

COPY

MANAGEMENT AND OPERATING AGREEMENT

THIS AGREEMENT dated for reference May 31, 2012 is

BETWEEN:

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

(the "City")

AND:

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

(the "Y")

WHEREAS:

- A. The City is the registered owner of the lands in fee simple located at 4015 Gordon Drive, Kelowna, B.C. and legally described as:

PID: 026-563-355

Lot 2 District Lot 168 and Section 2 Township 26 ODYD Plan KAP80134

- B. (the "Land"); The City has constructed on a portion of the Land a three storey aquatic centre building that includes a natatorium and other aquatic facilities, change rooms, fitness rooms, meeting rooms, administration spaces and public spaces, as shown and described on Schedule A, (the "Facility");

- C. The Facility is named, branded and marketed as H2O Adventure and Fitness Centre and the Facility is sometimes referred to in this Agreement as "H2O";

- C. The Facility is a community facility for the purpose of providing recreation, fitness and sport opportunities and other programs and services as defined herein for the benefit of the community of Kelowna;

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

- E. The Y and the City intend that the Y will be responsible for operating the Facility, utilizing its expertise and experience in operating community facilities, subject to the restrictions and

requirements of this Agreement, and the City's express obligations under this Agreement;

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

OBJECTIVES:

1. The City and the Y have entered into this Agreement for the provision of recreation, fitness and sport opportunities from the management and operation of the Facility and through this Agreement, the City and Y share the following common objectives:

(a) Common Objectives

- (i) To ensure the delivery of quality recreation opportunities with a focus on health and wellness that meet the needs and expectations of the public while maintaining an acceptable level of accessibility through reduced barriers to access for all citizens.
- (ii) To ensure the long-term operational viability of the Facility through the development of a planned and scheduled maintenance and renewal program.
- (iii) To ensure the Facility continues to be a modern, high quality, well-maintained recreation facility that meets or exceeds expectations of Kelowna residents and visitors.
- (iv) To maximize usage of the Facility by both residents and visitors and to maximize the overall operational financial performance.

In addition to the parties common objectives, the parties each have individual objectives including:

(b) The City Objectives

- (i) To have an operating model that is able to react to changing community needs.
- (ii) To ensure the Facility is seen as a community recreation, aquatic and fitness facility.
- (iii) To have the ability to leverage and benefit from the operations of the Facility with other areas of City business.
- (iv) To contract with an operator that will ensure the operation meets or exceeds approved standards and regulatory requirements and is committed to meeting City objectives through the operation of the Facility.

(c) The Y Objectives

- (i) To provide best value for the dollars expended at the Facility, while providing a fair opportunity for the Y to achieve its financial objectives for viability and

community reinvestment, throughout the life of the Agreement, provided the Y uses prudent management and operating practices.

- (ii) To facilitate stronger connections by Kelowna residents to the Facility, the City and Y.
- (iii) To foster social and physical well-being of Kelowna residents and to fulfill the Y's mission to build strong kids, strong families, and a strong Kelowna.
- (iv) To have capacity to operate with excellence, innovation and partnerships, to ensure the Facility achieves its potential and is accessible to all.

Y ENGAGEMENT

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

TERM

- 3. The term of this Agreement shall commence on January 1, 2012 and shall expire on December 31, 2016 (the "Term").

OPTION TO RENEW

- 4. The parties may agree to renew this Agreement for an additional five (5) years as follows:
 - (a) on or before October 1, 2015, the Y advises the City through a written notice its desire to renew the Agreement for an additional 5 year term;
 - (b) at the time of giving such notice, the Y is not in breach of any covenant or condition herein contained ; and
 - (c) the Y has duly and regularly throughout the term observed and performed the covenants and conditions herein contained.

The City will respond through written notice to the Y's request by December 31, 2015 as to whether it also desires to renew this Agreement. That decision will be at the City's sole discretion.

Should the City elect to participate in negotiations towards an extension, those negotiations will commence on or before June 1, 2016.

The Y and the City will each be responsible for their own expenses incurred in negotiating a renewal of this Agreement. For clarity, the parties will not be obligated to renew this Agreement, unless they enter a written renewal agreement.

DETAILED OPERATING REQUIREMENTS

5. The Y shall:

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

lands or to the public, including the accumulation of rubbish or unused personal property of any kind; and

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

CUSTOMER SERVICE

- 6. The Y and the City share a common interest in ensuring the highest level of customer service in the operation of the Facility. The Y will deliver high quality and consistent customer service through a comprehensive quality management program and complaint protocol reasonably consistent with the sample provided in Schedule I (the "Sample Quality Management System") which shall be amended from time to time in the interest of continuous improvement by mutual agreement.

FINANCING, REPORTING AND OBLIGATIONS

7. Operating Year

In this Agreement, "operating year" means a calendar year. The first operating year for this Agreement will commence January 1, 2012.

The Y shall operate the Facility in a fiscally responsible manner. The Y shall use all reasonable efforts to manage and operate the Facility in accordance with the established operating budget. The City acknowledges that adjustments to the budget may be required to accommodate unforeseen circumstances that result in shortfalls to projected sales or attendance levels but the Y shall continually strive to achieve positive financial performance.

In addition to the reporting requirements in sections 16 and 17, the Y will immediately inform the City of any anticipated significant deviations from the submitted annual operating budget. In the event of a projected operating budget deficit, the Y and City will collaborate on opportunities to minimize or eliminate any budget deficits.

Budget and Performance

The Y will establish an annual balanced operating budget where revenue is equal to or exceeds all expenses related to the operation, repair, maintenance, management and supervision of the Facility in accordance with this Agreement. On or before August 31st of each operating year, the Y shall prepare and submit to the City an operating budget for the upcoming operating year. The budget shall include anticipated revenue from the programming and operation of the Facility including but not limited to:

- (a) Admission and membership fees charged to members of the public to access Facility amenities;

- (b) Program fees charged to members of the public to participate in programs offered at the Facility;
- (c) Fees charged for lockers, merchandise sold at the Facility, childminding, pool and room rentals;
- (d) Fundraising initiatives that aid in the delivery of programs and services at H2O (i.e. financial assistance program).

A 2012 operating budget in Schedule B (the "Operating Budget Funding Requirements") demonstrates an approved balanced budget. Each annual budget will be submitted in accordance with Schedule B and include detailed divisional budgets.

a) Management Fee & Y Overhead

In consideration of the performance by the Y of its obligations under this Agreement, including the provision of Y Overhead and Management per Schedule B (Operating Budget Funding Requirements), the budget for each operating year shall include, as operating expense:

- i. A management fee in the amount of \$346,311 for each operating year, increasing by BC CPI (as published by Statistics Canada) for the second operating year and each operating year thereafter. The total fee will be expensed monthly.
- ii. An amount for Y overhead in each operating year equal to the Annual YMCA and YWCA Canada Affiliation Fees paid by the Y with respect to the Facility for that operating year, calculated by a formula set by YMCA and YWCA Canada.

Schedule B (the "Operating Budget Funding Requirements") provides an overview of costs related to the Y Overhead and Management.

b) Annual Financial Operating Surplus

Annual financial operating surplus is defined as year-end operating revenue in excess of operating expenses. The expenses for this equation are defined by those items outlined in the annual operating budget of the Facility including Y overhead fee and management fee but exclude, for clarity, any First Line Repair budget surplus as defined in First Line Repair section in Schedule F.

When the year-end budget is in a net surplus position, the surplus funds will be shared as follows:

Net surplus funds less than \$100,000:

- 33% shall be retained by the City and used as determined by the City.
- 33% shall be retained by the Y to fund its programs and charitable activities within Kelowna.

- 34% shall be retained by the City and placed in an Equipment Replacement and Improvement Fund as outlined in this section below.

Net surplus funds greater than \$100,000, the first \$100,000 will be shared as outline above and the additional surplus over \$100,000 will be shared as follows:

- 25% shall be retained by the City and used as the determined by the City.
- 50% shall be retained by the Y to fund its programs and charitable activities within Kelowna.
- 25% shall be retained by the City and placed in the Equipment Replacement and Improvement Fund as outlined in this section below.

The City's share of the surplus will be paid by the Y within five working days of completion of the Annual Report and Audited Financial Statements under section 17.

c) Annual Financial Operating Deficit

Annual financial operating deficit is defined as Facility operating expenses for an operating year including Y Overhead and Management fee that exceed operating revenues for the operating year less any surplus First Line Repair budget as defined in the First Line Repair section of Schedule F. The Y is responsible to fund the first \$20,000 in operating deficit in an operating year from its own resources that are separate and distinct from any funds associated with the H2O operating budget shortfall. The City will be responsible to provide a grant for any deficit in excess of \$20,000 in an operating year.

The City's share of any deficit will be paid to the Y within five working days of completion of the Annual Report and Audited Financial Statements under section 17.

EQUIPMENT REPLACEMENT AND IMPROVEMENT BUDGET

The City shall establish an Equipment Replacement and Improvement budget, which shall be used solely for the purpose of funding the replacement and improvement of equipment that will enhance the public's experience at the Facility. An Equipment Replacement and Improvement Plan has been established in Schedule E (the "Furnishings and Equipment Plan") in accordance with the terms of this Agreement that includes anticipated equipment and dates.

For clarity, the intent of the budget is not for general repair and maintenance items that would be covered through items as outlined in Schedule F (the "Facility Maintenance"). The budget will be maintained and managed by the City and any balance at the end of the expiry or earlier termination of this Agreement will remain with the City.

(a) Funding Sources for the Plan

- At the City's discretion, the City will maintain an annual budget for Equipment Replacement & Improvements. Any unused funds from this annual budget will be placed into the H2O General Reserve for future use.
- When an annual financial operating surplus exists, the Y will pay to the City the appropriate amount required in accordance with paragraph 7.b) Annual

Financial Operating Surplus, above, and the amount so paid will be added to the City's annual allocation for this program.

- The City will provide to the Y an annual written report with respect to the budget that will illustrate annual contributions, expenditures and balances as required.

(b) Accessing the Budget

- The Plan as outlined in Schedule E (the "Furnishings and Equipment Plan") shall be a guide for annual purchases. It is recognized that the Plan is only a guide and is subject to change based on actual needs.
- As part of the annual budget process and timeline required pursuant to this Agreement, the Y will submit an equipment purchase plan and budget.
- Any changes or deviations from the plan will be in consultation between both the Y and City.
- Upon approval from the City, the Y will complete purchases and invoice the City for reimbursement from the budget.

BRANDING AND MARKETING

8. H2O 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, and recognizing the importance of a successful operator, the Facility will be branded and marketed in accordance with the following:

- (a) The Facility is to be branded and marketed as a City-owned facility in accordance with H2O Adventure & Fitness Centre Brand & Visual Identity Guidelines as outlined in Schedule J (the "Brand and Visual Identity Guidelines").
- (b) The City is permitted to establish internal and external City branding of the facility. This branding will be at the City's expense.
- (c) H2O and all program offerings will be positioned firstly as H2O; this must be reflected at the Facility and in all marketing materials. City positioning will take precedence over Y positioning always. The Y will be recognized as the operator as will Y programs within the hierarchy parameters outlined Schedule J (the "Brand and Visual Identity Guidelines").
- (d) H2O marketing channels, such as website and print material, are to be used primarily for promoting H2O and programs offered at H2O, secondly H2O marketing channels will be used to cross-promote other City programs, services, information and facilities.

