

THIS AGREEMENT made as of DECEMBER the 1st, 2020.

BETWEEN:

THE MUNICIPALITY OF LAMBTON SHORES

(Hereinafter called "the Municipality")

OF THE FIRST PART

-and-

YMCA OF SOUTHWESTERN ONTARIO

(Hereinafter called "the Operator")

OF THE SECOND PART

RECITALS:

1. The Parties agree that this Agreement shall be governed by and interpreted in accordance with the following guiding principles:
 - a. The relationship between the parties is founded on a spirit of partnership, based on mutual trust and respect;
 - b. The parties agree to provide safe and high quality facilities and programs in accordance with Schedule "C" to ensure that the needs of the Lambton Shores community, within the framework of this Agreement, are being met;
 - c. The Operator shall, subject to the terms of this Agreement, have the sole authority to operate the Fitness Centre in keeping with its charitable mission and the Facilities shall bear the Operator's logo;
 - d. Policy and governance issues relating to the operation of the Facilities shall generally be the domain of the Operator; and
 - e. There shall be open and honest communications between the parties with a view to solving all differences and problems that may arise by way of consensus.
2. WHEREAS the Municipality owns a recreation facility at 7883 Amtelecom Parkway, Forest, Ontario which includes a Fitness Centre, Gymnasium and Walking Track (the "Facilities");
3. AND WHEREAS the Operator represents that it is an Ontario Corporation without share capital whose corporate purpose includes the operation and management of recreation facilities and whose representatives signing below are authorized to bind the Corporation without use of a corporate seal;

4. AND WHEREAS the Municipality wishes to engage the Operator to operate the Facilities in accordance with the terms and conditions outlined herein;

NOW THEREFORE in exchange for the mutual covenants contained herein and other good and valuable consideration, the parties agree as follows:

ARTICLE 1

- 1.1 **Interpretation.** Any term of this Agreement expressed in the singular shall also be interpreted to include the plural and any terms expressed in the plural shall also be interpreted to include the singular.
- 1.2 **Index and Headings.** The index and headings are inserted in this Agreement for convenience and reference and shall not affect the interpretation of this Agreement.
- 1.3 **Dates.** If any date expressed in this Agreement falls on a day that is not a Business Day, the obligation falling on that date will be fulfilled on the next Business Day.

ARTICLE 2 TERM

- 2.1 **Term.** The term of this Agreement shall be from the Effective Date through to December 31, 2023.
- 2.2 **Renewal.** This Agreement shall have the option to be renewed for an additional three (3) year period subject to a joint review by the parties to be undertaken at the beginning of the third year of the Agreement.

ARTICLE 3 DUTIES OF OPERATOR

- 3.1 The Operator agrees to manage and operate the Fitness Centre in accordance with the Operating Plan and annual budget approved by the Council of the Municipality.
- 3.2 The Operator will prepare and submit to the Municipality, by October 15th of each year, a preliminary Operating Plan and Budget for the next calendar year. The Operator will prepare and submit to the Municipality, by November 30th of each year, a final Operating Plan and Budget for the next calendar year. The operator will implement said budget, once approved by the Municipality, using its best efforts to achieve the targets contained within.
- 3.3 The Operator will develop, implement, advertise, promote and operate all programming in the Fitness Centre that meet the shared mission and vision of the Operator and the Municipality.
- 3.4 The Operator will provide trained, qualified, and competent staff as determined by the standards deemed appropriate by the Operator; and will provide adequate administrative equipment and supplies to operate the Fitness Centre and programming.
- 3.5 The Operator will provide and supervise all Human Resource functions as they relate to the Fitness Centre.

