



Report to: General Committee

Date Report Authored: April 15, 2013

SUBJECT: Transition of Thornlea Pool and Gymnasium Operation to the City of Markham
PREPARED BY: Colin Service, Manager, Planning & Standards
Janice Carroll, Community Manager, West

RECOMMENDATION:

- 1) That the report "Transition of Thornlea Pool and Gymnasium Operation to the City of Markham" be received; and
- 2) That the City of Markham enter into a new agreement with York Region District School Board (YRDSB) based on the principles outlined in this report effective July 1, 2013 to change roles of both parties related to the operation of the Thornlea Pool and Gymnasium; and
- 3) That a net additional \$50,000 be added to the 2014 Operating budget for the Thornlea Pool and Gymnasium operation, bringing the total additional budget for operation and programming to \$100,000 per year (\$50,000 included in 2013 operating budget) for an additional 1,800 hours of community access, bringing the total 2014 Operating budget to \$490,715; and
- 4) Staff will report back on the operational model including staffing for the Thornlea Pool and Gymnasium; and
- 5) That the City agrees to receive from the YRDSB a one-time fee of \$150,000, paid upon commencement of the new agreement, in recognition of the financial situation Markham inherits by assuming capital repair and replacements of the facility; and
- 6) That the Mayor and City Clerk be authorized to sign a new Agreement with the York Region District School Board – Thornlea Pool and Gymnasium subject to the satisfaction of the Chief Administrative Officer, the City Solicitor and the Commissioner of Community and Fire Services;
- 7) And that Staff be authorized and directed to do all things necessary to give effect to this resolution.

EXECUTIVE SUMMARY:

- In 1971 an agreement was signed with the YRDSB and City of Markham for shared use of a swimming pool and gymnasium constructed behind Thornlea Secondary School.
- As part of the agreement, the land in which the facility is located was sold to the City of Markham for \$1.00 and that Markham paid 100% of construction costs associated with building the facility. Markham is the owner of the building.

- The operating model has been in place over the past 40 years and consists of the YRDSB operating the pool and gym, charging Markham for 65% of their total costs (both operating and capital) Markham pays direct programming costs – lifeguards and program costs. This was originally based on the percentage of time utilized.
- YRDSB currently operates no other pools in York Region. As such, they had made a request in 2009 that the City of Markham takes over maintenance operation of the facility. YRDSB had indicated that operating only one pool presents significant challenges in staffing and training and provides a variety of labour relations issues. Further the Provincial Education funding formula does not provide for the operation of the pool.
- The final deal negotiated between the two parties includes Markham assuming 100% of the all of the costs both operating and capital, the YDRSB permitting use of the facility as required, and contributing a onetime capital contribution of \$150,000 for capital improvements which represents 35 % of the total capital lifecycle expected over the next 5 years.
- This increases community access Monday to Friday from 9 am – 4 pm which comprises an additional 1,800 hours annually.
- New costs to Markham are appropriately a net amount of \$100,000 annually. The 2013 Operating Budget already includes \$50,000 for operation for the last half of 2013. Moving forward from 2014 onward, an additional \$50,000 will need to be added to the Operating Budget. The additional costs are for the former share (35%) that was covered by the YRDSB for maintenance. The City's operating model will actually be at a lower cost per hour through our efficiencies in use of resources from Thornhill Community Centre for maintenance and at the same time offer increased access for the community – increasing aquatic services to the Thornhill community.
- By assuming maintenance operations from YRDSB, there is also opportunity to vary the hours of operation, consider day time programming alternatives, including implementation of the Swim to Survive Program in that area, and generally **improve the overall level of service offered to the community.**
- **The Thornhill Community has never had daytime access to a lane pool.** There are a variety of residents seeking lane swims, aqua fitness and daytime programming, including Swim to Survive that can now be accommodated.
- Additionally, assuming full maintenance responsibility will enable the City to perform of variety of facility enhancements that will better serve the community, including installation of solar panels (which the installation are time sensitive), UV filtration (improve air quality and reduce effects of chlorine effects) Mary need to explain what benefits UV provide and fibre optic cables to improve telecommunications.
- The time sensitive need to finalize the placement of the solar panels and meet the YDSB timelines for the transfer to the City of the operations has required this report to be brought forward to Council at this time.