- (e) Programs developed specifically for H2O under this Agreement will be branded as H2O programs. Y National Programs, as defined in Schedule C (the "Programming Requirements"), offered in the Facility will be identified as Y programs.
- (f) The Y will collaborate with the City to determine cross-promotional opportunities' using both H2O and the City's marketing channels.
- (g) The City retains all rights to internal and external naming opportunities related to the Facility. Name changes need to take into consideration the impact on the Brand & Visual Identity Guidelines.
- (h) Within the limitations described in privacy legislation, the City is the owner of all information and data related to marketing and customer usage of the Facility.
- (i) The City is the owner of all H2O marketing platforms including but not limited to website and social media urls.

SPONSORSHIP, ADVERTISING AND MEDIA RIGHTS

9. The Y may utilize H2O programs and services to promote the sale of financial sponsorship and/or advertisements by corporations and businesses whereby a fee is paid by the corporation or business to the Y. The Y shall apply all revenue from such fees towards the operations of the Facility. The Y will ensure that all advertising and sponsorship agreements are:
 - (a) Consistent with the Branding and Marketing guidelines in Schedule J (the "Brand and Visual Identity Guidelines"),
 - (b) Appropriate to families and children,
 - (c) In keeping with the City's and the Y's values of equality, accessibility, health, respect, and the dignity of the individual,
 - (d) Respectful of the sensitivities of neighbouring facilities and programs, and
 - (e) Appropriate to the aesthetics of the Facility itself.

FACILITY & EQUIPMENT MAINTENANCE, REPAIR, REPLACEMENT, SECURITY AND OTHER MATTERS

10. The City and the Y shall each have responsibility for maintaining the Facility in accordance with the allocation of responsibility set out in Schedule F (the "Facility Maintenance"). To facilitate these responsibilities, the Y and the City will meet

monthly commencing the first month of the Term, or at a frequency as mutually agreed to by the parties, to tour the Facility, discuss general building conditions, and jointly plan for major and minor capital projects and maintenance/repair/replacement and refurbishment issues and requirements, in accordance with the terms and financial limitations in this Agreement.

OPERATING LICENSE & PARKING LICENSE

11. The Y shall have a non-exclusive contractual license to enter and be on and within the Facility and the Facility Perimeter as shown generally on Schedule A (the "Facilities and Facility Perimeter (Site Plan)") for the purpose of performing its obligations under this Agreement.
12. The Y shall have a non-exclusive contractual license to use the parking area adjacent to the rear of the Facility for the purposes of Y staff parking, Y contractor parking, and other persons visiting the Facility as determined by the Y. City staff and City contractors shall also be permitted to park in this area.
13. The City shall be responsible for ice and snow removal in the parking lot and roads surrounding the Facility.
14. The Y shall be responsible for ice and snow removal on sidewalks as shown on the Perimeter Map, Schedule A (the "Facilities and Facility Perimeter (Site Plan)").
15. For clarity, the Y acquires no interest (legal or beneficial) in the Facility or the Land by virtue of this Agreement or any of the rights granted to it under this Agreement.

ACCOUNTING, RECORDS AND REPORTING

16. Appropriate representatives of the City and the Y shall meet on a quarterly basis or at such other frequency as may be mutually agreed upon by both parties, during the Term in order to discuss the operation of the Facility and to update the City as to the financial circumstances of Facility operations including but not limited to actual and anticipated revenue and expenses, budgetary shortfalls, Facility maintenance, Facility programs and schedules and Facility attendance.
17. The Y shall:
 - (a) Prepare Facility financial reports, maintain adequate accounts, books and records including copies of all receipts, vouchers and cheques, and use reasonable efforts to ensure that such accounts, books, records and financial reports meet Generally Accepted Accounting Principles (GAAP) as published by the Canadian Institute of Chartered Accountants.
 - (b) Within 21 days of month end during the Term, provide to the City unaudited financial statements and reports in respect of each month during the Term, reflecting in reasonable detail the results of the Facility's operations and the financial situation of the Facility for the month including but not limited to:

- i) *Profit & Loss Statement* for the preceding month comparing actual and budgeted revenues and expenses.
 - ii) *Membership Activity Summary* categorized by membership type and including total memberships, memberships sold & cancelled in the previous month and member retention rate.
 - iii) *Facility Traffic Report* summarized by age group and includes member visits and drop-in admissions.
 - iv) *Fitness Centre Activity Report* identifying traffic patterns and peak demand times.
 - v) *Program Summary* by program type including # of programs offered, # of programs ran, # of registrations and program cancellation rate.
 - vi) *Assistance Programs Report* summarizing number of individuals using the Y's financial assistance program and COK Recreation Opportunity Coupons including \$ value.
 - vii) *Incident Report* summarizing the occurrence of significant incidents by type (first aid, accident, general incident typically related to a facility banning). Notwithstanding the foregoing, major incidents should be reported immediately.
- (c) Within 30 days after each quarter during the Term, provide to the City unaudited financial statements and reports in respect of each quarter during the Term, reflecting in reasonable detail the results of the Facility's operations and the financial situation of the Facility for the quarter including but not limited to:
- i) *Profit & Loss Statement* for the year to date with year end projections and budget variances.
 - ii) *Facility Damage Report* summarizing damage to the facility. Notwithstanding the foregoing, significant damage must be reported immediately.
 - iii) *Customer Satisfaction Report* including positive and negative feedback and summarizing complaint types and subsequent resolutions.
- (d) Within 120 days of the end of each operating year, provide to the City:
- i) *Audited Financial Statements* in respect of Facility operations for that operating year and a comparison of revenues and expenses with the budget.
 - ii) *Comprehensive Annual Report* in a form appropriate for senior City staff review, summarizing the management of and activities at the Facility in that operating year, and including information regarding, but not limited to:
 - Program activities, events and services
 - Statistical summary of program registration, and general attendance participation levels
 - Staffing levels and staff training
 - Accomplishments, challenges, issues and trends
 - Safety issues and measures
 - Recommendations and objectives for future year
 - Customer service satisfaction and public comments (including complaints)
 - Aquatic sports clubs participation and events
 - Facility maintenance program summary.

If the Y and its auditor are not able to meet the noted 120 day timeline, the Y may seek an extension from the City, the approval of which shall not be unreasonably withheld.

- (e) Keep and maintain records for the Facility relating to the following:
 - i) Accident/incident reports;
 - ii) Attendance and program reports;
 - iii) Customer and user comments, including any collected from customer comment boxes at the facility;
 - iv) Current staff certifications and qualifications;
 - v) All swimming pool water chemistry analysis test results including those as submitted to the Department of Health;
 - vi) Emergency lighting inspections;
 - vii) Equipment and Furnishings Acquisitions & Disposals;
 - viii) Preventative maintenance plan including a schedule of activities for those maintenance obligations by the Y;
 - ix) Inspection and maintenance of emergency equipment and supplies;
 - x) Fire and emergency drills;
 - xi) Work Safe BC safety inspections;
 - xii) Change from Gas Chlorine to Annual pool chemical consumption for water treatment (this includes but is not limited to Chlorine, Soda Ash, etc.); and
 - xiii) Log books for all waterslides; BC Safety Authority inspections, or any preventative maintenance or service repair activities.
- (f) Cause all books and records of the Facility be kept at the Facility.
- (g) On 72 hours notice, permit the City, its accountants and other representatives, at the City's expense and at all reasonable times, to examine and make copies of any and all documents and records listed in this section and any other documents and records under the control of the Y that relate to the Facility and to audit the same.
- (h) Present to City Council within 120 days of each operating year an update on the activities of the previous year. The presentation should include, but is not limited to usage statistics, financial performance, customer satisfaction and future goals for the Facility.
- (i) Upon termination or expiration of this Agreement and within the limitations of privacy legislation, surrender all records, except those relating to staff, to the City.

CITY ACCESS

- 18. The City shall have unrestricted access to the Facility at all times. When City staff requires access to the public areas of the Facility, they are to notify the Y upon arrival.

COLLECTION OF TAXES & PROPERTY TAXES

19. The Y shall charge and collect from users and occupants of the Facility all applicable HST (or any such taxes that may replace the HST during the Term of this Agreement) and other taxes payable by users with respect to their use or occupation of the Facility and the Y shall remit such taxes in accordance with all applicable laws.

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

PAYMENT OF COSTS

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

USER AGREEMENTS AND WAIVERS

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

FURNISHINGS, EQUIPMENT AND OTHER PROPERTY

22. All equipment and furnishings related to operation of the Facility, whether supplied by the City or purchased by the Y before or during the Term is defined as "Facility Property" and shall, on the earlier of the date it is purchased for the Facility or the date it is placed within the Facility, become the property of the City and shall always remain within the Facility. On the expiration or earlier termination of this Agreement, the Y shall leave the Facility Property in good repair and condition, subject to reasonable wear and tear.
23. Schedule E (the "Furnishings and Equipment Plan") outlines the quantity of each type of equipment along with projected replacement dates and costs.
24. The Y shall inspect, maintain and repair, as necessary, all Facility Property and shall do so in such a manner as to ensure its safe use by the Y, its employees, contractors and agents, the public and others from time to time at the Facility.
25. The Y may, when it considers it necessary for the Facility, initiate acquisition of equipment and furnishing for the purpose of operating the Facility and otherwise performing its obligations under this Agreement, all of which shall be considered Facility Property. The City's Tangible Capital Asset Policy indicates that all eligible capital equipment whether acquired by purchase, donation or dedication is considered

capital assets and must be tracked. The Y shall keep and maintain records, as stated in Section 17 (the "Accounting, Records and Reporting"), of Facility Equipment acquisitions and furnishings acquisitions in the operating year.

26. The Y is responsible for insuring the Facility Property on terms satisfactory to the City as described in Section 37-43.
27. All Facility Property, as defined above, requiring disposal are subject to the City's Surplus and Salvage Disposal Policy and Procedure which states that surplus furnishings and equipment which are operable, useable but no longer required and/or are inoperable with salvageable components or have salvage materials that may have residual value through the scrap process must be disposed of through the City's Purchasing Department. All furnishings and equipment with an estimated value of \$1,000 or more at the time of disposal will be disposed of through the following procedure:
 - (a) The Y shall when it becomes necessary, initiate the disposal process by contacting the City designate and be responsible for decommissioning all equipment and preparing for disposal/delivery.
 - (b) The City shall authorize the disposal, transport, storing of furnishings and equipment as required and complete the disposal process. As owner of the Facility furnishings and equipment the City shall retain any proceeds gained a result of the disposal.
 - (c) The City may from time to time authorize the Y to complete the disposal process in a manner that is agreed upon by both parties and is consistent with the City's Disposal Policy.

The Y shall record all disposals as required in Accounting, Records, and Reporting paragraph 17 (e).