- 3.6 The Operator will maintain all records pertaining to its operation of the Fitness Centre. The Municipality will have access to such records at all times.
- 3.7 The Operator will manage the revenues from the Fitness Centre, programming and related activities.
- 3.8 The Operator shall provide a monthly financial statement of operations to the Municipality concerning the operation of the Fitness Centre.
- 3.9 The Operator shall provide to the Municipality an annual audited statement for the YMCA of Southwestern Ontario, including a schedule of revenue and expense for the operation of the Fitness Centre.
- 3.10 The Operator agrees that administration of the Municipality will, from time to time as the Municipality sees fit, have the opportunity to review the revenue and expenditure documents for the Fitness Centre.
- 3.11 The Operator will recommend capital equipment and improvement to the Municipality annually in conjunction with the Operating Plan and Budget.
- 3.12 The Operator shall at their expense, obtain and keep in force during the term of this License and any renewal thereof, Commercial General Liability Insurance satisfactory to the Municipality, be written by an insurer licensed to conduct business in the province of Ontario and include but not be limited to the following:
- i. A limit of liability not less than ten million dollars (\$10,000,000.00) per occurrence;
 - ii. The Municipality shall be named as the additional insured;
 - iii. The policy shall contain a provision for cross liability and severability of interest clauses;
 - iv. Non-owned automobile coverage with a limit of \$5,000,000 including contractual non-owned coverage;
 - v. Contractual liability – both oral and written;
 - vi. Contingent Employer's Liability, Employer's Liability;
 - vii. Hostile fire and pollution from hostile fire;
 - viii. Broad Form Property Damage;
 - ix. Property insurance for the Operator's property stores at the Facilities;
 - x. Professional Liability: The Operator shall take out and keep in force Professional Liability insurance in the amount of \$5 million providing coverage for acts, errors and omissions arising from their professional services performed under this Agreement. The policy SIR/deductible shall not exceed \$100,000 per claim and if the policy has an aggregate limit, the amount of the aggregate shall be double the required per claim limit. The policy shall be underwritten by an insurer licensed to conduct business in the Province of Ontario and acceptable to the Municipality. The policy shall be renewed for 2 years after contract termination. A certificate of insurance evidencing renewal is to be provided each and every year. If the policy is to be cancelled or non-renewed for any reason, 90 day notice of said cancellation or non-renewal must be provided to the Municipality. The Municipality has the right to request that an Extended Reporting

Endorsement be purchased by the Operator at the Operator's sole expense.

- xi. Fidelity Bond Including the Third-Party Extension: Coverage shall be written in an amount of not less than \$ 1 Million and shall be endorsed to include Third Party Extension.
- xii. Data Liability Insurance: Data liability/Network Security coverage, underwritten by an insurer licensed to conduct business in the Province of Ontario and in an amount not less than \$ 2 Million. Coverage is to respond to but not be limited to the following occurrences:
 - a. Privacy violations as a result of but not limited to unauthorized access to or dissemination of private information; failure to properly handle, manage, store, destroy or control personal information and include the failure to comply with privacy laws and their respective regulations regarding the collection, access, transmission, use and accuracy. Coverage shall extend to include the costs associated with notification of affected parties, regardless if required by statute as well as any fines or penalties or costs imposed as a result of the breach including defense of any regulatory action involving a breach of privacy.
 - b. Network Security to protect against incidents arising from system security failures such as, but not limited to, unauthorized access, theft or destruction of data, electronic security breaches, denial of service, spread of virus within the Operator's computer network or other third-party computer information systems and will further include expenses related to third party computer forensics.
 - c. Data Breach Expenses including crisis management and credit monitoring expenses related to electronic and non-electronic breaches.

The policy shall be maintained continuously during the term of this Agreement and for an additional (two) years after the termination or expiration of the Agreement. If coverage is to be cancelled or non-renewed for any reason, 90-day notice of said cancellation or non-renewal must be provided to the Municipality. The Municipality has the right to request an Extended Reporting Endorsement by purchased by the Operator at the Operator's sole expense. The term of the Extended Reporting Endorsement will be decided by the Municipality and Operator.

Primary Coverage

The Operator's insurance shall be primary coverage and not additional to and shall not seek contribution from any other insurance policies available to the Municipality.

Certificate of Insurance

The Operator shall provide a Certificate of Insurance evidencing coverage in force at least 10 days prior to contract commencement.

Thirty (30) days prior notice of cancellation of the policy shall be given in writing to the Municipality (with the exception of professional liability, in which case ninety (90) days prior notice is required).

