Council in July 2006, in preparation for the Alternative Approval Process, indicated an ongoing taxation increase of 1.56% for the annual net operating cost. The chart below details the areas of expenses and revenues, and is consistent with the Council's approved Financing Plan;

	<u>2009</u>	<u>2010</u>	<u>2011</u>
<b>TOTAL FACILITY EXPENSES</b>			
City Maintenance	\$127,500	\$153,000	\$157,590
Utilities	\$434,647	\$521,576	\$537,224
Chemicals	\$125,000	\$150,000	\$154,500
PRC Net Loss	\$50,000	\$50,000	\$50,000
Repayment to the reserve Account	\$116,000	\$116,000	\$116,000
<b>Sub-Total for City expenses</b>	<b>\$853,147</b>	<b>\$990,576</b>	<b>\$1,015,314</b>
Y start up operating expenses	\$384,000		
Y operating expenses	\$2,466,000	\$3,389,500	\$3,389,500
<b>Sub-Total for Y expenses</b>	<b>\$2,850,000</b>	<b>\$3,389,500</b>	<b>\$3,389,500</b>
	<b>\$3,703,147</b>	<b>\$4,380,076</b>	<b>\$4,404,814</b>
<b>TOTAL FACILITY REVENUES</b>			
Total Y operating Revenues	-\$2,016,000	-\$2,930,000	-\$2,930,000
Concession Lease Revenue	-\$25,000	-\$30,000	-\$30,000
2008 Carry over	-\$281,500		
	<b>-\$2,322,500</b>	<b>-\$2,960,000</b>	<b>-\$2,960,000</b>
<b>NET COST TO THE CITY</b>	<b>\$1,380,647</b>	<b>\$1,420,076</b>	<b>\$1,444,814</b>

The obligations of the City and the Y specific to this MOA - The City and the Y have worked closely to create detailed operating budgets for the Start Up Phase and for the Initial Operating Periods; net costs for the operating grant are;

Timeframe	Dates	City Funding
<b>2008 Start Up Phase</b>	October 1 to December 31	\$95,000
<b>2009 Start Up Phase</b>	January 1 to March 31	\$384,000
<b>2009 Operating Year</b>	April 1 to December 31	\$450,000
<i>Total Revenues</i> \$2,016,000	<i>Total Expenses</i> \$2,466,000	
<b>2010 Operating Year</b>	January 1 to December 31	\$459,500
<i>Total Revenues</i> \$2,930,000	<i>Total Expenses</i> \$3,389,500	
<b>2011 Operating Year</b>	January 1 to December 31	\$459,500
<i>Total Revenues</i> \$2,930,000	<i>Total Expenses</i> \$3,389,500	

This is not a fixed price Agreement; any net expense variance from that detailed above is the financial responsibility of the City;

- if the net cost is higher, the City will provide funds,
- if the net cost is lower, the City will recover funds.

Staff will report to Council periodically, with the financial status of the Aquatic Centre operations.



Considerations that were not applicable to this report:

Legal/Statutory Procedural Requirements:

Existing Policy:

Alternate Recommendation:

Technical Requirements:

External Agency/Public Comments:

Personnel Implications:

Legal/Statutory Authority:

Submitted by:

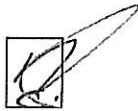


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JWR Oddleifson

Development Manager, Recreation Parks and Cultural Services

Approved for Inclusion:



c.c. Director of Recreation Parks and Cultural Services  
Financial Planning Manager  
City Clerk  
Sport and Recreation Manager  
Civic Properties Manager  
Y MCA-YWCA of the Central Okanagan

Attachment

## MANAGEMENT AND OPERATING AGREEMENT

THIS AGREEMENT dated for reference \_\_\_\_\_, 2008 is

BETWEEN:

**CITY OF KELOWNA**, 1435 Water Street, Kelowna, B.C., V1Y 1J4

(the "City")

AND:

**YMCA – YWCA OF THE CENTRAL OKANAGAN** (Inc. No. S-16706), a society under the *Society Act* (British Columbia), 375 Hartman Road, Kelowna, B.C., V1X 2M9, Facsimile 250-765-7962 email ceo@ymca-ywca.com

(the "Y")

WHEREAS:

- A. The City is the registered owner of the lands in fee simple located at 4015 Gordon Drive, Kelowna, B.C. and legally described as:  
  
PID: 026-563-355  
Lot 2 District Lot 168 and Section 2 Township 26 ODYD Plan KAP80134  
  
(the "Land");
- B. The City has constructed on a portion of the Land a three story aquatic centre building that includes a natatorium and other aquatic facilities, change rooms, fitness rooms, meeting rooms, administration spaces and public spaces, as shown and described on Schedule A, (the "Facility") for the purpose of providing community, sport and recreation opportunities and other programs and services for the benefit of the community of Kelowna;
- C. The Y and the City entered into a Memorandum of Understanding regarding the planned engagement of the Y to operate the Facility and that MOU included various principles regarding the relationship between the City and the Y;
- D. The Y wishes to manage and operate, and the City wishes to engage the Y to manage and operate, the Facility in accordance with this Agreement;

- E. The Y and the City intend that the Y will be responsible for operating the Facility, utilizing its expertise and experience in operating community facilities, subject to the restrictions and requirements of this Agreement, including the City approved budget, and the City's express obligations under this Agreement;
- F. While this Agreement sets out the City and Y operating relationship over the start-up and initial operation of the Facility, it is the intent of the parties to establish a long-term arrangement and this Agreement will serve as a basis for negotiating and entering into such a long-term arrangement;

NOW THEREFORE this Agreement witnesses that in consideration of the premises and mutual covenants herein contained and other good and valuable consideration (the receipt and sufficiency of which each party acknowledges), the City and the Y agree as follows:

**Objectives:**

- 1. The City and the Y respective objectives for this Agreement are as follows:

- **The City Objectives**

- To expand recreation opportunities and new services to the public
- To maximize the financial performance and reduce overall operating costs to the City with respect to the Facility
- To maintain an acceptable level of accessibility in keeping with the City's service philosophy to reduce barriers to access for all citizens, especially for youth, persons with disabilities, and economically and social disadvantages individuals and families, through programming, communication, partnerships, staff resources and budget.
- To ensure the Facility is operated at a standard that meets or exceeds the expectations of Kelowna residents.
- To ensure long-term asset management of the Facility during and beyond the Term.
- To collaborate amicably with the Y to ensure that the City's expectations for the Facility are fully realized while protecting the Y's ability to remain responsive to market conditions.
- To be responsible for public communications, events and circumstances which are beyond the Y's control.
- To ensure the City receives appropriate recognition for the Facility, as the legal owner of the Facility and on behalf of the citizens of Kelowna.

- **The Y Objectives:**

- To further the Y's mandate to Build Strong Kids, Strong Families and Strong Communities
- To provide Y value-based programs, events and service standards at the Facility
- To ensure a visible Y profile, presence and culture within the Facility and in the public marketing of the Facility

- To ensure the Y is protected from any financial losses that may result from the operation and management of the Facility that are outside of the Y's control
- To maintain and develop new relationships with government and other organizations with complimentary objectives in the provision of programs that may be offered at the Facility
- To collaborate amicably with the City to ensure that the City's expectations for the Facility are fully realized
- To have the resources and authority necessary to make decisions on operation matters to achieve business, service and financial objectives.
- To publicly and proactively enhance and protect the Y's image and reputation through management and operation of the Facility.

### **Y Engagement**

2. The Y shall, on the terms and conditions set forth in this Agreement, operate, maintain, supervise and manage the Facility in accordance with this Agreement.

### **Term**

3. The term of this Agreement shall begin on October 1, 2008 and shall expire on December 31, 2011, or, further, subject to extension contemplated herein in connection with the negotiation of a long-term arrangement, the Term shall be extended to the date that is 9 months following the termination of negotiations of a long-term arrangement under section 4 (the "Term"), provided that in no circumstances, except by agreement of the parties, shall the Term go beyond the fifth anniversary of the first day of the Term. The portion of the Term up to and including March 31, 2009 is referred to herein as the "Start-Up Phase" and each subsequent calendar year (or portion thereof) during the Term is referred to herein as an "Operating Year".

### **Negotiation of Long-Term Arrangement**

4. It is the intention of the City to negotiate solely with the Y towards a long-term agreement for the management and operation of the Facility and in connection therewith:
  - (a) On or before October 1 2010, the Y and the City shall commence negotiations in good faith for a long-term arrangement for the management and operation of the Facility.
  - (b) The parties will thereafter endeavour to negotiate an agreement for such long-term arrangements, provided that if either party is at any time not satisfied, in its sole discretion, with negotiations such that it does not consider that a satisfactory agreement can be reached, that party may provide notice to the other party terminating negotiations.

## Detailed Operating Requirements

### 5. The Y shall:

- (a) comply with the operating budget requirements set out in Schedule B (the "Operating Budget Requirements");
- (b) comply with the programming requirements and facility user rate requirements set out in Schedule C (the "Programming Requirements");
- (c) comply with the staffing requirements set out in Schedule D (the "Staffing Plan") and Schedule F (Facility Maintenance) and will otherwise employ as supervisors, employees and others performing its obligations under this Agreement only competent persons who possess the qualifications, skills, training and experience necessary for them to properly perform their duties;
- (d) perform its obligations as a prudent owner would, applying the degree of care, skill and diligence to manage and supervise the operation, maintenance, preservation and protection of the Facility as would a prudent owner of a similar facility in British Columbia;
- (e) comply with any and all laws, enactments, bylaws, statutes, regulations, rules, orders, permits, licences, codes, building codes, professional standards and specifications (including Canadian Standards Association standards) applicable to the Facility and the services to be provided by the Y under this Agreement, as they are in force from time to time or in the latest current version;
- (f) obtain and maintain in good standing, and comply with all terms of, all licences, permits, consents, authorizations, certificates, operating certificates and other approvals of any kind from any federal, provincial, local or other government or governmental agency, authority, board, bureau or commission that are required for the operation, management and maintenance of the Facility or for the performance of any of the Y's obligations under this Agreement;
- (g) provide all labour, equipment, tools, material and supplies that may be required to perform its obligations under this Agreement, unless otherwise provided by the City;
- (h) purchase and maintain sufficient inventory of supplies and materials (including spare parts and long lead-time replacement items) as is reasonably necessary to ensure continuous operation of the Facilities, unless otherwise provided by the City;
- (i) not do, suffer or permit any thing in, on or from the Facility or the portion of the Land licensed to the Y under this Agreement and the Facility Perimeter as shown on Schedule A that may be or become a nuisance or annoyance to the owners, occupiers or users of adjacent lands or to the public, including the accumulation of rubbish or unused personal property of any kind; and



- (j) keep the Land and lands adjacent to the Land free of any rubbish and debris originating from the Facility.

