

# Memo



Date: May 5, 2010  
File: 0870-20  
To: City Manager  
From: Property Manager  
Subject: Kelowna Museums Society Lease and Operating Agreement

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## **Recommendation:**

THAT Council approve the Kelowna Museums Society Lease and Operating Agreement as attached to the report from the Property Manager dated May 5, 2010;

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

## **Purpose:**

To obtain approval from City Council for the Lease and Operating Agreement between the City of Kelowna and the Kelowna Museums Society.

## **Background:**

The City and the Kelowna Museums Society (KMS) created an Operating and Lease Agreement in order to reestablish the City's relationship with KMS based on common principles, a legal framework for responsibility and accountability by both parties, and a maintenance procedure for the facilities.

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

One of the fundamental principles of this Agreement is that the Okanagan Heritage Museum, the Laurel Packinghouse and a portion of the Memorial Arena facilities are leased to KMS to be operated and maintained "for the perpetual benefit of the City and the citizens of the City of Kelowna".

The Lease and Operating Agreement is for a term of ten (10) years with an option for an additional 2 (two), five (5) year extensions. There are benefits for the City, KMS, and especially the community, as we maximize the efficient use of financial resources, as well as the services and facilities available to the community.

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

Lease and Operating Agreement

List of Schedules

- Schedule "A" - List of Collection;
- Schedule "B" - Certificate of Insurance;
- Schedule "C-i" - Plan of the Lands Okanagan Heritage Museum;
- Schedule "C-ii" - Plan of the Lands Okanagan Military Museum;
- Schedule "C-iii" - Plan of the Lands Laurel Packinghouse;
- Schedule "C-iv" - Floor plan of the Okanagan Military Museum
- Schedule "D" - Kelowna Museums Society Constitution and Bylaws.
- Schedule "E" - Okanagan Military Museum Integration Agreement
- Schedule "F" - First Line Maintenance Repair Amounts

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

1. The City appoints KMS to operate the facility and provide defined services to the public over a ten (10) year period, with an option for an additional two (2) five (5) year extensions;
2. The City provides a ten (10) year lease of the facility to KMS, with an option for an additional two (2) five (5) year extensions;
3. KMS and the City of Kelowna are jointly responsible for the maintenance of the facility, the City contracts KMS to provide the maintenance services, and the City providing the funds for maintenance costs;
4. KMS is fully responsible for all day-to-day operations, management decisions, and staffing the Facility;
5. Public access to the Facility is defined and assured over the life of the agreement;
6. KMS will provide comprehensive reports to the City on many operational and financial issues on a regular basis;
7. The City and KMS will have an annual formal meeting to review the Agreement, the Facility and all relevant business issues, including the preparation of the annual budget and any changes KMS may seek. KMS will follow the City's annual budget cycle, except under highly unusual or emergent situations;
8. The City provides operating funds to KMS annually based on the proposed annual operational budget;
9. The City always remains the legal owner of all property, the Facility, all major equipment, and the beneficial owner of the Collection;
10. KMS will provide appropriate support and work in collaboration with the many stakeholders, to ensure the success of the Cultural District.

As Kelowna's Cultural District continues to grow and flourish, the Kelowna Museums will provide a significant focal point for the development and understanding of the heritage of our community. Staff are pleased to present this comprehensive legal agreement for Council's consideration.

**Internal Circulation:**

Director, Recreation & Culture  
Director, Real Estate & Building Services  
Manager, Cultural Services  
Manager, Building Services  
City Clerk

**Considerations not applicable to this report:**

Existing Policy:  
Financial/Budgetary Considerations:  
Personnel Implications:  
Technical Requirements:  
External Agency/Public Comments:  
Communications Considerations:  
Alternate Recommendation:  
Legal/Statutory Procedural Requirements:  
Legal/Statutory Authority:

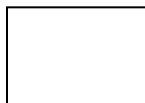
In light of the above, the Property Management branch of the Real Estate & Building Services department request Council support on this matter.

Submitted by:

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Ron Forbes, Manager  
Property Management

Approved for inclusion:



Doug Gilchrist, Director, Real Estate & Building