

the commencement of any program session. YWCA may access the Facilities for the duration of the time allotted in the Schedule, and for such short periods before and after the scheduled time as are reasonably required to set up or tear down programming, to use the change room, etc. YWCA Aquatic Program staff, representatives, and participants shall not have access to any part of Terrace Lodge other than the Facilities and the means of ingress thereto and egress therefrom. YWCA shall ensure that participants only access the permitted portions of Terrace Lodge and shall be responsible for the conduct of all persons accessing Terrace Lodge for purposes related to the Program.

- 3.3** Should circumstances require cancellation of any scheduled use of the Facilities, the cancelling party shall notify the other in writing as soon as possible and in every instance prior to the date of the scheduled use to be cancelled. No party shall incur any liability, claim, or charge arising out of a cancellation, except as specifically provided by this Agreement.

4.0 Payment to Elgin

- 4.1** In consideration of the use of the Facilities as provided for herein, YWCA shall pay to Elgin a fee of TWO THOUSAND THREE HUNDRED AND FIFTY DOLLARS (\$2,350.00), exclusive of taxes.
- 4.2** On or before August 31, 2024, Elgin shall prepare and deliver to YWCA an invoice, as contemplated by section 4.1 above, which shall additionally list the applicable taxes. Within thirty (30) days of receipt of said invoice, YWCA shall pay to Elgin the amount invoiced plus applicable taxes.

5.0 Responsibilities of YWCA

- 5.1** During the term of this agreement, YWCA shall:
- 5.1.1 Arrange for and conduct all Programs in a safe and prudent manner, in accordance with established operating standards, including but not limited to standards and procedures established by the Lifesaving Society;
 - 5.1.2 Ensure that the Aquatic Programs contemplated by this agreement shall be conducted under the supervision of a sufficient number of qualified swimming instructors;
 - 5.1.3 Take all reasonable steps to ensure the safety of persons participating in the Aquatic Programs contemplated by this agreement. Such steps shall, at a minimum, comply with the training and supervision requirements of the *Health Protection and Promotion Act*, R.S.O. 1990, c. H.7 and specifically with s. 17 of Reg. 565, passed thereunder, as amended or replaced from time to time. For clarity, for the purposes of the Programs, the Facilities operate as a "Class 'A'" Pool, as defined by Reg. 565. The Pool's emergency procedure is attached to this agreement as Appendix "A" and forms a part of this agreement. YWCA shall ensure that all its staff and instructors are trained in the emergency procedure as required by Reg. 565 and shall not permit any Program to proceed where such training has not been performed in accordance with applicable law nor where adequate supervision cannot be provided;
 - 5.1.4 Take all reasonable steps to ensure that the swimming pool and related equipment facilities will not suffer damage through the course of Aquatic Programs contemplated by this agreement;
 - 5.1.5 Be responsible for any and all damage caused by or attributed to the negligent act or omission of YWCA, including its staff, representatives, and instructors and further including the persons participating in the Aquatic Programs contemplated by this Agreement. For clarity, the YWCA shall not be responsible for damage attributed to normal wear and tear of the said swimming

pool and related equipment and facilities;

- 5.1.6 Take all reasonable steps required to ensure that its staff, representatives, and instructors and any persons participating in the Aquatic Programs contemplated by this agreement shall comply with and abide by any and all regulation, including police, fire, and sanitary regulations imposed from time to time by any federal, provincial, or municipal authority;
- 5.1.7 At its sole expense, obtain and keep in force during the term of this Agreement a general liability insurance policy or policies satisfactory to Elgin and underwritten by an Insurer licensed to conduct business in the Province of Ontario. The policy or policies shall include but not be limited to:
 - (a) A limit of not less than FIVE MILLION DOLLARS (\$5,000,000.00) per occurrence;
 - (b) Add Elgin as an additional insured with respect to the operations of the YWCA as Named Insured;
 - (c) The policy shall contain a provision for cross liability and severability of interest in respect of YWCA as Named Insured;
 - (d) The policy or policies shall cover/include:
 - 1. Bodily Injury, Death, Property Damage, and Personal Injury;
 - 2. Products and completed operations;
 - 3. Broad Form Property Damage;
 - 4. Contractual Liability;
 - 5. Owners and Contractors Protection;
 - 6. Hostile Fire;
 - 7. Physical / emotional / psychological abuse and, without limiting the generality of the foregoing, specifically related to child participants in programs contemplated by this Agreement.
 - 8. Non-owned automobile coverage, which shall include contractual non-owned coverage (SEF 96);
 - (e) The policy or policies shall provide 30 days prior notice of change or cancellation, which notice shall be likewise provided by the YWCA to Elgin.
- 5.1.8 Obtain from each participant in the Programs contemplated by this agreement a written release and waiver, signed by the participant or his or her legal guardian. Said acknowledgement is attached to this agreement as Appendix "B" and forms a part of this agreement.
- 5.1.9 Dismiss from the Programs and/or refuse further services at the Facilities to any person who, in Elgin's unfettered discretion, has caused unacceptable damage or disruption to Terrace Lodge and/or the facilities.

6.0 Responsibilities of Elgin

6.1 During the term of this agreement, Elgin shall

6.1.1 clean and maintain the swimming pool and related equipment

facilities in a sanitary condition suitable for safe use by persons participating in Aquatic Programs;

- 6.1.2 test the water within the subject swimming pool on a regular basis, adjust chemical requirements in response to the results of said tests, and deliver the results of said tests to the YWCA.