- 3.13 The Operator shall, upon reasonable request by the Municipality, properly provide the Municipality any information relating to the Fitness Centre, the condition and usage of the Fitness Centre's assets or the programs being carried out.
- 3.14 The Operator shall at all times provide complete access to the Fitness Centre to the Municipality and any authorized representatives.
- 3.15 The Operator shall immediately notify the Municipality of any occurrence of any event which could reasonably be expected to expose the Municipality to material liability of any kind, whether under this Agreement or otherwise.
- 3.16 The Operator shall maintain in good repair the equipment of the Fitness Centre. Equipment preventative maintenance will be completed by the YMCA technician every four weeks on site. Every effort to ensure small equipment repairs will be completed within 24 hours and larger scale repairs will be completed within 72 hours once parts are received.
- 3.17 The Operator may refuse to operate some or all of its programs from time to time due to liability concerns until the cause of such concern is resolved with the Municipality.
- 3.18 The Operator shall be responsible for maintenance and cleaning of the Fitness Centre as per Schedule "D".
- 3.19 The Operator will provide and supervise all Human Resource functions as they relate to the operation of the Fitness Centre. The Operator shall be responsible for and shall make all decisions relating to the staff of the Fitness Centre in its sole and absolute discretion. The Operator shall be responsible, at all times, including following the termination of this Agreement, for all costs associated with its employees, such costs to include but not be limited to wages and salaries, benefits, termination or severance entitlements, and any associated tax liabilities and costs associated with its employees. The Operator shall indemnify and shall hold the Municipality harmless with respect to any such costs or payments.
- 3.20 The Operator shall be solely responsible for programming the Fitness Centre and providing access to members, user and groups through the Operator's membership and activity pass model.
- 3.21 The Operator agrees to provide access to renters of the gymnasium and lower board room, as well as to the public for walking track access during the non-ice season and after municipal operating hours. The process is to be agreed upon by the Municipality and Operator and shall be reviewed on an annual basis for the term of this contract.
- 3.22 The Operator shall, on a quarterly basis, meet with Municipal staff to report on performance against identified financial and service targets. The Operator shall also communicate to Municipal staff; opportunities for further engagement, identified service gaps within the community, and issues arising within the operation requiring Municipal support or consideration.
- 3.23 The Operator shall ensure current COVID 19 protocols mandated by the Province of Ontario, Lambton Public Health, and/or the Municipality of Lambton Shores and/or any

other legislated authority/governing body are followed during use of the Licensed Premises. This may include, but not be limited to, use of masks, physical distancing, gathering sizes and enhanced hand sanitizing.

- 3.24 The Operator shall take all reasonable steps to minimize or eliminate the potential for the spread of communicable diseases, including but not limited to protocols for the considerations set out in paragraph 3.23, the disinfection of workout equipment and the demarcation of foot traffic directional flows.

ARTICLE 4 DUTIES OF THE MUNICIPALITY

The Municipality agrees to:

- 4.1 Provide the Fitness Centre; and grant the Operator access to the Gymnasium, Walking Track and lower board room as necessary to support programming; such to be provided without lease or additional expense. A maximum of 10 hours of prime time use of the gymnasium will be available on a weekly basis. Prime time is considered Monday to Friday, 5:00pm – 10:00pm. Prime time hours required in excess of 10 hours per week shall be negotiated with the Municipality. Additional hours may be negotiated from time to time without lease or additional expense. The Municipality reserves the right to accept or deny any additional rental hours, and reserves the right to invoice the Operator for additional rental hours per the Municipal Fee By-Law.
- 4.2 Insure the Municipally-owned Facilities, fixtures and equipment against first and other usual perils as well as obtaining liability insurance of not less than ten million dollars (\$10,000,000.00) per occurrence with the Operator named as an additional insured.
- 4.3 Provide snow plowing, grass cutting, exterior ground maintenance including parking lot maintenance for the Facilities.
- 4.4 Establish and maintain a capital reserve fund for the purpose of funding major capital expenditures and repairs to the Facilities as the Municipality in its absolute discretion deems necessary.
- 4.5 Provide operating support in accordance with the annual budget or variances provided by the Operator and approved by the Municipality.
- 4.6 Purchase all capital equipment and make improvements to the Facilities as may be recommended by the Operator in its annual Operating Plan, as approved by the Municipality.
- 4.7 Support the Operator and its decisions when they are in keeping with the sound Mission and Operational Principles.
- 4.8 Provide maintenance and cleaning of the Fitness Centre as per Schedule D.
- 4.9 Ensure unused or non-operating portions of the facility are secured and inaccessible to the general public during those hours in which the Operator's portion of the facility is

deemed to be the only portion of the facility to be open and accessible to the general public.