EMPLOYEES, REMUNERATION AND DEDUCTIONS

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

WORKERS COMPENSATION

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

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

FACILITY ALTERATION AND IMPROVEMENTS

- 31. The Y shall not make, install or construct any alterations, additions, improvements or fixtures with respect to any part of the Facility without first obtaining the City's written approval, which approval may be withheld or delayed by the City without reason.
- 32. Any alterations, additions, improvements and fixtures made, installed or constructed with respect to any part of the Facility will become the property of the City and part of the "Facility" as they are made, installed or constructed, as the case may be.

LIENS

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

ENCUMBRANCES

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

Y INDEMNITY

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

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

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

CITY INDEMNITY

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

- (a) any breach, violation, default or non-performance by the City of any provision of this Agreement; or
- (b) any wrongful act, omission or negligence of the City or its officers, employees, agents, contractors, subcontractors or others for whom it is responsible.

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

INSURANCE

37. The Y shall, throughout the Term obtain and maintain, with a deductible not to exceed \$25,000 payable by the Y, and otherwise in a form acceptable to the City, with an insurance company licensed to carry on business in the Province of British Columbia, a policy or policies of comprehensive general liability insurance providing for an inclusive limit of not less than \$10,000,000.00 for each occurrence or accident and property insurance in amounts satisfactory to the City from time to time, providing the following coverage and protecting the Y and the City against all claims arising out of:

- (a) death or injury to persons;
 - (b) damage to, or loss of, or loss of use of any property;
 - (c) damage to, or loss of, the Facility or Facility Property and any other equipment, furnishings and personal property of the Y or the City from time to time located at the Facility that the Y is responsible for, or where such loss or damage arises from any wrongful act, omission or negligence of the Y or its members, directors, officers, employees, agents, contractors, subcontractors or others for whom it is responsible;
 - (d) non-owned automobile insurance;
 - (e) contingent employer's liability;
 - (f) broad form property damage;
 - (g) personal injury;
 - (h) contractor's protective;
 - (i) products completed operations;
 - (j) blanket contractual;
 - (k) incidental malpractice;
 - (l) wrongful eviction;
 - (m) cross liability.
38. The Y shall, throughout the Term obtain and maintain, with a deductible payable by the Y, and otherwise in a form acceptable to the City, with an insurance company licensed to carry on business in the Province of British Columbia, a policy of All Risk Insurance for loss of or damage to furnishings, equipment and other general contents of the Facility.
39. Every policy of insurance will:
- (a) name the City as additional insured;
 - (b) state that the policy applies to each insured in the same manner and to the same extent as if a separate policy had been issued to each insured.
40. A certified copy of each policy of insurance, in the form set out in Schedule G (the "Certificate of Insurance"), shall be provided to the City prior to the commencement of the Term, and promptly thereafter on renewal or amendment of the policy, and

shall contain a clause that states that the policy will not be cancelled or materially changed without at least 30 days written notice to the City.

41. If the Y fails to insure as required by this Agreement, the City may obtain such insurance, but shall not be obligated to do so.
42. The Y shall be responsible for payment of any deductibles payable with respect to any insurance claims made with respect to the Facility.
43. A delay, failure or refusal of an insurer to pay insurance proceeds to the Y for any reason shall not relieve the Y from its obligations under this Agreement.

CITY INSURANCE

44. The City shall obtain and maintain, at its own expense and cost, replacement property damage insurance for the Facility in keeping with common industry practice for similar facilities and as insured by a prudent owner of reasonably similar facilities.
45. If the Facility is completely or substantially destroyed by any cause such that the damage cannot, within 6 months, be repaired using reasonable diligence so as to return substantially all of the Facility to a state useable for its intended purpose, the Y or the City may, by providing written notice to the other party within 30 days of the Chief Building Inspector's assessment (as contemplated further in this section), terminate this Agreement, which termination shall be effective 30 days following such written notice. The City shall cause its Chief Building Inspector to assess the damage and the time required for repair for the purposes of this section, which assessment shall be determinative for the purposes of this section.

DISPUTES AND DISPUTES RESOLUTION

Intention

46. It is the intention of both parties to seek mutually satisfactory resolution to any dispute which may arise during the Term, first utilizing good faith negotiations in accordance with the provisions of this Agreement, including Schedule H (the "Dispute Resolution").

Negotiation and Mediation

47. If any dispute arises between the City and the Y with respect to this Agreement, within 15 days of notice from one party to the other, unless otherwise agreed by both parties, the representative of the parties will meet in good faith in order to resolve and settle the dispute utilizing the tools described in Schedule H (the "Dispute Resolution"). In the event that such representatives are unable to resolve the dispute within 30 days of the first written notice, or such other time period agreed to by both parties, each party will appoint a senior representative that has not been previously involved in the matter in dispute, to attempt to resolve the dispute. If unable to resolve the matter within 60 days of the original dispute notice, then each senior

representative will meet and agree upon the selection of a qualified independent mediation practitioner versed in the resolution of commercial disputes in order to assist them within 90 days of the original dispute notice. Each party will bear their own costs of the above formal mediation process and will share the costs of the mediator on an equal basis.

Arbitration

48. If the matter is not settled through the process in the preceding section within 90 days of the original dispute notice then, unless the parties mutually agree to extend the 90 day period, the matter shall be referred to a single arbitrator pursuant to the *Commercial Arbitration Act* of British Columbia. The arbitrator will be selected by agreement of the parties or, failing agreement of the parties, appointed pursuant to the *Commercial Arbitration Act* (British Columbia), and the arbitrator's decision is binding upon the parties. Each party will bear their own costs associated with the arbitration process and will share the costs of the arbitrator on an equal basis unless otherwise ordered by the arbitrator.

DEFAULT & TERMINATION

City May Cure Y Default

49. If the Y fails to observe, comply with, keep or perform any of its obligations under this Agreement, the City may deliver to the Y a notice of default (in the manner set out below for giving notices) stipulating that the default must be rectified or cured within 30 days of the notice, unless such default gives rise to an emergency in which case the City does not need to provide any notices. The City may, if the Y does not fully correct the default within the 30 day period following such notice if required, or immediately where no notice is required, at its discretion and without prejudice to its other rights and remedies, take all steps considered in its sole discretion necessary to rectify or cure the default. Nothing in this Agreement obligates the City to rectify or cure any default of the Y but should the City choose to do so, the City shall not be liable to the Y for any act or omission in the course of rectifying or curing or attempting to rectify or cure any default save and except its own negligence or wilful default.

Termination Due to Default

50. If and whenever
- (a) the Y fails to observe, comply with, keep or perform any of its obligations and persists in such default after the time allotted in section 49, if any, for rectifying or curing a default; or
 - (b) the Y should cease to exist as a non-profit society in good standing in the records of the Registrar of Companies, and after a 30 day period to rectify and thereby be in good standing, or if it should take any proceedings towards dissolution or winding up or if it should be dissolved or wound up

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

Reconciliation following Early Termination

51. If this Agreement is terminated early as a result of Y default, the Y will not be entitled to any surplus earned for the year of termination or part thereof and will only be entitled to the management fee referred to above to the extent that the management fee exceeds all losses and other damage suffered by the City as a result of such Y default and early termination and only following the City's determination of such amount.

State of Facilities at Termination

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

If, the Y fails to comply with any of its obligations under this section, the City may undertake such work as may be necessary to bring the Facility into a good and clean condition, excluding normal wear and tear, and may remove any Y property.

Remedies Cumulative & Set-off

53. 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.
54. Where a provision of this Agreement permits the City to correct or take other steps in relation to a Y default of any kind under this Agreement and the City elects to exercise such rights, the Y shall reimburse the City for the City's costs of doing so within 30 days of receipt of an invoice from the City and, without limiting the foregoing, the City may deduct and set-off the amount of any such costs from amounts owing from time to time by the City to the Y pursuant to this Agreement.

ENVIRONMENTAL

55. The Y shall:

- (a) perform its obligations under this Agreement in compliance with all Environmental Laws;
- (b) not permit the storage, use, handling, manufacture, unloading, loading, treatment, disposal or introduction into the environment of any Contaminants in, on or under the Facility or the Land, except in accordance with the requirements of Environmental Laws;
- (c) without limiting the obligations under the preceding paragraph (b), immediately notify the City of the occurrence of any of the following and provide the City with copies of all relevant documentation in connection therewith:
 - (i) the storage, use, handling, manufacture, unloading, loading, treatment, disposal or introduction into the environment of any Contaminants in, on or about any of the Facility or the Land or any adjacent land that is not in compliance with Environmental Laws or of any information received by the Y which indicates that any of the foregoing may have occurred; or
 - (ii) the receipt by the Y of any citation, directive, order, claim, litigation, investigation, proceeding, judgment, letter or other communication from any person that is related to Environmental Laws;
- (d) promptly provide to the City a copy of any environmental site assessment, audit, report, or test results relating to the Facility or the Land conducted at any time by or for the Y;

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

56. The Y shall indemnify and save harmless the City, and its elected and appointed officials, officers, employees, contractors, agents, successors and assigns, from and against any and all liabilities, actions, damages, claims, remediation cost recovery claims, losses, costs, orders, fines, penalties, and expenses (including all legal and

consultant fees and expenses and the cost of remediation of the Land or the Facility or and any adjacent property) in any way directly or indirectly arising from or in connection with:

- (a) any breach of the preceding section by the Y or its officers, employees, contractors, consultants, agents, licensees, servants, invitees or anyone for whom the Y is in law responsible; or
- (b) the presence of, or any release of, any Contaminants at or from the Facility or the Land related to or as a result of the use or operation of the Facility or Land by, or any act or omission in connection with this Agreement of, the Y or its officers, employees, contractors, consultants, agents, licensees, servants, invitees or anyone for whom the Y is in law responsible.

57. In this Agreement:

- (a) "Contaminants" means
 - (i) as defined in the *Environmental Management Act*, any biomedical waste, contamination, contaminant, effluent, pollution, recyclable material, refuse, hazardous waste or waste;
 - (ii) matter of any kind which is or may be harmful to human safety or health or to the environment; or
 - (iii) matter of any kind the storage, manufacture, disposal, emission, discharge, treatment, generation, use, transport, release, remediation, mitigation or removal of which is now or is at any time required, prohibited, controlled, regulated or licensed under any Environmental Laws.
- (b) "Environmental Laws" means any past, present or future, common law or principle, enactment, statute, regulation, order, bylaw or permit, and any requirement, standard or guideline of any federal, provincial or local government authority or agency having jurisdiction, relating to the environment, environmental protection, pollution, the transportation of dangerous goods or public or occupational safety or health.

GENERAL

Status as Society

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

No Joint Venture or Partnership

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

No Landlord – Tenant

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

Independent Contractor

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

No Agency or Authority to Bind City

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

Notices

64. All notices required or permitted to be given under this Agreement shall be in writing and may be delivered by hand, sent by fax or forwarded by registered mail to the addresses set forth on the first page or such other address as may from time to time be notified in writing by the parties. The City may provide notice using any of the foregoing methods to the Y by providing such notice to the Y office within the Facility.
65. If the City gives notice to the Y, that notice must be marked to the attention of the Chief Executive Officer or as directed in writing by the Y.
66. If the Y gives notice to the City, that notice must be marked to the attention of the City Clerk or as directed in writing by the City.
67. Any notice delivered or sent by hand or by fax shall be deemed to be given and received at the time of sending. Any notice mailed shall be deemed to have been given and received on the expiration of three (3) days after it is posted, provided that if there shall be between the time of mailing and the actual receipt of the notice a mail strike, slow down or other labour dispute which might affect the delivery of such notice by the mails, then such notice shall only be effective once delivered.