PURPOSE:

The purpose of this report is to provide background on the new agreement for the operation of Thornlea Pool and Gymnasium and to seek approval to transfer maintenance operation from York Region District School Board (YRDSB) to the City of Markham based on a request from YRDSB and receive 1,800 additional community hours of access.

BACKGROUND:

In 1971 an agreement was signed with the YRDSB and the Town of Markham for shared use of a swimming pool and gymnasium constructed behind Thornlea Secondary School. As part of the agreement, the land in which the facility is located was sold to the Town of Markham for \$1.00. Further to the agreement, the Town of Markham paid 100% of construction costs associated with building the facility and has always remained the legal owner of the building.

In 2009 a report was brought forward to General Committee advising that the YRDSB was interested in changing the operating agreement and no longer wanted to continue its' existing role. At that time staff was directed to continue negotiations with YRDSB and Council was supportive of achieving additional community access. Active negotiations did not occur until 2012 and were finalized in April 2013. In 2012, Council approved during the Budget process additional resources in anticipation of the part year transfer of the Thornlea Pool and Gymnasium in 2012. The full year impact of the transfer of operations was to be accounted for once the transfer was approved and will be requested in the 2014 budget.

Current Operating Agreement

The 1971 agreement comprised operational practices as highlighted below:

- YRDSB has full responsibility for ongoing maintenance, cleaning and chemical monitoring of the facility;
- YRDSB has access to the pool during the school year, Monday to Friday from 9:00 am to 5:30 pm;
- Markham has access to the pool during the school year, Monday to Friday from 6:00 pm to 11:00 pm, Saturday from 8:30 am to 11:00 pm, Sunday from 10:00 am to 5:00 pm;
- Markham has access to the pool during school break periods (Christmas, March Break, Summer) Monday to Saturday from 8:30 am to 11:00 pm, Sunday from 10:00 am to 5:00 pm;
- Markham pays YRDSB 65% of all costs associated with maintenance and care of facility as Markham utilizes 65% of operating hours;
- Markham pays YRDSB 65% of all capital costs (as determined by YRDSB) associated with facility as Markham utilizes 65% of operating hours;
- The gymnasium has been permitted solely by YRDSB and they collected all associated revenues with the City of Markham have no access.

Over the years since the agreement was signed there were a series of small changes to hours of operation including earlier use by the City of Markham in the evening and use of the facility in the morning prior to 9:00 am. These changes to the agreement were never formalized. The City of Markham continues to pay 65% of all costs despite making use of closer to 70% of operating hours.

YRDSB currently operates no other pools in York Region. As such, they have requested that the City of Markham take responsibility for maintenance of a City building since they have no interest in continuing their current role. They are appreciative of the 40 years of positive relationships but have no mandate to continue its current role. . YRDSB have indicated that operating only one pool presents significant challenges in staffing and training and provides a variety of labour relations issues. Additionally, the facility was paid for entirely by the City and resides on City owned land. A review of the Agreement conducted by Legal Staff has confirmed that YRDSB is within its rights to end the current agreement.

Currently YRDSB performs all maintenance of the facility and then bills the City of Markham. This does put the City of Markham in a position of some risk as it has no control over how the facility is maintained but then must contribute 65% of said costs.

OPTIONS/ DISCUSSION:

Agreement Terms and Principles:

During a series of discussions with YRDSB, a draft agreement has been developed incorporating the following terms and principles:

- City of Markham will assume all responsibility for facility maintenance at end of day on June 30th, 2013 (Conditional upon Council and Board approval);
- Markham will determine hours of operation including hours of opening and closing during all periods throughout the year;
- Markham will program and permit use of the Thornlea Pool & Gymnasium Building. All expenses and revenues associated with permitting and programming of the pool and gymnasium facilities will be the responsibility of Markham;
- YRDSB will be given opportunity through the permitting process to make use of Thornlea Pool and Gymnasium facilities. The YRDSB will be responsible to pay permit fees in accordance with Markham Fees Bylaw when permitting the facility;
- Markham will be responsible for establishing permit fees;
- Markham will be responsible for all of its own waste management;
- Markham will ensure the Building is properly secured;
- Markham will be responsible entirely for caretaking of the Building;
- YRDSB will own and maintain all parking areas and functional lighting systems for parking areas, including the 20% designated for the facility (41 out of 205 total spots will be designated for the facility);