- 4.10 Ensure the Operator retains sole authority for the programming of the Fitness Centre; and that the Municipality does not permit or cause to be permitted programs, services or usage of the Fitness Centre not under the auspices of the Operator.
- 4.11 Provide the Operator, when available and feasible, access to additional Municipal facilities, halls, sports fields and locations for the purpose of offering programming falling under the YMCA's membership and activity pass model and/or for the purpose of conducting meetings and training events. Such space shall be provided without lease expense or additional charge to the Operator, with the exception of ice rental time and rentals at the Grand Bend Recreation Centre. The provision of such additional spaces shall occur at the discretion of the Municipality.
- 4.12 Operate the gymnasium and walking track at its sole discretion. The Municipality retains the right to book programs and services for the gymnasium and walking track without the prior permission of the Operator for those hours not previously booked by the Operator.
- 4.13 Ensure that the access to the gymnasium by those groups or individuals not affiliated with the Operator is granted based on fees established by the Municipal Fee By-Law and any other municipal policies that exist.
- 4.15 The Municipality shall review and approve the Operator's annual Operating Plan and Budget and shall do so in a manner that respects the Operator's right under this agreement to set pricing and define the operation's membership model in keeping with the stated objectives and principles of both the Operator and the Municipality.
- 4.16 The Municipality shall provide the Operator with a list of facility "blackout" dates for the meeting room and gymnasium at the beginning of each year and/or the beginning of each ice season.

ARTICLE 5 COMPENSATION

- 5.1 **Annual Operating Support.** The Operator acknowledges that the Municipality will continue to support the operation of the Fitness Centre. In the event that additional operating support is required from time to time the Municipality will, on an annual basis, pay to the Operator an amount that is in excess of the budgeted support approved by Council. The calculation to determine such operating payment will be based on actual annual revenues less the actual annual expenditures (net of all rebates and credits) for the Fitness Centre and the programs as approved in the annual Operating Plan and Budget to be submitted by the Operator to the Municipality for approval. This calculation shall be completed at the end of the fiscal year.

Alternatively, in the case of an annual operating surplus, the YMCA will reimburse the Municipality an annual operating payment. The calculation to determine such operating payment will be calculated as noted previously in this section (5.1.). This calculation will be submitted to the Municipality no later than 60 days following the fiscal year in which the operating payment applies.

The Operator and the Municipality will share membership revenue earned from members above an agreed upon threshold of 350 members in the ratio of sixty (60) percent to the Operator and forty (40) percent to the Municipality. This revenue sharing will not result in less net revenue to the Municipality than it would have earned at the threshold level in the event of an operating surplus. The membership will be determined as the average number of members at the end of each month of the year. Each member will be treated as a member for this calculation, regardless of whether it is a child, senior or adult and regardless of the type of membership held.

- 5.2 **Shared Services Allocation.** The Municipality shall pay the Operator a shared services allocation calculated at 15.5% of total actual revenue, such fee to be invoiced by the Operator and paid by the Municipality on a monthly basis.
- 5.3 **Billing and Payment.** All amounts owing between the Operator and the Municipality will be shown on an invoice supported by appropriate documentation to demonstrate the calculation of such amount. All amounts invoiced by the Operator are exempt from Harmonized Sales Tax where applicable. All invoices issued by the Operator are due upon receipt.

ARTICLE 6 CAPITAL FUNDING

- 6.1 Funding for capital improvements will be in accordance with plans to be prepared by the YMCA in conjunction with the Municipality and approved by Council. Funding of capital improvements shall be the Municipality's responsibility.

ARTICLE 7 OWNERSHIP OF FACILITIES

- 7.1 **Ownership of Facilities.** The Municipality and the Operator acknowledge that the Municipality is the sole owner of the Facilities and the Facilities' assets, subject to the terms of this Agreement and the rights granted to the Operator by this Agreement. It is understood that the Operator with respect to this Agreement is at no time to be a tenant or lessee of the Municipality. The Municipality shall be the sole and absolute owner of all records for the Facilities during the term of this Agreement and after the termination date.
- 7.2 **Capital Projects.** The Municipality may initiate a capital project at any time during the term of this Agreement with prior consultation with the Operator. At the Municipality's cost, the Operator agrees to take all reasonable steps to facilitate the initiation, development and completion of the capital project. The Municipality recognizes that, as a result of capital projects, there may be a disruption to operations and programs and this may affect the operating budget.
- 7.3 **Municipal Access.** The Municipality shall at all times have the right to use the Facilities for its own purposes, provided that one weeks' written notice is provided to the Operator. In the case of an emergency, there may be no notice provided to the Operator.
- 7.4 **Operator Access.** The Municipality shall provide the Operator with access to and use of the Fitness Centre, Fitness Centre equipment and assets for the sole and limited purpose of conducting the programs anticipated by this Agreement. Additionally the Municipality

shall grant the Operator access to the walking track and lower board room for the purpose of conducting programs and supporting the Operator's membership model.