Parties Representatives

68. Each party will, during the Term, appoint a person as its representative for the purpose of coordinating all matters and obligations of the parties as required by this Agreement. Each party will advise the other party in writing of the name, telephone number and fax number of its representative and each party may change its representative from time to time by notice in writing to the other.

Authority

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

Amendments

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

Assignment

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

Time of the Essence

72. Time is of the essence respecting this Agreement.

Entire Agreement

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

Interpretation

74. In this Agreement:
- (a) reference to the singular includes a reference to the plural, and vice versa, unless the context requires otherwise;
 - (b) article and section headings have been inserted for ease of reference only and are not to be used in interpreting this Agreement;
 - (c) reference to a particular numbered section or article, or to a particular lettered Schedule, is a reference to the correspondingly numbered or lettered article, section or Schedule of this Agreement;

- (d) if a word or expression is defined in this Agreement, other parts of speech and grammatical forms of the same word or expression have corresponding meanings;
 - (e) reference to any enactment includes any regulations, orders or directives made under the authority of that enactment;
 - (f) reference to any enactment is a reference to that enactment as consolidated, revised, amended, re-enacted or replaced, unless otherwise expressly provided;
 - (g) the provisions of s. 25 of the *Interpretation Act* with respect to the calculation of time apply;
 - (h) all provisions are to be interpreted as always speaking;
 - (i) reference to a "party" is a reference to a party to this Agreement and to their respective successors, assigns, trustees, administrators and receivers;
 - (j) reference to a "day", "month", "quarter" or "year" is a reference to a calendar day, calendar month, calendar quarter or calendar year, as the case may be, unless otherwise expressly provided; and
 - (k) where the word "including" is followed by a list, the contents of the list are not intended to circumscribe the generality of the expression preceding the word "including".
75. For clarity, all improvements, alterations, additions and fixtures made to or installed upon or in the Facility, whether before or during the Term, including where made or installed by or on behalf of the Y, will immediately become the property of the City as they are made or installed and shall remain with the Facility as part thereof during the Term and upon the expiry or earlier termination of this Agreement.

Enurement

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

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

CITY OF KELOWNA, by its authorized signatories:

Walter Gray
Mayor: **Walter Gray, MAYOR**

Karen Needham
Clerk: **Karen Needham,
Deputy City Clerk**

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

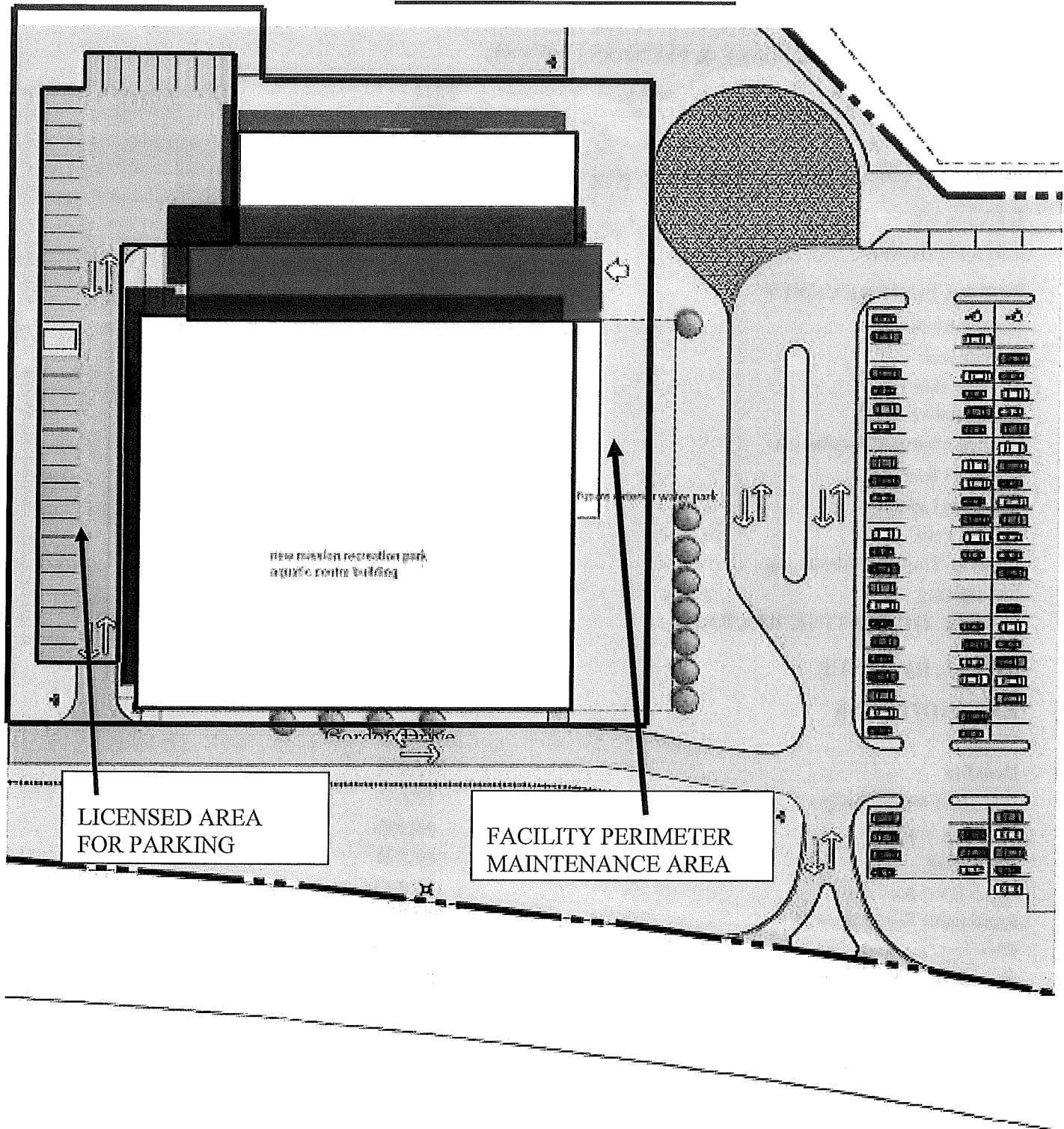
Ron Stewardson **RON STEWARDSON**
Authorized Signatory

Sharon Peterson **SHARON PETERSON**
Authorized Signatory

List of Schedules:

Schedule A	Facilities and Facility Perimeter (Site Plan)
Schedule B	Operating Budget Funding Requirements
Schedule C	Programming Requirements
Schedule D	Staffing Requirements
Schedule E	Furnishings and Equipment Plan
Schedule F	Facility Maintenance and Facility Systems Equipment (Inventory)
Schedule G	Certificate of Insurance
Schedule H	Dispute Resolution
Schedule I	Sample Quality Management System
Schedule J	Brand and Visual Identity Guidelines

Mission Recreation Park Aquatic Centre
Site Plan – Schedule A



Operating Budget Funding Requirements

Schedule B

**YMCA-YWCA OF THE CENTRAL OKANAGAN
H2O ADVENTURE & FITNESS CENTRE**

**2012
BUDGET
TOTAL**

SUMMARY- REVENUES AND EXPENDITURES**REVENUE**

City of Kelowna \$0

OPERATING REVENUE

Locker Rental	52,128
Admissions	942,968
Membership Fees	2,167,844
Merchandise	16,850
Service Charge/Cancellation	57,643
Aquatics Rentals	130,200
Aquatics Lessons	192,576
Fitness Fees	20,934
Child & Youth/Childminding	60,850
Fundraising	20,000

TOTAL OPERATING REVENUE

3,661,993

TOTAL REVENUE

3,661,993

EXPENDITURES

Wages	2,443,265
Benefits	274,610
Bad Debt/Bank Charges	58,646
Building Supplies	86,400
Marketing	69,148
Contracted Services	33,800
Equipment Purch/Maint	32,650
Merchandise Expense	11,763
Postage/Communications	84,960
Office Supplies	31,540
Program Supplies	51,100
Staff/Volunteer Expense	67,800
Management Fee	346,311
Y Affiliation Fee	70,000

TOTAL EXPENDITURES

3,661,993

Y OVERHEAD AND MANAGEMENT

In support of the management of the Facility, the Y shall provide or cause to be provided the following centralized services (collectively, "Y Overhead and Management"):

- (a) Strategic and operational management support and supervision in the areas of budgeting and financial management, human resource management, program development and evaluation, strategic planning, marketing and communication, Facility specific event planning and coordination, directed charitable fundraising, staff training, initiatives, recognition program and events, computer and information technology, City contract management and liaison and reporting;
- (b) Full accounting services including accounts receivable, accounts payable, payroll, group benefits administration, government remittances and reporting, financial statement preparation and reporting, banking and other similar services;
- (c) Independent financial auditing;
- (d) CLASS software support, training and licences;
- (e) Telephone line charges, long distance, postage, photocopying, paper, office utilities and supplies related to Y Overhead and Management;
- (f) Comprehensive Liability Insurance and All Risks Property Insurance as required through Sections 37-43 ("Insurance"); and
- (g) YMCA Canada and YWCA Canada program, facility and organizational resources, program standards, training, issue management, best practices, success measures and evaluation through its affiliation and membership in both national bodies.

The costs as agreed by the Y and the City which are expected to be incurred while providing the above centralized services are included in the budget as a Management Fee and Y Affiliation Fees as described in section 7 Financing, Reporting and Obligations.

2012 ADMISSION FEES (Including Taxes)

	<u>Drop in Admission</u>	<u>Annual Membership</u>
Adult	\$ 10.55	\$ 630.60
2nd Adult	n/a	\$ 534.64
Senior	\$ 8.30	\$ 490.09
2nd Senior	n/a	\$ 394.13
Young Adult	\$ 8.30	\$ 493.52
Youth	\$ 7.15	\$ 418.12
Members Youth	n/a	\$ 281.03
Child	\$ 6.00	\$ 349.57
Members Child	n/a	\$ 212.49
Family	\$ 26.00	n/a

Other Admission Options

- *Continuous Membership*
- *One Month Intro*
- *10 & 25 Visit Punch Cards*

Programming Requirements

Schedule C

1. GENERAL

The Y will provide quality aquatic, fitness and wellness programs and services at H2O 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 as set out herein are not considered as part of this Agreement and should not be provided at the Facility without the City's consent.