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- YRDSB will ensure all winter maintenance including snow removal is completed for all parking and drive way areas ;
 - Markham will pay 20% of the costs associated with parking lot maintenance and winter maintenance;
 - Where possible, all utilities that can be separately metered will be done. YRDSB will be responsible to pay utilities and bill back Markham for consumption as indicated by separate metres unless separate metering allows for bills to be sent directly to the Town of Markham;
 - For utility services that cannot be separately metered, Markham and YRDSB will come up with a mutually agreeable percentage of consumption by the Building. YRDSB will then pay the utilities and bill back Markham for consumption as per the agreed upon percentage;
 - YRDSB agrees to ensure that City of Markham and patrons are granted full vehicle access to the building.

Benefit to the Community – 1,800 Additional Hours

The Thornhill Community has never had daytime access to a lane pool. By assuming full operations from YRDSB, the community will receive an additional 1,800 hours of access in various program configurations based on community needs. Some of the benefits to the community include the following:

- Day time programming alternatives, including implementation of the Swim to Survive Program in that area,;
- Daytime lane swimming;
- Aqua fitness;
- Daytime learn to swim for Parent & Tots and Pre School.

Additionally based on the City's expertise in maintenance of aquatic facilities and the synergies with the Thornhill Community Centre the City's operating costs on a per hour of operation is lower than the YRDSB.

Assuming full maintenance responsibility will enable the City to perform a variety of facility enhancements that will better serve the community, including installation of solar panels, UV filtration (improve the pool environment for users – reduces chlorine odors) and fibre optic cables to improve telecommunications access for computers to enhance operating requirements of reporting.

FINANCIAL CONSIDERATIONS**Operating Expenses**

The City currently pays 65% of the maintenance expenses as determined by YRDSB. This includes utilities, ongoing maintenance, pool chemicals, and the equivalent of YRDSB caretaking staff members.

In addition to these expenses, the City also pays 100% of expenses associated with programming during City use times. This includes management staff, part time program staff, equipment and supplies.

The following chart outlines the 2013 Operating Budget and identifies the annualized 2014 operating budget when the City takes over full programming and maintenance operations of Thornlea Pool and Gymnasium.

Description	Detailed	Current 2013 Budget	Proposed 2014 Budget Markham responsible for full operation	Increase/ (Decrease)
Wages & Benefits	Total Personnel Expenses	\$437,495.00	\$589,375.00	\$151,880.00
Non Personnel Expenses	Total Non Personnel Expenses	\$354,943.00	\$296,340.00	(\$58,603)
	TOTAL EXPENSES	\$792,438.00	\$885,715.00	\$93,277
Less	TOTAL REVENUE	\$351,723.00	\$395,000.00	\$43,277
	NET	-\$440,715.00	-\$490,715.00	\$50,000

There will be no financial impact on the 2013 budget in assuming maintenance operations as the budget already includes \$50,000.00 for operation for the last half of 2013 in anticipation of this transition. For 2014 onward, the additional financial impact will be \$50,000.00 which will need to be added to the 2014 operating budget. The total annualized operating budget impact is \$100,000 to assume 35% of the maintenance and to provide daytime programming for 1,800 additional hours.

The cost difference of operations is attributed to assumption of 100% of maintenance costs versus the 65% currently paid. The major operation components that the City will now assume is all caretaking and mechanical maintenance, and full programming responsibilities.

While the total cost to Markham to operate the pool and gymnasium space does increase for additional 1,800 hours, it should be noted that the overall cost per hour does decrease based on efficiencies of staffing and maintenance.