### **Budgeting & City Payment**

6. On or before August 31<sup>st</sup> of each Operating Year (or, in the case of the first Operating Year only, at least 4 months before that Operating Year), the Y shall prepare and submit to the City for approval by City Council, an operating budget for the upcoming Operating Year. Both parties acknowledge that revisions to the Facility programs and services may be required in order to achieve a final operating budget for the City's overall financial plan and final approval. The proposed budget shall include anticipated operating expenses to be incurred by the Y under the terms of this Agreement and anticipated revenue from the programming and operation of the Facility, and any net operating funds from the previous Operating Year which are to be carried forward to the following Operating Year. Operating revenues shall include, but are not limited to:
  - (a) Admission and membership fees charged to members of the public to access Facility amenities
  - (b) Program fees charged to members of the public to participate in programs offered at the Facility
  - (c) Fees charged for lockers, merchandise sold at the Facility, childminding, pool and room rentals,
  - (d) Fees paid by any third party to access or operate a business within the Facility.
7. The Y shall use reasonable efforts to operate the Facility in accordance with the City approved operating budget, however, the City acknowledges that adjustments to the budget may be required to accommodate unforeseen circumstances and shortfalls in projected sales or attendance levels and the City shall act reasonably in considering any Y requests for budget adjustments.
8. The City shall pay to the Y, in equal monthly instalments during the Start Up Phase October 2008 to March 2009, the funding amount as defined in Schedule B.

The City shall pay to the Y, in equal quarterly instalments during each Operating Year 15 days prior to the beginning of each quarter, the amount by which annual operating expenses to be incurred to operate and manage the Facility by the Y exceed annual revenues of the Facility, as set out in the City approved operating budget, the net amount of which will represent the net Facility cost payment and further defined in Schedule B. Based on the financial performance of the previous three quarters, and after consultation between the parties, the final quarterly payment may be adjusted not less than 15 days prior to the approval date. Notwithstanding the foregoing, during a budget approval process, or at a time mutually agreed to by the parties, the City and Y may agree on an altered payment scheme that does not result in equal quarterly payments if necessary to address appropriate timing of funding, for instance, with respect to the Y's obligations hereunder to purchase furnishings and equipment or to address seasonal revenue fluctuations.

9. Provided that the Y uses reasonable efforts and to comply with the approved budget and by way of written report, keeps the City informed on a minimum quarterly basis and up-to-date with respect to the financial circumstances of the Facility and anticipated operating losses, the City will reimburse the Y if the total operating expenses properly incurred by the Y under this Agreement for the Operating Year exceed the total of actual Facility revenue and the City net Facility cost payment under section 8.
10. In the event that revenue plus the City payment under section 8 exceeds actual Y operating expenses for an Operating Year, the Y shall pay the surplus to the City within 120 days following the end of the Operating Year, unless other arrangements are made between the parties regarding such surplus and further defined in Schedule B.

#### **Facility Name, Y Profile & City Promotion**

11. The City shall have the exclusive right to name the Facility and to all revenue generated from the sale of naming rights, provided that any costs incurred by the Y in implementing the City designated name in signage, promotional material and otherwise at the Facility shall be included as operating costs under this Agreement. The City shall invite input from the Y regarding any future naming sponsorship agreement for the Facility in order to avoid any potential conflict with the Y's charitable Mission and operation of the Facility
12. The Y shall have the right to establish a strong profile at and within the Facility and to publicly associate itself with the Facility in its public advertising and media identification including Y news releases, interviews and related community involvement. The Y advertising and media identification shall not conflict with the rights of any naming sponsor as defined in a naming sponsorship agreement. Y profile at the facility may include but is not limited to:
  - (a) Interior signage that identifies the Y as the manager and operator of the Facility,
  - (b) Upon approval of the City, which approval may be withheld for any reason, exterior signage that identifies the Y as the manager and operator of the Facility,
  - (c) The use of the Y name and logo on staff uniforms, and marketing materials,
  - (d) Events and promotions held at the Facility that profile the Y and its charitable purpose and mission,
  - (e) Display of signage and print materials related to the Y mission, values, standards, awards, notices, volunteerism, fundraising and promotions,
  - (f) Delivery, promotion and marketing of Y programs such as Y Coach Approach, Y Healthy Hearts, Y Swimming Lessons, Y Fitness Instructor Training and related Y programs and activities,
  - (g) Other methods of highlighting the Y's profile as managers and operators of the Facility as may be agreed upon between the City and the Y in the future.
13. The City shall, from time to time, promote and advertise the Facility though display advertisements in any City periodic recreation program guides, City web site

announcements, and shall create web site links from appropriate City web sites to any Facility specific websites established by the Y pursuant to this Agreement.

### **Y Overhead and Management**

14. In support of the management of the Facility, the Y shall provide or cause to be provided the following centralized services (collectively, "Y Overhead and Management"):
  - (a) Strategic and operational management support and supervision in the areas of financial management, human resource management, program development and evaluation, strategic planning, marketing and communication, community and Facility specific event planning and coordination, directed charitable fundraising, organizational-wide staff training, initiatives, recognition program and events, computer and information technology, City contract management and liaison, and reporting;
  - (b) Full accounting services including accounts receivable, accounts payable, payroll, group benefits administration, government remittances and reporting, financial statement preparation and reporting, banking and other similar services;
  - (c) Independent financial auditing;
  - (d) CLASS software support and training, software licensing and support fees and contracted computer and telephone maintenance and repair;
  - (e) Telephone line changes, long distance, postage, photocopying, forms, paper, office and office supplies related to Y Overhead and Management;
  - (f) \$10,000,000.00 Comprehensive Liability Insurance and All Risks Property Insurance; and
  - (g) YMCA Canada and YWCA Canada program, facility and organizational resources, program standards, training, issue management, best practices, success measures and evaluation through its affiliation and membership in both national bodies.
15. In consideration of the provision of Y Overhead and Management, the budget for each Operating Year shall include an amount equal to 13% of all other operating expenses to be incurred by the Y for the operation of the Facility in the approved budget and as may be amended from time to time.

### **Facility & Equipment Maintenance, Repair, Replacement, Security and Other Matters**

16. The City and the Y shall each have responsibility for maintaining the Facility in accordance with the allocation of responsibility set out in Schedule F. To facilitate these responsibilities, the Y and the City will meet monthly commencing at the first month of the Term, or at a frequency as mutually agreed to by the parties, to tour the Facility, discuss general building conditions, and jointly plan for major and minor capital projects

and maintenance/repair/replacement and refurbishment issues and requirements, in accordance with the terms and financial limitations in this Agreement.

### **Operating License & Parking License**

17. The Y shall have a non-exclusive contractual license to enter and be on and within the Facility and the Facility Perimeter as shown generally on Schedule A for the purpose of performing its obligations under this Agreement.
18. The Y shall have a non-exclusive contractual license to use the parking area adjacent to the rear of the Facility for the purposes of Y staff parking, Y contractor parking, and other persons visiting the Facility as determined by the Y. City staff and City contractors shall also be permitted to park in this area as specified in Schedule A.
19. For clarity, the Y acquires no interest (legal or beneficial) in the Facility or the Land by virtue of this Agreement or any of the rights granted to it under this Agreement.

### **Accounting, Records and Reporting**

20. The Y shall cause appropriate representatives to meet with City representatives on a monthly basis, or at such other frequency as may be mutually agreed upon by both parties, during the Term in order to discuss the operation of the Facility and to update the City as to the financial circumstances of Facility operations including but not limited to actual and anticipated revenue and expenses, budgetary shortfalls, Facility maintenance, Facility programs and schedules and Facility attendance.
21. The Y shall:
  - (a) prepare Facility financial reports, maintain adequate accounts, books and records, including copies of all receipts, vouchers and cheques, and use reasonable efforts to ensure that such accounts, books, records and financial reports meet reasonable accounting and tax reporting requirements and meet accounting principles generally acceptable in Canada, as published by the Canadian Institute of Chartered Accountants from time to time ("GAAP");
  - (b) within 40 days after each quarter during the Term, provide to the City unaudited financial statements in respect of each quarter during the Term, reflecting in reasonable detail the results of the Facility's operations and the financial situation of the Facility for the quarter and for the Operating Year to date, including the balances in all operating accounts and projections of Operating Year-end revenues and expenses as compared with the City approved budget;
  - (c) within 120 days of the end of each Operating Year, provide to the City:
    - (i) audited financial statements in respect of Facility operations for that Operating Year, including the balances in all operating accounts and a comparison of revenues and expenses with the City approved budget;

- (ii) a comprehensive annual report in a form appropriate for senior City staff review, summarizing the management of and activities at the Facility in that Operating Year, and shall include information regarding, but not limited to
  - Programs activities, events and services
  - Statistical summary of program registrations, and general attendance and participation levels
  - Staffing levels, and staff training
  - Accomplishments, Challenges Issues and trends
  - Financial details for revenues and expenses
  - Safety measures and issues
  - Recommendations and objectives for future year
  - Customer services satisfaction public comments, including complaints
  - Aquatic sports clubs participation and events
  - Facility maintenance
  - Food and beverage services
- iii) provided that if the Y and its auditor are not able to meet the noted 120 day timeline , the Y may seek an extension from the City, the approval of which shall not to be unreasonably withheld;
- (d) keep and maintain the records of the Facility relating to the following:
  - (i) accident/incident reports;
  - (ii) attendance and program registration reports;
  - (iii) customer and user comments, including any collected from customer comment boxes at the Facility;
  - (iv) current staff certifications and qualifications;
  - (v) all swimming pool water chemistry analysis test results including those as submitted to the Department of Health;
  - (vi) emergency lighting inspections;
  - (vii) preventative maintenance for those maintenance obligations by the Y;
  - (viii) inspection and maintenance of emergency equipment and supplies;
  - (ix) fire and emergency drills;
  - (x) Work Safe BC safety inspections;
  - (xi) Gas chlorine record; and
  - (xii) Log books for all waterslides;



- (e) cause all books and records of the Facility be kept at the Facility; and
- (f) on 72 hours notice, permit the City, its accountants and other representatives, at the City's expense and at all reasonable times, to examine and make copies of any and all documents listed in this section and any other documents under the control of the Y that relate to the Facility and to audit the same.