2. DUTY AND OBLIGATION TO OPERATE

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

- (a) Manage the Facility to accommodate the Public Purposes and Public Uses for the benefit of the City and its residents. The Y acknowledges and agrees that the continued operation of the Facility in accordance with the Public Purposes and Public Uses is of the utmost importance to the City;
- (b) Utilize reasonable efforts to maximize the use of the unique leisure waterpark features, fifty (50) metre pool through public swimming, creative participation programming, variable water flows, and water feature scheduling techniques;
- (c) Ensure that, unless prevented by applicable governmental authorities or for reasons of repair and maintenance, the Facility is, at a minimum, open and available to the public each and every day, throughout the Term. The Y may reduce hours of operation, and close to the public under special circumstances including statutory holidays by providing 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;
- (d) Collaborate with other MRP (Mission Recreation Park) facilities operators, user groups and the City regarding special events scheduled and joint promotional opportunities at the MRP site.

3. PROGRAMS AND SERVICES

Core programs and services offered at H2O shall include:

- (a) A broad range of aquatic and fitness/wellness programs, activities and services for the public;
- (b) Opportunities for skill development, leadership development and volunteer development to support operations at H2O;
- (c) An effective balance of drop-in structured/unstructured, (i.e. public swim) registered programs (i.e. courses and lessons) and facility rentals;
- (d) A health and wellness focus so as to contribute to an active, healthy community;
- (e) An equitable balance of aquatic, recreation and fitness programs and activities for all age groups, genders and abilities;
- (f) Special programs and events that encourage use of H2O and meet core objectives for the Facility (ie. Youth Night, Birthday Parties, Childminding).

4. AQUATIC SPORTS CLUB

Space allocation for Aquatic Sports Clubs is established through the City's Aquatic Facilities General Use and Allocation Policy and the Y will comply with this Policy in relation to sports club allocation at the Facility. This Policy provides the framework for lane allocation in all Kelowna aquatic facilities. While the Policy is a City document, it is developed in collaboration with the user groups as well as facility operators. Any significant changes to the Policy as it applies to the Facility and sports club use patterns will be done in collaboration with the Y and taking into consideration the impact on the Facility operating model.

5. PUBLIC ACCESS

At a minimum, access options shall include single admissions, multiple tickets, passes and facility memberships for adults, seniors, youth, children and families. The Y will offer long term facility passes which will be marketed as H2O memberships. Membership in the Y Association shall not be a requirement for the purchase of, or participation in any of the services, access to the Facility, or its programs.

6. YMCA MEMBERSHIP RECIPROCITY PROGRAM

Memberships sold at the Facility may be used at any Y in Canada with the exception of the Kelowna Family Y. Y memberships, with the exception of those of the Kelowna Family Y or any Y within the Central Okanagan, will be honoured at the Facility in accordance with YMCA Canada's membership reciprocity program.

7. JOINT FACILITY ACCESS

In an effort to recognize individual commitment to an active healthy lifestyle, the City and Y will offer joint facility access for individuals who hold a valid membership or pass at one facility to receive a discount at the other facility. Guidelines for the program are as follows:

- Participants must hold a valid membership at H2O or one year pass at Parkinson Recreation Centre
- Eligible participants will receive 25% off single admission or punch card as used by the respective facilities
- Access through this program is for the equivalent age category, examples include:
 - Adult pass (Swim or Facility) or Membership is eligible for an adult single or punch card admission at the other facility
 - Family Pass (Swim or Facility) or Membership is eligible for any type of single or punch card admission at the other facility

This is subject to annual review with changes made as mutually agreed by both parties.

8. ACCESSIBILITY PROGRAMS AND OPPORTUNITIES

(a) Financial Assistance Program

The Y will make available a Financial Assistance Program, limited to the Program's processes and terms, for those who cannot afford the full fee for membership and programs at the Facility, including those persons with disabilities. Funds raised through fundraising at the Facility will be directed to funding this program.

(b) Recreation Opportunities Coupon

The Y will honour and implement the 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 Y will continue to monitor the success and use of this initiative to ensure it is addressing program objectives as well as operational needs.

- The intent is for the redemption of coupons to not exceed 2011 levels of \$160,000
- The City and Y will review the use of coupons at H2O quarterly. Should the use patterns indicate that the current year use may exceed the 2011 level, the City and Y will collaborate on ways to manage the program within the 2011 levels.

The Y and the City will continue to collaborate on the development of initiatives that reduce barriers to participation, for example Everyone Gets to Play Network.

9. FEES

Fees for public access (admission and membership) to Facility (excluding programs and services) shall be set at the beginning of the Agreement term and may be increased annually, at

the discretion of the Y and in consultation with the City, by no more than 2% per year. Fee increases that are greater than 2% require approval by City Council. 2012 base rate fees are defined in Schedule B (the "Operating Budget Funding Requirements").

Fees for all other programs and services will be set by the Y with the exception of lane rentals for aquatic sports clubs, which shall be determined by the City's Aquatic Facilities Allocation Policy for Aquatic Sports Clubs.

All fees set will use Prudent Management Practice.

10. SCHEDULED AND UNSCHEDULED FACILITY CLOSURES

In a public safety emergency situation, the City or the Y 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.

In the event of significant Facility closures, the City and the Y will work together to try to reasonably accommodate Facility members in the other's facility (Parkinson Recreation Centre as operated by the City and H2O as operated by the Y). The nature and the extent of the accommodation will be determined on a case by case scenario.

The Y and City will collaborate regarding schedules for planned shutdown periods with the intent of ensuring both facilities are not closed during the same period.

11. COMPLIANCE WITH RULES

The Y may, acting reasonably:

- (a) expel from the Facility any person causing damage to the Facility or Facility Property, Equipment, or materially failing to comply with the rules and regulations prescribed for the Facility or Facility Property or Equipment;
- (b) require damage deposits from user groups where there is a likelihood that such groups may cause damage to the Facility or Facility Property or Equipment; and pursue and seek compensation from any individual, group or organization which causes damage to the Facility or Facility Property or Equipment.
- (c) a joint facility banning and information sharing protocol between the City, Kelowna Family Y (KFY), and H2O will be developed and administered to ensure each facility is safe and enjoyable for all.

12. FUNDRAISING

As a registered charity, the Y may undertake fundraising activities within the Facility and will direct such funds to support H2O programs, equipment and services.

13. COMPUTER SYSTEMS AND SOFTWARE

The Y will use Active Networks (CLASS) as well as other licensed software as required.

14. INTERPRETATION FOR THIS SCHEDULE C:

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

15. Y NATIONAL PROGRAMS

YM/YWCA national programs include:

- (a) YMCA Learn to Swim Programs
- (b) YMCA Swim Instructor
- (c) YMCA Swim Instructor Cross Over Course
- (d) YWCA Girl Space
- (e) YMCA Coach Approach
- (f) YMCA Weight Management Program
- (g) YMCA Building Better Bones
- (h) YMCA Healthy Hearts
- (i) YMCA Prenatal Wellness
- (j) YMCA Fitness Leadership Courses

- (k) YMCA Volunteer Program
- (l) YMCA Strong Kids
- (m) YMCA Financial Assistance
- (n) YMCA Leaders in Training
 - i. Jr. Leaders
 - ii. Youth in Action
 - iii. Jr. Volunteers

These programs may change from time to time as the Y National Programs change and evolve.

Staffing Requirements

Schedule D

GENERAL MANAGER

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

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

GENERAL

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

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

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

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

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

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

CERTIFICATION REQUIREMENTS & STANDARDS

Aquatic Staff

- All lifeguards will hold Standard First Aid and CPR-C qualification and a current National Lifeguard Service Award and Basic Life Saving – Level C Certificate.
- Lifeguards must be sixteen (16) years of age or older in order to be employed as part of the lifeguard team but may not work independently until the age of seventeen (17). Lifeguards must also hold the National Lifeguard Service Award – Waterpark Option in order to work independently.
- The Y will ensure that there are qualified staff on duty at the Facility at all times while the pools are open to the public at or above the lifeguard to swimmer ratios set out in the Lifesaving Society Facility Audit Report or the British Columbia Health Act, which may change from time to time and/or whatever the highest standard is.
- The Y will provide aquatic staff with access to an in-house Aquatics Procedures Manual that outlines operational and safety procedures relevant to the effective performance of aquatic duties at the Facility. This manual will be reviewed and updated on a regular basis.

Swim Instructors

- All swim instructors will have current Red Cross Water Safety Instructor or YMCA Swim Instructors certification.
- All instructors of programs and courses offered at the Facility will be certified by the appropriate Provincial and/or Federal certification body as applicable.

Fitness Staff

- All staff conducting fitness programs will be registered as fitness instructors by the YMCA or British Columbia Recreation and Parks Association or other relevant Canadian certification body.

Maintenance Staff (refer to Schedule F (the “Facility Maintenance”) for further definition)

EMPLOYMENT PRACTICES

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

Schedule E

1000

Cleaning Equipment

10 year Total: \$ 57,000.00

Facility Maintenance

Schedule F

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

THE Y COVENANTS

1. DUTY TO REPAIR AND MAINTAIN

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

- (a) Subject to the financial limitations and annual financial limits set out in this Agreement, assume responsibility for maintenance, repair and replacement of the Facility and components thereof, and keeping the Facility in a state of good repair, to the same extent and in the same manner as a prudent owner would, except only for reasonable wear, so that at all times throughout the Term and upon the termination of this Agreement the Facility remain a fully operating and functioning swimming pool and recreational facility;
- (b) the terms "repair" and "maintenance" and variations thereof as used in this Agreement are hereby deemed to include replacements, renewals, alterations, additions, substitutions and improvements. Ensure all repairs will be in all respects to a standard at least substantially equal in quality of material and workmanship to the original work and material in the Facility and will meet the lawful requirements of all Statutory Authorities;
- (c) except where required by emergency, notify the City of any unusual circumstances, major repairs or replacements included in the scope of First Line Repair responsibilities of the Y, which may be required to any part of the Facility;
- (d) not make any alterations or improvements to any part of the Facility without first obtaining the City's written approval, such approval which may be withheld or delayed by the City for any reason;
- (e) not do, suffer or permit to be done any work, replacements, alterations or improvements to the Facility which, in the City's opinion acting reasonably, may weaken or endanger the structure or adversely affect the condition or operation of the Facility or diminish the value thereof;

Without limiting any other provision of this Agreement, promptly upon notice by the City, make and do all repairs and maintenance which the Y is obliged to make and do pursuant to this Agreement. If the Y does not complete such work within thirty (30) days of being given said Notice or where such work within thirty (30) days of being given said Notice or where such work, because of its nature, would require more than thirty (30) days to complete has not, within fifteen (15) days of being given said Notice, commence such work and thereafter promptly, effectively and continuously proceeded with the work to completion, the City will be entitled, in addition to any other remedies available to the City, to make such repairs and maintenance at the sole cost and expense of the Y.

2. STAFFING OBLIGATIONS

Facility Operations and Maintenance Staff

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

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

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

3. JANITORIAL SERVICES

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

Responsibility for supplying the major janitorial equipment shall be as defined in Schedule E ("Furnishings & Equipment List"). Major janitorial equipment as defined in Schedule E will be covered by the Equipment Replacement and Improvement Budget.