Solar Panels

The City of Markham has partnered with PowerStream Solar to install nearly 1.2MW of solar photovoltaic systems on city facilities as part of the Ontario Power Authority's (OPA) feed-in-tariff (FIT). FIT projects generate renewable and clean electricity for Ontario's electricity grid reducing the greenhouse gas emissions while creating local jobs. PowerStream is paying the City a fair rate for the right to access and lease our rooftops for the 20 year FIT contract term, including Thornlea Pool.

PowerStream was awarded a FIT contract for 70kW of roof top solar photovoltaic at Thornlea Pool in 2010, the contract had a three year development term in which the system should be designed, constructed and commissioned to achieve the Commercial Operation Date. The FIT contract for Thornlea expires on July 6, 2013, at which point we can forfeit the project or pay the \$1,890 liquidated damages to the OPA to delay the project a maximum of 180 days. To date PowerStream has \$25,000 in OPA, development and contractor costs committed for this project. Additional cancellation costs may be incurred from the contractor if we don't move forward.

It is necessary to move quickly to come to agreement on the asset transfer of Thornlea to the City in order to enter into positive discussions with the School Board to mitigate the risk of losing this FIT contract and/or to minimize liquidate damages until the solar array is installed.

Lifecycle Contributions from YRDSB

The City of Markham and YRDSB each independently conducted a condition assessment of the building. Both assessments identified capital requirements over the next five years in the \$400,000 to \$450,000 range. Under the existing agreement YRDSB would be responsible to pay for 35% of these capital expenses.

YRDSB has agreed to pay a one-time fee of \$150,000, paid upon commencement of the new agreement, in recognition of the financial situation Markham inherits by assuming capital repair and replacements of the facility. Upon receipt of this one-time payment, Markham would then bear sole responsibility for all operating and capital expenses of this City owned building moving forward.

HUMAN RESOURCES CONSIDERATIONS

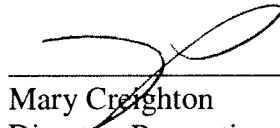
A staffing plan is being developed.

BUSINESS UNITS CONSULTED AND AFFECTED:

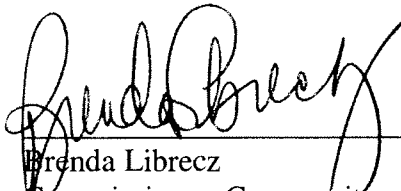
Finance, Sustainability, Asset Management, Legal

RECOMMENDED

BY:



Mary Creighton
Director, Recreation Services



Brenda Librecz
Commissioner, Community
& Fire Services

ATTACHMENTS:

Appendix A – Original 1971 agreement

MEMORANDUM of Agreement made in duplicate this
13th day of July, nineteen hundred and seventy-one.

B E T W E E N:

THE YORK COUNTY BOARD OF EDUCATION,

Hereinafter called the "Board"

OF THE FIRST PART

- and -

THE CORPORATION OF THE TOWN OF MARKHAM,

Hereinafter called the "Town"

OF THE SECOND PART

WHEREAS the Board and the Town have agreed to
the shared use of a swimming pool and appurtenant facilities
(hereinafter collectively called the "Pool") at the Thornlea
Secondary School;

AND WHEREAS the Board has agreed to sell in considera-
tion of the payment of One Dollar (\$1.00) of lawful money of
Canada the lands on which the pool is situated, and further
described in Schedule "A", hereto attached;

AND WHEREAS the Town has agreed to pay to the
Board the full cost of the construction of the Pool, as designed
by the Architect, D. Ross King, and incorporated in the plans
and specifications for the addition to Thornlea Secondary School;

AND WHEREAS the authority to enter into this
Agreement is provided for under The Schools Administration Act,

R.S.O. 1960, Chapter 361, as amended by The Schools Administration Act, Statutes of Ontario, 1968-69;

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AND WHEREAS the Town proposes to finance the construction of and use the proposed in-door swimming pool as a Community Centre pursuant to the provisions of The Community Centres' Act, R.S.O. 1960, Chapter 60, as amended, and regulations thereunder, and as such to qualify for a provincial grant therefor;