#### **City Access**

- 22. The City shall have unrestricted access to the Facility at such times and in such manner as the City considers necessary in order to perform the City's obligations under this Agreement, to exercise the City's rights under this Agreement, to assess compliance by the Y with its obligations under this Agreement and otherwise as the City may consider necessary in its capacity as owner of the Facility.

#### **Goods and Services Tax**

- 23. The City shall pay to the Y, in addition to the amounts otherwise payable to the Y for its services, all applicable GST and any other taxes payable by the City with respect to the services provided to it by the Y under this Agreement.

#### **Collection of Taxes & Property Taxes**

- 24. The Y shall charge and collect from users and occupants of the Facility all applicable GST and other taxes payable by users with respect to their use or occupation of the Facility and the Y shall remit such taxes in accordance with all applicable laws.

- 25. Property Taxes

The Y shall not be responsible to pay any property taxes payable with respect to the Land or the Facility.

#### **Payment of Costs**

- 26. The Y shall perform all its obligations under this Agreement at its own cost, subject to the City's obligations under this Agreement to make payment to the Y.

#### **User Agreements and Waivers**

- 27. The Y shall from time to time establish forms of agreements, indemnities, releases and waivers for Facility users and occupants (or particular classes of users or occupants) as is appropriate to reasonably protect both the Y and the City from liability as may be required by the Y or the City from time to time, in forms acceptable to the City acting reasonably, and the Y shall cause applicable users and occupants to execute such user agreements, indemnities, releases and waivers. The Y shall not be responsible for costs associated with the City's review and/or approval of such documents.

### **Furnishings, Equipment and Other Property**

28. Within 30 days following the execution of this Agreement the Y shall submit to the City a detailed list of equipment and furnishings related to administration, programming, and maintenance that it considers necessary to operate the Facility, including model specifications, pricing and other pertinent information for the purchase and installation of such equipment and furnishings. The City shall review and indicate its approval or disapproval of the items on the list. Where the City approves of an item, the City shall have the option, at its sole discretion, to purchase the items and deliver these to the Facility, or provide the approved funding to the Y for that item within 30 days, and the Y shall be responsible for purchasing, installing and commissioning, as required, all approved items. Any and all equipment and furnishings purchased and installed by the Y shall remain the property of the City and shall always remain in the Facility. Schedule E contains a non-exclusive list of the categories of equipment and furnishings that will be required for the Facility, complete with projected financial value for each category and a total financial limit for the purchase, delivery, installation and commissioning for all equipment in all categories
29. The Y shall inspect, maintain and repair, as necessary, all equipment and furnishings supplied by the City or purchased by the Y under this Agreement (collectively, "Facility Property") and shall do so in such a manner as to ensure its safe use by the Y, its employees, contractors and agents, the public and others from time to time at the Facility.
30. The Y may, when it considers it necessary for the Facility but subject to City approved budgetary allocation, purchase other equipment, furnishing and personal property for the purpose of operating the Facility and otherwise performing its obligations under this Agreement, all of which shall be considered part of the Facility Property.
31. The Y is responsible for insuring the Facility Property on terms satisfactory to the City.
32. All Facility Property shall, on the earlier of the date it is purchased for the Facility and the date it is placed within the Facility, become the property of the City and shall always remain within the Facility. On the expiration or earlier termination of this Agreement, the Facility Property shall be in good repair and condition, subject only to reasonable wear and tear.

### **Employees, Remuneration and Deductions**

33. Without limiting any other provision of this Agreement, the Y shall employ and provide the services of such staff and personnel as are necessary to promptly and efficiently carry out the duties and responsibilities of the Y. The Y is the employer of such staff and personnel and the City are not engaging such staff and personnel as employees or agents for the City.
34. The Y shall be solely responsible for any and all remuneration and benefits payable to its employees and all payments and deductions required to be made by any enactment, including those for Canada Pension Plan, Employment Insurance, Workers' Compensation or Income Tax.

### **Workers Compensation**

35. The Y shall, at all times during the Term:

- (a) in operating the Facility and otherwise performing its obligations under this Agreement, comply with the *Workers Compensation Act* (British Columbia) and all regulations and orders from time to time in force thereunder, including the Occupational Health and Safety Regulation, and, upon request from the City, provide evidence of any required registration under that Act and evidence of compliance with any requirement under that Act to make any payments or pay assessments; and
- (b) be the "prime contractor" for the Facility under the *Workers Compensation Act* (British Columbia) and fulfill all of the prime contractor's obligations under that Act, including by ensuring that the activities of any employers, workers and other persons at or within the Facility relating to occupational health and safety are coordinated and by doing everything that is reasonably possible to establish and maintain a process that will ensure compliance with that Act and regulations thereunder, including the Occupational Health and Safety Regulation.

### **Liens**

36. The Y shall promptly pay for all labour, services and materials ordered by or on behalf of the Y in connection with the performance of its obligations under this Agreement and the Y shall cause any and all liens the suppliers of such labour, services and materials under the *Builders Lien Act* (British Columbia) and other liens which may be registered against or otherwise affect the Land to be paid, satisfied, released or vacated within 30 days from the filing of such lien.

### **Encumbrances**

37. The Y acknowledges that the title of the Land is subject to certain registered charges and encumbrances and that the City may from time to time register other charges and encumbrances against title to the Land and shall give notice thereof to the Y and the Y shall not use or permit the use of the Land or the Facility in contravention of any of these charges and encumbrances. The Y shall comply with the City's obligations under any and all charges and encumbrances from time to time registered against title to the Land as they affect the Facility and the Y's other rights to use the Land under this Agreement.

### **Y Indemnity**

38. The Y agrees to save harmless, release and indemnify the City against and from all fines, suits, claims, liabilities, damages, costs, expenses, demands and actions of any kind or nature whatsoever for which the City may become liable, suffer or incur by reason of or related to or arising from:

- (a) any breach, violation, default or non-performance by the Y of any provision of this Agreement;

- (b) any wrongful act, omission or negligence of the Y or its members, directors, officers, employees, agents, contractors, subcontractors or others for whom it is responsible;
- (c) any death, bodily injury, property damage, property loss, economic loss or other loss or harm suffered by any person, including the City, on or in relation to the Facility.

In this section, references to the City include its elected officials, officers, employees, agents and contractors. This indemnity survives the expiry or earlier termination of this Agreement.

### **City Indemnity**

39. The City agrees to save harmless, release and indemnify the Y against and from all fines, suits, claims, liabilities, damages, costs, expenses, demands and actions of any kind or nature whatsoever for which the Y may become liable, suffer or incur by reason of or related to or arising from:
- (a) any breach, violation, default or non-performance by the City of any provision of this Agreement; or
  - (b) any wrongful act, omission or negligence of the City or its officers, employees, agents, contractors, subcontractors or others for whom it is responsible.

In this section, references to the Y include its officers, employees, agents and contractors. This indemnity survives the expiry or earlier termination of this Agreement.

### **Insurance**

40. The Y shall, throughout the Term obtain and maintain, with a deductible not to exceed \$25,000 payable by the Y, and otherwise in a form acceptable to the City, with an insurance company licensed to carry on business in the Province of British Columbia, a policy or policies of comprehensive general liability providing for an inclusive limit of not less than \$10,000,000.00 for each occurrence or accident and property insurance in amounts satisfactory to the City from time to time, providing the following coverage and protecting the Y and the City against all claims arising out of:
- (a) death or injury to persons;
  - (b) damage to, or loss of, or loss of use of any property;
  - (c) damage to, or loss of, the Facility or Facility Property and any other equipment, furnishings and personal property of the Y or the City from time to time located at the Facility that the Y is responsible for, or where such loss or damage arises from any wrongful act, omission or negligence of the Y or its members, directors, officers, employees, agents, contractors, subcontractors or others for whom it is responsible;

- (d) non-owned automobile insurance;
- (e) contingent employer's liability;
- (f) broad form property damage;
- (g) personal injury;
- (h) contractor's protective;
- (i) products completed operations;
- (j) blanket contractual;
- (k) incidental malpractice;
- (l) wrongful eviction;
- (m) cross liability.

41. Every policy of insurance will:

- (a) name the City as additional insured;
- (b) state that the policy applies to each insured in the same manner and to the same extent as if a separate policy had been issued to each insured.

42. A certified copy of each policy of insurance, in the form set out in Schedule G, shall be provided to the City prior to the commencement of the Term, and promptly thereafter on renewal or amendment of the policy, and shall contain a clause that states that the policy will not be cancelled or materially changed without at least 30 days written notice to the City.

43. If the Y fails to insure as required by this Agreement, the City may obtain such insurance, but shall not be obligated to do so.

44. The Y shall be responsible for payment of any deductibles payable with respect to any insurance claims made with respect to the Facility.

45. A delay, failure or refusal of an insurer to pay insurance proceeds to the Y for any reason shall not relieve the Y from its obligations under this Agreement.

