

Bill No. 86  
2015

By-law No. A.-\_\_\_\_\_

A By-law to authorize a Memorandum of Understanding with the YMCA of Western Ontario and the London Public Library Board for the construction and operation of a multi-use community facility; and to authorize the Mayor and City Clerk to execute the Agreement.

WHEREAS section 5(3) of the *Municipal Act, 2001* S.O. 2001, c.25, as amended, provides that a municipal power shall be exercised by by-law;

AND WHEREAS section 9 of the *Municipal Act, 2001* provides that a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under this or any other Act;

AND WHEREAS it is deemed expedient for The Corporation of the City of London (the "City") to enter into a Memorandum of Understanding with the YMCA of Western Ontario and the London Public Library Board for the construction and operation of a multi-use community facility (the "Agreement");

AND WHEREAS it is appropriate to authorize the Mayor and City Clerk to execute the Agreement on behalf of the City;

NOW THEREFORE the Municipal Council of The Corporation of the City of London enacts as follows:

1. The Memorandum of Understanding attached as Schedule "A" to this By-law, being a Memorandum of Understanding among The Corporation of the City of London, the YMCA of Western Ontario and the London Public Library Board for the construction and operation of a multi-use community facility is hereby AUTHORIZED AND APPROVED.
2. The Mayor and City Clerk are authorized to execute the Agreement authorized and approved under section 1 of this by-law.
3. This by-law shall come into force and effect on the day it is passed.

PASSED in Open Council February 24, 2015.

Matt Brown  
Mayor

Catharine Saunders  
City Clerk

First Reading – February 24, 2015  
Second Reading – February 24, 2015  
Third Reading – February 24, 2015

# Schedule "A"

**MEMORANDUM OF UNDERSTANDING  
BETWEEN:  
THE CORPORATION OF THE CITY OF LONDON ("City")  
-and-  
YMCA OF WESTERN ONTARIO ("YMCA")  
-and-  
LONDON PUBLIC LIBRARY BOARD ("Library")**

**1. Scope:**

The City, the YMCA and the Library wish to establish a joint venture for the purpose of planning, funding, constructing and operating the Project in Southwest on the Lands.

The Joint Venture will be the vehicle through which the City's, the YMCA's, and the Library's interests in and responsibilities with respect to the Project are delineated.

Capitalized terms used in this MOU are as defined in Schedule A hereto.

**2. Project Concept:**

The Project is intended to comprise a multi-use community facility consisting of, swimming pool(s), gymnasium, twin pad arena, community gathering space(s), lobby(s), specialized activity space(s) including a teaching kitchen, multipurpose meeting rooms, exercise facilities, offices, Service London space and a branch of the Library on the Lands.

**3. Project Stages:**

The Project will be undertaken by the Joint Venture in stages as summarized below. Each of Stages I to III must be completed before Stages IV and V are undertaken. In the event that Stage III is not completed by the dates set out therein, the City may in its discretion elect to terminate the Joint Venture.

Stage I – Design Concept Plan:

The City, the YMCA and the Library, through the Management Committee, will develop a design concept and design parameters for the Project. Once the design has been established changes to the design may only be made by mutual consent. Stage I is to be completed April, 2015.

Stage II – Material Agreements:

The City, the YMCA and the Library and any other applicable parties will negotiate the terms of the Joint Venture Agreement and the Material Agreements. Stage II is to be completed by June, 2015.

Stage III – Funding:

The Capital Contributions of the Joint Venturers set out in Section 5 will have been raised.

- City funding is in place, 2014 Approved Capital Budget- RC2755.
- Library funding within thirty (30) days of the completion of the sale of the Westmount Branch of the Library or two (2) months prior to the scheduled substantial completion of the Project, whichever is the later date.
- YMCA funding commitment by January 1, 2017 (combination of capital fundraising campaign and bank financing)

Stage IV – Detailed Design:

The detailed design of the Project will be undertaken including preparation of plans and specifications.

Stage V – Construction:

Construction of the Project will be undertaken as set out in Section 9.

The completion dates for Stages IV and V are yet to be determined.

**4. Establishment of the Joint Venture:**

The Joint Venture will be established by the Joint Venturers, which will incorporate the terms of this MOU. Ownership interests in the Project will be based upon each parties Project Interest. Beneficial ownership of the Project will be held in the name of Joint Venture.

The Joint Venture shall not carry on or undertake any other business or activities other than the Project.

Subject to subparagraph 8(i)(a), a Joint Venturer shall not assign, transfer, convey, mortgage, charge, hypothecate or grant a security interest in or over their Project Interest or the Project without the prior written consent of the other Joint Venturer, which consent may be arbitrarily withheld.

**5. Capital Contributions:**

Based upon an estimated projected capital cost for the Project, inclusive of land cost and exclusive of furniture and equipment, in the amount of \$53,865,965. The Capital Contributions of the parties is estimated as follows:

	<u>Amount</u>
City – Rec Centre	\$40,089,152
Library	\$ 4,576,813
YMCA	\$ 9,200,000

The City’s Capital Contribution includes the Lands and excludes \$300,000 allowance for furniture and equipment.

