

Lease and Operating Agreement Between the City of Kelowna and the YMCA of Southern Interior BC

January 2024

Table of Contents

Lease and Operating Agreement.....	III
1. OBJECTIVES.....	IV
2. GENERAL DUTIES AND OBLIGATIONS OF THE YMCA.....	V
3. TERM.....	VI
4. PREVIOUS AGREEMENTS.....	VII
5. USE AND OCCUPATION OF FACILITY.....	VII
6. FEES AND EXPENSES FOR USE OF THE FACILITY.....	XI
7. FINANCIAL AND REPORTING OBLIGATIONS.....	XII
8. MAINTENANCE, REPAIRS, AND CHANGES TO THE FACILITY.....	XIX
9. ENVIRONMENTAL MATTERS.....	XXVII
10. MANAGEMENT OF THE FACILITY AND PROVISION OF SERVICES.....	XXX
11. YMCA INSURANCE.....	XXXIII
12. INDEMNITY.....	XXXVI
13. DEFAULTS, TERMINATION AND EXPIRATION.....	XXXVII
14. GENERAL TERMS.....	XL
15. INTERPRETATION.....	XLIV
Schedule A – Facility and License Areas.....	XLVIII
Schedule B – Programming Requirements.....	XLIX
Schedule C – Program Assets.....	LII
Schedule D – Key Performance Indicators Matrix.....	LV
Schedule E - Facility Maintenance and Operations Responsibility Checklist.....	LVII
Schedule E - Appendix A - Natatorium Specialty Equipment.....	LIX
Schedule F – Branding Guidelines.....	LX
Schedule G – 2024 Proposed Budget.....	LXI
Schedule H – Insurance Certificate.....	LXII

Lease and Operating Agreement

THIS AGREEMENT made as of the _____ day of _____, 2024

BETWEEN:

CITY OF KELOWNA, a municipality incorporated under the laws of the Province of British Columbia, having an office at 1435 Water Street, Kelowna, British Columbia, V1Y 1J4

(the "City")

AND:

YMCA OF SOUTHERN INTERIOR BC, a society incorporated pursuant to the laws of the Province of British Columbia, having a registered and records office at 375 Hartman Road, Kelowna, British Columbia V1X 2M8

(the "YMCA")

WHEREAS:

A. The City is the registered owner in fee simple of the lands in the City of Kelowna, British Columbia, legally described as:

PID: 026-563-355

Lot 2, District Lot 168, Osoyoos Division Yale District, Plan KAP80134

(the "Lands");

B. On a portion of the Lands the City has constructed an aquatic centre that includes a natatorium, other aquatic facilities, change rooms, fitness rooms, meeting rooms, administration spaces, and public spaces, as shown and described on the attached Schedule A (the "Facility") for the purpose of providing sport, recreation, and wellness opportunities, programs, and services for the benefit of the community of Kelowna;

C. By a Management and Operating Agreement dated May 31, 2012, as amended by Modification Agreements dated December 6, 2016, February 18, 2021, and December 13, 2023 the City assigned the operation of the Facility, named, branded, and marketed as the H2O Adventure and Fitness Centre, to the YMCA for a term commencing on January 1, 2012 and terminating December 31, 2023;

D. The YMCA wishes to manage and operate, and the City wishes to engage the YMCA to manage and operate, the Facility in accordance with this Agreement; and

E. The City recognizes the valuable contribution that the YMCA provides in enhancing the health, wellness, and recreation opportunities available to residents, visitors, and the broader Kelowna community.

NOW THEREFORE THIS AGREEMENT is evidence that in consideration of the mutual promises and payments provided for in this Agreement and the payment of one dollar (\$1.00) from the YMCA to the City and other good and valuable consideration, the receipt and sufficiency of which the City hereby acknowledges, the parties covenant and agree as follows:

1. OBJECTIVES

Through this Agreement, the City and the YMCA seek to create value for their mutual investment in the Facility and present benefits to the Kelowna community through seeking to achieve shared objectives including:

- a) positioning the Facility as a community resource that facilitates stronger connections with Kelowna residents through health and wellness services, while supporting the YMCA's mission dedicated to strengthening the foundations of community;
- b) the efficient delivery of quality and innovative health, fitness, wellness, aquatic, and social programs and services to Kelowna residents and visitors, that address the needs and interests of Kelowna's diverse population across a broad range of demographics and meets the programming needs of all community members and user groups;
- c) ensuring access to the Facility, its programs, and its services is available to all residents, notwithstanding their economic circumstances, through the implementation of inclusivity and accessibility measures including, at a minimum, the provision of a comprehensive financial assistance program;
- d) the cost-effective, viable, and prudent operation and maintenance of City-owned lands and facilities through the business acumen and management expertise brought to all aspects of the operation of the Facility by the YMCA;
- e) operating using a comprehensive financial model that provides the YMCA with the flexibility to innovatively respond to market conditions, customer needs, and current trends to achieve desired performance and objectives, while minimizing the City's financial exposure through the purposeful pursuit of cost neutrality;
- f) implementing a maintenance and renewal program that enhances the visitor experience, maximizes the lifespan of the Facility and its equipment, and ensures the on-going sustainability of the Facility; and
- g) fostering an environment of collaboration and open communication between the parties, based on mutual trust and respect, to support the achievement of common objectives.

2. GENERAL DUTIES AND OBLIGATIONS OF THE YMCA

In addition to the other covenants and obligations to be performed by the YMCA under this Agreement, the YMCA covenants and agrees that it will, at all times, to the best of its abilities:

- a) promptly and safely perform its obligations under this Agreement by applying the degree of care, skill, and diligence to manage and supervise the operations, maintenance, preservation, and protection of the Facility as would a prudent owner of a similar facility in British Columbia;
- b) comply with the programming requirements established in Schedule B (the "Programming Requirements");
- c) perform its obligations under this Agreement and in its dealings with the City under this Agreement in good faith;
- d) regarding the programs, services and operating practices of the YMCA be responsive to the changing community needs, reactive to evolving management and operational practices within the broader wellness, fitness and aquatic sector, and be receptive to recommendations offered by the City;
- e) operate the Facility under the name "H2O Adventure and Fitness Centre", with no additions or variations;
- f) except as otherwise expressly set out in this Agreement, be responsible for full management, operations, and all costs of the Facility, including the following:
 - i. all program and service delivery, including planning, development, and implementation for the Facility;
 - ii. all revenue generation, including fund development opportunities such as membership fees, admission fees, programming fees, major gifts, fundraising, and sponsorship arrangements;
 - iii. carrying an Operating Reserve Fund as outlined in Section 7.6;
 - iv. preparation and submission of a Program Asset Management Plan annually in relation to all Program Assets as defined in section 5.11 of this Agreement, including planning and carrying a Program Asset Management Reserve Fund;
 - v. all operations and maintenance related to the Facility; and
 - vi. collaborating with the City by providing input on any future capital enhancements at the Facility;
- g) continue to be a registered charity, in good standing with the Government of Canada and a registered society in the Province of British Columbia;
- h) permit a City designate as required, upon invitation, to attend meetings of the YMCA's Board of Directors as the City's liaison: to address matters regarding facility and building operations;

- i) not take any action, or permit its officers, employees, contractors, or agents to take any action, which is intended, or would reasonably be expected, to harm the City's reputation, or which would reasonably be expected to lead to unwanted or unfavorable publicity to the City; provided, however, the foregoing limitation shall not apply to compliance with any legal process or statements made in response to an authorized inquiry from a court or regulatory body;
- j) upon request, facilitate the City's communication with members and users of the Facility through exercising any channels of communication available to the YMCA for such purposes; and
- k) obtain and maintain in good standing, and comply with all terms of, all licenses, permits, consents, authorizations, certificates, operating certificates, and other approvals of any kind from the 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 YMCA's obligations under this Agreement.

3. TERM

- a) The term of this Agreement shall be for three (3) years commencing on January 1, 2024 (the "Commencement Date") and expiring on December 31, 2026 (the "Term"), subject to earlier termination as provided herein.
- b) The Term of this Agreement may be renewed for up to one (1) further two (2) year renewal period, (the 'Renewal Term') upon the mutual agreement of both parties (the 'Renewal Option'). In order to exercise such Renewal Option;
 - i. no less than six (6) months prior to the expiration of the Term, the YMCA will advise the City in writing of its desire to exercise the Renewal Option; and
 - ii. the City will respond to the YMCA's written notice within 90 days of receipt of its intent to exercise the Renewal Option;
- c) Should the Parties decide not to exercise the Renewal Option, an additional one (1) year extension ("the Extension") will automatically occur following the end of the Term. The Parties agree to work collaboratively to prepare a Facility management transition plan during this Extension to ensure existing service and programming levels be maintained during the Extension period; If such an Extension occurs, the Management Fee and Operating Grant established in the previous year will be carried forward as the base for the Extension period.
- d) If the Renewal Option is exercised, no less than one (1) year prior to the expiration of the Renewal Term, the Parties will work collaboratively to prepare a Facility management transition plan to ensure existing service and programming levels are maintained upon the expiration of this Agreement.

4. PREVIOUS AGREEMENTS

This Agreement replaces any and all previous agreements, whether written or not, between the City and the YMCA, and the parties agree that any and all previous agreements shall be terminated and be of no further force and effect as of the Commencement Date.

5. USE AND OCCUPATION OF FACILITY

5.1 Grant of Leases

The City hereby leases the Facility to the YMCA (the "Lease") for the Term and any Extension or Renewal Term, as applicable, on the terms and conditions of this Agreement and for the purposes set out in this Agreement.

5.2 Licenses

- a) The City hereby grants to the YMCA a non-exclusive right and license to enter onto and use the Lands surrounding the Facility, as identified in the attached Schedule A (collectively, the "License Areas") for the purpose of performing its obligations under this Agreement;
- b) The YMCA shall have a non-exclusive right and license to use the parking area adjacent to the rear of the Facility for the purposes of parking for YMCA staff, contractors, and visitors to the Facility, as determined by the YMCA.
- c) The City shall be responsible for all landscaping services for the outdoor grounds surrounding the Facility.
- d) The City shall be responsible for ice and snow removal, including record keeping, for the parking lot and roads surrounding the Facility.
- e) The YMCA shall be responsible for ice and snow removal, including record keeping, for the sidewalks in the sidewalk maintenance License Area surrounding the Facility, as identified in Schedule A.
- f) The YMCA acknowledges and agrees that it acquires no interest, legal or beneficial, in the Facility or the Lands by virtue of this Agreement or any of the rights granted to it under this Agreement.

5.3 Permitted Uses

The YMCA will only use and occupy the Facility and the License Areas to provide the services outlined in Schedule B.

5.4 Accessibility of the Facility

The YMCA shall operate the Facility so that it is open to the public during all hours of operation, that its programs are available to the public, and so that the Facility is fixtured and maintained to be accessible to persons with diverse abilities. The YMCA and the City will work in cooperation should significant improvements to the Facility be required to improve access.

5.5 Smoking and Vaping

The YMCA shall operate the Facility as a non-smoking, non-vaping Facility.

5.6 Acknowledgement and Agreements of the YMCA

The YMCA acknowledges and agrees that:

- a) the YMCA leases the Facility and licenses the License Areas on an "as is" basis, and the City has not made any representations, warranties, or agreements as to the environmental condition of the Facility or the Lands;
- b) it is the sole responsibility of the YMCA to satisfy itself concerning the environmental conditions of the Facility and the Lands, including, without limitation, by conducting any reports, inspections, tests, investigations, studies, audits, surveys, and other inquiries as the YMCA, in its sole discretion, considers necessary to satisfy itself as to the environmental condition of the Facility and the Lands;
- c) the City has made no representations or warranties concerning the Lands and the Facility including, without limitation, concerning the condition or suitability of the Lands and the Facility for the YMCA's intended use;
- d) by entering into this Agreement, it is satisfied that the Facility and License Areas are suitable for the YMCA's purposes; and
- e) all resolutions and other prerequisites for this Agreement have been duly passed and the persons executing this Agreement on its behalf are authorized to do so.

5.7 Covenant to Operate

The YMCA shall ensure that, unless prevented by applicable regulatory authorities or for reasons of repair or maintenance, the Facility and License Areas shall remain open to and accessible to the public throughout the Term, subject to the YMCA's right to close the Facility at the YMCA's discretion, in accordance with the YMCA's published schedules or as the parties otherwise agree in writing.

5.8 Compliance with Laws

The YMCA shall carry on and conduct its activities in, on, and from the Facility and License Areas in compliance with any and all statutes, laws, regulations, enactments, bylaws, and orders from time to time in force, shall comply with the terms of any charges registered against title the Lands, shall obtain all required approvals and permits thereunder, and shall not to do or omit to do anything in, on, or from the Facility or License Areas in contravention thereof. The YMCA shall carry on and conduct its activities in compliance with the collection of all applicable Goods and Services Tax ("GST"), Provincial Sales Tax, and other taxes as the relevant legislation in force dictates.

5.9 Public Safety

The YMCA shall take all reasonable precautions to ensure the safety of all persons using the Facility.

5.10 No Waste or Nuisance

The YMCA shall not:

- a) commit, suffer, or permit any wilful or voluntary waste, spoilage, or destruction of the Facility or the License Areas; or
- b) do or permit to be done in, on, or from the Facility or License Areas anything that may be or become a nuisance or annoyance to the owners, occupiers, or users of the Facility, the License Area, or other parts of the Lands, adjoining lands, or to the public, including the accumulation of rubbish or unused property of any kind.

5.11 Equipment and Furniture

The YMCA acknowledges and agrees that:

- a) All equipment and furnishings purchased through H2O operations, including but not limited to all fitness and aquatic program equipment as identified in Schedule C – Program Assets (the "Program Assets"), placed or installed in the Facility shall be the property of the YMCA until the earlier of the dissolution of the YMCA, the expiry of this Agreement, or the termination of this Agreement pursuant to Section 13, at which time ownership of all such property shall revert to the City;
- b) all Program Assets shall be inspected, maintained, repaired, and generally kept in good condition as to ensure its safe use by the YMCA, its employees, contractors, agents, and the public, subject to reasonable wear and tear;
- c) the YMCA shall prepare a Program Asset Management Plan that outlines the quantity, quality and acceptable level of maintenance of each type of equipment, projected replacement dates, and estimated replacement costs, which will be reviewed by the parties each year;

- d) during the Term of this Agreement the YMCA shall maintain insurance for the Program Assets in accordance with Section 11;
- e) the YMCA shall create and implement a disposal policy for equipment, furnishings and Program Assets in a form acceptable to the City;
- f) the YMCA must notify the City of the disposition or removal from the Facility of any equipment, furnishings and Program Assets with an initial purchase value of ten thousand dollars (\$10,000.00) or more;
- g) any revenue generated from the disposition of equipment, furnishings and Program Assets are to be reinvested in the Program Asset Management Reserve Fund described in Section 7.5 of this Agreement; and
- h) the City is to be notified of all equipment and furnishings purchased through the YMCA's corporate office and general operating budget at the time of purchase. Equipment or furniture placed or installed in the Facility shall be logged/identified appropriately and be the property of the YMCA until the earlier of the dissolution of the YMCA, the expiry of this Agreement, or the termination of this Agreement pursuant to Section 13, at which time ownership of all Facility property not identified accurately by the YMCA shall revert to the City.

5.12 Right to Inspect

The City or its authorized representative may enter the Facility at all reasonable times in order to inspect the Facility.

5.13 Emergency Use

The YMCA shall make all or part of the Facility available for use in the event of a community emergency, as determined by the City in accordance with applicable enactments. The City shall solely be responsible for determining whether the Facility can safely be used at the time of the emergency, and shall:

- a) be responsible for any direct expense incurred or damage caused to the Facility as a result of such use;
- b) be responsible for any and all liabilities, costs, expenses, suits, or claims arising as a result of such use;
- c) compensate the YMCA for all increased operating costs incurred during such use by the City; and
- d) compensate the YMCA for uninsured business losses arising out of such use, provided that the YMCA must act reasonably in re-arranging bookings and events to minimize the extent of any business losses during such use.

5.14 Vacant Facility

If directed to cease services and operations by an applicable regulatory authority for public safety reasons, such as natural disaster, pandemic, or other significant public concern, the YMCA shall continue to maintain responsibility of the Facility and endeavour to take the necessary steps to ensure the Facility is kept safe. This may include, but is not limited to, routine internal and external inspections of the Facility. The YMCA may seek direction and support from the City as required.

5.15 Access for Telecommunication Antenna Systems

Upon request from the City, the YMCA shall grant access to the Facility for the installation and maintenance of telecommunication antenna systems. Such installation shall occur in consultation with the YMCA and shall not interfere with the operations of the YMCA. The costs associated with these systems shall be separate from Facility operations and are a City responsibility.

6. FEES AND EXPENSES FOR USE OF THE FACILITY

6.1 Rent

The YMCA shall pay to the City:

- a) annual base rent in the amount of one dollar (\$1.00), plus any and all applicable taxes, payable on the first day of the Term and each anniversary thereafter (the "Base Rent"); and
- b) all additional sums of money to be paid by the YMCA to the City under this Agreement (the "Additional Rent",)

(collectively, the "Rent"). The YMCA shall pay Additional Rent monthly, plus any and all applicable taxes, within fifteen (15) days of the YMCA's receipt of an invoice from the City.

6.2 No Deductions

The YMCA shall pay the Base Rent and the Additional Rent without deduction, abatement, set-off, or withholding whatsoever, despite any law or statute now or in the future to the contrary. The YMCA's obligation to pay the Base Rent and the Additional Rent survives the expiry or earlier termination of this Agreement.

6.3 Payment of Taxes, Utilities, Chemical Costs, and other Expenses

The YMCA covenants and agrees with the City to pay all charges, costs, duties, expenses, rates, sums, assessments, taxes (including property taxes), telephone, electrical, gas, water, sewage, garbage disposal, internet, Cablevision, security systems, chemical costs, and other utility charges and payments for work and materials in any way relating to the Facility and the License Areas, and that in

the event of any such amounts remaining unpaid after they come due, upon review between the Parties and an appropriate notice period, such amounts shall be deemed as Additional Rent and may be collected by the City as Rent. In addition, the YMCA agrees to pay the City any and all applicable taxes in respect of Base Rent, Additional Rent, or any other services that may be paid from time to time.

7. FINANCIAL AND REPORTING OBLIGATIONS

7.1 Operating Year and Operating Budget

In this Agreement, the operating year means the calendar year; January 1 – December 31 (the “Operating Year”). The first Operating Year for this Agreement will commence January 2024.