### **City Insurance**

46. The City shall obtain and maintain, at its own expense and cost, replacement property damage insurance for the Facility in keeping with common industry practice for similar facilities and as insured by a prudent owner of reasonably similar facilities.



47. If the Facility is completely or substantially destroyed by any cause such that the damage cannot, within 6 months, be repaired using reasonable diligence so as to return substantially all of the Facility to a state useable for its intended purpose, the Y or the City may, by providing written notice to the other party within 30 days of the Chief Building Inspector's assessment (as contemplated further in this section), terminate this Agreement, which termination shall be effective 30 days following such written notice. The City shall cause its Chief Building Inspector to assess the damage and the time required for repair for the purposes of this section, which assessment shall be determinative for the purposes of this section.

## **DISPUTES AND DISPUTES RESOLUTION**

### **Intention**

48. It is the intention of both parties to seek mutually satisfactory resolution to any dispute which may arise during the Term. Certain dispute remedial processes are available to the parties and set out as follows:

### **Negotiation and Mediation**

49. If any dispute arises between the City and the Y with respect to this Agreement, within 15 days of notice from one party to the other, unless otherwise agreed by both parties, the representative of the parties will meet in good faith in order to resolve and settle the dispute. In the event that such representatives are unable to resolve the dispute within 30 days of the first written notice, or such other time period agreed to by both parties, each party will appoint a senior representative that has not been previously involved in the matter in dispute, to attempt to resolve the dispute. If unable to resolve the matter within 60 days of the original dispute notice, then each senior representative will meet and agree upon the selection of a qualified independent mediation practitioner versed in the resolution of commercial disputes in order to assist them within 90 days of the original dispute notice. Each party will bear their own costs of the above processes formal mediation process and will share the costs of the mediator.

### **Arbitration**

50. If the matter is not settled through the process in the preceding section within 90 days of the original dispute notice then, unless the parties mutually agree to extend the 90 day period, the matter shall be referred to a single arbitrator pursuant to the *Commercial Arbitration Act* of British Columbia. The arbitrator will be selected by agreement of the parties or, failing agreement of the parties, appointed pursuant to the *Commercial Arbitration Act* (British Columbia), and the arbitrator's decision is binding upon the parties.

## **Termination**

### **City May Cure Y Default**

51. If the Y fails to observe, comply with, keep or perform any of its obligations under this Agreement, the City may deliver to the Y a notice of default (in the manner set out below for giving notices) stipulating that the default must be rectified or cured within 30 days of the notice, unless such default is an emergency.

Notwithstanding the foregoing, the City does not need to provide any notice in emergency or urgent circumstances, as determined by the City, acting reasonably, or where the Y has failed to keep the Facility insured or in proper working condition to ensure public safety. If the Y does not fully correct the default within the 30 day period following such notice if required, or where no notice is required, the City may, but is not obliged to, at its discretion and without prejudice to its other rights and remedies, take all steps considered in its sole discretion necessary to rectify or cure the default. Nothing in this Agreement obligates the City to rectify or cure any default of the Y but should the City choose to do so, the City shall not be liable to the Y for any act or omission in the course of rectifying or curing or attempting to rectify or cure any default save and except its own negligence or wilful default.

### **Termination Due to Default**

52. If and whenever
- (a) the Y fails to observe, comply with, keep or perform any of its obligations and persists in such default after the time allotted in section 50, if any, for rectifying or curing a default; or
  - (b) the Y should cease to exist as a non-profit society in good standing in the records of the Registrar of Companies, and after a 30 day period to rectify and thereby be in good standing, or if it should take any proceedings towards dissolution or winding up or if it should be dissolved or wound up

then the City may, in its sole discretion, terminate this Agreement.

### **Return of Operating Funds**

53. The Y shall immediately upon expiration of the Term or the earlier termination of this Agreement, release, relinquish and forfeit the balance of any unused portion of the payment made by the City under section 8 and any surplus under section 10 after payment of all outstanding wages, invoices and charges due and payable by the Y under its obligations under this Agreement.

### **State of Facilities at Termination**

54. At the expiry or earlier termination of this Agreement, the Y shall deliver to the City, the Facility vacant and in good and clean condition, excepting reasonable wear and tear.

### **City May Repair**

55. If, upon the expiry of the Term or the earlier termination of this Agreement, the Y fails to comply with any of its obligations under this Agreement, the City may undertake such repairs and work, excluding normal wear and tear, on behalf of the Y including, without limitation, the removal of any Y property.

### **Remedies Cumulative**

56. No reference to or exercise of any specific right or remedy by the City prejudices or precludes the City from any other remedy, whether allowed at law or in equity or expressly provided for in this Agreement.

### **Environmental**

57. It is acknowledged by the City that the Facility will be used as a public swimming pool and as such swimming pool chemicals will be used and stored at the Facility. The Y's environmental responsibilities shall be limited to the performance of the Y's duties and obligations as defined in this Agreement, and those that occur as a result of the Y's actions in the performance of those duties and obligations. The Y shall not be responsible for any Environmental impacts occurring as a result of the construction of the Facility, nor any actions of others, including the City in its performance of its duties and obligations in this Agreement and the City agrees to indemnify the Y for any claims resulting therefrom.
58. The Y shall:
- (a) perform its obligations under this Agreement in compliance with all Environmental Laws;
  - (b) not permit the storage, use, handling, manufacture, unloading, loading, treatment, disposal or introduction into the environment of any Contaminants in, on or under the Facility or the Land;
  - (c) without limiting the obligations under the preceding paragraph (b), immediately notify the City of the occurrence of any of the following and provide the City with copies of all relevant documentation in connection therewith:
    - (i) the storage, use, handling, manufacture, unloading, loading, treatment, disposal or introduction into the environment of any Contaminants in, on or about any of the Facility or the Land or any adjacent land that is not in compliance with Environmental Laws or of any information received by the Y which indicates that any of the foregoing may have occurred; or
    - (ii) the receipt by the Y of any citation, directive, order, claim, litigation, investigation, proceeding, judgment, letter or other communication from any person that is related to Environmental Laws;

- (d) promptly provide to the City a copy of any environmental site assessment, audit, report, or test results relating to the Facility or the Land conducted at any time by or for the Y;

and the Y assumes and is solely responsible for any and all actions, causes of action, liabilities, demands, claims, losses, damages, costs (including remediation costs (as defined in the *Environmental Management Act* (British Columbia)), the costs of complying with any Environmental Laws and any consultant and legal fees, costs and disbursements), expenses, fines and penalties whether occurring, incurred, accrued or caused during or after the Term, arising out of or in any way related to or in connection with the storage, use, handling, manufacture, unloading, loading, treatment, disposal or introduction into the environment of any Contaminants in, on or under the Facility or the Land, or migrating from the Land, during the Term, including any mandatory or voluntary remediation, mitigation or removal of any Contaminants, but only to the extent related to or as a result of the use or operation of the Facility or Land by, or any act or omission in connection with this Agreement of, the Y or its officers, employees, contractors, consultants, agents, licensees, servants, invitees or anyone for whom the Y is in law responsible.

- 59. The Y shall indemnify and save harmless the City, and its elected and appointed officials, officers, employees, contractors, agents, successors and assigns, from and against any and all liabilities, actions, damages, claims, remediation cost recovery claims, losses, costs, orders, fines, penalties, and expenses (including all legal and consultant fees and expenses and the cost of remediation of the Land or the Facility or and any adjacent property) in any way directly or indirectly arising from or in connection with:
  - (a) any breach of the preceding section by the Y or its officers, employees, contractors, consultants, agents, licensees, servants, invitees or anyone for whom the Y is in law responsible; or
  - (b) the presence of, or any release of, any Contaminants at or from the Facility or the Land related to or as a result of the use or operation of the Facility or Land by, or any act or omission in connection with this Agreement of, the Y or its officers, employees, contractors, consultants, agents, licensees, servants, invitees or anyone for whom the Y is in law responsible.
- 60. In this Agreement:
  - (a) "Contaminants" means
    - (i) as defined in the *Environmental Management Act*, any biomedical waste, contamination, contaminant, effluent, pollution, recyclable material, refuse, hazardous waste or waste;
    - (ii) matter of any kind which is or may be harmful to human safety or health or to the environment; or

- (iii) matter of any kind the storage, manufacture, disposal, emission, discharge, treatment, generation, use, transport, release, remediation, mitigation or removal of which is now or is at any time required, prohibited, controlled, regulated or licensed under any Environmental Laws.
- (b) "Environmental Laws" means any past, present or future, common law or principle, enactment, statute, regulation, order, bylaw or permit, and any requirement, standard or guideline of any federal, provincial or local government authority or agency having jurisdiction, relating to the environment, environmental protection, pollution, the transportation of dangerous goods or public or occupational safety or health.

#### **Status as Society**

- 61. The Y will abide by its Constitution, Bylaws and other *Society Act* requirements and will hold annual meetings and file annual reports and other documents to be filed with the Registrar of Companies.

#### **No Joint Venture or Partnership**

- 62. Nothing in this Agreement makes the City and the Y joint venturers or partners.

#### **No Landlord – Tenant**

- 63. Nothing in this Agreement makes the Y the tenant of the City and no relationship of landlord-tenant is created.

#### **Independent Contractor**

- 64. The parties have entered into an arm's length contract for the provision of the services set out in this Agreement and the Y is an independent contractor, not an employee, of the City.

#### **No Agency or Authority to Bind City**

- 65. Nothing in this Agreement gives the Y any authority, as agent or otherwise, to enter into on behalf of the City, or bind the City in any way to, any contracts or other legal obligations and no contracts or other legal obligations entered into by the Y will affect or bind the City unless the City has signified its intention to be bound by an instrument in writing signed by the authorized signatory signatories of the City.
- 66. The Y shall not indicate, represent or otherwise suggest in its dealings with any person, contractually or otherwise, that the Y is acting as agent of the City or has any authority to bind the City in any way.