ARTICLE 8 REPRESENTATIONS AND WARRANTIES

Each of the parties represents and warrants as follows:

- 8.1 Each of the parties has the full legal right, power and authority to enter into and perform its obligations under this Agreement;
- 8.2 This Agreement has been duly authorized, executed and delivered by all necessary actions of each of the parties and constitutes a legal, valid and binding obligation of the Municipality and the Operator in accordance with its terms;
- 8.3 The execution and delivery of this Agreement by the parties and the performance of the obligations by the Municipality and Operator does not conflict with or violate or result in a material breach of law, regulation or by-law or conflict with, violate or result in a material breach of any term or condition of any order, judgement, decree, agreement or other instrument to which either is a party;
- 8.4 Neither the Municipality nor the Operator has received written notice of any action, lawsuit or proceeding before any court or government agency that is pending or threatened, in which an unfavourable decision could reasonably be expected to have a material adverse effect on the ability of either party to carry out its obligations under this Agreement against either of them.

ARTICLE 9 TERMINATION

- 9.1 **Termination for Convenience.** Either party may terminate this Agreement at any time, for any reason upon a minimum of six (6) month's written notice to the other party.
- 9.2 **Event of Default.** Without limiting the generality of Article 9.1 either party may terminate this Agreement upon the default of the other party by providing written notice and may specify a termination date in such written notice that is a minimum of thirty (30) days' notice and a maximum of one hundred and eighty (180) days' notice after the date of delivery of such notice. In the event of default, a reasonable time period to correct the default shall be allowed.
- 9.3 **Operator's Obligations Upon Termination.**
 - 9.3.1 At the termination date, the Operator shall return the Facilities and Facilities' assets in as good or better condition as the date upon which the Operator took possession of the Facilities, subject only to such wear and tear as may be reasonably expected given the reasonably expected service life of the Facilities.
 - 9.3.2 The Operator shall reasonably co-operate with the Municipality for up to three (3) months, at the Municipality's cost, in order to facilitate the smooth continuation of the programs anticipated to be provided by the Operator under this Agreement.

- 9.3.3 **Contracts.** The Municipality shall have the right, but not the obligation, to offer positions to the Operators' employees who staff the Fitness Centre on such terms and conditions as the Municipality in its sole discretion shall determine. The Operator shall not interfere with this right in any manner. To the extent assignable and transferable, the Operator shall, at the Municipality's request, assign and transfer to the Municipality any supply or other contracts relating to the Facilities. Upon such assignment, the Municipality shall assume all of the Operator's obligations under any such assigned contracts, other than obligations arising or relating to events which occurred prior to the date of the assignment.
- 9.3.4 **Records.** Upon reasonable request, the Operator shall make available and, if necessary, explain or interpret in a meaningful way to the Municipality all records. All records shall remain the sole and absolute property of the Municipality during the term and after the termination date.
- 9.4 **Effect of Termination.** As of the termination date, all rights and obligations under the Agreement other than the obligations in Articles 9.3.1, 9.3.2, 9.3.3 and 9.3.4 shall terminate and no longer be of any force or effect.
- 9.5 In the case of termination the YMCA will have the right to remove its property in a manner and according to a time frame to be agreed to by the parties.
- 9.6 In the event of termination each party shall use its best efforts to demonstrate respect and goodwill towards the other.
- 9.7 Upon termination of this Agreement, to the extent that they are assignable and transferable, the Operator shall, at the Municipality's request, assign and transfer to the Municipality any supply or other contracts relating to the Facilities. Upon such assignment, the Municipality shall assume all of the Operator's obligations under any such assigned contracts, other than obligations arising or relating to events that occurred prior to the date of assignment.

ARTICLE 10 UNCONTROLLABLE CIRCUMSTANCES

- 10.1 Neither party shall be liable to the other for breach, default or delay in performance of any of its obligations under this Agreement (except an obligation to make payment when due) in the event such party is rendered unable, wholly or in part, to carry out its respective obligations as the result of an Uncontrollable Circumstance. Such party shall be excused from performance only during the period and to the extent that the affected party, acting with all due diligence and dispatch, is prevented from performing by the Uncontrollable Circumstance.