The operating budget is inclusive of all revenue from programming and operations including but not limited to grants, admissions, memberships, rentals, programs, etc. and all expenses, allocations and contributions (the “Operating Budget”) as outlined in the Agreement.

The City acknowledges that adjustments to the Operating Budget may be required to accommodate unforeseen circumstances. The YMCA shall strive to achieve positive financial performance while meeting its financial obligations under this Agreement.

7.2 Operating Grant from the City

The City shall pay the YMCA an operating grant each year to be included as revenue in the Operating Budget on the following basis, which is provided to support the ongoing maintenance and operations of the Facility (the “Operating Grant”):

- a) The Operating Grant will be payable in monthly installments on the first day of each month. To establish a monthly installment amount for the current Operating Year, utilities and chemical charges from the previous Operating Year will be used. Actual charges for the Operating Year must be reconciled by the Parties no later than January 31 of the following Operating Year. This formula will be used ongoing in the subsequent years of the Term, inclusive of the Renewal Option, to calculate installments;
- b) in the first year of the Term, the Operating Grant shall be equivalent to the total value expended by the YMCA on utilities, as noted in the financial forecast model, and chemicals in 2024.
- c) in the second year of the Term and each year thereafter, the Operating Grant shall be reduced on an annual basis by a value equal to twenty five percent (25%). In the event that the Renewal Option is exercised, the Operating Grant in the final year of the Renewal Term, shall be zero dollars (\$0.00).

7.3 Management Fee & YMCA Affiliation Fee

In consideration of the performance by the YMCA of its obligations under this Agreement, including the provision of YMCA overhead and management costs, the budget for each Operating Year shall include, as operating expense:

- a) During the Term, the Operating Budget will provide to the YMCA an annual management fee of five hundred, forty thousand, nine hundred and seventy-nine dollars (\$540,979), to be adjusted annually starting January 1, 2025, by BC CPI annual average for the prior calendar year (the "Management Fee"). In any calendar year, should the BC CPI be negative, no adjustment will occur. The Management Fee will be recorded as a credit in favour of the YMCA as part of the year-end financial reconciliation process. The City and the YMCA acknowledge and agree that the Management Fee is provided to support the YMCA's administration and provision of programs and services, which are delivered for a public purpose and the public good.
- b) During the Term, the City will pay to the YMCA an annual YMCA affiliation fee equal to the annual YMCA Canada Affiliation Fees paid by the YMCA with respect to the Facility for that operating year, calculated by the formula set out by YMCA Canada (the "YMCA Affiliation Fee").

7.4 Operating Surplus and Deficit

For this Agreement, an operating surplus is considered when Facility revenues exceed expenses for an Operating Year (the "Operating Surplus"). When an Operating Surplus is realized, contributions shall be made equally to the Program Asset Management Reserve Fund as outlined in Section 7.5 and the Operating Reserve Fund as outlined in Section 7.6 until they are realized as described in their respective sections in this Agreement.

For this Agreement, an operating deficit is considered when Facility expenses exceed revenue for an Operating Year (the "Operating Deficit"). Should the YMCA anticipate an Operating Deficit, it will notify the City at its earliest opportunity. The Operating Reserve Fund may be used to assist with any budget shortfalls as outlined in Section 7.6 (a). Operating Deficits above and beyond the Operating Reserve Fund will be the responsibility of the YMCA.

7.5 Program Asset Management Reserve Fund

- a) The YMCA shall establish a fund for the replacement and improvement of the Program Assets, in particular program-related amenities that improve the customer experience (the "Program Asset

Management Reserve Fund"). Facility operations through the Operating Budget shall contribute up to \$100,000 annually to the Program Asset Management Reserve Fund.

- b) The City shall contribute up to \$425,000 towards the Program Asset Management Reserve Fund; comprised of \$200,000 at the commencement of the Term of this Agreement and \$225,000 in the second year of the Term. For clarity, the intent of the Program Asset Management Reserve Fund is not for general repair and maintenance items that would be covered through items outlined in Schedule E – Facility Maintenance and Operations Responsibility Checklist. The amounts in this section may be amended by agreement of the City and the YMCA.
- c) The YMCA will make best efforts to conform with the Program Asset Management Plan in Schedule C in the use of the Program Asset Management Reserve Fund. Any updates or changes to the Program Asset Management Plan will be done in collaboration with the City.
- d) At the expiry of this Agreement, or the termination of this Agreement pursuant to Section 13, the YMCA must transfer an amount equivalent to the then balance of the Program Asset Management Reserve Fund to the City.
- e) Independent of the YMCA's Program Asset Management Reserve Fund, the City will maintain a separate equipment replacement and improvement fund for the purpose of replacing natatorium speciality equipment and supporting the Program Asset Management Plan as identified through operations. The City will maintain and control the use of these funds. Allocation of these funds will be done in collaboration with the YMCA and at the sole discretion of the City.

7.6 Operating Reserve Fund

- a) The annual Facility operating budget will include a contribution to an operating reserve fund, which shall be used solely for the purposes of funding any budget shortfall resulting from the operation of the Facility (the "Operating Reserve Fund").
- b) The YMCA shall exert best efforts to attain an Operating Reserve Fund balance equivalent to no less than ten percent (10%) of the previous years' annual operating expenditures by the expiry of the Term, inclusive of the Renewal Option, of this Agreement.
- c) The Operating Reserve Fund shall be funded from the Facility's operational budget through annual contributions until such a time as a balance at least equivalent to ten percent (10%) of the previous years' annual operating expenditures has been met. Once met, the YMCA must maintain the balance of no less than ten percent (10%) of the previous years' annual operating expenditures until the termination or expiry of this Agreement.

- d) At the expiry of this Agreement, or the termination of this Agreement pursuant to Section 13, the YMCA must transfer an amount equivalent to the then balance of the Operating Reserve Fund to the City.

7.7 Performance Fee

- a) The City shall pay to the YMCA an annual performance fee, the value of which shall be determined in accordance with the performance matrix described in the attached Schedule D, and the YMCA's annual performance of the key performance indicators detailed therein (the "Performance Fee") and shall be based on the annual net income surplus generated by the Facility after all expenses, allocations, and contributions have been made (the "Facility Surplus").
- b) The Performance Fee will be recorded as a credit in favour of the YMCA as part of the year-end financial reconciliation process.
- c) Any Facility Surplus remaining after the Performance Fee has been credited shall be remitted by the YMCA to the City by no later than May 31st of the following year.

7.8 Business Continuity Rebate

- a) In the event of a partial or full Facility closure as a result of a City responsibility, action or inaction, that results in the full expenditure of the Operation Reserve Fund, the YMCA shall report their projected foregone revenue less their profit margin to the City, with supporting data, and the City shall supply a business continuity rebate (the "Business Continuity Rebate") to the YMCA to the extent that the YMCA suffers a loss as a result of the closure of the Facility.
- b) In the event the parties do not agree on the value of the Business Continuity Rebate, the matter shall be referred to a single arbitrator pursuant to the *Arbitration Act* [SBC 2020] Chapter 2, as amended from time to time (the "*Arbitration Act*"). The arbitrator will be selected by agreement of the parties, or, failing agreement of the parties, appointed pursuant to the *Arbitration Act*, and the arbitrator's decision shall be binding upon both parties. The costs of the arbitration shall be borne in equal parts by both parties.

7.9 Quarterly Reporting

- a) Within thirty (30) days after each quarter of the Term the YMCA shall provide the City with unaudited financial statements and reports in respect of each quarter during the Term, reflecting in reasonable detail the results of the Facility's operation and the financial situation of the Facility for that quarter (the "Quarterly Report").

The Quarterly Reports must include, as applicable:

- i. minor repairs maintenance reports;

- ii. a forecasted budget for the upcoming year in the Q₃ report; and
 - iii. a forecasted surplus/deficit reconciliation for the current year in the Q₄ report.
- b) After the delivery of the Quarterly Report, representatives from each of the parties shall meet on a quarterly basis, or at such other frequency as may be mutually agreed upon by both parties, to review the Quarterly Report and discuss the operations of the Facility.

7.10 Annual Reporting

By no later than March 31 of each year during the Term, except for the first year of the Term, the YMCA will provide to the City an annual report for the Facility, in the format the City shall prescribe and deliver to the YMCA no later than January 31st of such calendar year, which shall include, the following information relating to the prior calendar year (the "Annual Report"):

- a) Professionally prepared audited annual financial statements, approved by the YMCA's Board of Directors, for the most recent fiscal year-end;
- b) Proof of insurance as specified in Section 11;
- c) Current year operating and capital budget, as approved by the YMCA's Board of Directors, with actuals or forecast to December 31;
- d) An annual budget forecast report for the upcoming year;
- e) A performance report which must include the following:
 - i. net growth of membership;
 - ii. membership retention rates;
 - iii. ratio of salaries and benefits expenses to total revenues;
 - iv. Financial Assistance Program participant values and costs;
 - v. gross profit/gross profit margin ratio;
 - vi. net profit/net profit margin ratio;
 - vii. operating statement for the current year in comparison to budget;
 - viii. a summary of individuals served, which can include membership, attendance, visitation, participation, program registration, or a combination thereof;
 - ix. overall individual customer satisfaction;
 - x. overall user group satisfaction;
 - xi. overall facility usage rates via facility membership scans;
 - xii. program participation or admission scans of non-members;

- xiii. admission information for child and youth programs, swim lessons;
 - xiv. percentage of program participants by member and non-member;
 - xv. participants and membership values in the demographic categories of seniors, people with diverse abilities, children, and youth; and
 - xvi. highlights of particular achievements and successes with a focus on the impact of YMCA programs in the community.
- f) Governance and planning information, which includes:
- i. a list of the YMCA's directors;
 - ii. an organizational chart indicating key management and staff roles and staffing levels;
 - iii. objectives for the current calendar year; and
 - iv. a self-assessment, including identification of areas where improvements can be made in the areas of programming, organization governance, and financial oversight, along with strategies and processes to achieve improvements. This may be in the form of a strategic plan, program evaluation, or consultant's report, and may include information about trends, external threats, or other factors which influence the YMCA's planning and results.
- g) In relation to the Facility, provide a:
- i. summary of operational expenses for gas, water, chemicals, and electrical utility data (as applicable), indicating consumption and costs;
 - ii. summary of janitorial costs;
 - iii. list of maintenance and repair tasks carried out by the YMCA, with costs and contractors/trades identified;
 - iv. inspection reports as listed in Section 8.5, along with upcoming capital expenses/projects that the YMCA intends to undertake in the coming year; and
 - v. inspection reports as listed in Schedule E - Facility Maintenance and Operations Responsibility Checklist, and
- h) Any other information as requested upon mutual agreement.

The City may request, at its sole discretion, that the YMCA provide a public-in-attendance report to the City's Council in a prescribed format, which will reflect the reporting information listed in this section.

7.11 City Feedback on Reporting

Upon reviewing the Annual Report, in each calendar year the City may, at its sole discretion, make specific recommendations and requests (the "Recommendations") as follows:

- a) Such Recommendations are intended to be constructive and offered in the spirit of learning and improvement. The YMCA shall review the Recommendations and provide the City with notice of their agreement to implement the Recommendations, such agreement not to be unreasonably withheld, and a timeline for implementation of the Recommendations. Recommendations and requests made by the City under this section or during other discussions, meetings, or communications between the YMCA staff, officers, or board members and the City do not constitute direction or instructions by the City staff, agents, or Council. The YMCA is responsible for the direction and governance of all its operations.
- b) In the event the YMCA is unable or unwilling to agree to implement any particular Recommendations, the YMCA will provide the City with written notice of the same, along with the reason's implementation is not feasible for the on-going operation of the facility. Upon the delivery of such notice, the YMCA and the City shall exercise good faith efforts to seek a mutually satisfactory resolution to any dispute arising in relation to the Recommendations.
- c) Should the YMCA and the City not come to a satisfactory resolution, or should the YMCA not implement the agreed upon Recommendations within the agreed timeline, the matter shall be referred to a single arbitrator pursuant to the *Arbitration Act* [SBC 2020] Chapter 2.

7.12 Accounts

The YMCA shall, at all times during the Term:

- a) Keep, or cause to be kept, true and accurate records and accounts regarding the management and operation of the Facility, including without limitation:
 - i. Programs and Services Records: financial reports and records, (in accordance with generally accepted accounting principles), accident and incident reports, program registration reports, and customer comments; and
 - ii. Facility Records: any WorkSafeBC safety inspection records, energy consumption logs, emergency lighting inspection records, annual Facility inspection reports, health department inspections and reports, preventative maintenance records, fire and emergency drill records, or other such similar records that the YMCA may acquire from time to time.
- b) On seventy-two (72) hours' notice or as otherwise determined reasonable, 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 YMCA that relate to the Facility, and to audit the same.
- c) Upon termination or expiration of this Agreement, and within the limitations of privacy legislation, surrender all records relating to the operation and management of the Facility, except those relating to the YMCA's staff, to the City.

8. MAINTENANCE, REPAIRS, AND CHANGES TO THE FACILITY

8.1 General

- a) The City and the YMCA shall each have defined responsibilities for maintaining the Facility and License Areas under this Agreement, which are described in general terms below and specified further in the attached Schedule E.
- b) In this section, use of the term “maintenance” refers to corrective or preventative activities completed in order to prevent damage and prolong the life expectancy of an asset or piece of equipment.
- c) In this section, use of the term “repair” refers to any restoration work performed when an asset or piece of equipment breaks, is damaged, or for any other reason stops working.
- d) In this section, use of the term “safety modifications” refers to any work that is required to modify an asset or piece of equipment due to changes in safety codes, bylaws or other requirements.
- e) All maintenance, safety modifications and repair work performed within the Facility will all occur to a standard at least substantially equal in quality of material and workmanship to the original work and materials in the Facility and License Areas, and will meet the lawful requirements of all statutory authorities.
- f) To facilitate the maintenance of the Facility and License Areas, the City and the YMCA will meet at a frequency as mutually agreed to by the parties, but no less than annually, to tour the Facility and License Areas, discuss the general building conditions, and jointly plan for major and minor capital projects and maintenance, repair, safety modifications, replacement, and refurbishment issues and requirements.

8.2 Routine Maintenance and Minor Repair

- a) Routine maintenance and minor repair shall be the responsibility of the YMCA, as detailed in the attached Schedule E – Facility Maintenance and Operations Responsibility Checklist, and shall include the following:
 - i. Facility interior, including but not limited to internal doors, glass, floor, fixtures, walls, ceilings, lockers, access, and all related hardware;
 - ii. Plumbing, Domestic Fixtures - point-of-use fixtures and equipment (faucets, shower heads, toilets, water fountains, etc.). The required testing of backflow prevention devices

associated with the domestic plumbing infrastructure will be organized by the City, with the cost borne by the YMCA;

- iii. Plumbing, Natatorium Mechanical Systems - natatorium features and their associated mechanical systems as described in Schedule E – Appendix A - Natatorium Specialty Equipment, and including but not limited to water circulation works (piping, pumps, valves, fittings, etc.), feature-specific systems (flow rider, wave generator, etc.), dedicated aquatic systems (heat exchangers, filtration systems, UV system, surge tanks, etc.), steam generator maintenance, and water chemistry including supply, testing, aquatic chemical treatments, and water balancing;
 - iv. Fire Protection, Fire Alarm, and Fire Suppression systems - quarterly and annual testing of fire alarm system and fire extinguishers, annual inspections of the fire suppression system, monthly testing of emergency lighting;
 - v. Electrical system, including replacement of all interior light bulbs, underwater light bulbs, and ultraviolet light bulbs;
 - vi. Natatorium and aquatic facility point of use features, as described in Schedule E – Appendix A - Natatorium Specialty Equipment, including but not limited to waterslides, spray park features, diving boards, and starting blocks; and
 - vii. Security and access systems.
- b) Responsibility for the maintenance and repair of the pool and hot tub heat exchangers shall be shared by the parties, with the YMCA being responsible for the infrastructure and equipment on the load-side of the heat exchangers, and the City being responsible for the infrastructure and equipment on the source-side of the heat exchangers.
 - c) The City shall reimburse the YMCA for cumulative annual monies expended exceeding thirty thousand dollars (\$30,000.00) for minor repair, to be adjusted annually starting January 1, 2025, by the BC CPI annual average for the prior calendar year.

8.3 Routine Maintenance and Repair Standards

Throughout the Term, in relation to the Facility and the License Areas, excluding the parking area identified in the attached Schedule A, the YMCA shall, at its sole expense and in a timely manner:

- a) clean, maintain, and keep all fixtures and appurtenances thereon in good repair, in accordance with any applicable manufacturer specifications, and at all times consistent with standards of

repair generally accepted in British Columbia with respect to comparable premises, as required in the attached Schedule E;

- b) perform all reasonable routine maintenance that can prolong the life expectancy of Facility equipment and prevents premature operations failures;
- c) completion of all routine inspections and adhere to all applicable laws, regulations, and codes necessary for the YMCA's use, occupation, and operation of the Facility and the License Areas;
- d) upon receipt of notice from the City of required repairs or maintenance, within thirty (30) days of being given notice complete such work or, where such work because of its nature requires more than thirty (30) days to complete, within fifteen (15) days of being given notice commence such work, and thereafter promptly, effectively, and continuously proceed with the work to completion; and
- e) at the end of the Term, surrender the Facility and the License Areas to the City in good repair, excepting reasonable wear and tear.

If the YMCA fails to fulfil its maintenance responsibilities following any provision in this Agreement, the City may, at its sole discretion and in addition to any other remedies available to the City, complete such repairs and maintenance at the sole cost and expense of the YMCA, or declare the YMCA to be in default of this Agreement, or both.

8.4 Major Building Systems Maintenance and Repairs

The maintenance and repair of major building systems shall be the responsibility of the City and include:

- a) structural systems, including building infrastructure and foundations;
- b) operating systems, including mechanical, plumbing, electrical, utility, and elevating;
- c) all heating, ventilation, and air conditioning systems ("HVAC"); and
- d) Facility exterior, including the roofing system, exterior doors and windows, facades, parking lot, exterior lighting, and drainage.

8.5 Inspections, Assessments and Testing

The City, in coordination with the YMCA, will conduct a building condition assessment (the "Building Condition Assessment") of the Facility in 2025. The Building Condition Assessment will establish a

baseline report as to the current condition of various structural, mechanical and operating systems in the Facility. The Building Condition Assessment will be available to both the City and YMCA.