**Notices**

67. All notices required or permitted to be given under this Agreement shall be in writing and may be delivered by hand, sent by fax or forwarded by registered mail to the addresses set forth on the first page or such other address as may from time to time be notified in writing by the parties. The City may provide notice using any of the foregoing methods to the Y by providing such notice to the Y office within the Facility.

**Parties Representatives**

68. Each party will, during the Term, appoint a person as its representative for the purpose of coordinating all matters and obligations of the parties as required by this Agreement. Each party will advise the other party in writing of the name, telephone number and fax number of its representative and each party may change its representative from time to time by notice in writing to the other.
69. If the City gives notice to the Y, that notice must be marked to the attention of the Chief Executive Officer or as directed in writing by the Y.
70. If the Y gives notice to the City, that notice must be marked to the attention of the City Clerk or as directed in writing by the City.
71. Any notice delivered or sent by hand or by fax shall be deemed to be given and received at the time of sending. Any notice mailed shall be deemed to have been given and received on the expiration of 3 days after it is posted, provided that if there shall be between the time of mailing and the actual receipt of the notice a mail strike, slow down or other labour dispute which might affect the delivery of such notice by the mails, then such notice shall only be effective once delivered.

**Authority**

72. The Y represents and warrants to the City that it has the authority to enter into this Agreement and carry out its transactions and all necessary resolutions and procedural formalities have been completed and the persons executing this Agreement on its behalf are duly authorized to do so.

**Amendments**

73. No amendments to this Agreement shall be valid unless evidenced by written agreement executed by the City and the Y.

**Assignment**

74. The Y may not assign this Agreement or the benefit hereof, without the prior written consent of the City, at the sole discretion of the City.

### **Time of the Essence**

75. Time is of the essence respecting this Agreement.

### **Entire Agreement**

76. This Agreement is the entire agreement among the parties and neither the City nor the Y has given or made representations, warranties, guarantees, promises, covenants or agreements to the other except those expressed in writing in this Agreement.

### **Interpretation**

77. In this Agreement:

- (a) reference to the singular includes a reference to the plural, and vice versa, unless the context requires otherwise;
- (b) article and section headings have been inserted for ease of reference only and are not to be used in interpreting this Agreement;
- (c) reference to a particular numbered section or article, or to a particular lettered Schedule, is a reference to the correspondingly numbered or lettered article, section or Schedule of this Agreement;
- (d) if a word or expression is defined in this Agreement, other parts of speech and grammatical forms of the same word or expression have corresponding meanings;
- (e) reference to any enactment includes any regulations, orders or directives made under the authority of that enactment;
- (f) reference to any enactment is a reference to that enactment as consolidated, revised, amended, re-enacted or replaced, unless otherwise expressly provided;
- (g) the provisions of s. 25 of the *Interpretation Act* with respect to the calculation of time apply;
- (h) all provisions are to be interpreted as always speaking;
- (i) reference to a "party" is a reference to a party to this Agreement and to their respective successors, assigns, trustees, administrators and receivers;
- (j) reference to a "day", "month", "quarter" or "year" is a reference to a calendar day, calendar month, calendar quarter or calendar year, as the case may be, unless otherwise expressly provided; and
- (k) where the word "including" is followed by a list, the contents of the list are not intended to circumscribe the generality of the expression preceding the word "including".

78. For clarity, all improvements, alterations, additions and fixtures made to or installed upon or in the Facility, whether before or during the Term, including where made or installed by or on behalf of the Y, will immediately become the property of the City as the are made or installed and shall remain with the Facility as part thereof during the Term and upon the expiry or earlier termination of this Agreement.

#### Enurement

79. This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors.

IN WITNESS WHEREOF the parties hereto have executed this Agreement below.

**CITY OF KELOWNA**, by its authorized  
signatories:

\_\_\_\_\_  
Mayor:

\_\_\_\_\_  
Clerk:

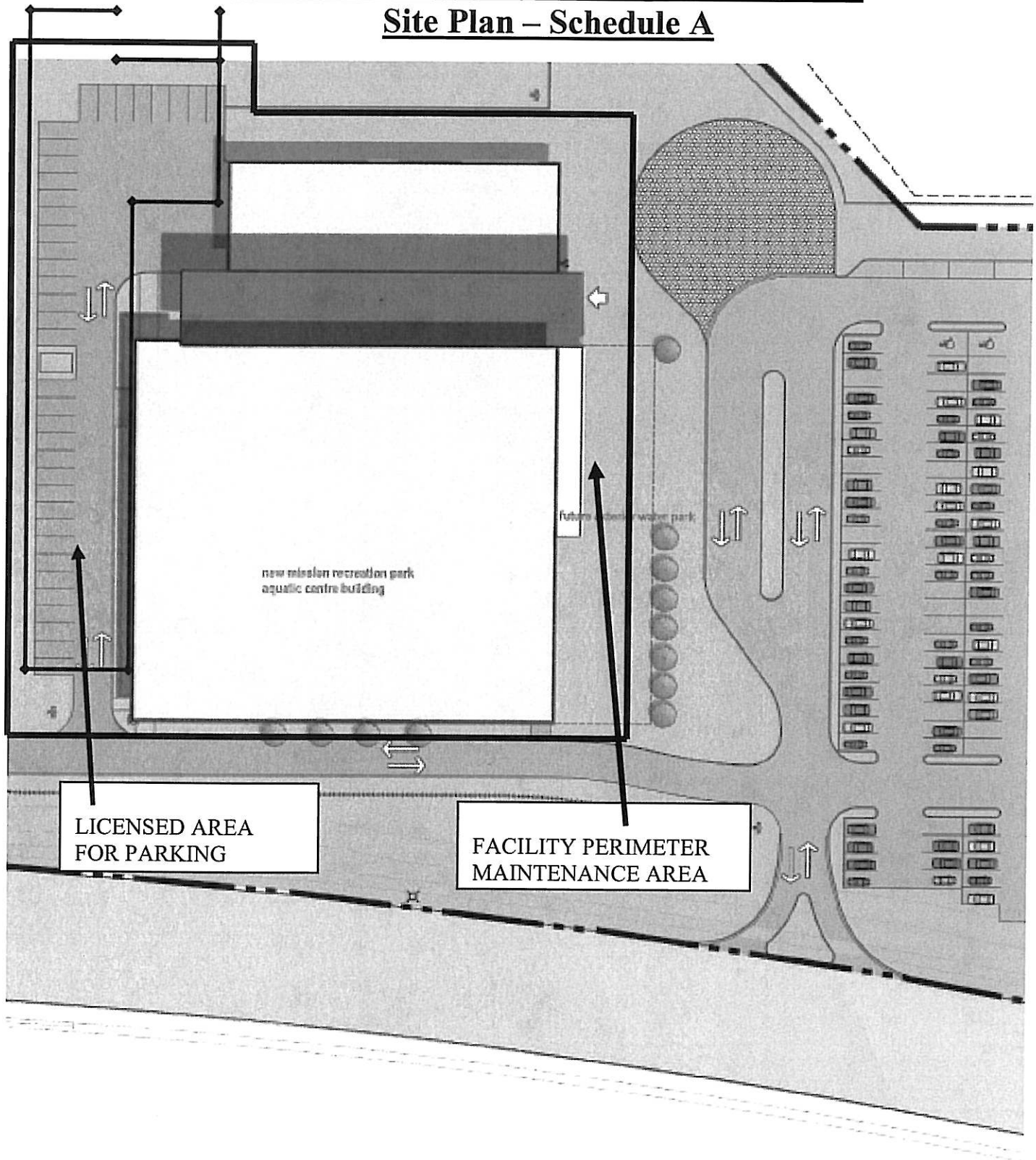
**YMCA – YWCA OF THE CENTRAL  
OKANAGAN** by its authorized  
signatories:

\_\_\_\_\_  
Authorized Signatory

\_\_\_\_\_  
Authorized Signatory

List of Schedules:

Schedule A	Facilities and Facility Perimeter
Schedule B	Operating Budget Requirements
Schedule C	Programming Requirements
Schedule D	Staffing Requirements
Schedule E	Furnishings and Equipment List
Schedule F	Maintenance Requirements
Schedule G	Certificate of Insurance



## Operating Budget Funding Requirements

## Schedule B

TIMEFRAME		DATES		TOTAL FUNDING	
2008 Start Up Phase		October 1 to December 31		\$95,000	
2009 Start Up Phase		January 1 to March 31		\$384,000	
2009 Operating Year - Admission fees and charges shall be based on:		April 1 to December 31			
Single Admission to entire Facility		Monthly pass to entire Facility			
Adult	\$9.00	Adult	\$45.00	Total Revenues \$2,016,000	
Senior	\$7.00	Senior	\$35.00	Total Expenses \$2,466,000	
Youth	\$6.00	Youth	\$30.00	Net Facility Cost	\$450,000
Child	\$5.00	Child	\$25.00	Payment	
2010 Operating Year - Subject to budget process as defined in Clause 6		January 1 to December 31			
Single Admission to entire Facility		Monthly pass to entire Facility			
Adult	\$9.25	Adult	\$46	Total Revenues \$2,930,000	
Senior	\$7.25	Senior	\$35.75	Total Expenses \$3,389,500	
Youth	\$6.25	Youth	\$30.50	Net Facility Cost	\$459,500
Child	\$5.25	Child	\$25.50	Payment	
2011 Operating Year - Subject to budget process as defined in Clause 6		January 1 to December 31			
Single Admission to entire Facility		Monthly pass to entire Facility			
Adult	\$9.25	Adult	\$46	Total Revenues \$2,930,000	
Senior	\$7.25	Senior	\$35.75	Total Expenses \$3,389,500	
Youth	\$6.25	Youth	\$30.50	Net Facility Cost	\$459,500
Child	\$5.25	Child	\$25.50	Payment	



## **Programming Requirements & Facility User Rate Requirements**

## **Schedule C**

### **1. GENERAL**

The Y will provide quality wellness, fitness, education and recreation programs and services, with a focus on meeting the broad needs of demographic segments of the community. All services will be offered without discrimination on the basis of age, gender, ability, race, religion and economic circumstances. The Y may also offer additional programs over and above identified core programs and services as set out herein, which reflect community needs, and respond to unique market opportunities, so long as such programs are compatible with the policies and strategic planning of the City.