7.0 Termination

- 7.1 In the event that either party is in default of any term of this Agreement or obligation created thereby, which default continues for at least fifteen (15) days after written notification of same to the defaulting party, the non-defaulting party shall have the right to terminate this Agreement upon a further thirty (30) days written notice to the defaulting party, which right shall be exercised without recourse by or remedy to the defaulting party.
- 7.2 Notwithstanding that set forth in Section 7.1 above, Elgin at all times shall have the absolute and unfettered discretion to terminate this Agreement, without default on the part of YWCA, upon ninety (90) days written notice to YWCA, which right of termination is exercisable without recourse or default.

8.0 Release/Indemnification

- 8.1 YWCA shall defend, indemnify, and save harmless Elgin, its elected officials, officers, employees, and agents from and against any and all claims of any nature, actions, causes of action, losses, expenses, fines, costs (including legal costs), interest or damages of every nature and kind whatsoever, including but not limited to bodily injury, sickness, disease or death or to damage to or destruction of tangible property including loss of revenue or incurred expense resulting from disruption of service, arising out of or allegedly attributable to the negligence, acts, errors, omissions, misfeasance, nonfeasance, fraud or willful misconduct of YWCA, its directors, officers, employees, agents, contractors and subcontractors, or any of them, in connection with or in any way related to the Programs authorized or otherwise contemplated by this Agreement. This indemnity shall survive this Agreement indefinitely.

For clarity, this indemnity includes the actual costs incurred by Elgin where damage to or contamination of the Facilities are caused by any Program or staff, agent, or participant thereof, including the costs of paying overtime wages to Elgin staff where they are required to attend the facilities after hours to address damage to or contamination of the facilities. Without limiting the generality of the foregoing, where staffing costs arise solely out of the fouling of the pool by blood, vomit, or feces, the costs that Elgin may recover from the YWCA relating to the payment of overtime wages to Elgin's staff across the initial term of the life of this Agreement shall be limited to the lesser of the actual wages paid to such staff and \$500.

YWCA further agrees to defend, indemnify, and save harmless Elgin from and against any and all claims of any nature, actions, causes of action, losses, expenses, fines, costs (including legal costs), interest or damages of every nature and kind whatsoever arising out of or related to the status of YWCA with WSIB. This indemnity shall survive this Agreement indefinitely.

9.0 Miscellaneous

- 9.1 The parties hereto agree that any amendment to this agreement shall be in writing, executed by authorized officers and/or representatives of each of the parties to this agreement, in the form of an amending agreement.
- 9.2 Any notice or written communication between the parties to this agreement shall be delivered or sent by prepaid mail addressed to the parties at the

following addresses:

Corporation of the County of Elgin

Attention: Director of Homes and Seniors Services
Terrace Lodge
49462 Talbot Line
Aylmer, Ontario N5H 3A5

YWCA of St. Thomas-Elgin

Attention: Lindsay Rice, Executive Director
St. Thomas YWCA
16 Mary Street
St. Thomas, Ontario N5P 2S3

- 9.3** The parties agree to do or cause to be done all acts and things necessary to implement and carry into effect this agreement to its full extent.
- 9.4** This agreement shall enure to the benefit and be binding upon the parties and their respective successors and permitted assigns. The YWCA may not transfer or assign this licence nor any right or obligation hereunder without first obtaining the written consent of Elgin.
- 9.5** In this agreement, words importing the singular include the plural and visa versa and words importing gender include all genders.
- 9.6** The insertion of headings and a division of this agreement into sections are for convenience of reference only and shall not affect the interpretation thereof.
- 9.7** This agreement constitutes the entire agreement between the parties pertaining to the subject matter hereof and supersedes all prior agreements, understanding, negotiations, and discussions with respect to the subject matter hereof, whether oral or written. No supplement, modification, or waiver of this agreement shall be binding unless executed in writing by both parties.
- 9.8** The invalidity or unenforceability of any provision of this agreement or any covenant herein contained shall not affect the validity or enforceability of any other provision or covenant hereof or herein contained. Any such invalid provision or covenant shall be deemed to be severable.
- 9.9** This agreement shall be construed in accordance with the laws of the Province of Ontario. The parties agree to attorn to the jurisdiction of the appropriate Courts of the Province of Ontario.
- 9.10** This Agreement may be executed in one or more counterparts and thereafter exchanged by scanned, emailed or facsimile transmission methods, each of which document, once executed, shall constitute an original thereof and all of which together shall constitute one and the same Agreement. This Agreement may be signed by way of electronic signatures, provided that such electronic signatures comply with the Municipality's policies regarding the same.

[Remainder of page intentionally blank; signatures to follow.]

IN WITNESS WHEREOF the parties hereto have caused this agreement to be executed by their respective authorized officers and/or representatives as of the date first written above.

SIGNED & DELIVERED

) **CORPORATION OF THE**
) **COUNTY OF ELGIN**
)
) Per: _____
) Name:
) Position:
)
)
) Per: _____
) Name:
) Position:
)
) We have the authority to bind the
) Corporation
)
) **YWCA of St. Thomas-Elgin**
)
) Per: _____
) Name:
) Position:
)
) I have authority to bind the YWCA of
) St. Thomas-Elgin