The YMCA covenants and agrees to conduct, at a minimum, the inspections for the Facility as outlined below:

a) **Plumbing**

The YMCA shall provide an annual inspection report from a certified plumber documenting the observed status of those Facility plumbing systems over which they have responsibility, as described in section 8.2 and Schedule E of this Agreement, confirmation of completed preventative maintenance, and any recommended capital repairs. All completed inspection reports under this section must be submitted to the City upon receipt by the YMCA and are also required to be submitted as part of the annual reporting process.

b) **Air Quality**

The YMCA shall contract a third party to complete an air quality testing for chloramines and other known airborne contaminants on a no less than annual basis. The testing and associated report will document the observed and tested quality of the air in the Facility, confirm whether the air quality meets or exceeds industry standards, and make recommendations for any system repairs to be evaluated by the City.

8.6 Contractors

- a) All maintenance and repair work completed on the Facility and License Areas must be performed by persons' qualified and approved as defined in this section.
- b) For work on electrical and plumbing components and systems, the YMCA will exclusively engage contractors that have been selected or approved by the City. The City will provide a list of City-selected contractors upon request.
- c) All other Facility contractors must be approved by the City and:
 - i. be qualified to perform such work;
 - ii. carry a minimum of two million dollars (\$2,000,000.00) of commercial liability insurance;
 - iii. carry valid WorkSafeBC coverage;
 - iv. act as the Prime Contractor for all work to be done; and
 - v. have a valid City of Kelowna business license.

8.7 Restoration Work / Non-Fire Facility Emergencies

The YMCA acknowledges and agrees that upon identifying a Facility emergency, including, but not limited to, flooding or structural concerns, the YMCA shall:

- a) take immediate steps to respond to the emergency to the extent that any immediate risk to the safety of any persons or property is alleviated; and
- b) notify the City of the emergency as soon as practicable, but in any event no later than four (4) hours from the discovery of the emergency; failure to do so may result in the YMCA being financially responsible for any damage incurred.

A City representative can be reached after hours by calling the non-emergency line at the fire department 250-469-8577, 24 hours a day, 7 days a week.

8.8 Minimum Work Standards

The YMCA must ensure that any repairs or work with respect to the Facility and the License Areas done by or on behalf of the YMCA:

- a) do not affect any Facility systems or the License Areas;
- b) meet or exceed the standards of material and construction employed in the original construction of the Facility and the License Areas; and
- c) comply with all applicable laws, statutes, enactments, regulations, bylaws, and orders from to time in force, including the applicable Facility code and bylaws of the City.

8.9 Annual Onsite Meeting

The YMCA and the City shall meet annually to conduct an onsite walk through the Facility to identify items that require maintenance and future capital replacement. The walk-through will be organized by the City, and meeting minutes and action items will be distributed to all attendees. The YMCA and the City consent to complete the action items as per a mutually agreed upon time frame. If the YMCA or the City fails to complete the action items, any contingent damage as a result of the deferred repairs is the responsibility of the party failing to complete the action item.

8.10 Keys and Access

The City will own, install, upgrade, operate and maintain all key and access systems at the Facility. The City will provide the YMCA access to the systems, in addition to clear policies, guidelines and training. Installation of a new key and access system is anticipated for June 2024 and will be done in coordination with the YMCA.

Until the new access system is operational the YMCA is to provide the City access to the Facility upon request, within a reasonable time frame. The YMCA is to also provide the City with master key(s) and necessary security information for the Facility. If, in the City's sole opinion, the YMCA does not provide adequate Facility access, the City reserves the right to take over the management of the keys and access to the Facility. Should the City take over the management of the Facility keys, the YMCA covenants that it will not change the locks on the Facility, copy the keys, or hand them out. The City will maintain a record of the keys and to whom they have been issued. If the locks need repair or replacement, the YMCA will inform the City.

8.11 Environmental Stewardship and Sustainability

The YMCA and the City must strive to operate the Facility in an environmentally sensitive manner and pursue "green" initiatives through the implementation of innovative and responsible environmental practices. This includes taking active steps to reduce its carbon footprint, reduce waste, promote energy conservation, improve sustainability and ensure the on-going efficiency of the operation of the Facility. The YMCA covenants with the City:

- a) that the YMCA will co-operate with the City in the conservation of all forms of energy in the Facility;
- b) that the YMCA will comply with all laws, bylaws, regulations, and orders relating to the conservation of energy and affecting the Facility; and
- c) that the YMCA will, at its own cost, comply with reasonable requests of the City made with a view of such energy conservation and sustainability following a cost-benefit analysis.

8.12 Energy Expense Reporting and Energy Upgrades

The YMCA agrees to grant permission to the utility providers (i.e. FortisBC) to provide the City with all utility billing reporting information pertaining to the Facility.

Should the City upgrade certain equipment at the Facility with the expected outcome of significantly reducing energy consumption and utility costs (the "Energy Upgrade"), the City and the YMCA will addend the agreement to outline re-payment terms related to the recovery of the City's investment. The addendum will be based on mutually agreed upon financial projections for the Energy Upgrade. The City and the YMCA agree to make every reasonable effort to ensure the Facility realized significant, sustained energy savings as a result of the Energy Upgrade.

The costs associated with additional energy enhancements on the Lands (i.e. Electric vehicle charging stations) that are not related to Facility operations shall be separate and the responsibility of the City.

8.13 Video Monitoring and Security

The City will own, install, upgrade, operate and maintain all video monitoring and security systems at the Facility. The City will provide the YMCA access to the systems, subject to applicable privacy laws, in addition to clear policies, guidelines and training. Installation of a video monitoring system is anticipated for February 2024 and will be done in coordination with the YMCA. Until the new video monitoring system is operational the YMCA is solely responsible for ongoing operations and maintenance of all internal video monitoring and security systems.

The YMCA shall take all reasonable steps to ensure that the Facility, equipment, staff, volunteers, and visitors are secure at all times, with the use of a monitored alarm system, security guards when appropriate, and other measures the YMCA considers necessary. It is the responsibility of the City to ensure all video monitoring and security systems consider all the appropriate legislation governing their use. The City shall grant the YMCA access to the security footage upon request, subject to applicable privacy laws.

8.14 YMCA's Construction of Buildings, Structures, and Other Improvements

The YMCA must not construct, erect, or install or cause to be constructed, erected, or installed any buildings, structures, improvements, extensions, installations, alterations, additions, renovations, fixtures, major signage, or other constructions in, on, over, under, around, and to the Facility or the License Areas, or alter the existing state of the Facility in any material way, without the prior written consent of the City, which consent may be withheld for any reason at the City's sole discretion. If the City gives such consent, the YMCA must obtain the City's prior approval of drawings and specifications for such work, must do such work strictly in accordance with the approved drawings and specifications, and must comply with any conditions the City imposes with that approval. The YMCA is responsible for applying for the required permits and requesting the necessary construction inspections, including the final sign-off. The cost of construction and design of the improvements are the sole responsibility of the YMCA.

8.15 Ownership of Improvements at Termination

At the expiry of the Term or earlier termination of this Agreement, any improvements, extensions, installations, alterations, renovations, or additions to the Facility and the License Areas, whether done by or on behalf of the YMCA or not, are forfeited to and become the permanent property of the City.

8.16 Builders Liens

The YMCA shall promptly discharge any builders' lien or other lien or claim of lien which may be filed against the title to the Lands relating to any improvements, work, or construction that the YMCA undertakes on the Lands, and to comply at all times with the *Builders Lien Act* [SBC 1997] Chapter 45,

as amended from time to time, in respect of any improvements, work, or construction undertaken on the Lands.

8.17 Capital Expenditures

- a) The City acknowledges responsibility for the long-term operational effectiveness of the Facility, including the renewal of major systems including but not limited to HVAC, plumbing, electrical, fire suppression, and security systems.
- b) The City will include appropriate funding in the City's capital planning consistent with other City public buildings over the life of this Agreement. Future capital expansion, renovation, and Facility development not identified in this Agreement will be cooperatively and collaboratively discussed and facilitated by the City and the YMCA.
- c) The YMCA shall not make any application for grant funding for capital expansion or renovation of the Facility without first receiving express written approval from the City.

8.18 City's Construction of Buildings, Structures, and Other Improvements

The YMCA acknowledges and agrees that the City may, in consultation with the YMCA, construct or cause to be constructed certain leasehold improvements in, on, over, under, around, or to the Facility ("Future Construction"), the design, construction, and performance of which is in the sole discretion of the City. If the City undertakes any Future Construction, the YMCA:

- a) acknowledges and agrees that the Future Construction may be performed during the Term;
- b) shall grant full access to the Facility to the City and its elected officials, officers, employees, contractors, agents, and others for purposes relating to the Future Construction; and
- c) acknowledges and agrees that the Future Construction may result in the temporary closure, in whole or in part, of the Facility and/or the License Areas, and may require the interruption, disruption, rescheduling, or cancellation of regularly scheduled programs and services offered at the Facility. Both parties will work collaboratively to minimize the financial and operational impacts of Future Construction.

8.19 Damage or Destruction of the Facility

- a) If, during the Term, the Facility is damaged or destroyed by any cause whatsoever, or if a major Facility system in the Facility fails such that in the opinion of the City the Facility is rendered unfit for use by the YMCA, the City may or may not, in its sole discretion, repair, rebuild, or replace the Facility system or the Facility.
- b) If the City chooses not to repair, rebuild, or replace the Facility system or the Facility, the City will work collaboratively with the YMCA to review options for alternative locations. If the City and the YMCA cannot agree on an alternative location, then the City may, in its sole discretion:

- i. provide three (3) months' written notice to the YMCA that this Agreement is terminated, and the YMCA shall vacate the Facility as if this Agreement had expired or been terminated for cause; or
- ii. negotiate the continuation of this Agreement deleting all references and obligations related to the destroyed Facility and the provision of programs and services.

8.20 Expropriation

If an authority with expropriation power expropriates all or a material part of the Facility, the City may give reasonable notice to the YMCA, but in no case less than thirty (30) days, and the YMCA shall have no claim for compensation against the City or the expropriating authority for any interest in land, except that where compensation is available for disturbance, in which case the YMCA may make such a claim to the expropriating authority.

8.21 No Capital Liabilities

Despite any other provision of this Agreement, nothing in this Agreement obligates the City to make any expenditure of a capital nature and nothing in this Agreement shall be interpreted in a manner that results in the City having expressly or implicitly incurred a 'liability of a capital nature' as that phrase is used in the *Municipal Liabilities Regulation*, B.C. Reg. 201/2015, as amended from time to time.

9. ENVIRONMENTAL MATTERS

9.1 Definitions

In Section 9, the below terms shall have the following meanings:

- a) "**Contaminants**" is defined in the *Environmental Management Act* [SBC 2003] Chapter 53, as amended from time to time, as: "any biomedical waste, contamination, effluent, pollution, recyclable material, refuse, hazardous waste or waste and any radioactive materials, asbestos materials, urea formaldehyde, underground or above ground tanks, pollutants, contaminants, deleterious substances, dangerous substances or goods, hazardous, corrosive or toxic substances, special waste or waste of any kind or any other substance the storage, manufacture, disposal, treatment, generation, use, transport, remediation or Release into the Environment of which is now or hereafter prohibited, controlled or regulated under Environmental Laws";
- b) "**Environment**" includes the air (including all layers of the atmosphere), land (including soil, sediment deposited on land, fill, and lands submerged under water), and water (including oceans, lakes, rivers, streams, ground water, and surface water);
- c) "**Environmental Laws**" means any past, present, or future common laws, enactments, statutes, laws, regulations, orders, bylaws, standards, guidelines, permits, and other lawful

requirements of any federal, provincial, municipal, or other governmental authority having jurisdiction relating in any way to the Environment, environmental protection, health, occupational health and safety, product liability, or transportation of dangerous goods, including the principles of common law and equity; and

- d) **"Release"** includes any release, spill, leak, pumping, pouring, emission, emptying, discharge, injection, escape, leaching, migration, disposal, or dumping.

9.2 YMCA's Representations and Warranties

The YMCA represents and warrants to the City, and acknowledges that the City is relying on such representations and warranties in entering into this Agreement, that as of the date of this Agreement:

- a) except as disclosed to the City in writing, the YMCA is not, and has never been, subject to any charge, conviction, a notice of defect or non-compliance, work order, pollution abatement order, remediation order, or any other proceeding under any Environmental Laws; and
- b) except as disclosed to and approved in writing by the City, the YMCA's business at the Facility, the License Areas, or the Lands does not involve the sale, storage, manufacture, disposal, handling, treatment, generation, use, transport, refinement, processing, production, remediation, Release into the Environment of, or any other dealing with any Contaminants.

If any of the representations and warranties contained in this section are untrue or incorrect in any material respect, the same shall constitute a breach of this Agreement by the YMCA and shall be subject to the provisions of Section 13 of this Agreement.

9.3 Condition of the Facility

The YMCA acknowledges and agrees that the City has made no representations or warranties with respect to the environmental condition of the Facility, the License Areas, or the Lands, and is leasing the Facility to the YMCA under this Agreement on an "as is, where is" basis with respect to its environmental condition. Prior to taking possession of the Facility under this Agreement, the YMCA has performed such investigations of the Facility, the License Areas, and the Lands as it considered appropriate and is satisfied as to their environmental condition.

9.4 Compliance with Environmental Laws and Use of Contaminants

The YMCA covenants and agrees with the City to:

- a) carry on and conduct its activities in, on, and from the Facility, the License Areas, and the Lands 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, under, or from the Facility or the License Areas, or the Lands, except in compliance with all Environmental Laws;

- c) 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. a Release of Contaminants in, on, or about the Facility, the License Areas, the Lands, or any adjacent land; or
 - ii. the receipt of any citation, directive, order, claim, litigation, investigation, proceeding, judgment, letter, or other communication from any person that is related to any Environmental Law;
- d) promptly provide to the City a copy of any environmental site assessment, audit, report or test results relating to the Facility, the License Areas, or the Lands conducted at any time by or for the YMCA;
- e) if the City suspects that the YMCA has not complied with its obligations under this section, obtain from an independent environmental consultant approved by the City an environmental site assessment, audit, report, or testing of the Facility or the License Areas, and conduct or cause to be conducted any additional investigations that the environmental consultant may recommend all in order to determine compliance of the Facility or the License Areas with Environmental Laws; and
- f) promptly remove any Contaminants arising from the YMCA's use or occupation of the Facility, the License Areas, or the Lands in a manner that conforms to Environmental Laws governing their removal.

9.5 Confidentiality of Environmental Reports

The YMCA shall maintain all environmental site investigations, assessments, audits, and reports relating to the Facility, the License Areas, or the Lands in strict confidence and shall not disclose their terms or existence to any third party (including without limitation, any governmental authority) except as required by law, to the YMCA's professional advisers and lenders on a need-to-know basis or with the prior written consent of the City, which consent may be unreasonably withheld.

9.6 Authorizations

The YMCA shall promptly provide to the City, on request, such written authorizations as the City may require from time to time to make inquiries of any governmental authorities regarding the YMCA's compliance with Environmental Laws.

9.7 Ownership of Contaminants

Notwithstanding any rule of law to the contrary, any Contaminants or leasehold improvements or goods containing Contaminants brought onto, used at, or Released from, the Facility, the License Areas, or the Lands by the YMCA or any person for whom it is in law responsible shall be and remain the sole and exclusive property of the YMCA and shall not become the property of the City,

notwithstanding the degree of their affixation to the Facility, the License Areas, or the Lands, and notwithstanding the expiry or earlier termination of this Agreement. This section supersedes any other provision of this Agreement to the contrary.

9.8 Survival of YMCA's Obligations

The obligations of the YMCA under this Section 9 (including, without limitation, the YMCA's indemnity, its obligation to remove and remediate Contaminants, and its covenant of confidentiality) shall survive the expiry or earlier termination of this Agreement.

10. MANAGEMENT OF THE FACILITY AND PROVISION OF SERVICES

10.1 No Discrimination

The YMCA hereby covenants and agrees to provide programs and services, and any other services offered at the Facility, in accordance with the *Human Rights Code* [RSBC 1996] Chapter 210, as amended from time to time, and best practices related to equity and inclusion.

10.2 Employee Standards

- a) The YMCA shall hire, train, supervise, and remunerate, or cause to be hired, trained, supervised, and remunerated, all employees, contractors, and volunteers required for the provision of the programs and services outlined in Schedule B.
- b) The YMCA shall ensure that all employees, contractors, and volunteers meet mandatory statutory and regulatory certification and training requirements needed in order to perform the duties and responsibilities of their position at the Facility.

10.3 WorkSafeBC Coverage

The YMCA shall, in its use of and activities on the Facility and the Lands, comply with the *Workers Compensation Act* [RSBC 2019] Chapter 1 (the "WCA"), as amended from time to time, and all regulations and orders from time to time in force thereunder, including the *Occupational Health and Safety Regulation*, B.C. Reg. 222/2021; and, upon request from the City, provide evidence of any required registration under that WCA and evidence of compliance with any requirement under that WCA to make any payments or pay assessments. In addition, the YMCA shall be the "prime contractor" for the Facility under the WCA, and shall fulfill all associated obligations, including ensuring that the activities of any employers, workers, or other persons in, on, or under the Facility relating to occupational health and safety are coordinated; and further, by doing everything that is reasonably possible to establish and maintain a process that shall ensure compliance with the WCA and regulations thereunder, including the *Occupational Health and Safety Regulations*, B.C. Reg. 222/2021.

10.4 Branding and Marketing

The Facility was developed as a community facility to meet the current and future recreational needs for Kelowna citizens and visitors. Recognizing the significant capital investment by the City, the importance of the Facility as an integral part of the City's recreational landscape, and the importance of a successful operator, the Facility will be branded and marketed in accordance with the following:

- a) the Facility will be branded and marketed as a City-owned Facility, operated by the YMCA, and positioned at all times as the H₂O Adventure and Fitness Centre;
- b) the City is permitted to establish internal and external City branding of the Facility, at the City's sole expense;
- c) the Facility will be positioned under the Facility brand, specifically "H₂O Adventure and Fitness Centre";
- d) the programs offered at the Facility, including swimming lessons, staff, volunteerism, health promotions, fitness certifications, and cause marketing, will be positioned under the YMCA brand;
- e) all memberships sold at the Facility shall be deemed and branded first as memberships of the H₂O Adventure and Fitness Centre. Secondary branding of any membership sold at the Facility shall be permitted pursuant to the attached Schedule F – Branding Guidelines;
- f) Facility marketing channels are owned by the City and are to be used primarily to promote the Facility and programs offered at the Facility, and secondly to cross-promote other City programs, services, information, and facilities;
- g) the City shall retain all rights to internal and external naming opportunities relating to the Facility;
- h) the YMCA is permitted to establish YMCA branding within the Facility, at YMCA's sole expense, provided such materials are in compliance with the attached Schedule F – Branding Guidelines;
- i) the YMCA is permitted to erect temporary external YMCA branded signage of the Facility in relation to specific media or fundraising campaigns of defined duration, at the YMCA's sole expense and with the written consent of the City, and provided such signage is in compliance with all applicable City bylaws and associated regulations; and
- j) the parties will collaborate to identify cross-promotional opportunities that will utilize Facility, City, and YMCA marketing channels.