### **2. DUTY AND OBLIGATION TO OPERATE**

In addition to the other covenants and obligations to be performed by the Y hereunder, the Y covenants and agrees that it will, at all times during the Term:

- a) Manage the Facility to accommodate the Public Purposes and Public Uses for the benefit of the City and its residents. The Y acknowledges and agrees that the continued operation of the Facility in accordance with the Public Purposes and Public Uses is of the utmost importance to the City;
- b) Utilize reasonable efforts to maximize the use of the unique leisure waterpark features, 50 metre pool through public swimming, creative participation programming, variable water flows, and water feature scheduling techniques.
- c) Ensure that, unless prevented by applicable governmental authorities or for reasons of repair and maintenance, the Facility is, at a minimum, open and available to the public each and every day, throughout the Term. The Y may reduce hours of operation, and close to the public under special circumstances including statutory holidays by providing 30 days written notice to the City of their intentions to reduce hours or close to the public, in order to provide adequate time for public notification.
- d) Collaborate with other facilities operators, user groups and the City to develop and execute broad based sport and recreation programs and activities at the Mission Recreation Park site.

### **3. CORE PROGRAMS AND SERVICES**

Core programs offered by the Y shall include:

- a) A broad range of aquatic programs, activities and recreation services to the public;
- b) Opportunities for skill development, leadership development, volunteer development, fitness & physical conditioning and recreation;
- c) A mix of drop-in unstructured (i.e. public swim), registered (i.e. courses and lessons) and membership (long term facility pass) programs;
- d) Facility spaces and activities for both group and individual activities;
- e) A health and wellness focus so as to contribute to the goals of ActNow BC;
- f) Special seasonal schedules, media events, and an annual open house event;
- g) An equitable balance of aquatic, recreation and fitness programs and activities for all age groups and genders,
- h) Facility rentals at market rates, so as not to impact on other schedule priorities.

### **4. Grand Opening**

In cooperation with the City, the Y shall cooperate and assist with an official Grand Opening Celebration of the Facility at a time to be determined by the City, and to be funded by the City.

### **5. Community and User Input**

The Y will develop and implement a program (process) for community and user input and feedback on the programs and operations of the facility. Such feedback and community input will be shared with the City at agreed to periodic intervals.

### **6. Groups**

Under separate contract the Y will make reasonable efforts to provide other organizations such as school districts with time blocks for aquatic programming coordinated with other services at the Facility.

- a) Aquatic Sports Clubs – provide space to aquatic sports clubs as defined in the Aquatic Facilities General Use and Allocation Policy for Aquatic Sports Clubs training and competitions including spectator access as required.

### **7. PUBLIC ACCESS**

Public access to the Facility may include single admission, multiple tickets, and one-month passes, or as agreed by the City and the Y from time to time. The Y will offer long term facility passes which may be marketed as memberships; however membership in the Y Association shall not be a requirement for the purchase of, or participation in any of the services, access to the Facility, or its programs.

## **8. PASS INTERCHANGE PROGRAM**

Within 90 days of the Facility opening to the public, the City and the Y agree to develop a program to encourage use of the Parkinson Recreation Centre, Kelowna Family Y and the Facility by long term pass or membership holders of each facility. Such a program shall be implemented within 180 days of the Facility opening to the public, and may include discounts for long term pass or membership holders using another facility on a drop in basis, an additional monthly fee allowing access to all three facilities or another similar program. An assessment of the potential impact on attendance levels and revenues at all facilities of such a program will be made during this 180 day period to inform program development.

## **9. ACCESSIBILITY PROGRAMS AND OPPORTUNITIES**

### **Financial Assistance Program**

The Y will make available access to the Y's Membership Financial Assistance Program, limited to the Program's processes, terms and available funding, for those who cannot afford the full fee for programs and services at the Facility, including those persons with disabilities.

### **Recreation Opportunities Coupon**

The Y will honour the recreation opportunities coupon as developed and distributed by the City for

- a) Access to drop in swimming, and
- b) Access to drop in fitness

The Y will further assist to implement the program at the Facility as follows:

- c) Accept recreation opportunities coupons as presented for all age categories; child, youth, adult, senior and family,
- d) When a coupon is redeemed at the Facility the Y will check (1) type of access, and (2) user type.
- e) The redeemed coupons are to be returned to the City's Access to Recreation Coordinator within 5 working days of each month's end.
- f) The City will compile data that reflects overall coupon use within all accessible facilities and programs.
- g) During regular program meetings, the City will provide a quarterly breakdown and analysis of use.
- h) The Y will provide any suggestions to improve the program.

### **Everyone Gets to Play Network**

The Y will participate on the Everyone Gets to Play Network (EGTP) as established by the City, and delegate a knowledgeable person to attend Accessibility meetings, which shall not exceed one meeting per month. The Y will assist in developing and implementing new programs and techniques to ensure the Facility is accessible to the disadvantaged.

NOTE: additional details on the EGTP Network are defined in the RPCS Master Plan.

## **10. FEES**

Fees for public access to Facility programs and services shall be established in accordance with Prudent Management Practices, and at a minimum shall include single admissions, multiple tickets, passes and Facility memberships for adults, seniors, youth and children.

Fees for all programs and services will be set by the Y, and approved by the City through the operating budget approval process as defined in article 6, with the exception of rentals for aquatic sports clubs, which shall be determined by the City's Aquatic Facilities Allocation Policy for Aquatic Sports Clubs.

## **11. PUBLIC SAFETY EMERGENCY**

In a public safety emergency situation, the City or the Y reserves the right to close the Facility in the interest of public safety. The party that closes the building must immediately inform the other party. The building will remain closed until the unsafe condition or emergency situation is corrected.

## **12. COMPLIANCE WITH RULES**

The Y may, acting reasonably:

- a) expel from the Facility any person causing damage to the Facility or Facility Property, Equipment, or materially failing to comply with the rules and regulations prescribed for the Facility or Facility Property or Equipment;
- b) require damage deposits from user groups where there is a likelihood that such groups may cause damage to the Facility or Facility Property or Equipment; and pursue and seek compensation from any individual, group or organization which causes damage to the Facility or Facility Property or Equipment.

## **13. SPONSORSHIP, ADVERTISING AND MEDIA RIGHTS**

The Y may utilize Facility programs and services to promote the sale of financial sponsorship and/or advertisements by corporations and businesses whereby a fee is paid by the corporation or business to the Y. The Y shall apply all revenue from such fees towards the operations of the Facility. The Y shall retain all media rights for all Y sponsored activities, and other events at the Facility including, but not limited to, all television, photography, radio and internet-related media activities. The Y will ensure that all advertising and sponsorship agreements are:

- a) Appropriate to families and children,
- b) In keeping with City and the Y's values of equality, accessibility, health, respect, and the dignity of the individual,
- c) Respectful of the sensitivities of neighbouring Facility and programs and
- d) Appropriate to the aesthetics of the Facility itself.

#### **14. FUNDRAISING**

As a registered charity, the Y may undertake fundraising activities within the Facility and will determine the use of all such funds.

#### **15. COMPUTER SYSTEMS**

The City will provide computer systems for conducting all forms of business and record keeping the Y deems necessary. The Y shall not use any unlicensed software.

#### **16. Y USE OF FACILITY**

The Y shall have use of the Facility for the purpose of operating any programs the Y wishes to utilize the Facilities for which are generally consistent with the organization's goals and objections, except as determined by the Aquatic Club Allocation Policy.

#### **17. INTERPRETATION FOR THIS SCHEDULE C:**

- a) "Public Purposes" means the provision of a privately managed recreational facility on City land being managed and operated at the risk of persons other than the City so as to provide swimming pool and recreational facilities and ancillary facilities for the City and its residents and the residents of the City of Kelowna in a manner which reduces the risk operational deficits to the City.
- b) "Public Uses" means a swimming pool and recreational centre open to and accessible by the public and the use thereof upon payment of applicable administration and registration fees for swimming and recreational purposes and uses ancillary thereto.
- c) "Prudent Management Practice" means the practices, methods and acts including those related to public availability, safety, cost and business conduct generally accepted at the relevant time by responsible and reputable public swimming pool and recreational facilities in British Columbia.

## **Staffing Requirements Schedule D**

### **General Manager**

The Y will appoint a suitable, qualified and competent General Manager to be responsible for supervising the Facility within the requirements of the Agreement on behalf of the Y. The General Manager is a full time employee of the Y and is to be based at the Facility.

The Y will advise the City, in writing, the identity of the person appointed as the General Manager and of any subsequent appointment, within 10 days of appointment.

### **General**

The Y will recruit and employ sufficient numbers of suitably qualified and experienced staff to provide a high standard of customer service, technical expertise, supervision and safety at all times.

Facility staffing levels, certification and experience for all areas will conform to industry standards for that area.

Staff shall have access to on-going in-service and other training related to their duties.

Staff will be informed of issues and developments within the industry relevant to their area in a timely manner.

All staff will be provided with appropriate uniforms that clearly identify them as Facility staff.

All staff and volunteers who interact with children under the age of 18 years as part of their employment will undergo a Criminal Record Check.

### **Certification Requirements & Standards**

- Aquatic Staff
  - All lifeguards will hold Standard First Aid qualification and a current National Lifeguard Service Award and Basic Life Saving – Level C Certificate.
  - Lifeguards must be 16 years of age or older in order to be employed as part of the lifeguard team but may not work independently until the age of 17. Lifeguards must also hold the National Lifeguard Service Award – Waterpark Option in order to work independently.
  - The Y will ensure that there are qualified staff on duty at the Facility at all times while the pools are open to the public at or above the lifeguard to swimmer ratios set out in the British Columbia *Health Act*.
  - The Y will provide aquatic staff with access to an in-house Aquatics Procedures Manual that outlines operational and safety procedures relevant to the effective performance of



aquatic duties at the Facility. This manual will be reviewed and updated on a regular basis.