ARTICLE 11 LIABILITY AND INDEMNITY

- 11.1 **Operator Indemnity.** The Operator shall defend, indemnify and hold harmless the Municipality, its elected representatives, officers, employees and agents from and against any losses that arise out of, or result from and are directly related to:

- 11.1.1 The occurrence of default by the Operator;
 - 11.1.2 Any negligent or willful acts or omissions by the Operator with respect to the Operator's performance of its obligations under the Agreement.
 - 11.1.3 Any losses or damages incurred by any person using the Facilities including sickness or death that occurs as a result of the COVID 19 PANDEMIC and the Operator agrees to release the Municipality of Lambton Shores from any liability in connection therewith.
- 11.2 Municipal Indemnity. The Municipality shall defend, indemnify and hold harmless the Operator, its affiliates, officers, employees and agents from and against any losses that arise out of, or result from and are directly related to:
- 11.2.1 The breach of any representations, warranties or covenants contained in this Agreement;
 - 11.2.2 The negligent or willful acts or omissions by the Municipality with respect to the performance of its obligations under this Agreement.
- 11.3 The provisions of this Article shall survive the expiration or termination of this Agreement.

ARTICLE 12 DISPUTE RESOLUTION

- 12.1 In the event that any disagreement arises between the parties with reference to this Agreement or any other matter arising hereunder and upon which the parties cannot agree, such Agreement shall be referred to arbitration pursuant to the provisions of the *Arbitrations Act*, R.S.O. 1990. One arbitrator shall be appointed if the parties agree upon one, otherwise three shall be appointed; one by each party and a third by the first two so appointed and in such case the decision of the majority shall be binding. There shall be no appeal from the award of the arbitrator and the cost of the arbitration shall be shared equally between the parties.

ARTICLE 13 ASSIGNMENTS

- 13.1 **Municipal Assignment.** The Municipality shall not assign this Agreement or transfer, sell or convey substantially all of the Facilities without at least sixty (60) days' prior written notice to the Operator, provided, however, that no such assignment shall relieve the Municipality of its obligations under this Agreement.
- 13.2 **Operator Assignment.** This Agreement shall not be assigned by the Operator without the Municipality's written consent, which consent shall not be unreasonably withheld.

- 13.3 **Notice of Assignment.** In the event of any assignment permitted by this Article, the assignor shall give prompt written notice to the other party.

ARTICLE 14 CONDITIONS PRECEDENT

- 14.1 **Municipal Conditions.** As of or prior to execution and delivery of this Agreement, the Operator shall do the following:

14.1.1 Deliver to the Municipality copies of all certificates and proof of insurance for that insurance coverage required under this Agreement; and

14.1.2 Deliver to the Municipality certificates of incumbency for the officers of the Operator executing the Agreement.

- 14.2 **Operator Conditions.** As of or prior to the execution and delivery of this Agreement, the Municipality shall do the following:

14.2.1 Deliver to the Operator a certified copy of a by-law of the Municipality approving the execution and delivery of this Agreement; and

14.2.2 Deliver to the Operator a certificate of incumbency for the officers of the Municipality executing this Agreement.

- 14.3 **Effective Date.** This agreement takes effect on January 1, 2021.

ARTICLE 15 GENERAL PROVISIONS

- 15.1 **Notices.** All notices required or desired to be given hereunder to either party shall be effective if given personal delivery, certified or registered mail, postage pre-paid, return receipt requested, by nationally recognized overnight delivery company or by telecopy (with telephone confirmation of receipt) if addressed to the following addresses or telecopy numbers:

Operator: YMCA of Southwestern Ontario
165 Elmwood Ave, East
London, ON N6C 0A8
Tel: 519-907-5500

Attn: Andrew Lockie, CEO

Municipality: Municipality of Lambton Shores
7883 Amtelecom Parkway
Forest ON N0N 1J0

Tel: 519-243-1400
Fax: 519-786-2135
Attn: Municipal Clerk
Email: clerks@lambtonshores.ca

Any party may change its address for the purpose of this section by giving written notice of such change to the other party. Notices delivered personally or by telecopy (with telephone confirmation of receipt) shall be deemed given as of three days after mailing. Notices given by overnight delivery company shall be deemed given as of the date and time of delivery indicated on the delivery company's receipt.