10.5 Incidental Rights

The YMCA may:

- a) offer programs and services at the Facility to reflect community needs or respond to unique market opportunities;
- b) enter into sponsorship, media, or advertising agreements ("Endorsements") involving the programs and services offered at the Facility, provided that the Endorsements are:
 - i. appropriate for families and children;
 - ii. consistent with the parties' joint values of equality, accessibility, health, respect, and the dignity of the individual;
 - iii. respectful of the neighbourhoods surrounding the Facility and all scheduled programs and services at the Facility;
 - iv. appropriate to the aesthetics of the Facility;
 - v. used solely to generate revenue to support improvements to the Facility, its programming, or community services; and
 - vi. in compliance with the requirements of Council Policy 376 – Corporate Sponsorship and Advertising.
- c) undertake fundraising activities within the Facility for the benefit of YMCA programs and services offered within the City of Kelowna, with the written consent of the City; and
- d) use the Facility for the YMCA's office and headquarters during the Term.

10.6 City Acknowledgement

The YMCA will acknowledge the Facility's relationship to and the operating support of the City through the following:

- a) **Guiding Principle:** The relationship of the parties, between each other and the Facility, is that it is a City-owned Facility, operated by the YMCA.
- b) **Facility Contribution:** The City's contributions to the Facility and ownership of the Facility will be acknowledged in the form of an external plaque or signage, as determined and produced by the City. All costs associated with the production and placement of external recognition signage is to be incurred by the City.
- c) **Financial Contribution:** The City's contribution to the management, operational, and capital renewal needs of the Facility should be recognized at a consistent level with all other major funding contributors on any internal collateral that is used to recognize financial contributors (i.e. donor wall, plaque, or signage at the information desk). In addition, funding contributions

from the City should be recognized on the Facility's primary website, as well as in any principal collateral, such as the annual report prepared in relation to the Facility, the Facility's main brochure, and any materials that would not otherwise be produced without the City's funding.

10.7 Reciprocity

- a) Memberships sold at the Facility may be used at any other YMCA not located in the City of Kelowna, at the YMCA's sole discretion; and
- b) YMCA memberships issued by any other YMCA, with the exception of YMCA facilities located within the City of Kelowna, may be used at the Facility, at the YMCA's sole discretion.

10.8 Joint Facility Access

- a) The City and the YMCA will offer a discounted rate to individuals who hold a valid membership or pass at the Facility, the Parkinson Recreation Centre, or the Kelowna Family Y for access to the other facility. The rate to be applied under this section shall be a twenty-five percent (25%) discount of single admission or punch card, whichever applicable, and is subject to annual review and change as mutually agreed between the parties.
- b) The parties agree to work collaboratively towards the creation of a joint-membership user pass which would allow for member access to the Facility and other recreation and fitness facilities within the City of Kelowna owned and/or operated by the parties, and which contemplates allocation of revenues through a usage tracking model.

11. YMCA INSURANCE

11.1 YMCA to Provide

The YMCA shall procure and maintain during the Term, at its own expense and cost, the insurance policies listed in Section 11.2 of this Agreement. For clarity, the insurance requirements set out in Section 11.2 are minimum requirements and are not to be interpreted in a manner that limits the YMCA's obligations under this Agreement. The YMCA shall be responsible for obtaining and maintaining such additional insurance as would a prudent tenant, having similar obligations to those of the YMCA under the terms of this Agreement. Further, all insurance policies held pursuant to this Agreement shall contain an undertaking by the insurer to notify the City in writing not less than thirty (30) days before any material change, cancellation, or termination.

11.2 YMCA's Insurance Obligations

At a minimum, the YMCA shall, without limiting its obligations or liabilities under any other contract with the City, procure and maintain, at its own expense and cost, the following insurance policies:

- a) Directors and Officers Liability Insurance;
- b) Comprehensive General Liability Insurance including the following terms:
 - i. providing for an inclusive limit of not less than ten million dollars (\$10,000,000.00) for each occurrence or accident;
 - ii. providing for all sums which the YMCA shall become legally obligated to pay for damages because of bodily injury (including death at any time resulting there from) sustained by any person or persons, or because of damage to or destruction of property caused by an occurrence or accident arising out of or related to this Agreement, services and/or occupancy under this Agreement, or any operations carried out in connection with this Agreement;
 - iii. coverage for Products/Completed Operations, Blanket Contractual, Contractor's Protective, Personal Injury, Contingent Employer's Liability, Broad Form Property Damage, and Non-Owned Automobile Liability; and
 - iv. a Cross Liability clause providing that the inclusion of more than one Insured shall not in any way affect the rights of any other Insured hereunder, in respect to any claim, demand, suit, or judgement made against any other Insured.
- c) All risks (including flood and earthquake, as required by the City) property insurance (contents, tenant improvements, etc.) in an amount equal to one hundred percent (100%) of the full replacement cost:
 - i. insuring all property owned by the YMCA, or for which the YMCA is legally liable, or installed by or on behalf of the YMCA, and located within the Facility including, but not limited to, fittings, installations, alterations, additions, partitions, and all other leasehold improvements. In the event of loss or damage, the YMCA shall, if so requested by the City, forthwith replace such lost or damaged equipment or chattels;
 - ii. insuring the YMCA's inventory, furniture, and movable equipment to the extent that such insurance is commercially available;
 - iii. providing business interruption insurance to the YMCA for loss of revenue resulting from or due to loss or damage to equipment or the Facility;
 - iv. providing a period of indemnity which shall not be less than twelve (12) months from the date of loss or damage; and
 - v. naming the City as a first loss payee with respect to any loss or damage to the permanent collection maintained by the YMCA on the policy required by this section.
- d) Insurance upon all plate glass in the Facility in an amount sufficient to replace all such glass.

The policy(s) set out in Section 11.2 shall contain a waiver of any subrogation rights that the YMCA's insurer may have against the City for YMCA responsibilities. The YMCA hereby waives its rights of subrogation against the City for areas identified as a YMCA responsibility.

11.3 City's Insurance Obligations

The City shall maintain, through the Term, in those reasonable amounts and with those reasonable deductions that a prudent owner of similar property would maintain, having regard to the size, age, and location:

- a) All risk insurance on the Facility, License Areas, and the Common Area, including all machinery, boilers, and equipment contained therein and owned by the City (excluding property that the YMCA is required to insure pursuant to this Agreement);
- b) General liability insurance with respect to the City's operations at the Facility; and
- c) Whatever other forms of insurance the City considers advisable.

11.4 Automobile Liability Insurance

The YMCA shall procure and maintain insurance policies covering all motor vehicles owned, operated, and used or to be used by the YMCA directly or indirectly related to this Agreement, services and/or occupancy under this Agreement, or any operations carried out in connection with this Agreement. The limit of liability shall not be less than five million dollars (\$5,000,000.00) inclusive of loss or damage, including personal injuries and death resulting from any one accident or occurrence.

11.5 The City Named as Additional Insured

The policies required by Section 11.2 shall provide that the City is named as an "Additional Insured" thereunder and that said policies are primary, without any right of contribution from any insurance otherwise maintained by the City.

11.6 Certificates of Insurance

The YMCA agrees to submit certificates of insurance in the form attached as Schedule H (the "Certificates of Insurance") for itself and all of its subcontractors to the City before the commencement of this Agreement, the occupancy of the Facility, the provision of services, and/or the use of the Facility, Lease Areas, Common Area, and Lands under this Agreement. No review or approval of any insurance certificate or insurance policy by the City derogates from or diminishes the City's rights under this Lease.

11.7 YMCA's Subcontractors and Subleasees

The YMCA shall require each of its subcontractors and subleasees to provide comparable insurance to that set out in Schedule H – Insurance Certificate, except for the minimum amounts required for subcontractors, which shall instead be in compliance with Section 8.6 of this Agreement.

11.8 Other Insurance

After reviewing the YMCA's Certificates of Insurance, the City may require other insurance or alterations to any applicable insurance policies in force during the Term and will give notifications of such requirements. Where other insurances or alterations to any insurance policies in force are required by the City and result in increased insurance premiums, such increased premium shall be at the City's expense.

11.9 Additional Insurance

The YMCA may take out such additional insurance, as it may consider necessary and desirable. All such additional insurance shall be at no expense to the City. The YMCA shall ensure that all of its subcontractors are informed of and comply with the City's requirements set out in Schedule H.

11.10 Insurance Companies

All insurance, which the YMCA is required to obtain with respect to this Agreement, shall be with insurance companies registered in and licensed to underwrite such insurance in the Province of British Columbia.

11.11 Failure to Provide

If the YMCA fails to do all or anything which is required of it with regard to insurance, the City may do all that is necessary to effect and maintain such insurance in the name and at the expense of the YMCA, and the YMCA shall repay any and all costs expended by the City within twenty-one (21) days of receipt of an invoice. For clarity, the City has no obligation to obtain any insurance required to be maintained by the YMCA under this Agreement.

11.12 Non-Payment of Losses

The failure or refusal to pay losses by any insurance company providing insurance on behalf of the YMCA or any subcontractor shall not be held to waive or release the YMCA or subcontractor from any of the provisions of the insurance requirements or this Agreement with respect to the liability of the YMCA otherwise. Any insurance deductible maintained by the YMCA or any subcontractor under any of the insurance policies is solely for their account and any such amount incurred by the City will be recovered from the YMCA as stated in Section 11.11.

12. INDEMNITY

12.1 YMCA Indemnity

The YMCA will indemnify and save harmless the City and its elected and appointed officials, officers, employees, agents, successors and assigns from all claims, costs and expenses arising out of or related to any breach of the YMCA's covenants in this Agreement and all claims, demands, actions, suits and other proceedings for personal injury, death or property damage or loss arising out of or related to any act or omission of the YMCA, its officers, employees or agents relative to the Facility or the License Areas. The obligations of the YCMA under this Section 12.1 shall survive the expiry or earlier termination of this Agreement.

12.2 City Indemnity

The City will indemnify and save harmless the YMCA and its officers, employees, agents, successors and assigns from all claims, costs and expenses arising out of or related to any breach of the City's covenants in this Agreement and all claims, demands, actions, suits and other proceedings for personal injury, death or property damage or loss arising out of or related to any act or omission of the City, its officers, employees or agents relative to the Facility or the License Areas. The obligations of the City under this Section 12.2 shall survive the expiry or earlier termination of this Agreement.

13. DEFAULTS, TERMINATION AND EXPIRATION

13.1 City May Cure Default

If the YMCA fails to observe, comply with, keep, or perform any of its covenants, agreements, or obligations under this Agreement, the City may, but is not obliged to, at its discretion and without prejudice, take all steps considered necessary to rectify or cure the default and all costs of so doing, including the costs of retaining professional advisors, shall be payable immediately by the YMCA upon receipt of an invoice. Nothing in this Agreement obligates the City to rectify or cure any default of the YMCA, but should the City choose to do so, the City shall not be liable to the YMCA for any act or omission in the course of rectifying or curing or attempting to rectify or cure any default.

13.2 Termination Due to Default

If and whenever:

- a) the YMCA does not fully observe, keep, or perform each and every term, covenant, agreement, stipulation, obligation, condition, and provision of this Agreement to be observed, kept, and performed by the YMCA, and persists in such default for thirty (30) days after written notice by the City;
- b) the YMCA ceases to exist as a non-profit YMCA in good standing in the records of the British Columbia Corporate Registry;

- c) any proceedings towards dissolution or winding up of the YMCA are initiated;
- d) any of the goods or chattels in the Facility are at any time seized or taken in execution or attachment by any creditor of the YMCA or under a bill of sale or chattel mortgage;
- e) a writ of execution is issued against the goods and chattels of the YMCA;
- f) the YMCA makes any assignment for the benefit of creditors or becomes insolvent or bankrupt;
- g) the YMCA is in default in the payment of Rent, or any other amount payable under this Agreement, and the default continues for thirty (30) days after written notice by the City to the YMCA;
- h) the Facility or the Lands, or any part of it, is destroyed or damaged by any cause so that in the opinion of the City the Facility is no longer reasonably fit for use by the YMCA for the purposes set out in this Agreement for any period over sixty (60) days; or
- i) the YMCA vacates or abandons the Facility or any part of it, or uses or permits or suffers the use of the Facility for any purpose other than the purposes permitted by this Agreement, and such default persists for fourteen (14) consecutive days after written notice by the City,

then the City may, in its sole discretion, terminate this Agreement, at which time the Rent and all outstanding levies and charges shall become immediately due and payable; the Term shall immediately become forfeited and void; and, the YMCA must immediately cease all use and occupation of the Facility and the Lease Areas and vacate, deliver up possession of the Facility and License Areas. The City may, without notice or any form of legal process, and without any adherence to public law duties or procedural fairness or the principles of natural justice, forthwith re-enter the Facility and take possession of the Facility.

13.3 Distress

If the Rent payable by the YMCA are in arrears for thirty (30) days or more, the City or a person authorized in writing by the City may enter upon or into the Facility and seize any goods or chattels and may sell the same.

13.4 Termination without Cause

Notwithstanding the rest of this Agreement, either party may terminate this Agreement upon at least twelve (12) months' written notice to the other party. The Parties will work collaboratively to prepare a Facility management transition plan to ensure existing service and programming levels are maintained during this period.

13.5 Return of Operating Grant

The YMCA shall immediately upon expiration of the Term or the earlier termination of this Agreement, release, relinquish, and return pro rata portion of the Operating Grant to the City, to be calculated

based upon the date of expiration of the Term or the termination of the Agreement, whichever applies.

13.6 Overholding

If the YMCA continues to occupy any or all of the Facility after the expiration of the Term or the earlier termination of this Agreement, such holding over will not constitute a renewal of this Agreement. In such case, the City, at its option, may elect to treat the YMCA as one who has not vacated at the end of the Term and to exercise all of its remedies in that situation, or may elect to construe such holding over as a tenancy from month to month, subject to all the terms and conditions of this Agreement except as to the Term. For clarity, this section does not authorize or permit the YMCA to overhold.

13.7 Compensation Upon Termination

The YMCA shall not make any claim for compensation, in damages or otherwise, upon the termination or expiry of this Agreement. If the City terminates this Agreement, the City retains the right to proceed at law against the YMCA for all of the Rent and other loss or damage and costs, including all prospective losses or prospective damages suffered or to be suffered by the City arising from the default of the YMCA under this Agreement.

13.8 State of the Facility and Lands at Termination

If the YMCA fails to leave the Facility and the Licence Areas in a condition the same or largely similar to the condition the Facility and License Areas were identified as in the meeting minutes following the most recent Annual Onsite Meeting, inspection and/or assessment by the City and YMCA, notwithstanding reasonable wear and tear, the City may take such action as the City deems necessary to rectify such breach on behalf the YMCA. In that instance, the YMCA must, on demand, compensate the City for all costs incurred by the City.

13.9 Vacate Upon Termination, Survival

At the termination of this Agreement, whether by effluxion of time or otherwise, the YMCA shall vacate and deliver up possession of the Facility in good repair and in a clean, safe, and uncontaminated condition, and the YMCA shall surrender all keys to the Facility to the City.

13.10 Additional Rights of Re-Entry

If the City shall re-enter the Facility or terminate this Agreement, then:

- a) notwithstanding any such termination or the Term thereby becoming forfeited and void, the provisions of this Agreement relating to the consequences of termination shall survive;

- b) the City may re-enter and retake possession of the Facility and the Collection, and the YMCA hereby releases the City from all actions, proceedings, claims, and demands whatsoever for or in respect of any such entry or any loss or damage in connection therewith or consequential thereupon; and
- c) the City may re-let the Facility or any part thereof for a term or terms, which may be less or greater than the balance of the Term, and may grant reasonable concessions in connection therewith.

13.11 Delivery of Information

At the expiry or earlier termination of this Agreement, the YMCA will deliver to the City a detailed list of all computer software, with the assignment of all rights, for management and recording of all original paper and electronic information about the Facility and its operations and maintenance.

13.12 Remedies Cumulative

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.

14. GENERAL TERMS

14.1 Assignment and Subleasing or Sublicensing

The YMCA shall not assign this Agreement and may not mortgage this Agreement by assignment or sublease. The YMCA may only rent or sublet interior portions of the Facility, and may retain all revenues derived therefrom, to provide a wider variety of amenities and further the objectives of the YMCA. A rental or sublet of the Facility to a subleasee may only occur if the YMCA:

- a) establishes and adheres to policies and guidelines which ensure a fair process for individuals and organizations wishing to obtain a rental or sublease;
- b) ensures that rental and sublease rates are fair, reasonable, and consistent with the operation of a fitness and aquatics centre;
- c) sublease rates include payment of property tax as part of the rent;
- d) requires the subleasees to enter into a rental contract or sublease in a form acceptable to the City;
- e) ensures that no rental or sublease agreement has a term that exceeds the Term of this Agreement; and

- f) requires that subleases, at all times, have insurance in place pursuant to Section 11.6 of this Agreement.

14.2 YMCA's Representations and Warranties

The YMCA represents and warrants that it:

- a) is a not-for-profit YMCA validly incorporated and in good standing under the laws of British Columbia and does not conduct its activities with a view to obtaining, and does not distribute, profit or financial gain to its members;
- b) has the power and capacity to enter into and carry out its obligations under this Agreement; and
- c) has completed all necessary resolutions and other preconditions to the validity of this Agreement.

14.3 City's Powers Unimpaired

Nothing contained or implied in this Agreement affects or prejudices the City's rights, powers, duties, or obligations in the exercise of its functions pursuant to the *Local Government Act* [RSBC 2015] Chapter 1, the *Community Charter*, or its rights and powers under any enactment, to the extent the same apply to the Facility or the Lands, all of which may be fully and effectively exercised concerning the Facility or the Lands as if this Agreement had not been fully executed and delivered.