- Swim Instructors
  - All swim instructors will have current Red Cross Water Safety Instructor or YMCA Swim Instructors certification.
  - All instructors of programs and courses offered at the Facility will be certified by the appropriate Provincial and/or Federal certification body as applicable.
- Fitness Staff
  - All staff conducting fitness programs will be registered as fitness instructors by the YMCA or British Columbia Recreation and Parks Association or other relevant Canadian certification body.
- Maintenance Staff (refer to Schedule F for further definition)
  - Pool maintenance staff will possess Pool Operators 1 and 2 certification.
  - Maintenance Supervisor staff will possess Power Engineering certification or equivalent as approved by the City.

### **Employment Practices**

The Y will comply with the British Columbia *Labour Relations Code*, *Employment Standards Act* and the *Workers Compensation Act*, and all regulations under those Acts and will provide and maintain a working environment for its employees, and members of the public, that is safe and without risk to health.

## Furnishings and Equipment Categories

## Schedule E

Furniture Fixtures and Equipment (FF&E) – Within the constraints of the identified FF&E budget, equipment and furnishings shall be purchased as described in the categories listed below. Costs shall include the purchase, delivery, installations and commissioning as required, and shall be kept within the financial limits specified below in compliance with article 26 of the Agreement;

The City shall retain the right to delegate the responsibility to purchase this to the Y, or to purchase this directly, and deliver to the Facility.

Audio Visual Equipment	\$ 20,000
Business Equipment, including computers and telephones	\$ 120,000
Fitness Equipment and full fit up of fitness rooms	\$ 385,000
Building Maintenance and Janitorial Equipment	\$ 54,000
Office furniture for staff lounge and miscellaneous	\$ 3,500
Natatorium Equipment	\$ 125,000
Safety and communications Equipment	\$ 55,000
Regulatory Signage	\$ 8,000
Sub-Total	\$ <b>770,500</b>
Installation, taxes, and freight	\$ 73,200
Total	\$ <b>843,700</b>

## Facility Maintenance

## Schedule F

The City and the Y shall each have responsibility for maintaining the Facility as described in this Agreement. To facilitate this process, the Y and the City will meet monthly commencing at the first month of the Term, or at a frequency as mutually agreed to by the parties, will meet to tour the Facility, discuss general building conditions, and jointly plan for major and minor capital projects and maintenance/repair/replacement and refurbishment issues and requirements, in accordance with the terms and financial limitations in this Agreement, and as further defined in this Schedule F.

### THE Y COVENANTS

#### 1. DUTY TO REPAIR AND MAINTAIN

In addition to the other covenants and obligations to be performed by the Y hereunder the Y covenants and agrees that it will, at all times during the Term:

- a) subject to the financial limitations and annual financial limits set out in this Agreement, assume responsibility for maintenance, repair and replacement and keep the Facility in a state of good repair to the same extent and in the same manner as a prudent owner would, except only for reasonable wear that does not materially affect the foundations or structure of the Facility, so that at all times throughout the Term and upon the termination of this Agreement the Facility remain a fully operating and functioning swimming pool and recreational facility;
- b) The terms "repair" and "maintenance" and variations thereof as used in this Agreement shall include replacements, renewals, alterations, additions, substitutions and improvements when same are necessary for the Y to comply with its obligations pursuant to this Agreement. All repairs will be in all respects to a standard at least substantially equal in quality of material and workmanship to the original work and material in the Facility and will meet the lawful requirements of all Statutory Authorities;
- c) except where required by emergency, to notify City of any unusual circumstances, major repairs or replacements beyond the First Line Maintenance responsibilities of the Y, as described in this Schedule, which may be required to any part of the Facility
- d) except for First Line Maintenance not make any alterations or improvements to any part of the Facility without first obtaining the City's written approval, such approval which may be withheld or delayed by the City for any reason;
- e) not do, suffer or permit to be done any work, replacements, alterations or improvements to the Facility which, in the City's opinion acting reasonably, may weaken or endanger the structure or adversely affect the condition or operation of the Facility or diminish the value thereof;
- f) Without limiting any other provision of this Agreement, promptly upon Notice by the City, make and do all repairs and maintenance which the Y is obliged to make and do pursuant to this Agreement. If the Y does not complete such work

within thirty (30) days of being given said Notice or within thirty (30) days of being given said Notice or where such work, because of its nature, would require more than thirty (30) days to complete has not, within fifteen (15) days of being given said Notice, commenced such work and thereafter promptly, effectively and continuously proceeded with the work to completion, the City will be entitled, in addition to any other remedies available to the City, to make such repairs and maintenance at the sole cost and expense of the Y and to deduct the cost of the work from any monies due and owing to the Y by the City.

## **2. STAFFING OBLIGATIONS**

### **Facility Operations and Maintenance Staff**

As the City and the Y each have responsibility for maintaining the Facility, both parties recognize the importance of having experienced and qualified personnel repairing, operating and maintaining the equipment and systems throughout the building.

The Y shall employ adequate number of staff to meet the maintenance obligations as set out in this Agreement, and shall ensure staff assigned to the Facility meet the following minimum staffing qualifications:

- a) Facility Operations Manager – Shall have Power Engineering or equivalent as approved by the City, with minimum 6 years experience in aquatic building operation and maintenance staff supervision. BCRPA Pool Operators Certificate level 1&2, Workplace Hazardous Materials Information Systems (WHMIS) and Transportation of Dangerous Goods (TDG) certification.
- b) Facility Operations Team Leader – Shall have maintenance background and minimum 4 years facility operational experience. BCRPA Pool Operators Certificate level 1&2, WHMIS, CPR and 1<sup>st</sup> aid, and Transportation of Dangerous Goods (TDG)
- c) Facility Operations staff – Shall have minimum 2 years facility operational experience, BCRPA Pool Operators Certificates level 1&2, WHMIS, CPR and 1<sup>st</sup> aid, and Transportation of Dangerous Goods (TDG)
- d) Janitorial staff – Desirable qualifications shall include formal cleaning education with 2 years experience in relative field of scope. WHMIS, CPR and 1<sup>st</sup> aid, and Transportation of Dangerous Goods (TDG).

## **3. MAINTENANCE MANUALS AND LIBRARY**

The Y shall cause the Facility Operations Manager above during the Start Up Phase, to shadow designated Facility contractors, sub-contractors and appropriate City staff, to observe and learn throughout the final installation, start up and commissioning of Facility equipment, as specified by the City.

The Y shall utilize this Start Up Phase to compile a comprehensive library of manuals, drawings and related literature specific to equipment and maintenance throughout the Facility and as delivered from the contractors and sub-contractors for the Swimming Pool Water Systems, Janitorial Services, Natatorium Equipment and Apparatus and all First Line Maintenance obligations as assigned to the Y as detailed in this Agreement and to the satisfaction of the City.

The Y shall further create a maintenance and procedures manual specific to the Facility to the satisfaction of the City. At a minimum, this maintenance manual shall include the following categories;

- A. Water systems
  - a. Operating instructions
  - b. Water testing instructions
  - c. Record keeping instructions
  - d. Backwash procedures
    - i. Discharge limits
  - e. Pool Fouling procedures
  - f. Spray park toy and area check
  - g. Water slide inspection guide/forms
  - h. Wave pool inspection guide/forms
  - i. Standing wave inspection guide/forms
  - j. 50 m pool: Bulkheads, moveable bottom operation guidelines
  - k. Whirl pool and River Run checks/forms
- B. Administration
  - l. Communication guidelines
    - i. Internal communication & equipment
    - ii. Communication protocol with City of Kelowna
    - iii. Safety authority requirements
- C. Fitness & Conditioning Equipment
  - m. Maintenance and service information for fitness equipment
  - n. Preventative maintenance schedules for fitness equip
  - o. Inspections and reporting
- D. Exterior Systems
  - p. Cleaning & preventative maintenance schedules
  - q. Inspections and reporting
- E. General
  - r. Expectations for Facility Operations staff
  - s. Building opening/start up daily
  - t. Staff notes/daily log
  - u. Incident/Accident instructions/forms
  - v. Safety and lockout procedures
  - w. First aid reports

- x. Diving boards/platforms/ladder inspections/forms
- y. Facility inspection guidelines/forms
- z. Facility cleaning guidelines/schedules/forms
- aa. Preventative maintenance guidelines/schedules/forms
- bb. Volumes and calculations
- cc. Troubleshooting guides
  - i. Pool operation
  - ii. HVAC systems
  - iii. Lighting systems

#### **4. FIXTURES**

The Y agrees that any goods, alterations, additions, improvements and fixtures made to or installed upon or in the Facility, whether before or after the Commencement Date, will immediately upon affixation become the property of the City and remain with the Facility as part thereof upon the expiration or earlier termination of this Agreement.

#### **5. JANITORIAL SERVICES**

The Y shall be responsible for full janitorial services including all consumable materials, supplies and equipment and labour to maintain the Facility in good clean condition to a standard to comply with the B.C. *Health Act* and all regulations thereunder and as would a prudent owner of a customer service oriented aquatic recreation facility.

The City shall supply the major janitorial equipment funding as identified in Schedule E

#### **6. SWIMMING POOL WATER SYSTEMS**

The Y shall be responsible for full operations of the swimming pool water circulations systems, safe operating procedures, inspections, water testing procedures, equipment and supplies, to meet requirements under the B.C. *Health Act* and *Safety Standards Act* and the Elevating Devices Safety regulations and all regulations thereunder to ensure optimal performance is continually achieved. Swimming Pool Water Systems include;

- a) The 52 metre pool, whirl pools, water slides, wave pool, river run, spray pool, all water spray features, Flowrider;
- b) All water chemical treatment equipment including the Wapotec system, gas chlorine systems, ultra violet light fixtures and apparatus, water chemistry control sensors, injectors, pumps, hoppers, pipes, valves, thermometers, controllers;
- c) All water circulation systems, water balancing and surge tanks, filtration systems, boilers heat exchangers,;
- d) The Y shall keep all maintenance records and logs at the facility which shall be made available to the City as requested..