- 15.2 **Compliance with Laws and Regulations.** In performing all of their respective obligations under this Agreement, the Operator and the Municipality shall at all times comply with all applicable laws.
- 15.3 **Further Assurances.** The Municipality and the Operator each agree to execute and deliver instruments, and to perform any acts that may be necessary or reasonably requested in order to give full effect to the provisions of this Agreement.
- 15.4 **Governing Law.** This Agreement is made with reference to, and shall be governed by and construed in accordance with the laws of the Province of Ontario, without regards to conflict of law provisions.
- 15.5 **Partial Invalidity; Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any way, if, however, the absence of the eliminated provision is contrary to the original intention of the parties, the parties shall negotiate a mutually acceptable substitute provision. If an acceptable substitute provision cannot be agreed upon within sixty (60) days of the initiation of such negotiations, the parties shall have the right to terminate the Agreement.
- 15.6 **Waiver.** The failure of either party to enforce any right under this Agreement shall not be construed as a waiver of its right to enforce that or any other right hereunder in the future.
- 15.7 **Entire Agreement.** This Agreement, including the Schedules hereto, supersedes any and all other agreements, whether oral or in writing, between the parties hereto, and, subject to any agreement relating to specified services entered into pursuant to this Agreement, contains all of the covenants and agreements between the parties. Each party to this Agreement acknowledges that no representations, inducements, promises or agreements, oral or otherwise, have been made by any party or anyone acting on behalf of any party, which are not embodied herein and that no other agreement, statement or promise not contained in this Agreement shall be valid or binding.
- 15.8 **Modification and Amendment.** Neither this Agreement nor any of the terms hereof may be terminated, amended, modified, waived or supplemented orally, but only with an instrument in writing executed by both parties.
- 15.9 **Successors and Assigns.** This Agreement shall be binding upon and ensure to the benefit of, the parties and their respective successors and permitted assigns.
- 15.10 **Execution in Counterparts.** This Agreement may be executed in two or more Counterparts, each of which shall be deemed to be an original but all of which together shall be deemed to be one and the same instrument.
- 15.11 **Relationship of Parties.** The Municipality and the Operator intend that:

- 15.11.1 The Municipality and the Operator shall not be treated as partners or joint venture partners for any purpose;
- 15.11.2 The Operator is and shall be treated as an independent contract of the Municipality. The Operator shall be responsible at all times, including following the termination of this Agreement, for all costs associated with its employees, including wages and salaries, benefits, Workers' Compensation and unemployment compensation, and any associated tax liabilities.

IN WITNESS WHEREOF the parties have hereunto entered into and executed this Agreement by their duly authorized representatives, as of the date first above written.

THE MUNICIPALITY OF
LAMBTON SHORES

By: Bill Weber

Name: Bill Weber

Title: Mayor

By: Stephanie Troyer-Boyd

Name: Stephanie Troyer-Boyd

Title: Clerk

YMCA OF SOUTHWESTERN
ONTARIO

By: Andrew Lockie

Name: Andrew Lockie

Title: CEO

SCHEDULE "A"

The YMCA will be responsible for the following operations:

Operation of the Fitness Centre contained within the Shores Recreation Centre. The YMCA shall also access, but not operate, the gymnasium, walking track and lower board room contained within the Shores Recreation Centre to provide programming in support of the YMCA's membership model. In addition, the YMCA is responsible for the "maintenance and cleaning" duties as per Schedule "D".

Except that the Municipality will be responsible for the following parts of the above operations:

- Snowplowing and removal of snow in parking lots and sidewalks at the Shores Recreation Centre
- "heavy cleaning" duties as per Schedule "D"
- The operation of all other facilities contained in the Shores Recreation Centre that are not a part of the Fitness Centre proper.

SCHEDULE "B"

Services Provided Under the YMCA Shared Services Allocation

Association Services supports the YMCA mission by providing administrative leadership and services to all service areas and branches of the YMCA. Accounting and Finance, Communications, Human Resources, IT, and Marketing professionals provide technical expertise, advice, coaching and tools to build strength and capacity across the association. Administrative and technical staff provide specialized accounting, IT and other administrative services.

Accounting for the YMCA is provided by an accounting team including the Vice President, Finance, qualified accountants, accounts payable, accounts receivable and payroll administrators. This staffing level provides for efficient centralized transaction processing, separation of duties, and management accounting support for all service areas and branches.

Using a common computer network across all locations, all transactions are processed using a single point-of-sale software and provides extensive reporting capabilities. Payroll is outsourced to Ceridian, providing a file for each payroll period.