14.4 Freedom of Information

The parties acknowledge, agree, and consent to the disclosure of this Agreement as a matter of public record, and further acknowledge and agree that applicable laws may require disclosure of information, provided by one party to the other pursuant to or in connection with this Agreement.

14.5 Entire Agreement

The provisions in this Agreement constitute the whole of the agreement between the parties and supersede all previous communications, representations, warranties, covenants, and agreements, whether verbal or written, between the parties with respect to the subject matter of this Agreement.

14.6 Amendment

This Agreement may not be modified or amended except in writing signed by the City and the YMCA.

14.7 Enurement

This Agreement shall enure to the benefit of and be binding upon the City and the YMCA and their respective successors and permitted assigns, if any.

14.8 City Interests

The YMCA acknowledges and agrees that the City may assign, transfer, mortgage, subdivide, and otherwise deal with its interests in the Facility, the License Areas, Lands, or any portion thereof, whether land or improvement, without the consent of the YMCA.

14.9 Attornment

If any person shall, through the City, succeed to the rights of the City under this Agreement or to ownership of the Facility then, upon the request of the party succeeding to the City's rights hereunder, the YMCA shall attorn to and recognize the new owner(s) as the landlord of the YMCA under this Agreement and shall promptly execute and deliver any instrument that such party may reasonably request to evidence the attornment. In the event of any other transfer of interest of the City hereunder, upon the written request of the transferee and the City, the YMCA shall attorn to and recognize the transferee as the landlord of the YMCA under this Agreement and shall promptly execute and deliver any instrument that the transferee and the City may reasonably request to evidence the attornment, provided that the transferee agrees with the YMCA to become the landlord hereunder and to assume the obligations of the City hereunder that are to be performed by the transferee after the transfer.

14.10 Certificates

The City and the YMCA agree that at any time and from time to time upon not less than thirty (30) days prior request by the other party, each will execute, acknowledge, and deliver to the other a statement in writing certifying:

- a) that this Agreement is unmodified and in full force and effect or, if there have been modifications, that the same is in full force and effect as modified and identifying the modifications;
- b) the dates to which the Rent, Operating Grants, and any other charges or fees pursuant to this Agreement have been paid;
- c) that, so far as the maker of the statement knows, without having conducted any searches or made any particular inquiries, the party who requests the statement is not in default under any provisions of this Agreement or, if in default, the particulars thereof; and
- d) any other reasonable information which is requested.

14.11 Not in Registrable Form

The YMCA acknowledges and agrees that the City is under no obligation at any time to deliver this Agreement or any instrument creating this Agreement to the YMCA in a form registrable in the Land Title Office.

14.12 Notice

Any notice, request, direction, or other communication (any of which is a "Notice") that is to be given or made by a party under this Agreement, shall be in writing, and if to the City, either delivered to an executive officer of the City or delivered or mailed (by prepaid registered mail) to the City at the address set out on page 3 of this Agreement, or if the City has given the YMCA Notice of another address in Canada to which notices to the City under this Agreement are to be given, then to the last such address of which the YMCA has been given Notice or sent by e-mail; and if to the YMCA, either delivered to the YMCA personally (or to a partner or officer of the YMCA if the YMCA is a firm or corporation) or delivered or mailed (by prepaid registered mail) to the YMCA at the Facility or sent by email, addressed as follows:

- a) To the City: City of Kelowna
E-mail Address: sportkelowna@kelowna.ca
Attention: Director, Active Living and Culture
- b) To the YMCA: YMCA of Southern Interior BC
E-mail Address: Allyson.Graf@ymcasibc.ca
Attention: President and CEO

Every such Notice shall be deemed to have been given when delivered or, if mailed as aforesaid, upon the third business day after the day of mailing thereof in Canada, provided that if mailed, should there be a mail strike, slowdown, or other labour dispute which might affect delivery of such notice between the time of mailing and the actual receipt of notice, then such notice shall only be effective if actually delivered. Any Notice sent by e-mail is to be considered given on the day it is sent if that day is a business day, and if that day is not a business day, it is to be considered given on the next business day after the date it is sent.

14.13 Waivers

A waiver by a party of any default by the other party shall not be deemed to be a waiver of any subsequent default. A waiver is effective only if it is in writing.

14.14 Further Assurances

The parties shall execute and do all such further deeds, acts, things, and assurances as may be reasonably required to carry out the intent of this Agreement.

14.15 Own Cost

The YMCA shall perform all obligations, covenants, and agreements under this Agreement solely at its own cost.

14.16 Joint Venture

Nothing in this Agreement creates the relationship of principal and agent or partnership, joint venture, business enterprise, or entity between the parties, or gives the YMCA any power or authority to bind the City in any way.

14.17 Independent Contractor

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

14.18 Legal Advice

The YMCA acknowledges and agrees that the City has recommended that it receive independent legal advice concerning this Agreement, and that the City has provided the YMCA with adequate time to do so.

14.19 Dispute Resolution

Should a dispute occur between the parties over any aspect of this Agreement that cannot be successfully resolved through good faith efforts by both parties within sixty (60) days of the dispute having been identified, the matter shall be referred to a single arbitrator pursuant to the *Arbitration Act* [SBC 2020] Chapter 2, as amended from time to time (the "*Arbitration Act*"). The arbitrator will be selected by agreement of the parties, or, failing agreement of the parties, appointed pursuant to the *Arbitration Act*, and the arbitrator's decision shall be binding upon both parties. The costs of the arbitration shall be borne in equal parts by both parties.

14.20 Time is of the Essence

Time is of the essence of this Agreement.

15. INTERPRETATION

15.1 Headings and Table of Contents

The division of this Agreement into sections, the insertion of headings and the provision of a table of contents are for convenience only and do not form a part of this Agreement and will not be used to interpret, define, or limit the scope, extent, or intent of this Agreement.

15.2 Schedules

The following schedules are attached to and form part of this Agreement:

- a) Schedule "A" - Facility and License Areas
- b) Schedule "B" - Programming Requirements
- c) Schedule "C" - Program Assets
- d) Schedule "D" - Key Performance Indicators Matrix
Schedule "D" - Appendix 1 – Key Performance Indicators
- e) Schedule "E" - Facility Maintenance and Operations Responsibility Checklist
Schedule "E" - Appendix A - Natatorium Specialty Equipment
- f) Schedule "F" - Branding Guidelines
- g) Schedule "G" - 2024 Proposed Budget
- h) Schedule "H" - Insurance Certificate

15.3 Number and Gender

Unless otherwise specified, words importing the singular include the plural and vice versa, and words importing gender include all genders.

15.4 Use of the Word "Including"

The word "including" when following any general term or statement will not be construed as limiting the general term or statement to the specific matter immediately following the word "including" or to similar matters, and the general term or statement will be construed as referring to all matters that reasonably could fall within the broadest possible scope of the general term or statement.

15.5 Governing Law

This Agreement and each of the documents contemplated by or delivered under or in connection with this Agreement are governed exclusively by, and are to be enforced, construed and interpreted exclusively in accordance with the laws applicable and in force in British Columbia.

15.6 Severability

If any portion of this Agreement is held invalid by a court of competent jurisdiction, the invalid portion shall be severed and the decision that it is invalid shall not affect the validity of the remainder of this Agreement.

IN WITNESS WHEREOF the City and the YMCA have executed this Agreement on the date first above written.

CITY OF KELOWNA by its authorized)
signatories:)
)
_____)
Mayor)
)
_____)
City Clerk)

YMCA OF SOUTHERN INTERIOR BC)
by its authorized signatory:)
Alllyson Graf)
_____)
Signature)
Alllyson Graf)
_____)
Print Name)

Schedule A – Facility and License Areas



Schedule B – Programming Requirements

A. General

The YMCA will provide quality aquatic, fitness, and wellness programs and services at the Facility 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. Additional programs over and above identified core programs and services set out herein are not considered as part of this Agreement and should not be provided at the Facility without the consent of the City.

B. Duty and Obligation

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

1. Manage the Facility so as to provide aquatic, recreational, and ancillary facilities that are accessible to the public upon payment of applicable administration and registration fees.
2. Utilize reasonable efforts to maximize the use of the aquatic facilities through public swimming, creative participation programming, variable water flows, and water feature scheduling techniques.
3. Ensure that, unless prevent by applicable government 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 YMCA may reduce hours of operation and close to the public under special circumstances, including statutory holidays, by proving thirty (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 and City approval.
4. Collaborate with other Mission Recreation Park facility operators, user groups, and the City regarding special events scheduled and joint promotional opportunities at the Mission Recreation Park site.

C. Programs and Services

Core programs and services offered at the Facility shall include:

1. A broad range of aquatic, fitness, and wellness programs and activities and services for the public.
2. Opportunities for skill, leadership, and volunteer development to support the operations of the Facility.
3. An effective balance between drop-in/unstructured access (i.e. public swim), registered programs (i.e. courses and lessons), and facility rentals.
4. A health and wellness focus so as to contribute to an active, health community.

5. An equitable balance of aquatic, recreation, and fitness programs and activities for all age groups, genders, and abilities.
6. Special programs and events that encourage use of the Facility and meet the core objectives of the Facility.

D. Aquatic Sport Clubs

Space and lane allocation for aquatic sports clubs is established through the City's Aquatic Facilities General Use and Allocation Guidelines (the "Guidelines"), which the YMCA will comply with in relation to sports club allocation at the Facility. The Guidelines provide the framework for equitable space and lane allocation in all City aquatic facilities. While the Guidelines are a City document, they have been developed in collaboration with user groups and facility operators. Any significant changes to the Guidelines as they apply to the Facility and sports club use patterns will be done in collaboration with the YMCA and will consider the impact such changes will have on the Facility operating model.

E. Public Access

At a minimum, access options shall include single admissions, multiple tickets, passes, and facility memberships for adults, seniors, youth, children, and families. Membership in the YMCA shall not be a requirement for the purchase of access to the Facility or participation in any of the programs or services (excluding swimming lessons) offered at the Facility.

F. Accessibility Programs and Opportunities

The City and the YMCA will continue to collaborate on the development of initiatives that reduce barriers to participation. These initiatives must will include, at a minimum, the following:

1. Financial Assistance Program – the YMCA will make available a Financial Assistance Program for those who cannot afford the full fee for membership and/or access to the Facility and its programs, including persons with diverse abilities, to be funded by the YMCA at a value of no less than twenty thousand dollars (\$20,000.00) per year.
2. Recreation Opportunities Coupon – the YMCA will honour and implement a Recreation Opportunities Coupon, as developed and distributed by the City. This program is to provide opportunities for individuals and families in low social economic circumstances the ability to access community recreation. The City and the YMCA will continue to monitor the success and use of this initiative to ensure it is addressing program objectives as well as operational needs. The City and the YMCA will review the use of these coupons at the Facility on a quarterly basis.

G. Fees

1. Fees for access to the Facility shall be set at the discretion of the YMCA, with the exception of lane rentals for aquatic sports clubs, which shall be determined by the Guidelines.

2. The YMCA shall notify the City of any changes to fees no less than sixty (60) days prior to implementing such a change.
3. Any change in fees shall be proportionally reflected in both membership and drop-in fees.

H. Scheduled and Unscheduled Facility Closures

1. In a public safety emergency situation, the City or the YMCA may 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.
2. In the event of significant Facility closures, the City and the Y will work together to try to reasonably accommodate Facility members in other recreational facilities owned by the City or operated by the YMCA. The nature and extent of the accommodation will be determined on a case by case basis.
3. The City and the YMCA will collaborate regarding schedules for planned shutdown periods with the intent of ensuring multiple facilities are not closed over the same period.

I. Compliance with Rules

The YMCA may, acting reasonably:

1. Expel from the Facility any person causing damage to the Facility or Facility property, or materially failing to comply with the rules and regulation prescribed for the Facility.
2. Require damage deposits from user groups where there is a likelihood that such groups may cause damage to the Facility or Facility property, and pursue and seek compensation from any individual, group, or organization which causes damage to the Facility or Facility property.
3. Develop and administer a joint facility banning and information sharing protocol with the City in relation to other City- and YMCA-facilities.

Schedule C – Program Assets

Asset ID	Asset Name	Make	Model	S/N	Console Make	Console Model	Console S/N
83	Spin Bike 001	Schwinn		1401T16022			
84	Spin Bike 002	Schwinn		1401T16004			
85	Spin Bike 003	Schwinn		1401T16038			
86	Spin Bike 004	Schwinn		1401T16149			
87	Spin Bike 005	Schwinn		1401T16106			
88	Spin Bike 006	Schwinn		1401T16154			
89	Spin Bike 007	Schwinn		1401T16071			
90	Spin Bike 008	Schwinn		1401T15990			
91	Spin Bike 009	Schwinn		1401T15983			
92	Spin Bike 010	Schwinn		2601T28040			
93	Spin Bike 011	Life Fitness	15200-6	LF3507090108123			
94	Spin Bike 012	Life Fitness	15200-6	LF3507090108124			
95	Spin Bike 013	Life Fitness	15200-6	LF3507090108119			
96	Spin Bike 014	Life Fitness	15200-6	LF3507090108116			
97	Spin Bike 015	Life Fitness	15200-6	LF3507090105105			
98	Spin Bike 016	Life Fitness	15200-6	LF3507090108125			
99	Spin Bike 017	Life Fitness	15200-6	LF3507090108120			
100	Spin Bike 018	Life Fitness	15200-6	LF3507090108122			
101	Spin Bike 019	Life Fitness	15200-6	LF3507090108103			
102	Spin Bike 020	Life Fitness	15200-6	LF3507090108117			
103	Spin Bike 021	Life Fitness	15200-6	LF3507090309457			
104	Spin Bike 022	Life Fitness	15200-6	LF3507090309443			
105	Spin Bike 023	Life Fitness	15200-6	LF3507090309461			
106	Spin Bike 024	Life Fitness	15200-6	LF3507090309391			
107	Spin Bike 025	Life Fitness	15200-6	LF3507090309388			
108	Spin Bike 026	Life Fitness	15200-6	LF3507090309460			
109	Spin Bike 027	Life Fitness	15200-6	LF3507090309458			
110	Spin Bike 028	Life Fitness	15200-6	LF3507090309124			
111	Spin Bike 029	Keiser	005500PBC	090203-02300			
112	Spin Bike 030	Keiser	005500PBC	090203-02293			
113	Spin Bike 031	Keiser	005500PBC	110419-10287			
114	Spin Bike 032	Keiser	005500PBC	110419-10307			
115	Spin Bike 033	Keiser	005500PBC	110419-10275			
116	Spin Bike 034	Keiser	005500PBC	081212-18131			
117	Spin Bike 035	Keiser	005500PBC	090203-02298			
118	Spin Bike 036	Keiser	005500PBC	090203-02297			
119	Spin Bike 037	Keiser	005500PBC	090203-02295			
120	Spin Bike 038	Keiser	005500PBC	090203-02290			
121	Spin Bike 039	Keiser	005500PBC	140303-77078			
122	Spin Bike 040	Keiser	005500PBC	110419-10273			
123	Spin Bike 041	Keiser	005500PBC	090203-02292			
124	Spin Bike 042	Keiser	005500PBC	110419-10274			

Asset ID	Asset Name	Make	Model	S/N	Console Make	Console Model	Console S/N
125	Spin Bike 043	Keiser	005500PBC	090203-02294			
126	Spin Bike 044	Keiser	005500PBC	090203-02299			
127	Spin Bike 045	Keiser	005500PBC	110419-10322			
128	Cardio Upright Bike 001	Precor	UKB885/835/825/815	AYZGK26120004	Precor	P80	ATWMJ31130031
129	H2O Level 02						
130	Cardio Upright Bike 002	Precor	UKB885/835/825/815	AYZGK26120003	Precor	P80	ATWMB04130032
131	Cardio Upright Bike 003	Precor	UKB885/835/825/815	AYZGK26120011	Precor	P80	ATWML07120033
132	Cardio Upright Bike 004	Precor	UKB885/835/825/815	AYZGK26120012	Precor	P80	ATWML07120011
133	Cardio Upright Bike 005	Precor	UKB885/865/835	AKCEI12180012	Precor	P82	AC85G25185071
134	Cardio Upright Bike 006	Precor	UKB885/865/835	AKCEI12180011	Precor	P82	AC85G25185018
135	Cardio Recumbent Bike 001	Precor	RBK885/845/835/825/815	AXHGL17120005	Precor	P80	ATWML28120026
136	Cardio Recumbent Bike 002	Precor	RBK885/845/835/825/815	AXHGL17120009	Precor	P80	ATWML07120036
139	Cardio Recumbent Bike 003	Precor	RBK885/845/835/825/815	AXHGL17120010	Precor	P82	ATWMJ31130018
140	Cardio Recumbent Bike 004	Precor	RBK885/845/835/825/815	AXHGL17120006	Precor	P80	ATWML07120031
141	Cardio Recumbent Bike 005	Precor	RBK885/845/835/825/815	A596113180008	Precor	P80	AC85G25185079
142	Cardio Recumbent Bike 006	Precor	RBK885/845/835/825/815	A596113180009	Precor	P82	AC85G25185001
144	Cardio Arm Ergo Meter 001	Technogym	700TVATSC	D4773D08000301			
145	Cardio Curved Treadmill 001	Technogym	DJK13D	DJK13D16000597			
146	Cardio Recumbent Stepper 001	NUSTEP	NAP	446928			
147	Cardio Air Rowing Machine 001	Concept 2	D	1016080-300204902-02			
148	Cardio Air Rowing Machine 002	CONCEPT 2	D	1112090-400017919-02			
149	Cardio Air Rowing Machine 003	CONCEPT 2	E	0108090-310111890-02			
150	Cardio Air Bike 001	ASSAULT	Not Available	A1801B80006			
151	Cardio Air Bike 002	ASSAULT	Not Available	AD83E02180067			
152	Cardio Adaptive Motion Trainer 001	Precor	AMT100I	A927B12090003	Precor	PVS-12EDTL	CEWDK18080892
153	Cardio Adaptive Motion Trainer 002	Precor	AMT100I	A927L03090042	Precor	PVS-12EDTL	CEWDK23090010
154	Cardio Adaptive Motion Trainer 003	Precor	AMT100I	A927L03090039	Precor	PVS-12EDTL	CEWDK23090027
155	Cardio Open Stride 001	Precor	AMT12 885/835/833/813	AJTEK19130041	Precor	P80	ADHHJ31130057
156	Cardio Open Stride 002	Precor	AMT12 885/835/833/813	AJTEK19130021	Precor	P80	ADHHJ31130057
157	Cardio ClimbMill 001	Matrix Fitness	C-5X/7X	CS24160104448	Matrix Fitness	C-5X-02-C	CS19160109026
159	Cardio Ski Erg 001	Concept 2	2715	430755416			
160	Cardio Elliptical Crosstrainer 001	Precor	EFX885/883/865/863/835/833	ANGFH0618D019	Precor	P30	AXLWH23185080
161	Cardio Elliptical Crosstrainer 002	Precor	EFX885/883/865/863/835/833	 ANGFH0618D006	Precor	P30	AXLWH17185113
162	Cardio Elliptical Crosstrainer 003	Precor	EFX885/883/865/863/835/833	ANGFH0618D011	Precor	P30	AXLWH23185086
163	Cardio Elliptical Crosstrainer 004	Precor	EFX885/883/865/863/835/833	ANGFH0118D022	Precor	P30	AXLWH23185081
164	Cardio Elliptical Crosstrainer 005	Precor	EFX885/883/865/863/835/833	ANGFH0118D017	Precor	P30	Not Available
165	Cardio Elliptical Crosstrainer 006	Precor	EFX885/883/865/863/835/833	ATYAH22160028	Precor	P82	A659G27160061
166	Cardio Elliptical Crosstrainer 007	Precor	EFX885/883/865/863/835/833	ANGFH0618D009	Precor	P82	A659H24185014
167	Cardio Elliptical Crosstrainer 008	Precor	EFX885/883/865/863/835/833	ANGFH0618D020	Precor	P82	A659H24185011
168	Cardio Elliptical Crosstrainer 009	Precor	EFX885/883/865/863/835/833	ANGFH0618D010	Precor	P82	A659H24185018
169	Cardio Elliptical Crosstrainer 010	Precor	EFX885/883/865/863/835/833	ANGFH2818D007	Precor	P82	A659H24185012
172	Spin Bike 046	Indoor Cycling Matrix	IC-MXIC7B-03	LAR80008148815L	Indoor Cycling	320-00-00011-01	32884