NOW THEREFORE this Agreement witnesseth that in consideration of the mutual covenants hereinafter contained, the parties hereto agree each with the other as follows:

1. The Board shall convey to the Town the lands outlined in red on a plan attached hereto as Schedule "A". Title to the said lands to be conveyed free and clear of all encumbrances within 15 days after certification by the Architect for the Board that the Pool has been completed in accordance with the plans and specifications therefor.
 2. The Board shall grant to the Town an easement over such driveways, parking lot and sidewalks as may be required to provide ingress to the pool and egress therefrom.
 3. The Town undertakes and agrees to pay to the Board the costs of survey, preparation of the plan thereof and legal description of the lands to be conveyed and the lands over which the easement is granted, together with any loss of legislative grant (not to exceed the sum of \$1,000.00) by which the Board may be penalized resulting from the conveyance.
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In addition thereto^{to}, the Town shall pay to the Board the total cost of the construction of the pool as hereinafter set out in Paragraph 5 hereof.

4. The Board shall take all necessary steps to proceed with and complete the construction of the proposed swimming pool as designed by its Architect, D. Ross King, in accordance with the plans and specifications as approved by the Board and the Town. It is understood and agreed that the said construction is subject to all necessary governmental approvals as may be required of each party, including approval in regard to the financing of the project.

5. The Town shall provide the necessary interim financing during the construction of the pool and shall reimburse the Board monthly within 10 days after receipt by it of a progress certificate, certified by the Architect to be correct and approved by him for payment. In case of any dispute as to the total construction costs attributable to the swimming pool which should be borne by the Town, ~~the differences shall be determined as outlined in Clause 11 of this Agreement.~~ ^{the differences shall be determined as outlined in Clause 11 of this Agreement.} ~~Architect should be final and binding~~

SPIC
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pb 6. The Board through its Plant Operation and Maintenance Staff, shall have full responsibility under the Board, for operation, maintenance and caretaking of the swimming pool wing, including the agreed periods when the pool is under the jurisdiction of the Town.

7. The Board shall, except for delays or interruptions caused by or arising out of events of force majeure

and subject to normal wear and tear and depreciation, at all times keep and maintain the pool in good condition. As experience may indicate necessary, and on three weeks written notice by the Assistant Superintendent of Business (Plant and Sites) to both parties the swimming pool shall be closed for the purpose of maintenance and repair. Need for emergency maintenance excepted.

8. Subject to paragraph 10 hereof, the use of the pool shall be shared by the Board and the Town as follows:

(a)	<u>Each School Day</u>	Hours per year
	9:00 a.m. to 5:30 p.m. (195 days) by the Board	1657 - 1/2 hours
(b)	6:00 p.m. to 11 p.m. (195 days) by the Town	975 hours
(c)	<u>Each Saturday</u>	
	8:30 a.m. to 11:00 p.m. by the Town (48 x 14.5)	696 hours
(d)	<u>Each Sunday</u>	
	10:00 a.m. to 5:00 p.m. by the Town (48 x 7)	336 hours
(e)	<u>Official School Summer, Christmas and Winter Break Holidays</u>	
	Monday to Friday inclusive	
	8:30 a.m. to 11:00 p.m. by the Town (47 x 14)	681 hours
	Subtotal of hours for use by the Town	2688 hours
	Subtotal of hours for use by the Board	1657 - 1/2 hours
	TOTAL HOURS	4345 - 1/2 hours

Provided that, for all hours not covered by this Agreement, the Town shall retain its rights to the use of the pool. At all times, when the Board uses the pool, the Board shall provide competent supervision to insure the care of property and of persons and shall provide for competent, qualified and sufficient lifeguards. The Town shall ensure that there is competent supervision at all other times.

AK. 9. (a) The Town shall pay to the Board on or before the 31st day of January in each year, its share of the total cost of operation and maintenance of the pool, for the preceding calendar year. Such sum to be equal to the result obtained by dividing the total of the operating and maintenance costs of the pool (as defined in clause (c) of this paragraph for the immediately preceding year, by 4345.5 and multiplying the resulting quotient by 2688 (being the aggregate number of hours set forth in Paragraph 8 thereof for such use by the Town) such sum shall be so paid whether or not the Town actually uses the pool for each of such 2688 hours.