4. SWIMMING POOL WATER SYSTEMS

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

- (a) The 52 meter pool, whirl pools, water slides, wave pool, river run, spray pool, all water spray features, Flowrider;
- (b) All water chemical treatment equipment including gas chlorine systems, ultra violet light fixtures and apparatus, water chemistry control sensors, injectors, pumps, hoppers, pipes, valves, thermometers, controllers;
- (c) All water circulation systems, water balancing and surge tanks, filtration systems, boilers heat exchangers;

The Y shall keep all maintenance records and logs at the facility which shall be made available to the City as requested as noted in section 17 of Accounting, Records and Reporting.

5. NATATORIUM EQUIPMENT AND APPARATUS

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

- (a) Written and practiced procedures for the safe operations of moving the pool bulk heads and movable floor.
- (b) Highly visible regulatory and directional signage is maintained for public safety.
- (c) All on deck equipment must be inspected and tested daily and results recorded.
- (d) Compliance with the Safety Standards Act and all regulations thereunder (EDSR) for waterslides as administered by the BC Safety Authority.

- (e) Safe and proper operation and documentation of all pools required under the *Health Act* and all regulations thereunder.
- (f) Following safety and risk management procedures in accordance with the *Workers Compensation Act* and all regulations thereunder which would include:
 - i) Establish and review written procedures for operation of all natatorium apparatus and equipment systems.
 - ii) Inspections for hazards, defects and structural deficiencies.
 - iii) Minor repairing and preventative maintenance schedules and guidelines.
 - iv) Recording and reporting of all minor and major deficiencies in natatorium.
 - v) Obtain specific expertise for areas outside the scope of the building service staff.
 - vi) Communication with City of Kelowna representatives on all issues in regularly scheduled meetings or as required.

6. FIRST LINE REPAIRS

The Y shall be responsible for all First Line Repairs as defined in the categories below and detailed in the H2O Building Responsibility Guidelines and associated Appendixes to ensure the ongoing operation, cleanliness and safety of a first class public facility. First Line Repairs for all the following shall have a cumulative annual financial limit of \$18,000 after which the City will be financially responsible for such repairs.

(a) Structural

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

(b) Plumbing

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

(c) Fire Protection

The Y shall be responsible for implementing a comprehensive emergency evacuation plan and performing fire safety inspections, monthly testing of emergency lighting, quarterly testing of the fire alarm systems equipment and annual inspections of the fire alarm and sprinkler systems by qualified personnel to ensure all such systems are in compliance with manufacturer's specifications and in accordance with all code requirements. Log books with all testing results must be kept on site as per Section 17 of Accounting, Records and Reporting.

(d) Electrical

The Y's responsibility for electrical building work shall be limited to replacement of all interior light bulbs, underwater light bulbs and ultraviolet light bulbs,

In compliance with the Canadian Electrical Code, The City is to be contacted prior to commencement of any building system electrical work that is being contemplated by the Y maintenance staff.

(e) Vandalism

The Y shall be responsible for all vandalism repairs or replacement to the interior of the facility up to the amount identified herein. The Y shall endeavour to recover interior vandalism costs via the appropriate insurance.

(f) Furniture and Equipment

The Y shall be responsible for repairs to all office furnishings and equipment, exercise equipment, lockers and all aquatic furnishing and equipment.

(g) Security

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

(h) Surplus

Any of the unused "First Line Repair" budget, not spent in a fiscal year, shall be returned to the City and placed in a "H2O Building Reserve" and will not become part of the calculation for net operating surplus as defined in the Budget and Performance section. The funds in this reserve will be expensed at the discretion of the City as follows:

- i) To fund the balance of "First Line Repair" expenses over and above the fiscal limit responsibility of the Y;
- ii) To fund capital replacement and/or repair of major building systems equipment as required.

7. REPLACE VS. REPAIR

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

THE CITY COVENANTS:

The City shall employ an adequate number of staff to meet the maintenance obligations as set out in this Agreement, and shall ensure staff assigned to the Facility are qualified to perform the work assigned. City staff assigned to maintain the Facility shall conduct on-site visits to the Facility a minimum of once per week and shall be available to respond to emergency situations within twelve (12) hours of being contacted. The City shall have financial responsibility for all the categories as defined below and detailed in the H2O Building System Responsibility Guidelines and associated appendixes.

8. STRUCTURAL

The City shall be responsible for all major building infrastructure and foundation structures, exterior windows/doors, facades, lighting and parking lots.

9. ROOFING

The City will have full responsibility for the roofing system.

10. HVAC

The City shall be responsible for all heating, ventilation and air conditioning system (HVAC) and major repair and replacement. With input from Y Maintenance staff on desired heating and cooling temperatures, the City will maintain the DDC controls and system calibration and balancing.

11. ELECTRICAL

The City shall be responsible for the maintenance, repair and inspection of the electrical services and will provide the electrical operating permit(s) and a Field Safety Representative(s) for the Facility. The City shall supply all the light bulbs to the Y as per the First Line Maintenance responsibilities.

12. FACILITY EXTERIOR

The City shall have responsibility to maintain all exterior lighting, window cleaning/replacement, parking lot maintenance, painting, drainage, snow and ice control outside of Facility Perimeter area and related landscaping.

13. VANDALISM

The City shall be responsible for all repair or replacement, due to acts of vandalism or graffiti to the exterior of the Facility.

16. ELEVATOR

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

17. LONG TERM AND MAJOR CAPITAL REPAIRS AND REPLACEMENT

In consultation with the Y, the City will establish and maintain a plan that includes a program, schedule and budget for the long-term maintenance, replacement and protection of the Facility's architecture, foundation, structure, and mechanical, plumbing, HVAC, and electrical operating systems. Long term maintenance scheduling

and budgeting will be based on ensuring the Facility's operational viability, energy management, and structural integrity.

18. UTILITIES

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

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

19. WATER CHEMICALS FOR SWIMMING POOL WATER

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

H2O BUILDING RESPONSIBILITY GUIDELINES

	Provided by the Y	Provided by the City
Janitorial Services, Supplies, Equipment	X	
Window Cleaning Interior	X	
Window Cleaning Exterior		X
Maintenance of Landscaping		X
Tree removal		X
Snow Removal		X
Garbage/Recycling Removal	X	
Electricity		X
Natural gas		X
Water, Sewer		X
Telephone	X	
Internet	X	
Insurance - Operations Liability	X	
Insurance - Property, Building		X
Content Insurance - Facility Furnishings & Fixtures, Computers		X
Insurance - WCB	X	
Pool operating permits/affiliate fees	X	
Communications license	X	
Y Signage	X	
City Signage		X
Maintain & Replace Furnishings	X	

	Provided by the Y	Provided by the City
Elevator maintenance contract		X
Elevator equipment repairs		X
Fire safety plan and fire drills	X	
Fire alarm system testing & inspection contracts	X	
Fire alarm system repairs	X	
Fire sprinkler system testing and inspection contracts	X	
Fire sprinkler system repairs	X	
Emergency lighting testing & repairs	X	
Fire extinguisher monthly & annual inspections	X	
HVAC preventative maintenance (see appendix "A")		X
HVAC repairs		X
Pool Mechanical preventative maintenance (see appendix "B")	X	
Pool Mechanical repairs	X	
Electrical system preventative maintenance (see appendix "C")		X
Electrical system repairs		X
Plumbing system preventative maintenance (see appendix "D")	X	
Plumbing system repairs	X	
Boiler operating permits		X
Elevator operating permits		X
Waterslide operating permits		X
Electrical operating permit		X
Roof inspection & maintenance (see appendix "E")		X
Roof repairs		X
Interior vandalism	X	
Exterior vandalism		X
Interior walls, flooring, doors, ceilings, lighting, plumbing fixtures etc.	X	
Exterior doors, windows, facades, utilities, parking lots, lighting etc.		X
Parking Lots - Lighting, parking lines, sweeping, asphalt, signage, drainage etc.		X
Pest control	X	
Building structural systems		X
Specialty equipment (see appendix "G")	X	X

APPENDIX A **HVAC**

<u>Equipment Description</u>	<u>Location</u>	<u>Brand</u>	<u>M/N</u>	<u>S/N</u>	<u>Age</u>
DDC	PENT MECH	Automated Logic			2008
AHU-1	PENT MECH	TRANE	TCCA0911DBOAOBLTVVM	K08B13095	2008
AHU-2	PENT MECH	TRANE	TCCA0911DBOAOBLTVVM	K08B13096	2008
AHU-3	PENT MECH	TRANE	MCCB030UAOCOUB	K08B19243	2008
AHU-4	PENT MECH	TRANE	MCCB030UAOCOUA	K08B19248	2008
AHU-5	BASE MECH	TRANE	B025VAODOUB	K08B19235	2008
RF-4	BASE MECH	GREENHECK	BSO-360-50	11302862-0804	2008
AHU-6	PENT MECH	TRANE	TCCA1001DBOABLTVVM	K08B13097	2008
AHU-7	PENT MECH	TRANE	TCCA0631DBOABLTVVM	K08B13098	2008
SF-1	ROOF	TRANE	TCCA0510DBOAOBMD	K08B13106	2008
RF-1	ROOF	TRANE	TCCA0510DBOAOBMD	K08B13117	2008
SF-2	ROOF	TRANE	TCCA0510DBOAOBMD	K08B13107	2008
RF-2	ROOF	BKM	TCCA0510DBOAOBMD	K02313118	2008
HRU-1	ROOF	BKM			2008

HRU-2	ROOF	BKM			2008
FCU-1	CLASSROM	TRANE	BCHC024B1BOA	T08B09839	2008
FCU-2	ELECT. RM	TRANE	BCHC036B1BOA	T08B09840	2008
RTU-1	AEROBICS	TRANE	YSC120EWEHA	811100182L	2008
RTU-2	NORTH FITNESS	TRANE	YCD150EWHAAA	811100481D	2008
RTU-2 EF	Built into RTU				2009
RTU-3	SOUTH FITNESS	TRANE	YCD150EWHAAA	811100455D	2008
RTU-3 EF	Built into RTU				2009
RTU-4	CHILD MINDING	TRANE	YSC036EWEHAKDOB	81110019L	2008
RTU-5	MEETING RM	TRANE	YSC036EWEHAKDOB	81110023L	2008
RTU-6	ADMIN / LOBBY	TRANE	TCH300EWOAAA	808101551D	2008
RTU-7	EAST FITNESS	TRANE	YSC092EWEHAODD	811100190L	2008
RTU-8	MECH RM	TRANE	TSC060EWE0A02VH	811100151L	2008
SF-3	PENT MECH	CANADA BLOWER	VX FAN 24 AF	C7-8807	2008
RF-3	PENT MECH	CANADA BLOWER	VX FAN 27 AF	C7-8807	2008
HRU-3	PENT MECH	BKM			2008
EF-1	CHLORINE RM	GREENHECK	BSQ-120		2008
EF-7	ELEV. ROOF	GREENHECK	GB-101-4	11291903 0804	2008
EF-6	POOL STORAGE				
EF-8	ELEV. RM				2008
TF-1	BASE MECH	GREENHECK	BSQ-100-4	11290960-0804	2008
TF-2	BASE MECH	GREENHECK	BSQ-300HP-30	11290961-0804	2008
TF-3	BASE MECH	GREENHECK	SEI-12		2008