Asset ID	Asset Name	Make	Model	S/N	Console Make	Console Model	Console S/N
173	Spin Bike 047	Indoor Cycling Matrix	IC-MXIC7B-03	LARB0008126815L	Indoor Cycling	320-00-00016-01	17385
174	Spin Bike 048	Indoor Cycling Matrix	IC-MXIC7B-03	LARB0008122815L	Indoor Cycling	320-00-00011-01	32929
175	Spin Bike 049	Indoor Cycling Matrix	IC-MXIC7B-03	LARB0008128815L	Indoor Cycling	320-00-00011-01	32910
176	Spin Bike 050	Indoor Cycling Matrix	IC-MXIC7B-03	LARB0008124815L	Indoor Cycling	320-00-00011-01	32904
177	Spin Bike 051	Indoor Cycling Matrix	IC-MXIC7B-03	LARB0008129815L	Indoor Cycling	320-00-00011-01	79870
178	Spin Bike 052	Indoor Cycling Matrix	IC-MXIC7B-03	LARB0008123815L	Indoor Cycling	320-00-00011-01	32927
179	Spin Bike 053	Indoor Cycling Matrix	IC-MXIC7B-03	LARB0008125815L	Indoor Cycling	320-00-00011-01	32874
180	Spin Bike 054	Indoor Cycling Matrix	IC-MXIC7B-03	LARB0008146815L	Indoor Cycling	320-00-00011-01	32891
181	Spin Bike 055	Indoor Cycling Matrix	IC-MXIC7B-03	LARB0008112815L	Indoor Cycling	320-00-00011-01	32886
182	Spin Bike 056	Indoor Cycling Matrix	IC-MXIC7B-03	LARB0008111815L	Indoor Cycling	320-00-00016-01	17392
183	Spin Bike 057	Indoor Cycling Matrix	IC-MXIC7B-03	LARB0008149815L	Indoor Cycling	320-00-00011-01	32917
184	Spin Bike 058	Indoor Cycling Matrix	IC-MXIC7B-03	LARB0008150815L	Indoor Cycling	320-00-00011-01	32877
185	Spin Bike 059	Indoor Cycling Matrix	IC-MXIC7B-03	LARB0008106815L	Indoor Cycling	320-00-00011-01	75609
186	Spin Bike 060	Indoor Cycling Matrix	IC-MXIC7B-03	LARB0008109815L	Indoor Cycling	320-00-00011-01	32893
187	Spin Bike 061	Indoor Cycling Matrix	IC-MXIC7B-03	LARB0008110815L	Indoor Cycling	320-00-00011-01	32918
188	Spin Bike 062	Indoor Cycling Matrix	IC-MXIC7B-03	LARB0008107815L	Indoor Cycling	320-00-00011-01	73047
189	Spin Bike 063	Indoor Cycling Matrix	IC-MXIC7B-03	LARB0008113815L	Indoor Cycling	320-00-00011-01	32932
190	Spin Bike 064	Indoor Cycling Matrix	IC-MXIC7B-03	LARB0008130815L	Indoor Cycling	320-00-00016-01	73069
191	Spin Bike 065	Indoor Cycling Matrix	IC-MXIC7B-03	LARB0008147815L	Indoor Cycling	320-00-00016-01	9033
192	Spin Bike 066	Indoor Cycling Matrix	IC-MXIC7B-03	LARB0008153815L	Indoor Cycling	320-00-00011-01	73109
193	Spin Bike 067	Indoor Cycling Matrix	IC-MXIC7B-03	LARB0008152815L	Indoor Cycling	320-00-00011-01	32889
194	Spin Bike 068	Indoor Cycling Matrix	IC-MXIC7B-03	LARB0008151815L	CYTECHGMBH	320-00-00011-01	32879
195	Spin Bike 069	Indoor Cycling Matrix	IC-MXIC7B-03	LARB0008118815L	Indoor Cycling	320-00-00011-01	32923
210	Squat 001	Life Fitness	TCSL-0102-101	100845108689			
212	Lat Pulldown 001	Life Fitness	TCDD-0102-101	100845108620			
213	AB Crunch 001	Life Fitness	TCAD-0102-101	100842107473			
214	Shoulder Press 001	Life Fitness	TCSD- 102-101	100905100404			
215	Seated Row 001	Life Fitness	TCCD-0102-101	100904100247			
216	Leg Extension 001	Life Fitness	TCLF-0102-100	100845108587			
217	Chest Press 001	Life Fitness	TCCP-0102-101	100904100247			
218	Seated Leg Curl 001	Life Fitness	TCLC-0102-101	100843107831			
219	Tricep Press 001	Life Fitness	TCTP-0102-101	100841107350			
220	Bicep Curl 001	Life Fitness	TCBC-0102-102	100843107812			
221	Leg Press 001	Precor	Strength Line	BA72H25160004			
222	Lateral Rise 001	Precor		BD58J19110001			
223	Seated Row 002	Precor					
247	A Frame Dumb Bell Stand 002	Precor		BY56J19110001			
248	Shoulder Press 002	Precor		BPCHJ19110001			
249	Chest Press 002	Precor		BWJGJ19110002			
250	Abdominal 001	Precor		BWJPJ20110001			
251	Pulldown 001	Precor		BGKHK10100037			
252	Back Extension 001	Precor		BWJRJ19110001			

Asset ID	Asset Name	Make	Model	S/N	Console Make	Console Model	Console S/N
253	Inner/Outer Thigh 001	Precor		BDSHJ07110005			
254	Leg Press 002	Precor		BWJTJ20110001			
255	Rear Delt Pec Fly 001	Precor		BWJNJ19110001			
256	Position Folding Bench 001	Hammer Strength					
257	Flat Bench Red 001	Hammer Strength					
258	Preacher Curl Bench 001	Hammer Strength	FWAC-B00	6106			
259	Olympic Bench with Assistant Platform 001	Hammer Strength	OIB-A02	1356			
260	Lateral Horizontal Bench Press (Red) 001	Hammer Strength	ILHBP-A00	1691			
261	Olympic Bench With Weight Storage 001	Hammer Strength	OFB-B02	11241			
262	Leg Extension with Weight Stand 001	Hammer Strength	PLLE-C02	1505			
263	A Frame Dumb Bell Stand 001	Hammer Strength	FWBAR-A	3220			
264	Barbell Storage Rack 001	Hammer Strength	FWDR2-A00	13637			
265	Barbell Storage Rack 002	Hammer Strength	FWDR2-A00	13638			
266	Barbell Storage Rack 003	Hammer Strength	FWDR2-A00	13639			
267	Full Cage Squat Rack 001	Hammer Strength	A01	651			
268	45 Degree Linear Leg Press 001	Hammer Strength	HSLLP	HSLLP0309004			
269	Sated Calf Raise 001	Hammer Strength	B06	6807			
270	Utility Bench 001	Body Solid					
271	Utility Bench 002	Body Solid					
272	Position Folding Bench 002	Hoist Fitness					
273	Position Folding AB Bench 001	Hoist Fitness					
274	Functional Trainer 001	Hoist Fitness		15-02-A01-002685			
275	Weight Stand with Bumper Plate 001	Eurosport					
276	Weight Stand with Bumper Plate 002	Eurosport					
277	A Frame Dumb Bell Stand 003	Eurosport					
278	Barbell Storage Rack 004	Apex		13639			
279	Kettle Bell Storage Rack 001						
280	Cart Storage 001						
281	Functional Trainer (KINESIS ONE) 001	TechnoGym	M5800	M580015100542			
282	Functional Trainer (KINESIS ONE) 002	TechnoGym	M5800				
283	Glute Ham Developer 001	Torque Fitness					
284	Full Cage Squat Rack 002	Torque Fitness	XPC-204-801	40715000193			

H2O Program Asset Management Plan (2024 -2028)

Type of Equipment	Estimated Unit Price	Units	2024	2025	2026	2027	2028	Total
Strength Equipment								
Precor Squat Half Racks	\$ 2,500.00	2	\$ 5,000.00					\$ 5,000.00
Precor Smith Machine	\$ 4,400.00	1	\$ 4,400.00					\$ 4,400.00
Precor Olympic Flat Bench	\$ 1,500.00	2	\$ 3,000.00					\$ 3,000.00
Precor Multi Adjustable Bench	\$ 1,000.00	4	\$ 4,000.00					\$ 4,000.00
Precor Flat Bench	\$ 500.00	3	\$ 1,500.00					\$ 1,500.00
Weight Rack - 2 Tier	\$ 1,000.00	1	\$ 1,000.00					\$ 1,000.00
Dumbbells Set*	\$ 2,000.00	1	\$ 2,000.00					\$ 2,000.00
Dumbbell Replacement	\$ 10,000.00	1	\$ 10,000.00					\$ 10,000.00
Olympic Barbell^	\$ 500.00	3	\$ 1,500.00					\$ 1,500.00
Precor Dual Pulley	\$ 5,500.00	2	\$ 11,000.00					\$ 11,000.00
Precor 8 Stack Cable Crossover w Chin Dip	\$ 25,000.00	1	\$ 25,000.00					\$ 25,000.00
Precor Selectorized Strength Replacement	\$ 5,500.00	10		\$ 55,000.00				\$ 55,000.00
Strength Equipment as Identified (+)	\$ 5,000.00	2				\$ 5,000.00	\$ 5,000.00	\$ 10,000.00
Total Strength Equipment		33	\$ 68,400.00	\$ -	\$ 55,000.00	\$ 5,000.00	\$ 5,000.00	\$ 133,400.00
Cardio Equipment								
Precor Stairclimber	\$ 6,000.00	3	\$ 18,000.00					\$ 18,000.00
Spin Bike	\$ 4,440.00	25	\$ 111,000.00					\$ 111,000.00
Treadmill	\$ 13,000.00	15	\$ 195,000.00					\$ 195,000.00
Elliptical	\$ 12,000.00	6	\$ 72,000.00					\$ 72,000.00
Adaptive Motion Trainer	\$ 14,000.00	2	\$ 28,000.00					\$ 28,000.00
Upright Bike	\$ 7,600.00	6	\$ 45,600.00					\$ 45,600.00
Recumbent Bike	\$ 7,900.00	6	\$ 47,400.00					\$ 47,400.00
NuStep Recumbent Cross Trainer	\$ 15,000.00	2	\$ 30,000.00					\$ 30,000.00
Hand Cycle	\$ 3,000.00	2	\$ 6,000.00					\$ 6,000.00
Cardio Equipment as Identified (+)	\$ 5,000.00	2				\$ 5,000.00	\$ 5,000.00	\$ 10,000.00
Total Cardio Equipment		69	\$ 129,000.00	\$ 424,000.00	\$ 55,000.00	\$ 10,000.00	\$ 5,000.00	\$ 563,000.00
Total Equipment Replacement		102	\$ 197,400.00	\$ 424,000.00	\$ 55,000.00	\$ 10,000.00	\$ 10,000.00	\$ 696,400.00
<i>City Contribution</i>								
<i>YMCA Contribution**</i>								
			\$ 197,400.00	\$ 224,000.00	TBD	TBD	TBD	\$ 421,400.00
			\$ 100,000.00	\$ 100,000.00	\$ 100,000.00	\$ 100,000.00	\$ 100,000.00	\$ 500,000.00
			\$ 100,000.00	\$ -	\$ 45,000.00	\$ 135,000.00	\$ 225,000.00	
<i>Projected YMCA Program Asset Reserve Fund Balance</i>								

Notes:

Over a 5 year period 100+ pieces of equipment are to be replaced.

Year 1 (2024) focuses on increasing capacity and improving overall customer satisfaction while adapting to consumer trends in the strength and fitness area.

Year 2 (2025) focuses on a cardio equipment renewal as the equipment is nearing end of life and service/repairs are becoming challenging due to age.

YMCA best practice to manage user experience regarding cardio equipment is a complete renewal. Allows YMCA to achieve cost saving and increased service levels via purchasing power.

**Subject to the Operating Budget, the YMCA will contribute up to \$100,000/year to a Program Asset Reserve Fund for future equipment replacement. Next cardio renewal is anticipated for 2031.

* Dumbbell Set 10 Person (2X20, 2X25, 2X30, 1X40, 1X45, 1X50)

^ Olympic Barbell - 7 ft/45lbs

(+) as identified through operations

Schedule D – Key Performance Indicators Matrix

1. The annual Performance Fee to be paid to the YMCA pursuant to section 7.7 of this Agreement shall be calculated based on the information submitted by the YMCA to the City through the Annual Reporting process.
2. The information supplied by the YMCA will measure the degree of the YMCA's achievement of the Key Performance Indicators ("KPI's") listed in the attached Schedule D – Appendix 1.
3. The City shall assess the YMCA's annual performance of the KPI's through the application of the points value indicated in the attached Schedule D – Appendix 1.
4. The value of the Performance Fee earned by the YMCA shall be based on the annual net income surplus generated by the Facility, after all expenses, allocations, and contributions have been made (the "Facility Surplus"), and shall be credited to the YMCA as follows:

Year	Points Earned	Performance Fee Value
2024	21 points or more	25% of the Facility Surplus
2025	21 points or more	25% of the Facility Surplus
2026	21 points or more	25% of the Facility Surplus
2027	21 points or more	25% of the Facility Surplus
2028	21 points or more	50% of the Facility Surplus

5. Any disputes between the parties in relation to the City's assessment of the points value or the calculation of the Performance Fee shall be referred to a single arbitrator pursuant to the *Arbitration Act* [SBC 2020] Chapter 2, as amended from time to time (the "*Arbitration Act*"). The arbitrator will be selected by agreement of the parties, or, failing agreement of the parties, appointed pursuant to the *Arbitration Act*, and the arbitrator's decision shall be binding upon both parties. The costs of the arbitration shall be borne in equal parts by both parties.