AK. (b) In calculating the hourly pool time rate, the annual operating and maintenance cost of the pool shall include caretaking salaries, caretaking and operating supplies, repair and maintenance costs, fuel costs, electricity costs, water costs and general expenses, including insurance premiums (other than Liability insurance), and overhead at a rate to be calculated by the Board and agreed to by the Town. The Town

auditor shall be granted the right to examine the accounts of the Board in respect to the pool expenditures.

CK. (c) As provided in Paragraph 10 hereof, should a variation or exchange of pool time take place, which by reason of mutual consent does not result in an equal exchange in hours, the adjustment in hours shall be paid for at the hourly rate as computed in accordance with Paragraph 9 (a).

10. On or before the 30th day of June in each year the parties shall settle between themselves the number of hours and the dates for which the pool is required by the Board for the purpose of student use for special activities in the coming school academic year. In event that by reason other than is provided for in this agreement, there is a period of several days or a recurring period of several hours in a school day, during which the pool is not required for school Board purposes, the Board agrees to inform the Town of such period or periods and the Town shall have the right to use the pool during such time or times, and the hours of use by the Town shall be paid for at the hourly rate as computed in accordance with Paragraph 9 (a). CK. Notwithstanding the scheduled use of the pool by each of the parties as herein provided, a variation or exchange of pool time use may be made for special activities upon the mutual consent of the Director of Recreation for the Town and the Director of Education or his authorized delegate on behalf of the Board.

11. In the event of differences arising as between parties in respect to this agreement which the parties as between themselves cannot resolve, the same shall be determined by arbitration under The Arbitrations Act, R.S.O., 1960, Chapter 20 or as the same may be amended or replaced from time to time. Such differences shall be determined by a single arbitrator jointly appointed by the parties and failing concurrence in such appointment, the arbitrator shall be appointed as provided in the Arbitrations Act.

12. Special temporary services and/or facilities, e.g. bleachers, required by either party, over and above the usual requirements for the operation of the pool shall be paid for by the party requiring same, and may be installed only with the consent of the other party.

13. In the event that a change in jurisdictional status of either party, the result of which will require an assessment of assets and liabilities, then the Town shall be entitled to receive its asset value invested in the swimming pool herein referred to, and the Board its asset value of the lands conveyed as herein set out for the said pool (as if at the time of the assessment the said lands were owned by the Board).

14. The parties hereto mutually indemnify and hold each other harmless and their respective servants and agents from and in respect of all manner of claims, demands, actions, and suits made against either of them arising out of or connected with their use of the pool, together with all costs and expenses

related thereto, unless due to each party's negligence or their respective servants or agents.

15. Neither party hereto shall assign any of its rights hereunder without the prior written permission of the other party hereto.

16. Throughout this agreement "force majeure" means acts of God, strikes, lockouts, or other labour or industrial disturbances, civil disturbances, arrests and restraints from rulers and people, interruptions by government or court order, future valid orders of any regulatory body having jurisdiction, acts of the public enemy, earthquake, fire, storm, flood, washout or explosion and any other event or occurrence beyond the reasonable control of the Board, whether or not of the nature of those hereinbefore mentioned.

17. Any term of the agreement may at the request of either party and consented to by the other party be reviewed at any time, and in any event, the agreement herein shall be reviewed by both parties at the end of five (5) years from the anniversary date hereof.

18. Any notice required to be given under this agreement shall be deemed sufficiently given if sent via registered mail, postage prepaid, respectively addressed to:

(a) York County Board of Education

P. O. Box 40

AURORA, Ontario

or to such other address for themselves as the parties may respectively notify to the other, and such notice shall be deemed to have been received on the second business day next following the mailing thereof.

IN WITNESS WHEREOF the parties hereto have here-
unto affixed their respective corporate seals attested to by
the hands of their respective proper officers in that behalf
fully authorized.

Deputy - Clerk