The IT Manager and technical support staff maintain a variety of functional, secure systems to handle all data processing needs and connect employees across the region as well as providing online services to members and participants. It is understood that the Municipality owns all hardware and any software that is has purchased for the Fitness Centre operations.

Effective Human Resources leadership provides oversight of all legal and regulatory employment requirements, while coaching supervisors and strategically managing our most important resource.

Communications and Marketing professionals ensure that our message is on-point and effective in reaching its intended audience through a wide and evolving variety of media.

Comprehensive policies and procedures based on the YMCA's by-laws are widely distributed and applied for finance, human resources, information technology and other key functions. This includes health & safety, child protection, privacy, financial controls, data security, the full range of human resources, and other key policies to minimize risk. An enterprise risk management plan has been approved by the Board and implemented. The YMCA's internal controls and practices are supported by the annual external audit, conducted by PricewaterhouseCoopers.

The Shared Services Allocation includes the following:

- 1) CEO and Management Leadership
 - President and CEO
 - Senior Management Leadership – Chief Operating Officer
 - General Manager

- 2) Financial Services Leadership
 - Vice President, Finance
 - Accounting

- Accounts Payable/Receivable and Invoicing
 - Internal Controls, Policies and Procedures
- 3) I.T. Leadership
 - Software and Hardware Maintenance and Support
 - Training
 - I.T. Policies and Procedures
 - 4) Financial Development Leadership and Support
 - Working with volunteers, strengthening philanthropic role within the community
 - 5) Human Resources Leadership
 - Policies, Procedures, Training and Legal Support
 - Employee Benefits Administration
 - Payroll
 - 6) Communications Support
 - Branding, communication standards, branded templates
 - 7) Purchasing Support
 - 8) Risk Management and Insurance Leadership
 - 9) Marketing Support
 - Demographic and market research, marketing promotion
 - 10) Program Quality and Training Leadership
 - YMCA Canada program quality standards, training, and mentorship as it relates to Sales & Marketing, Centre of Excellence Service Standards, Healthy Child Development, Fitness and Wellness, Raising Healthy Adolescents
 - 11) Development/Leadership
 - Career Development, Y Canada leadership certifications, shared staff model for sustainability

SCHEDULE "C"

YMCA Canada's Priority SAM 2.0 standards have been based on over 15 years of YMCA Canada and External YMCA membership retention research. SAM 2.0 is a comprehensive set of resources that support and sustain high levels of excellence in operations.

The Seven SAM Standards are supported by specific objectives within each to focus on continuous improvement.

1. YMCA experience is convenient
2. YMCA is clean and well maintained
3. YMCA experience is safe
4. YMCA experiences are friendly and welcoming
5. YMCA staff and volunteers build positive relationships with members
6. Members are provided opportunities to learn and develop in spirit, mind and body
7. YMCA staff/volunteers are engaged and knowledgeable

Detailed standards are published in the YMCA Priority SAM 2.0 Playbooks.

SCHEDULE "D"

Cleaning Schedules

1. The Operator shall perform the following schedules of "maintenance and cleaning" duties:
 - Cleans and sanitizes bathrooms, change rooms and other high touch surfaces twice daily
 - Daily dusting and cleaning of change rooms lockers, showers, toilets, vanities and mirrors
 - Daily mop, sweep and dust wellness floor
 - Garbage removal from the Fitness Centre
 - Polish metal finishes
 - Vacuum surfaces
 - If required, and at the Operator's expense, contract the weekly thorough cleaning of the showers, walls and floors.

2. The Municipality shall perform the following schedule of "heavy cleaning" duties and shall provide a cleaning schedule for all fixed assets including but not limited to:
 - Annual deep clean of the fitness centre, including: change rooms, floors (screen clean including moving equipment), walls, light fixtures, ceiling, air vents and any other fixed assets.
 - Maintain all fixed assets.
 - Clean floors quarterly with the floor scrubber
 - Weekly cleaning and sanitizing of showers in change rooms
 - Refurbishment such as painting and touch ups
 - Replacement of ceiling tiles
 - Clean windows that require a ladder and all exterior windows
 - Supply at no charge to the Operator cleaning equipment and products along with paper products for washroom facilities
 - Provide the Operator with access to cleaning tools and equipment
 - Provide for the ongoing replacement of light bulbs and like operational equipment as needed.

Detailed schedules/checklists will be agreed upon by both parties.