TF-4	BASE MECH	GREENHECK	SE1-12-432-44	11290897-0804	2008
BKM-COMP	PENT MECH	SPEED AIR	DP5612	L 6/11/08-00025	2008
WAVE-COMP	BASE MECH	QUINCY	QTS5VT0007	20080521-0068	2008
FLOOR-COMP	BASE MECH	SWAN	SWV415	8190163	2008
TK-14	EXP. TANK	ARMSTRONG	AST-180	372006-307	
TK-15	EXP. TANK	ARMSTRONG	A600-L	317946	
TK-16	EXP. TANK	ARMSTRONG	A300-L	317954	
HP-1	PENT HOUSE	MULTISTACK	MS50Z6C2H-V	J4-04-26	2008
P-1	BOILER RM	ARMSTRONG	4030 5X4X10	593840	2008
P-2	BOILER RM	ARMSTRONG	4030 5X4X10	593841	2008
P-3	BOILER RM	ARMSTRONG	4030 5X5X8	586816	2008
P-4	BOILER RM	ARMSTRONG	4380 5X5X8	586817	2008
P-5	BOILER RM	ARMSTRONG	4380 4X4X6	586630	2008
P-13	PENT MECH	ARMSTRONG	4380 4X4X6	586891	2008
P-14	PENT MECH	ARMSTRONG	4380 4X4X6	586892	2008
P-15	PENT MECH	ARMSTRONG	4360 2D	593712	2008
P-16	PENT MECH	ARMSTRONG	4360 2D	586719	2008
P-17	BASE MECH	ARMSTRONG	4360 2D	593714	2008
P-21	PENT MECH	BELL & GOSSETT	PL36		2008
P-22	POOL DECK	ARMSTRONG	ASTRO 70		2008
P-25	PENT MECH	ARMSTRONG	4360 3D	587019	2008
P-26	PENT MECH	ARMSTRONG	4360 3D	587020	2008
P-28	BASE MECH	ARMSTRONG	4360 2D	SCP208 13704	2008
P-32	PENT MECH	ARMSTRONG	4380 3X3X8	594717	2008
P-35	PENT MECH	ARMSTRONG	4380 4X4X6		2008

P-39	BASE MECH	ARMSTRONG	4380 2X2X8		2008
P-40	PENT MECH	AXIOM	SF100	08-6139-SF	2008
P-42	PENT MECH	BELL & GOSSETT	NBF18S		2008
B-1	BOILER RM	CAMUS	DFNH-4524-MHI	20806389	2008
B-2	BOILER RM	CAMUS	DFNH-4524-MHI	20806388	2008
B-3	BOILER RM	CAMUS	DFXNH-4001-MHI	20806390	2008
DHWT-1		BRADFORD WHITE	D80T5053NA	ED10509099	
DHWT-2		BRADFORD WHITE	D80T5053NA	ED10509100	
DHWT-3		BRADFORD WHITE	D80T5053NA	ED10509197	
DHWT-4		BRADFORD WHITE	D80T5053NA	ED10509098	
DHWT-5		BRADFORD WHITE	D80T5053NA	ED10509096	
CU-1	ROOF	TRANE	TTA090AW00FA	8405T06AD	2008
CU-2	ROOF	TRANE	4TTA3048A3000AA	80946CK2F	2008
CU-3	ROOF	TRANE	4TTA3048A3000AA	807451B2F	2008
CU-4	ROOF	TRANE	4TTB3024A1000AA	64145G31F	2008
CU-5	OUTSIDE GL	TRANE	DB20442-2.0-IP	50190580-000	2008
DUCT-SLPIT	ROOF ELECT. RM	MR. SLIM	PUYA24NHA2	84V00299C	2008
SP-2	BASE MECH	NORTHWEST TECH CON	DCP5751V0	13614-1	
SP-5	BASE MECH	NORTHWEST TECH CON	DCP5751V0	13614-2	
SP-28	BASE MECH	NORTHWEST TECH CON	SCP208	13704	
AHU-1, FREQ	PENT MECH	TRANE	TR16062GT6CN1STRODLFOOAOOCD	001419H268	2008
AHU-2, FREQ	PENT MECH	TRANE	TR16062GT6CN1STRODLFOOAOOCD	001519H268	2008

AHU-6, FREQ	PENT MECH	TRANE	TR16042GT6CN1STRODLFOOAOOCD	007719H278	2008
AHU-7, FREQ	PENT MECH	TRANE	TR16022GT6CN1STRODLFOOAOOCD	009119H268	2008
HRU-1, SF	PENT MECH	TRANE	TR16022GT6CN1STRODLFOOAOOCD	009019H268	2008
HRU-1, RF	PENT MECH	TRANE	TR16022GT6CN1STRODLFOOAOOCD	008819H268	2008
HRU-2, SF	PENT MECH	TRANE	TR16022GT6CN1STRODLFOOAOOCD	008919H268	2008
HRU-2, RF	PENT MECH	TRANE	TR16022GT6CN1STRODLFOOAOOCD	008619H268	2008
CL-GAS	CHLORINE RM	HW ANALYTICS	VA30102CL2-CO	WOCFA00030	2008
Comments					
Emergency contacts					
Contractor					

APPENDIX B

POOL MECHANICAL

Equipment Description	Location	Brand	M/N	S/N	Age
PP-1B	50M FILTER	ARMSTRONG	6 X 5X 10 4030	594897	2008
PP-1C	50M FILTER	ARMSTRONG	6X5X10 4030	594896	2008
WS-1	WATERSLIDE	ARMSTRONG	8X6X10 4030	594899	2008
WS-2	WATERSLIDE	ARMSTRONG	6X4X8 4030	594159	2008
WS-3	WATERSLIDE	ARMSTRONG	6X5X10 4030	593838	2008
PP-1A	VACUUM PUMP50M	WHISPER-FLO	WFK-8	12/31/2007	2008
PP-16	WAVE PL FILTER	ARMSTRONG	6X4X10 4030	594898	2008
PP-9A	WAVE PL FILTER	ARMSTRONG	6 X5X 11.5 4030	599514	2008
PP-2	FAM HT FILTER	ARMSTRONG	6X4X10 4030	593836	2008
PP-3	FAM HT JET	ARMSTRONG	6X4X10 4030	594880	2008
PP-4A	ADULT HT FILTER	ARMSTRONG	3X2X10 4030	599256	2008
PP-4B	ADULT HT JET	ARMSTRONG	4X3X10 4030	593711	2008
PP-6	WAT PARK FILTER	ARMSTRONG	3X2.5X10 4030	593798	2008
PP-5B	FLOW-R FILTER	ARMSTRONG	4X3X10 4030	593845	2008
PP-14	SPRAY PARK FILTER	PANTAIR/MARATHON	347967	3232480700011	2008
PP-15G	SPRAY PARK TOYS	PANTAIR/MARATHON	347933	0323C26080005Y	2008
PP-11A	RAPID RIVER	ARMSTRONG	12X12X17 43TC	597879	2008
PP-11B	RAPID RIVER	ARMSTRONG	10X8X15 4030	596911	2008
PP-12	RR VORTEX	ARMSTRONG	6X4X8 4030	594958	2008
PP-18	3 GUYZER JETS	ARMSTRONG	3X2X8 4280	595904	2008
PP-17	RR CANON WATER	ARMSTRONG	4270-02	719043	2008
PP-9B	CURTAIN	ARMSTRONG	6X5X10 4030	593839	2008
PP-9C	6 ORANGES	ARMSTRONG	3X2X8 4280	595906	2008

PP-9D	STREAM JET	ARMSTRONG	3X2.5X8 4280	600009	2008
PP-9E	ORANGE SKIRTS 4 ORANGE SKIRTS	ARMSTRONG	3X1.5X8 4280	595903	2008
PP-9F		ARMSTRONG	4270-02	719045	2008
PP-6A	AQUAPLAY	ARMSTRONG	4X3X10 4030	593710	2008
PP-6D	UMBRELLA JETS	ARMSTRONG	6X4X8 4030	593799	2008
PP-6C	ORANGE SKIRTS	ARMSTRONG	3X1.5X8 4280	595902	2008
PP-6B	MINE CANONS	ARMSTRONG	4270-00	710045	2008
PP-39		ARMSTRONG	2X2X8 4380	586954	2008
STEAM GEN	MENS WR	RELAX A MIST	SG-36		
WAVE FAN	WAVE RM	HAUCK	TBA24-60-T-3	B080275	
CHLORINE	50M	J-CLASS	JRM07C1-C	91110882	
SODA ASH		PULSATRON	LEH6SAVHC3XXX	3251	
CHLORINE	WAVE	J-CLASS	JRM07C1-C	91110882	
SODA ASH		PULSATRON	LEH6SAVHC3XXX	3251	
CHLORINE	ADULT HOT TUB	J-CLASS	JRM07C1-C	91110882	
SODA ASH		PULSATRON	LEH6SAVHC3XXX	3248	
CHLORINE	FAMILY HOT TUB	J-CLASS	JRM07C1-C	91110882	
SODA ASH		PULSATRON	LEH6SAVHC3XXX	3250	
CHLORINE	SPRAY PARK	J-CLASS	JRM1C1-C	91110890	
SODA ASH		PULSATRON	LEH6SAVHC3XXX	3253	
CHLORINE	FLOW RIDER	J-CLASS	JRM1C1-C	91110890	
SODA ASH		PULSATRON	LEH6SAVHC3XXX	3249	
SODA ASH PUMP		VISSER SALES	CG-1	1409-12-05	
POOL FILTER	50M	ASTRA POOL	6633	07C00 3751	
				07C00 3801	

					07C00 3789	
					07C00 3803	
					07C00 3791	
					07C00 3790	
POOL FILTER	WAVE	ASTRA POOL	6634		07C00 3792	
					07C00 3737	
POOL FILTER	ADULT HOT TUB FAMILY HOT TUB	ASTRA POOL	6684		07C00 3788	
POOL FILTER		ASTRA POOL	6634		07C00 3738	
POOL FILTER	SPRAY PARK	ASTRA POOL	6681		07C00 3783	
					07C00 3775	
POOL FILTER	FLOW RIDER	ASTRA POOL	6680		07C00 3798	
POOL FILTER	WATER PARK	ASTRA POOL	6684		07C00 3784	
POOL FILTER	RAPID RIVER	ASTRA POOL	6633		07C00 3804	
					07C00 3802	
UV LIGHT	50M	TROJAN UV LOGIC	08AS20			
UV LIGHT	WAVE	TROJAN UV LOGIC	08AS20			
UV LIGHT	ADULT HOT TUB FAMILY HOT TUB	TROJAN UV LOGIC	08AS20			
UV LIGHT		TROJAN UV LOGIC	08AS20			
UV LIGHT	SPRAY PARK	TROJAN UV LOGIC	08AS20			
UV LIGHT	FLOW RIDER	TROJAN UV LOGIC	08AS20		TKO 8/03 005	
UV LIGHT	POOL TOYS	TROJAN UV LOGIC	08AS20		TKO 8/03 009	
Chemical Pumps	50M	STRANTROL				
Chemical Pumps	WAVE	STRANTROL				
Chemical Pumps	ADULT HOT TUB FAMILY HOT TUB	STRANTROL				
Chemical Pumps		STRANTROL				
Chemical Pumps	SPRAY PARK	STRANTROL				
Chemical Pumps	FLOW RIDER	STRANTROL				