#### **7. NATATORIUM EQUIPMENT AND APPARATUS**

The Y shall be responsible for full operations of all the pool natatorium building equipment to meet all requirements under the B.C. *Health Act* and *Safety Standards Act*, and all regulations thereunder, and to ensure optimal performance is continually achieved. In particular, the following specific duties include;



- a) Written and practiced procedures for the safe operations of moving the pool bulk heads and movable floor.
- b) All regulatory and directional signage is to be highly visible and maintained for public safety.
- c) All on deck equipment must be inspected and tested daily and results recorded,
- d) Compliance with the Safety Standards Act and all regulations thereunder (EDSR) for waterslides as administered by the BC Safety Authority
- e) Safe and proper operation and documentation of all pools required under the *Health Act* and all regulations thereunder, ,
- f) Following safety and risk management procedures in accordance with the *Workers Compensation Act* and all regulations thereunder which would include;
  - i) Establish and review written procedures for operation of all natatorium apparatus and equipment system,
  - ii) Inspections for hazards, defects and structural deficiencies,
  - iii) Minor repairing and preventative maintenance schedules and guidelines,
  - iv) Recording and reporting of all minor and major deficiencies in natatorium,
  - v) Obtain specific expertise for areas outside the scope of building service staff,
  - vi) Communication with City of Kelowna representatives on all issues in regularly scheduled meetings or as required.

## 8. FIRST LINE MAINTENANCE

The Y shall be responsible for all First Line Maintenance including but not limited to daily repairs and maintenance to ensure the cleanliness and safety of a first class public facility. Each First Line Maintenance category as defined below shall have an annual single incident financial limit of \$2,000, First Line Maintenance for all of the following shall have a cumulative annual financial limit shall be \$30,000.

### a) **STRUCTURAL**

The Y shall be responsible for any single structural repair/replacement for all doors, internal glass, floor, fixtures, walls, ceilings, and all related hardware that control entry and/or exit from all areas.

### b) **PLUMBING**

The Y shall be responsible for any single plumbing repair or replacement, including all water backflow prevention device testing.

### c) **HVAC**

The Y's responsibility for heating, ventilation and air conditioning systems (HVAC) shall be limited to preventative maintenance scheduling and work required under the supervision of a qualified City personnel, to change air filters, change any drive belts, and the cleaning of coils and grills, minor DDC motor and fan programming. The City will supply all materials required for this work

### d) **FIRE PROTECTION**

The Y shall be responsible for implementing a comprehensive emergency evacuation plan and performing fire safety inspections, monthly testing of emergency lighting, quarterly testing of the fire alarm systems equipment, and annual inspections of the fire alarm and sprinkler systems by qualified personnel to ensure all such systems are in

compliance with manufacturer's specifications and in accordance with all code requirements. Log books with all testing results must be kept on site.

e) **ELECTRICAL**

The Y's responsibility for electrical maintenance shall be limited to replacement of all interior light bulbs, underwater light bulbs, ultraviolet light bulbs, minor DDC lighting and temperature programming, minor fixture maintenance and repairs, the Facility electronic public address audio visual equipment.

In compliance with the Canadian Electrical Code, the Y shall contact the City prior to commencement of repairs to the building electrical systems.

f) **VANDALISM**

The Y shall be responsible for vandalism repair or replacement to the interior of the facility.

g) **FURNITURE AND EQUIPMENT**

The Y shall be responsible for repair, maintenance, replacement of all office furnishings and equipment, exercise equipment, lockers and all aquatic furnishing and equipment and all equipment purchased as defined in Schedule E.

h) **SECURITY**

The Y shall be responsible for all aspects of security at the Facility and shall take reasonable steps to ensure the Facility is secure at all times from trespassers and to ensure that Y staff, the public and others at the Facility are safe. Without limiting the foregoing, the Y shall be responsible for maintaining and repairing security alarm systems, surveillance camera (indoor and outdoor) system, door access control devices and for providing door key management to secure the Facility.

## 9. REPLACE VS. REPAIR

Any individual repair that costs more than the residual value should result in replacement as opposed to repair.

## THE CITY COVENANTS:

The City shall employ adequate number of staff to meet the maintenance obligations as set out in this Agreement, and shall ensure staffs assigned to the Facility are qualified to perform the work assigned. City staff assigned to maintain the Facility shall conduct on-site visits to the Facility a minimum of once per week and shall be available to respond to emergency situations within 12 hours of being contacted.

## 10. AQUATIC FEATURES

The City shall be responsible for major repair and replacement of all components of the Facility for any specific item over \$2000 and over the Y cumulative First Line Maintenance annual financial limit of \$30,000;

## 11. STRUCTURAL

The City shall be responsible for all major building infrastructure and foundation structures, exterior windows and for any repair/replacement over \$2,000 including all doors, glass, floor, fixtures, walls, ceilings, and all related hardware that control entry and/or exit from all areas.

**12. ROOFING**

The City will have full responsibility for preventive maintenance, repair and replacement of the roofing systems.

**13. PLUMBING**

The City shall be responsible for all major plumbing repair or replacement with cost over \$2,000.00.

**14. HVAC**

The City shall be responsible for all heating, ventilation and air conditioning systems (HVAC), and major repair and replacement. The City will maintain the DDC controls and system calibration and balancing and will direct the Y on limited DDC adjustments for motors fans, temperatures and light schedules. The City shall also supply the Y with all filters, and consumable replacement parts to assist the Y for their preventive maintenance responsibilities,

**15. FIRE PROTECTION**

The City shall be responsible for major repair and replacement with costs over \$2000 for the emergency lighting, fire alarm, and fire suppression systems,

**16. ELECTRICAL**

The City shall be responsible for the electrical services and maintenance, MCC panels, electrical operating permit(s), Field Safety Representative(s), and all major repair and replacement of ballast, inspections and maintenance of all major components. The City will provide all light bulbs to the Y as per their first line maintenance responsibilities.

**17. SECURITY**

The City shall be responsible for major repair and replacement with costs over \$2000, for the security alarm systems, surveillance camera (indoor and outdoor) system, and electronic door access control devices,

**18. FACILITY EXTERIOR**

The City shall have responsibility to maintain all exterior lighting, window cleaning\replacement, parking lot maintenance, painting, drainage, snow and ice control outside of Facility Perimeter as defined in Schedule A and related landscaping.

**19. VANDALISM**

The City shall be responsible for all repair or replacement, due to acts of vandalism or graffiti to the exterior of facility and for vandalism repair or replacement to the interior of the facility with costs over \$2000.

**20. FURNITURE AND EQUIPMENT**

The City shall be responsible for major repair and replacement with costs over \$2000 for furnishings and equipment,

**21. ELEVATOR**

The City shall be responsible for the elevator including the elevator inspections and maintenance contract.

**21. WARRANTIES**

The City shall be responsible for the management of all warranties on all Facility equipment including any communications, repair and/or replacement negotiations and financial implications.

**22. LONG TERM AND MAJOR CAPITAL REPAIRS AND REPLACEMENT**

In consultation with the Y, the City will establish and maintain a plan that includes a program, schedule and budget for the long-term maintenance, replacement and protection of the Facility's architecture, foundation, structure, and mechanical, plumbing, HVAC, and electrical operating systems. Long term maintenance scheduling and budgeting will be based on ensuring the Facility's operational viability, energy management, and structural integrity.

**23. UTILITIES**

The City will be responsible for the procurement of and the costs and charges for the following utilities:

- a) Water
- b) Sewer
- c) Electrical
- d) Natural gas

**24. WATER CHEMICALS FOR SWIMMING POOL WATER**

- a) The City will be responsible for costs and charges for the required chemicals for the balancing of all swimming pool water, including;
  - i) Wapotec
  - ii) gas chlorine
  - iii) soda ash
  - iv) sodium bicarbonate
  - v) calcium carbonate
- b) The City will establish procurement and delivery procedures with suppliers and provide the Y with a list of suppliers and contact information on an annual basis.
- c) The Y will be responsible to order the required chemicals as specified in the City procedures noted above. The Y shall be further responsible for receiving and storing chemicals at the Facility in compliance with Workplace Hazardous Materials Information System (WHMIS), Transportation of Dangerous Goods Act (TDG), *Workers Compensation Act*, and all regulations under those Acts, and Material Safety Data Sheets (MSDS).

**CERTIFICATE OF INSURANCE****SCHEDULE G****This Certificate is issued to:**      **Central Okanagan Y and to City****Insured**

Name:

Address:

**Broker**

Name:

Address:

**Location and nature of operation or contract to which this Certificate applies:**

<u>Type of Insurance</u>	<b>Company &amp; Policy Number</b>	Policy Dates		<u>Limits _____ of Liability/Amounts</u>
		<u>Effective</u>	<u>Expiry</u>	
<b>Section 1</b>  Comprehensive General Liability including: <ul style="list-style-type: none"> <li>• Products/Completed Operations;</li> <li>• Blanket Contractual;</li> <li>• Contractor's Protective;</li> <li>• Personal Injury;</li> <li>• Contingent Employer's Liability;</li> <li>• Broad Form Property Damage;</li> <li>• Non-Owned Automobile;</li> <li>• Cross Liability Clause.</li> </ul>				Bodily Injury and Property Damage  \$ <b><u>10,000,000</u></b> Inclusive  \$ _____ Aggregate  \$ _____ Deductible
<b>Section 2</b>				Bodily Injury and

Automobile Liability				Property Damage <u>\$2,000,000</u> Inclusive
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It is understood and agreed that the policy/policies noted above shall contain amendments to reflect the following:

1. Any Deductible or Reimbursement Clause contained in the policy shall not apply to the Y and shall be the sole responsibility of the Insured named above.
2. The Y and City are named as an Additional Insured.
3. 30 days prior written notice of negative material change and/or cancellation will be given to the Y and City.

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**Print Name**

**Authorized Signatory**

**Date**