Schedule D – Appendix 1 – Key Performance Indicators

Key Performance Measure	Method of Assessment	Performance Target	Points Value	Score
Membership retention	YMCA Reporting <i>(Membership Reports via registration software)</i>	More than 55% retention in Year 1; 60% in Year 2; 65% in Year 3	5 points for 55% retention or more	
			3 points for 50-55% retention	
			1 point for 45-50% retention	
			0 points for under 45% retention	
Overall customer satisfaction (Memberships and Drop-in Admissions)	YMCA Reporting <i>(Member Survey, Comment Cards)</i>	75% satisfaction	5 points for 75% or more	
			3 points for 60-75%	
			1 point for 50-60%	
			0 points for under 50%	
Overall user group satisfaction	YMCA Stakeholder Engagement <i>(Survey to be developed in consultation with the City and distributed to swim club liaisons for completion)</i>	70% satisfaction	5 points for 70% or more	
			3 points for 60-70%	
			1 point for 50-60%	
			0 points for under 50%	
Membership demographics in the categories of adults, seniors, people with diverse abilities, children, and youth	YMCA Reporting <i>(Membership Reports via registration software)</i>	Membership reflective of City demographics (baseline to be provided by the City)	5 points for 85% or more reflective	
			3 points 70-85% reflective	
			1 point for 60-70% reflective	
			0 points for under 60% reflective	
Drop-in Admission demographics in the categories of seniors, adults, youth, children, and family	YMCA Reporting <i>(Drop-in Admission Reports via registration software)</i>	Participation reflective of City demographics (baseline to be provided by the City)	5 points for 85% or more reflective	
			3 points 70-85% reflective	
			1 point for 60-70% reflective	
			0 points for under 60% reflective	
Meeting Quarterly and Annual Reporting requirements	YMCA Reporting <i>(Quarterly Reports (Section 7.9) Annual Report (Section 7.10))</i>	Reports submitted by established deadlines	1 point for each report submitted by the deadline	
Performance Targets to be re-evaluated following the Term			Total	/30

Schedule E - Facility Maintenance and Operations Responsibility Checklist

H2O Adventure and Fitness Centre	Responsible Party: City	Responsible Party: City	Responsible Party: YMCA
	Cost carried by: City	Cost carried by: YMCA	Cost carried by: YMCA
Annual Air quality testing			X
Boiler operating permits	X		
Building Automation System maintenance, repairs, and renewal	X		
Chlorine Gas detection & alarm system			X
Electrical field safety representative	X		
Electrical operating permit	X		
Electrical system - preventative maintenance and repairs of M.C.C's distribution equipment, circuit panels and associated infrastructure.	X		
Elevator equipment repairs	X		
Elevator maintenance contract	X		
Elevator operating permits	X		
Emergency lighting, internal – testing and repairs			X
Emergency lighting, external – testing and repairs	X		
Facility exterior – roofing system, doors, windows, facades, parking lots, and lighting	X		
Facility interior – doors, glass, floors, fixtures, walls, ceilings, access systems, and related hardware			X
Fire alarm system repairs (liability limit)			X
Fire alarm system testing and inspection contracts			X
Fire extinguisher monthly and annual inspections			X
Fire safety plan and fire drills			X
Fire sprinkler system repairs	X		
Fire sprinkler system testing and inspection contracts		X	
Furnishings and equipment			X
Garbage removal			X
HVAC & Mechanical Systems- preventative maintenance, repair, and renewal	X		
Insurance - automotive			X
Insurance - liability			X
Insurance - property, building	X		
Insurance - tenant owned furnishings and fixtures			X
Insurance - tenant owned operation equipment, computers, and furnishings			X
Insurance - WCB			X
Internet			X
Janitorial services and supplies			X

Kitchen Exhaust Hood – maintenance and repairs	X		
Kitchen Hood - fire suppression system inspection, testing, maintenance, and repairs	X		
Landscape maintenance – License Areas	X		
Lighting, internal – lamp and tube replacement			X
Lighting, external – lamp and tube replacement	X		
Natatorium and aquatic facility features and mechanical systems – routine maintenance and repair Refer to Appendix “G” for details			X
Natatorium – operating permits/affiliate fees			X
Parking lots - lighting, parking lines, sweeping, asphalt, signage, drainage etc.	X		
Pest control			X
Plumbing: Domestic Infrastructure - repair	X		
Plumbing: Domestic Infrastructure - maintenance (including backflow testing)		X	
Plumbing: Domestic Fixture maintenance - repair and renewal			X
Plumbing: Natatorium Mechanical Systems - preventative maintenance and repairs Refer to appendix “XX” for details			X
Recycling program			X
Roofing system - inspection and maintenance	X		
Roofing system - repairs	X		
Security system operations			X
Signage - exterior	X		
Snow removal – parking and roadways	X		
Snow removal – sidewalks			X
Structural system – building infrastructure, bearing structure, outside walls, and foundations	X		
Taxes			X
Telephone			X
Tenant improvements			X
Tenant improvements - maintenance			X
Tree removal	X		
Utilities - electricity		X	
Utilities - natural gas		X	
Utilities - water, sewer		X	
Vandalism, exterior	X		
Vandalism, interior			X
Waterslide – operating permit			X
Water Quality – quarterly pool chemistry testing by 3 rd party			X
Water Quality – chemical supply and treatments			X
Window Cleaning, exterior	X		
Window Cleaning, interior			X

Schedule E - Appendix A - Natatorium Specialty Equipment

The YMCA is responsible for the maintenance and repair of the natatorium specialty equipment listed below and will provide annual reporting to the City on the on-going maintenance of this equipment, pursuant to section 7.10 (g) of this Agreement. Capital replacement is a City responsibility.

Systems
Moveable floor (including all associated mechanical system and controls)
Pool water filtration systems
Flow rider (including all associated mechanical and control equipment)
Spray park (including all features, mechanical and control equipment)
UV lamps and accessories
Steam generator maintenance as per manufacturers specifications
Water slides (including all associated mechanical equipment and controls)
Wave generator (including all associated mechanical equipment and controls)
Water circulation – on the load side of pool & hot tub heat exchangers (piping, pumps, valves, fittings etc.)
Competitive Program Assets
Pool deck bleachers system
On deck storage containers
Diving boards, stands, ladders
Starting blocks and touchpads (including all associated electrical and control equipment)
Sound systems (pool deck and underwater)
Competitive scoreboard and timing system
Specialty club equipment (i.e. water polo nets, lane ropes)

Schedule F – Branding Guidelines

The H2O Adventure and Fitness Centre Brand & Visual Identify Guidelines provides support and interpretation for the Branding and Marketing in Section 10.4 of the Agreement between the City of Kelowna and the YMCA of Southern Interior BC.

Schedule G – 2024 Proposed Budget

Operating Budget Funding Requirements YMCA of Southern Interior British Columbia H2O Adventure & Fitness Centre

SUMMARY - REVENUES & EXPENDITURES	2024 BUDGET
OPERATING REVENUE	
Admissions	\$ 1,250,700
Membership Fees	\$ 3,711,300
Programs	\$ 150,400
Rentals	\$ 164,600
Retail	\$ 2,000
Financial Assistance	\$ (139,700)
Operating Funding - City of Kelowna	\$ 648,300
Discounts - City of Kelowna	\$ (29,000)
TOTAL OPERATING REVENUE	\$ 5,758,600
OPERATING EXPENDITURES	
Bad Debt/Write Offs	\$ 35,000
Bank Charges	\$ 121,800
Chemicals	\$ 50,000
Contract Services	\$ 15,000
Dues & Licenses	\$ 9,400
Information Technology	\$ 180,000
Marketing	\$ 92,800
Meetings & Conferences	\$ 4,500
Repairs & Maintenance & Vehicle	\$ 97,300
Staff/Volunteer Expense	\$ 80,000
Supplies	\$ 194,200
Utilities	\$ 611,800
Wages	\$ 3,468,800
TOTAL OPERATING EXPENDITURES	\$ 4,960,600
OPERATING CONTRIBUTIONS:	
Management Fee	(541,000)
Y Affiliation Fee	(55,700)
Development Allocation	20,000
Program Asset Management Reserve Fund Contribution	(100,000)
Operating Reserve Fund Contribution	(121,300)
NET OPERATING SURPLUS	\$ -

Schedule H – Insurance Certificate



1435 Water Street
Kelowna, BC V1Y 1J4
250 469-8500
kelowna.ca

APPENDIX A-1
CERTIFICATE OF INSURANCE

City staff to complete prior to circulation
City Dept.: _____
Dept. Contact: _____
Project/Contract/Event: _____

Insured

Name:	_____
Address:	_____

Broker

Name:	_____
Address:	_____

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

--

Type of Insurance	Company & Policy Number	Policy Dates		Limits of Liability/Amounts
		Effective	Expiry	
Section 1 Comprehensive General Liability including: <ul style="list-style-type: none"> • Products/Completed Operations; • Blanket Contractual; • Contractor's Protective; • Personal Injury; • Contingent Employer's Liability; • Broad Form Property Damage; • Non-Owned Automobile; • Cross Liability Clause. 				Bodily Injury and Property Damage \$ <u>10,000,000</u> Inclusive \$ _____ Aggregate \$ _____ Deductible
Section 2 Automobile Liability				Bodily Injury and Property Damage \$ <u>5,000,000</u> Inclusive

- 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 City of Kelowna and shall be the sole responsibility of the Insured named above.
 2. The City of Kelowna is named as an Additional Insured.
 3. 30 days prior written notice of material change and/or cancellation will be given to the City of Kelowna.

Print Name	Title	Company (Insurer or Broker)
Signature of Authorized Signatory		Date



adventure + fitness centre

BRAND & VISUAL IDENTITY GUIDELINES

TABLE OF CONTENTS

1	The Importance of Identity	13	Minimum Size
2	H ₂ O Brand Principles	14	Unacceptable Use
3	City of Kelowna Brand Principles	17	Background Screen Tints
4	H ₂ O Logo	18	Marketing Materials
5	Logo Versions	19	Website & Social Media
6	Colour Palette	21	Customer Relations
8	Logo Colours	22	Business Materials
9	Typography	24	Cross Promotion
10	Logo Hierarchy	25	Other Considerations
11	Protected Space		

December 2023

THE IMPORTANCE OF IDENTITY

To understand the function and value of the H₂O identity, it is important to recognize that every organization has a specific public identity—an identity partly formed by the look of its printed materials, customer service, stationery, website, etc. Each element of communication contributes to the overall impression people have of the organization.

When an organization's identification program is a coordinated one, it projects a unified character which works effectively to reinforce all of its activities. In many cases, it also helps the organization to be more cost-effective in its communication efforts by simplifying certain decision-making processes.

The purpose of this manual is to provide support and interpretation for the Marketing and Branding section of the H₂O agreement between the City of Kelowna and the Operator, to explain the components of the H₂O visual identity program, to define its graphic design standards and to illustrate how these standards are applied.

This manual provides an overview of H₂O's visual identity standards and symbolization program. It includes specific instructions for the use of the logotypes belonging to each vested party as well as several rules governing their use.

The visual identity standards set specific rules that are meant to reinforce the projection of a consistently strong and distinguished image for the H₂O.

Why we need a visual identity

The visual identity standards will promote a uniform identity of the H₂O to the general public and support the City's reputation as dynamic and growing.

The H₂O visual identity program will:

- ▶ Help build H₂O as its own brand, which is connected to the City of Kelowna;
- ▶ Ensure citizens can easily identify and recognize the H₂O as a City facility that is being operated by a third party Operator and thereby assisting citizens to recognize the value of the services they receive for their tax dollar;
- ▶ Help reinforce the City's mandate to provide programming at the neighbourhood level; and
- ▶ Help reinforce or support the City's reputation (or brand as it's otherwise known).

The visual identity guidelines are an essential part of a planned approach to building H₂O's reputation and raising awareness about this facility and its services and programs.

H₂O BRAND PRINCIPLES

Brand Principles

H₂O is the City of Kelowna's premier aquatic and recreational facility and will be used to help better position the City within the community.

H₂O marketing channels are to be used primarily for promoting H₂O and programs offered within the facility. Secondly, H₂O platforms will be used to cross-promote other City programs, services, information and facilities, and thirdly may be used to promote Operator specific programs that directly support H₂O.

H₂O and all program offerings will be positioned firstly under the H₂O brand; this must be reflected at the facility and in all marketing materials. City positioning will take precedence over Operator positioning always.

Operator specific programming can be identified as such within the parameters outlined above and contained in the following guidelines.

Vision & Mission

As the H₂O is a City-owned facility, it falls under the City's vision and mission statements.

The Operator also has the right to include their corporate vision, mission statement and taglines on materials related to Operator specific programs that are nationally recognized, registered or trademarked (i.e., YMCA Coach Approach®) that directly support H₂O; however, the placement of such materials within the facility must align with the above stated principles. Any exceptions need to be approved by the Divisional Director of Active Living & Culture or designate.



CITY OF KELOWNA BRAND PRINCIPLES

Brand Principles

The City of Kelowna has developed a set of brand and visual identity guidelines that are supported by its brand drivers:

- ▶ Active: Kelowna Lifestyle
- ▶ Responsible: Kelowna Environment
- ▶ Beauty: Kelowna Community
- ▶ Dynamic: Kelowna Economy

Any use of the City's logo, icon or brand must adhere to the City's guidelines including the use of sub-brands.

The City's Brand and Visual Identity Guide is available at kelowna.ca/brand.

This manual covers a wide range of predictable applications but cannot include all possibilities. For applications not covered in the manual or for advice about any application, please contact the City of Kelowna Communications Department.



Logo

The H₂O logo was created to capture the energy of the aquatic facility while promoting health, fitness and well-being. As the H₂O is a City-owned facility, its colour palette contains the blues within the City's palette.

The H₂O logo was created in 2009.



Logo Versions

The H₂O logo is available in two versions: stacked and horizontal.

The stacked logo is the primary identification for H₂O and is to be used when appearing with the City of Kelowna logo.

The horizontal logo should be considered only in circumstances where it is impossible to use the primary visual identity (i.e., website, lanyards).

The logo type must appear with the H₂O icon to preserve logo integrity. The icon may only appear on its own in pre-determined instances (i.e., social media identification).

Stacked Logo



Horizontal Logo



COLOUR PALETTE

H₂O Colour Palette

These colours have been specifically selected from the City of Kelowna's colour palette as they project the colours of the H₂O facility. "Whale" is the only new colour added to the palette to provide an option for greyscaled images.

Strict adherence to these colour standards will serve to unify the image of the H₂O. Colours will vary slightly depending on whether they are printed on coated paper or uncoated paper.

Designated PANTONE® colours and their equivalents for other methods of reproduction are indicated.

Note: Because of the colour reproduction limitations of video monitors and laser printers, the simulated display of the H₂O colour palette at the right does not establish visual standards for colour reproduction.

PANTONE®

The printing industry standard for specifying solid ink colours.

CMYK

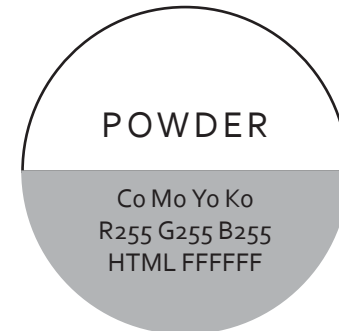
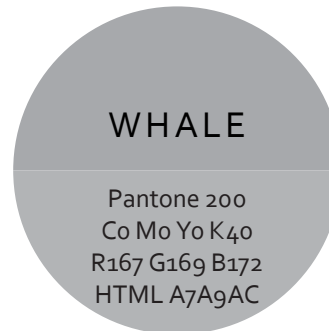
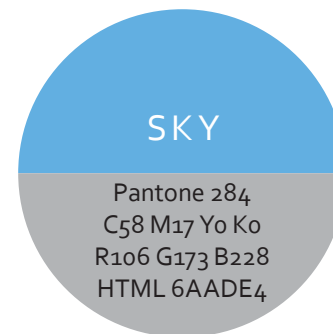
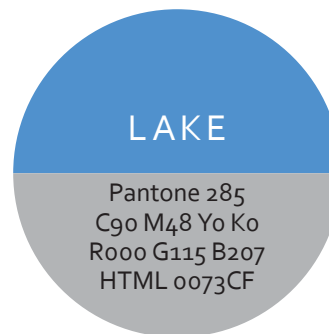
The print industry standard for full colour printing. Also known as process colour printing, it relies on cyan, magenta, yellow and black to create the spectrum of colour seen in most full colour printing.

RGB

A colour system based on red, green and blue, and used to represent the full spectrum of colour on video displays.

HTML

A colour system used for internet code programming.



The colors shown on this page and throughout this guide have not been evaluated by Pantone, Inc. for accuracy and may not match the Pantone Color Standards. Consult current Pantone Publications for accurate color. Pantone® is the property of Pantone, Inc.

COLOUR PALETTE

City of Kelowna Colour Palette

The City colour palette has been specifically selected to project the colours of Kelowna, which is known for its pristine natural beauty.

These colours can be used in H₂O marketing to reinforce the relationship between the H₂O and the City.

Designated PANTONE® colours and their equivalents for other methods of reproduction are indicated.

Note: Because of the colour reproduction limitations of video monitors and laser printers, the simulated display of the City of Kelowna Colour Palette at the right does not establish visual standards for colour reproduction.

PANTONE®

The printing industry standard for specifying solid ink colours.

CMYK

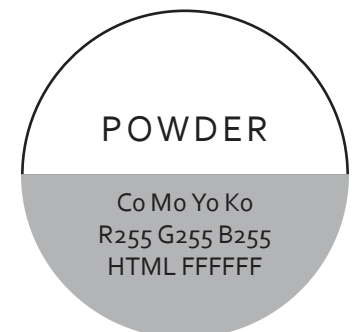
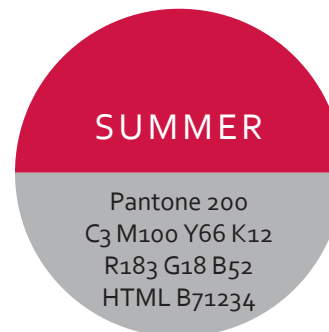
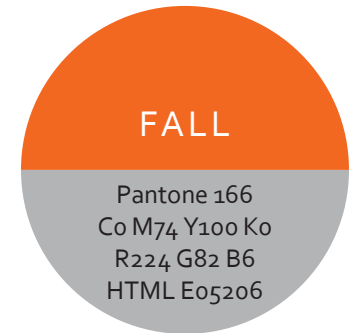
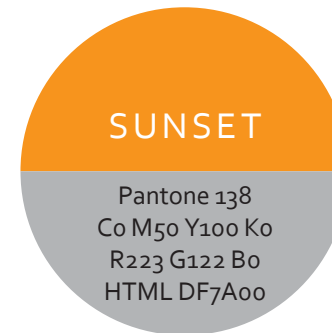
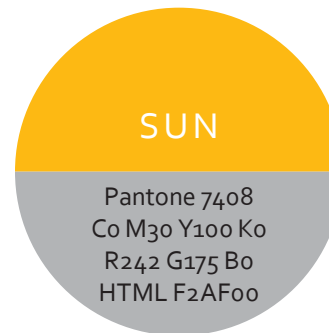
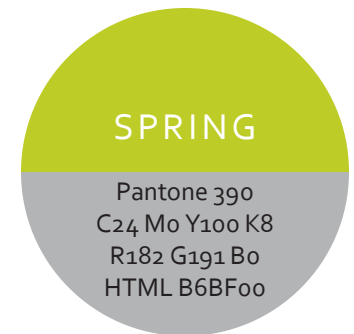
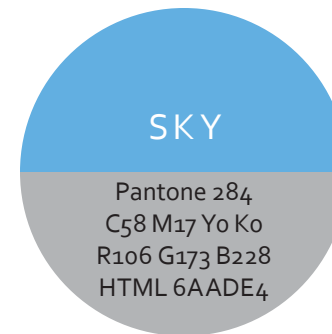
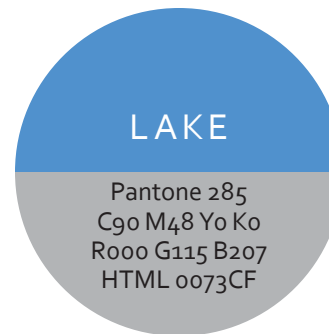
The print industry standard for full colour printing. Also known as process colour printing, it relies on cyan, magenta, yellow and black to create the spectrum of colour seen in most full colour printing.

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HTML

A colour system used for internet code programming.



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Logo Colours

The H₂O logo is comprised of specific Pantone colours. Each colour is specified here.



Single Colour
100 per cent black is the only acceptable single colour use of the logo.



Single Colour Reverse
When using the single colour version of the logo on a dark background, the entire logo should appear as white.



Greyscale Colour
Where the background permits, a greyscale version of the logo can be used.



Semi-Colour Reverse
Where the background permits, a semi-colour version of the logo can be used.



Note: The text should appear as white.

If photocopying the logo, use the black version only.