Chemical Pumps	POOL TOYS	STRANTROL		
POOL LEVEL	50M	GREYLINE	LIT25	
POOL LEVEL	WAVE	GREYLINE	LIT25	
POOL LEVEL	ADULT HOT TUB FAMILY HOT TUB	GREYLINE	LIT25	
POOL LEVEL		GREYLINE	LIT25	
POOL LEVEL	SPRAY PARK	GREYLINE	LIT25	
POOL LEVEL	FLOW RIDER	GREYLINE	LIT25	
POOL LEVEL	POOL TOYS	GREYLINE	LIT25	
Comments				
Emergency contacts				
Contractor				

APPENDIX C ELECTRICAL

Equipment Description	Location	Brand	Model #	Age
Movable floor control panel	Basement			2008
Movable floor water depth control panels	Natorium			2008
Pool water quality control panels	Basement			2008
Emergency stop buttons	Natorium			2008
Pump vacuum limit switches	Basement			2008
Stray current collectors	Basement			2008
Flowrider control panel	Basement			2008
Water Toy control panel	Natorium			2008
Chlorine alarm system	Natorium			2008
Electrical MMC's	Basement/Penthouse			2008
UV Lamps/Accessories	Basement			2008
Transformers	Exterior			2008
Lamps	Interior/Exterior			2008
Lamp fixtures & ballasts	Interior/Exterior			2008
Lighting controls	Exterior			2008
Flowrider motor	Flowrider			2008
Sound system	interior			2008
50M Main timing clock	Natorium			2008
Signage	Exterior			2008
Signage	Interior			2008
Access control system	Interior/exterior			2008
CCTV	Interior/exterior			2008
Wall plugs	Interior			2008
Comments:				
Emergency Contacts:				
Contractor:				

**APPENDIX D
PLUMBING**

Equipment Description	Location	Brand	Model #	Serial #	Age	
Washroom fixtures	Interior				2008	Y
Backflows	Interior				2008	Y

**APPENDIX E
ROOFS**

Roof Section	Location	Type	Age
West section	Exterior	2 ply torch-on	2008
Mid-section	Exterior	2 ply torch-on	2008
East section	Exterior	2 ply torch-on	2008
Roof Drains	Exterior		2008

SPECIALTY EQUIPMENT (EQ)

Equipment Description	Location	Brand	Model #	Serial #	Age	Y	City
Door hardware	Interior				2008	X	
Door hardware	Exterior				2008		X
Visitor turnstiles	Front lobby				2009	X	
Exercise equipment	Interior				2008	X	
Flooring	Interior				2008	X	
Diving boards	Natatorium				2008	X	
Movable bulkheads	50M pool				2008	X	
Movable floor	50M pool				2008	X	
Stainless steel	Natatorium				2008	X	
Pool play structures	Natatorium				2008	X	
Water slides	Natatorium				2008	X	
Jugo Juice lease	Front lobby				2008		X
Utilities	Building						X
Chemicals	Pools						X
Millwork/furniture systems	Interior				2008	X	
Washroom partitions/millwork	Washrooms				2008	X	
Lockers	Interior/washrooms				2008	X	
Kitchen equipment	Lunch room				2008	X	
Washer/dryer	Basement				2008	X	
Comments:							
Emergency Contacts:							
Contractor:							

Certificate of Insurance

Schedule G

This Certificate is issued to: Central Okanagan Y and to City

Insured

Name:

Address:

Broker

Name:

Address:

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

<u>Type of Insurance</u>	Company & Policy Number	Policy Dates		<u>Limits _____ of Liability/Amounts</u>
		<u>Effective</u>	<u>Expiry</u>	
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				Bodily Injury and

Automobile Liability				Property Damage <u>\$2,000,000</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 Y and shall be the sole responsibility of the Insured named above.**
2. **The Y and City are named as an Additional Insured.**
3. **30 days prior written notice of negative material change and/or cancellation will be given to the Y and City.**

Print Name

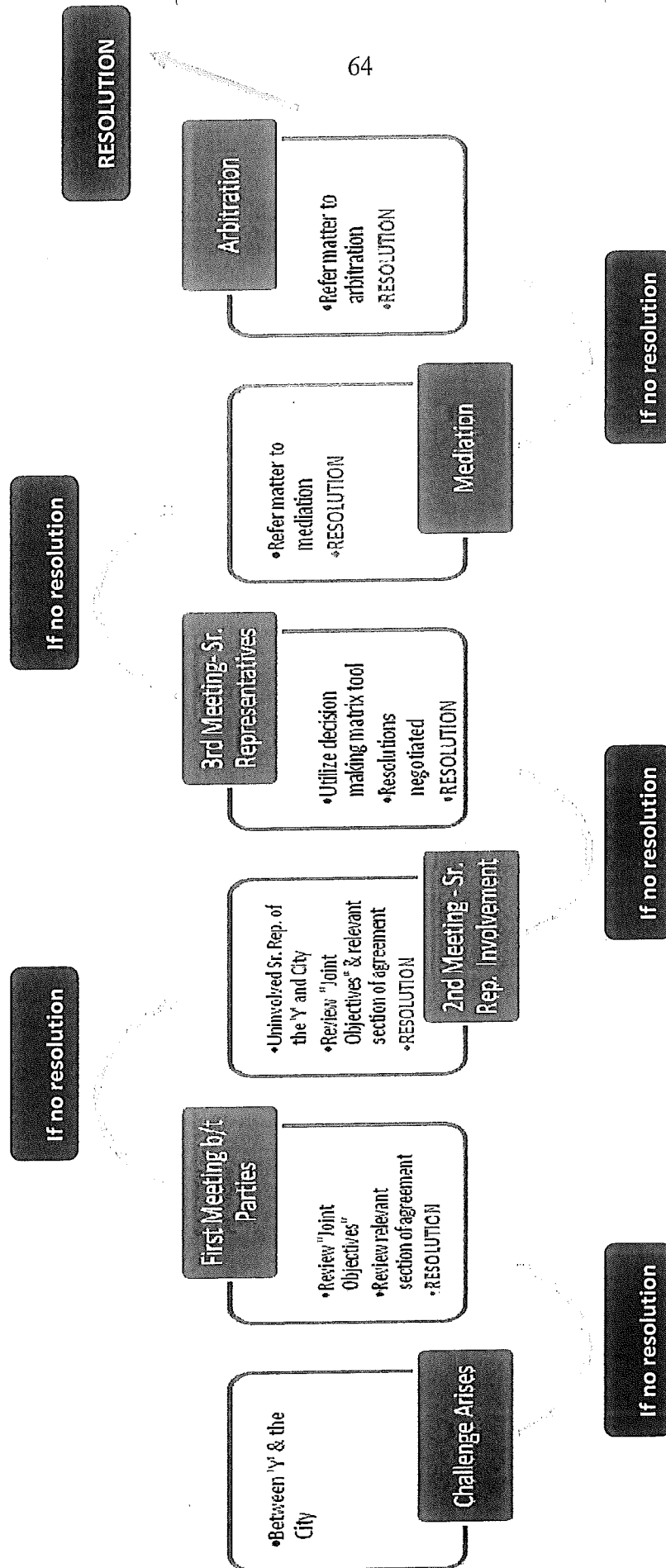
Authorized Signatory

Date

Dispute Resolution

Schedule H

It is the intention of both parties to seek mutually satisfactory resolution to any dispute which may arise during the Term. The City and the Y will follow the Dispute Process Model for resolution management.



(* to be used as an "indicator" and not to replace judgement)

	Friction Point (topic)			Description	Description	Comments/Justifications (The 'Y')	Comments/Justifications (The City of Kelowna)
	Joint Objectives	Weighting	Rating (1-20)		Rating (1-20)		
1	Delivery of quality recreation opportunities with a focus on health and wellness						
2	Meeting the needs and expectations of the public						
3	Maintaining an acceptable level of accessibility						
4	Ensure the long-term operational viability of the Facility						
5	Maintaining a modern, high quality, well-maintained recreation facility						
6	Maximize usage of the facility by both residents and visitors						
7	Maximize overall operational financial performance						
TOTAL:							

Sample Quality Management System

Schedule I

OBJECTIVE

To ensure that customer expectations are met and exceeded and that service is delivered by well-informed staff who ensure each customer is dealt with in a professional manner. To ensure customers are listened to and staff deliver high quality and consistent customer service.

QUALITY MANAGEMENT SYSTEM

The Y uses a best practices approach to ensure all programs and services are delivered at the high standard the Y is renowned for. A comprehensive customer service program exists that outlines in detail service standards related to customer expectations for recreation facilities in the following areas:

- Convenience
- Cleanliness and Maintenance
- Safety
- Friendly and Welcoming
- Positive Customer Relationships
- Opportunities to learn and develop
- Engaged and knowledgeable staff

EVALUATION AND REPORTS

Several evaluation methods are used to ensure that resources are directed at achieving customer service objectives and ensuring continual improvement in achieving high customer service scores including:

- Member Survey – annual on-line survey conducted by YMCA Canada; results collated by YMCA Canada and compared to previous years and other YMCA facilities
- Secret Shopper – phone and visit; conducted by SQM for YMCA Canada; random with reports provided for each test and year-to-date; compared to other YMCA facilities
- Special Focus Surveys – on line or paper, conducted periodically as often as we request; topics include new member experience, conditioning room survey, fitness class survey, children's program survey, youth engagement, exit survey – results collected and collated by YMCA Canada
- Program Evaluations – swimming lessons, fitness leadership, registered programs; conducted periodically – results collected and collated internally
- Customer Satisfaction Surveys – by phone, in person or on-line to gain targeted input from customers on specific issues
- Suggestion/Comment box – located in lobby; collected daily; responses to common customer feedback and requests are posted on the reader board in the lobby; customers requesting follow-up are contacted within 24 hours.

COMPLAINT PROTOCOL

The Y's aim is ultimately to eliminate complaints through excellent customer service, high quality programs and services, clean and well-maintained equipment and facility, informed staff, and opportunities for customer feedback. In spite of systems and processes to ensure an excellent customer experience, it is inevitable that some customer's expectations may not be met.

Complaints can be received via email, phone, in person, on-line or in writing. Contact is made with the customer within 24 hours of receiving the complaint. When necessary, investigations into the complaint may take a few days after which follow-up contact is made with the customer.

Complaints received by the City of Kelowna regarding H2O are referred to the Y General Manager who follows-up directly with the customer and reports the outcome of the investigation and resolution to the city. No complaints are referred by the Y to the City.

Brand & Visual Identity Guidelines

Schedule J

The H2O Adventure & Fitness Centre Brand & Visual Identity Guidelines provides support and interpretation for the Marketing and Branding section of the H2O agreement between the City of Kelowna and the YMCA-YWCA of the Central Okanagan.