Typography

Using a consistent family of typefaces visually reinforces the identity of the H₂O and its relationship to the City.

The H₂O's primary font is Priva for all signage and marketing materials. The italic font should not be used on signage.

Do not condense, extend, bold, italicize or otherwise distort the fonts in any way.

Primary Font

Priva Family

ABCDEFGHIJKLMNOPQRSTUVWXYZ
abcdefghijklmnopqrstuvwxyz

Priva Italic

ABCDEFGHIJKLMNOPQRSTUVWXYZ
abcdefghijklmnopqrstuvwxyz

Secondary Font

Trebuchet

ABCDEFGHIJKLMNOPQRSTUVWXYZ
abcdefghijklmnopqrstuvwxyz

Trebuchet italic

ABCDEFGHIJKLMNOPQRSTUVWXYZ
abcdefghijklmnopqrstuvwxyz

LOGO HIERARCHY

Logo Hierarchy

The H₂O logo will always have the prominent position in H₂O related marketing materials.

The City of Kelowna logo will take a secondary position. The City logo must maintain its minimum size requirements as outlined in the City's Visual Identity Guidelines.

The Operator's logo will only appear at a tertiary level. The Operator's logo will be positioned to the right of the City logo and under the words "H₂O is operated by." The combined height of both (phrase and logo) should not exceed that of the City's logo. Should this height not meet the Operator's brand standards, the Operator's logo can be replaced with the phrase "H₂O is operated by name of Operator."

When appropriate, a layout combining the H₂O logo and City logo may be used. The City logo will appear smaller and to the right of the H₂O logo. In this instance, the Operator logo will not appear but will be replaced with the predetermined phrase. There will be times when only the H₂O and City logo will appear together.

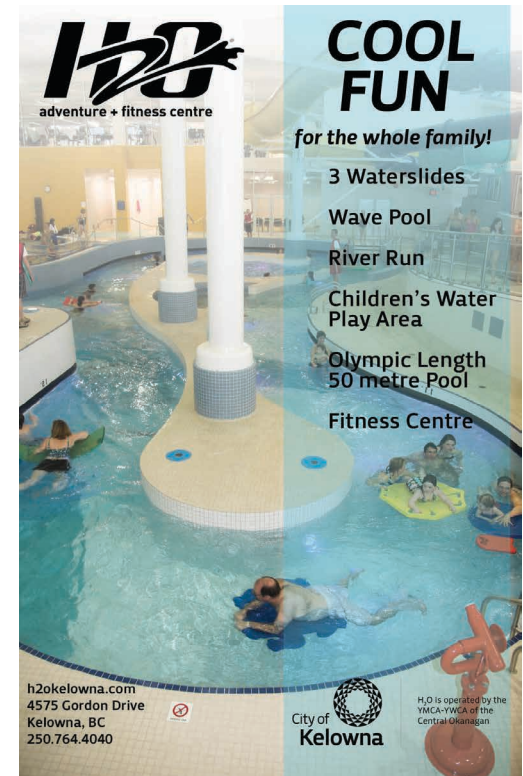
The Operator logo is not to be placed beside or in proximity to the H₂O logo.



H₂O operated by



H₂O is operated by the
YMCA of Southern
Interior BC



H₂O Logo Protected Space

To maintain the integrity of the H₂O brand, space must be left on each side as well as above and below the logo. The increment used to determine this space is based on $\frac{1}{4}$ the height of the capital case letter H in the H₂O logo. A minimum of one unit of space is required on each side, as shown in the examples on the right.



The increment used to determine this space is based on $\frac{1}{4}$ the height of the capital case letter H.



Combined Logo Protected Space

To maintain the integrity of all corporate identities, space must be left on each side as well as above and below the logos. Overall, the increment used to determine this space is based on the height of the capital case letter K in the City of Kelowna logo. The space protecting the Operator logo is based on the Operator's brand standards.

A minimum of one unit of K space is required on each side of the combined logo, as shown in the examples on the right.



One Unit of Space



MINIMUM SIZE

H₂O Logo

Stacked Logo

The logo, regardless of colour, should be no smaller than 1.25 inches in width.

Horizontal Logo

The icon, regardless of colour, should be no smaller than 3.5 inches in width.

Minimum size
1.25 inches



Minimum size
3.5 inches



City and Operator Logo

The colour logos should be no smaller than 2.25 inches in width; the City stacked logo is to be no smaller than one inch in width.

The colour City logo and Operator description should be no smaller than 2.5 inches in width.

The black logos should be no smaller than 1.75 inches in width; the City logo is to be no smaller than .75 inch in width.

The black City logo and Operator description should be no smaller than two inches in width.

This is in accordance with the minimum size standards for the City logo set in the City's Brand & Visual Identity Guidelines.

Minimum size
2.25 inches



Minimum size
2.5 inches



Minimum size
1.75 inches



Minimum size
2 inches



UNACCEPTABLE USE

Logo Usage

The logo must not be altered, cropped or reconfigured in any way. To ensure the best reproduction quality, always use original artwork files, as either vector graphics or high resolution raster graphics. Vector graphics are preferred.

▶ Never change the colour designations assigned to each component of the logo. Even if the colours are correct, they must not be reassigned to different components.



▶ Do not use the logo elements in any other arrangement or stacking order.



▶ Do not print the logo on a background colour that does not permit enough contrast to the logo or text colour.



▶ Do not place the logo on a complex background such as a busy photo or illustration. If using the logo on an image, place it in an area that has little or no detail to allow sufficient contrast.



UNACCEPTABLE USE

Logo Usage

▶ Never change the logo to a solid colour.



CORRECT



▶ Never customize the logo by adding or deleting text.



UNACCEPTABLE USE

Logo Usage

▶ Do not create outlines around the logo to create contrast.



▶ Do not skew, stretch, rotate, tilt or compress the logo.



▶ Do not use in proximity to the Operator logo with or without the City logo present.



BACKGROUND SCREEN TINTS

Background Screen Tints

To maintain legibility, always ensure there is enough contrast between the logo and the background colour. If using the City of Kelowna logo, please refer to the City's Visual Identity Guidelines to ensure proper usage.

10% black



20% black



30% black



40% black



50% black



60% black



70% black



80% black



90% black



100% black

MARKETING MATERIALS

Marketing Materials

Any marketing templates used must be unique to the H₂O and reflect the guidelines identified in this manual.

Facility materials

The H₂O logo is to appear on its own in a predominate location while the City and Operators logos can appear on the bottom of the item or be replaced by the phrase "H₂O is owned by the City of Kelowna and operated by the name of the Operator."

Multi-Panel Brochures & Double-sided Rack Cards

The front side of double-sided or multi-panel items will be used to promote the H₂O brand. All references to the City of Kelowna and the Operator will be reserved for the back side/panel, as shown in the example to the right.

Posters, Print Ads & Single-sided Rack Cards

The H₂O logo is to appear on its own in a predominate location while the City and Operator's logos can appear on the bottom of the item or be replaced by the phrase "H₂O is owned by the City of Kelowna and operated by name of Operator."



Online Marketing & Radio Advertisements

The only branding required online or on-air is that of the H₂O. If there is room, the phrase "H₂O is owned by the City of Kelowna and operated by name of Operator" may be included.

Programs & Services offered across Y locations

Any program and service materials which promote programs offered at multiple Y locations would be branded as Y programs. The material would list out the multiple Y locations.

Programs & Services offered at the H2o

For programs which are only offered at H₂O, the branding should be the H₂O brand and cobranded with Y.

Front Panel



Back Panel

Drop-in & Play Today

Facility Drop-in Fees (includes GST)	Drop-in	10 Visit Punch Card	25 Visit Punch Card
Members	\$10.00	\$100.00	\$250.00
Adults (18-64)	\$1.00	\$10.00	\$25.00
Seniors (65+)	\$0.50	\$5.00	\$12.50
Youth Adults (15-24)	\$0.50	\$5.00	\$12.50
Youth (11-14)	\$0.25	\$2.50	\$6.25
Child (5-10)	\$0.25	\$2.50	\$6.25
Infant (0-4)	Free	Free	Free
Family (1st child included)	\$3.00	\$30.00	\$75.00
Drop-in Fee	\$1.00	\$10.00	\$25.00

H2O Adventure + Fitness Centre
4075 Gordon Drive
Kelowna, BC V1W 5J2
h2oinfo@ymca-ywca.com
h2okelowna.ca

City of Kelowna | H₂O operated by Y

Website

The H₂O website is to be referred to as h2okelowna.ca. It can be redirected to a distinct page within the Y website so long as the content and branding on the page is distinctly H₂O.

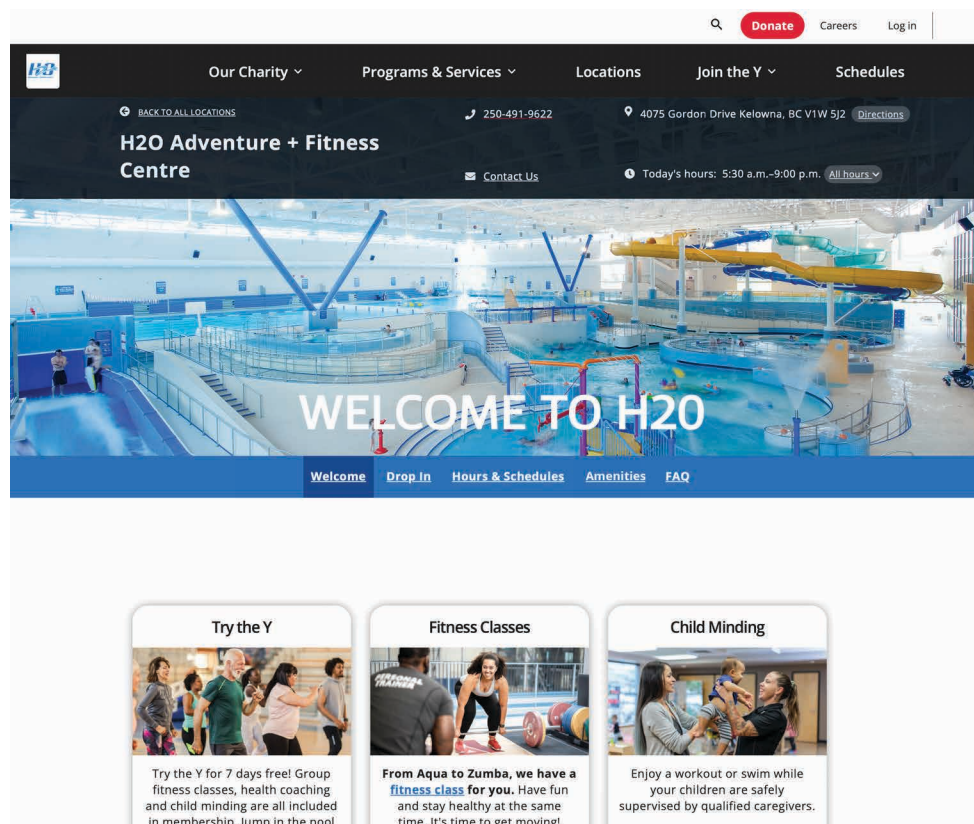
Logo placement needs to be in the top banner of the page and reflect the H₂O colours.

The banner image should be an interior shot that shows the aquatic amenities within the H₂O facility.

The mid-page navigation menu should only featured facility and program information for the H₂O facility.

There needs to be a section on the webpage that describes the facility – amenities, activities and the ownership.

All links should open in a new window.



Social Media

Social Media sites under the H₂O brand should be visually recognizable using the H₂O logo and marketing/design elements.

H₂O Social Media channels may only be used to promote programs operating out of the H₂O or supporting H₂O.

Postings must reflect programs, events and services happening at the H₂O. In order to promote the H₂O website, links should - for the most part - link back to h2okelowna.ca.

Where possible, H₂O sites must follow or fan the City's Social Media sites. The primary Operator's social media site may also be followed.

Other than specific requirements detailed here, conduct on H₂O social media sites must follow the City of Kelowna's Social Media Policy and Marketing Guidelines Manual.

The City of Kelowna retains ownership of any social pages created for H₂O.

CUSTOMER RELATIONS

Membership Cards

Membership is to the H₂O facility; the membership card is to be branded as an H₂O pass.

The H₂O logo is to appear alone on the front of the card. Logos for the City and the Operator may be included on the back side of the membership card.

Should the operator implement a digital membership cards in the H₂O, the operator must consult the City for approval of the look and feel of that digital card.

Front



Back



Uniform

Staff may wear Operator branded uniforms (shirt) and Operated branded name badges.



Lanyards

BUSINESS MATERIALS

Business Cards

The business card is a unique item that connects employees to their employer and work location.

The business card may reflect the operator's visual identity but must list the H₂O Adventure and Fitness Centre as the location.

Front



Back

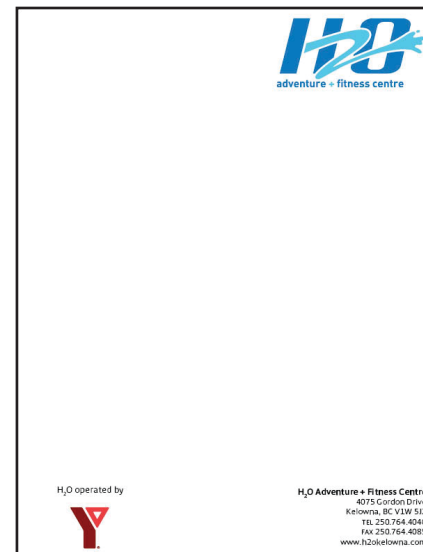


Letterhead

Letterhead, whether used for physical, electronic or receipt communication, needs to reinforce the H₂O brand. It might be necessary to include Operator-specific information for legal purposes but this must be done in the secondary position.

The Operator's logo may appear on the letterhead; however, it must include "Operated by."

The Operator logo may not take more room vertically than the height of the H₂O address block as shown in the example to the right.



BUSINESS MATERIALS

Email Signature

Every communication from the H₂O facility should reflect the organization in a professional, positive way. Similar to business cards, the email signature is reflective of the employer but needs to include the H₂O location and owner/operator structure.

First and Last Name (subject, object, possessive)

Job Title

YMCA of Southern Interior BC

H2O Adventure + Fitness Centre (Owned by the City of Kelowna, Operated by the YMCA)

4075 Gordon Drive, Kelowna BC V1W 4Z1

250-491-9622 ext. ### | firstname.lastname@ymcasibc.ca

ymcasibc.ca [Facebook](#) [Instagram](#) [Twitter](#) [Linked In](#)

Building healthy communities

I acknowledge that I live and work within the unceded territory of the Syilx/Okanagan People

Phone Messages

In instances where employees are unable to answer the phone, either because they are on the other line or away from their desk, an appropriate message should be recorded that identifies the individual reached, their position and the relationship between the the H₂O facility and the Operator.

Hello, you've reached (Your Name), (Your Title), of the H₂O Adventure and Fitness Centre, proudly operated by the YMCA of Southern Interior BC. I am sorry to have missed your call - please leave a detailed message or press "o" for immediate assistance.

Cross Promotion

The H₂O facility presents the City of Kelowna with an opportunity to cross-promote City programs and events to facility users. Cross promotion can take place through, but not limited to, advertisements on television screens, features or links on the H₂O website, placing rack cards or program guides in designated locations throughout the facility.

The City has first right of refusal to approximately 20 per cent of individual marketing channels in order to promote City programs, facilities and initiatives. For example, if there are ten rack card slots, the City can use two of the slots to marketing and informational materials.

The Operator may use the marketing channels to promote Operator specific programs and initiatives that are nationally recognized, registered or trademarked, and that directly support H₂O. The inclusion of such marketing materials within H₂O must align with the brand principles outlined on page 2.

Cross promotion speaks specifically to marketing materials and channels and does not apply to facility signage.

Other Considerations

Ownership

The City of Kelowna retains the ownership of all original design files and images used or obtained for all materials created for the H₂O.

The City of Kelowna retains ownership of all URLs created for online materials for the H₂O.

Sponsorship Opportunities

There are many sponsorship opportunities within H₂O. While the Operator may work with third party sponsors with respect to program sponsorship opportunities that operate out of the facility (i.e., Sun Rype Swim Club for Tots), the City of Kelowna retains all rights with respect to the naming of the building as well as individual rooms and areas within the facility. Any approved sponsorship that alters the name of the facility must align with the City's Naming Policy.

Signage

Exterior signage

All exterior signage should reflect H₂O logo and brand regardless of if it is affixed to the building or stand alone. Sandwich boards may be used to promote programs and membership within the H₂O facility but the framing must include the H₂O logo. At the front door of the facility, the H₂O logo along with a note about City ownership and the Operator should all be on the same glass panel to the left of the front doors. Hours of operation may be put on the front doors themselves.

There are occasional needs to affix temporary messaging to door signage for holiday hour operations or maintenance notices. These messages should be printed on an approved template – the messaging must be related to operations of the facility and are at the Operator's discretion. Any additional affixed exterior signage, including digital signage, needs to be approved by the City. Should external digital signage be installed at the H₂O, the intent would be to promote programming and services offered within the H₂O facility. Any Operator branding should be minimal and be no more than 10 per cent of the visuals.

Interior signage

Wayfinding signage should all be consistent and adhere to the approved facility signage package. If existing signage needs to be replaced or additional signs are required, these should all follow existing templates.

Any signage that requires installation needs approval from the City. This would include anything that requires affixing to walls, adhesives on walls, windows or floors, additional hanging banners, etc. These signs should only be used for programs and services offered within the H₂O and not broader Operator programming.

Temporary and non-installed signage include pop up banners, program posters, and digital signage may be used and follow the YMCA's brand so long as those programs and services offered within the H₂O facility. Temporary signage related to the operations of the facility may be used in pre-approved templates with content at the Operator's discretion. The intent of guidelines for temporary interior signage is not to clutter any areas – this signage is used to bring awareness to equipment repairs, facility repairs or temporary changes in program offerings.

More Information

This guide covers a wide range of predictable applications, but cannot include all possibilities. For applications not covered in the guide or for advice about any application, please contact the City of Kelowna Communications Department.

Reproduction Materials

To maintain quality standards it is important to work from original files. All versions of the logos (H₂O and City of Kelowna) are available from the City of Kelowna Communications Department.

Third Party Usage

Written permission to use the H₂O logo by a third party must be provided by the Operator or the City of Kelowna Communications Department.

Should either party make significant updates to their visual identity, both parties will work together to adjust the standards.