All estimates are inclusive of taxes net of applicable rebates.

The Capital Contribution of the YMCA will be capped at \$9,200,000, and excludes a \$1,200,000 allowance for furniture and equipment. The Capital Contribution of the City will be equal to the balance of the final approved capital budget for the Project.

The Project Interest of each party shall be as follows:

City	77%
Library	8%
YMCA	15%

In the event that the capital cost of the Project is less than the estimate of \$53,865,965, the Capital Contributions of the parties will be reduced in proportion to their Project Interests.

As part of the Joint Venture Agreement, the YMCA and the City, through the Management Committee, shall develop an advance schedule for the YMCA’s capital contributions along the following guidelines: 5% at commencement of construction, and the balance of the YMCA’s Capital Contribution, to be paid two months prior to the scheduled substantial completion of the Project.

**6. Management of the Joint Venture**

The Joint Venture will be managed by a Management Committee consisting of eight (8) members. Four (4) members will be appointed by the City, inclusive of one member from the London Public Library. Three (3) members will be YMCA representatives, along with the Chief Executive Officer of the YMCA who will be the chair of the committee. The chair will not have a second or casting vote.

It is intended that decisions of the Management Committee will be reached by consensus. On any matter requiring a vote, each member of the Management Committee shall have one (1) vote with respect to decisions of the Management Committee. In the event of disagreement between the City, the YMCA and the Library, the Joint Venture Agreement shall provide a dispute resolution mechanism in the form of binding mediation and/or arbitration.

#### **7. Role of the Management Committee**

Subject to the terms of the Material Agreements, the Management Committee will be responsible for the following:

- (i) the overall direction, supervision and management of the Project;
- (ii) approval of annual business plans, including annual operating budget and annual capital and maintenance budgets, including capital reserves;
- (iii) approval of long term contracts with Project outside user groups;
- (iv) approval of material service agreements having a term exceeding five (5) years.

#### **8. Material Agreements:**

The following Material Agreements will be entered into contemporaneously with the Joint Venture Agreement:

(i) YMCA Lease Agreement:

The YMCA Lease Agreement, under which a portion of the Project is leased to the YMCA for a term of 40 years (the "Term"), excluding only those portions of the Project subject to the Library Agreement and Arena and Service London Agreement. The terms of the YMCA Lease Agreement will contain provisions related to rent and financial matters, repair and maintenance, insurance dispute resolution and remedies in the event of default. The parties may agree to extend the Term beyond the initial 40 year term as mutually agreeable. In the event that the parties do not agree to extend the Term and provided the YMCA is not then in default under the terms of the YMCA Lease Agreement, at the end of the Term or any extension thereof, the City will agree to pay the YMCA an amount equal to the YMCA's Project Interest multiplied by the then fair market value of the Project. Furthermore, the YMCA Lease Agreement shall reflect that:

- a. the YMCA will be entitled to mortgage its leasehold interest to an Approved Lender to raise a portion of its Capital Contribution, subject to the City having the right to step-in to cure defaults by the YMCA under such financing or to take over the leasehold mortgage with all rights of the Approved Lender, in the case where the Approved Lender takes steps to realize on its security;
- b. no material change in the use of the YMCA portion of the Project shall occur without the prior written consent of the City; and
- c. no change in the capital repair reserve budget or maintenance reserve budget shall occur without the prior written consent of the City.

These latter two provisions shall not be subject to mediation under the Joint Venture Agreement.

(ii) Municipal Capital Funding Agreement:

An agreement between the City and the Joint Venture under Section 110(6) of the Municipal Act exempting the Project from payment of property tax.

NTD: to be resolved

iii. Program Services and Access Agreement: (formerly “City User Agreement”)

The Program Services and Access Agreement, under which the parties will agree to the scope and diversity of program services that will be available to visitors to the Project as well as the mechanisms for users to access those services. The intent of this agreement will be to offer a diverse and seamless menu of program services to the public and offer a variety of mechanisms to access those services in order to maximize participation and encourage participant exploration of other potential opportunities available to them through Party activities at the Project and across the City.

The Program Services and Access Agreement will provide for a broad array (“menu”) of program services reflecting diverse participation opportunities including, but not necessarily limited to:

- Activities available to all age groups
- Activities spanning the seven dimensions of wellness in terms of targeted benefits ( i.e. social, emotional, spiritual, environmental, occupational, intellectual, and physical wellness)
- Activities reflecting the diversity of education and leisure participation interests (e.g. sports, arts/crafts, dance/music, social activities, leadership training, fitness, etc.)
- Rental opportunities for community/neighbourhood groups and organizations

The Program Services and Access Agreement will also identify and maximize the options for participants to access various program services at the Project including, for example, via YMCA membership or via ‘a la carte’ payment methods (e.g. Spectrum registration for single programs, access cards for drop-in program participation, etc.)

The Program Services and Access Agreement will outline the processes, policies and procedures necessary to achieve the above principles and goals within the pragmatic constraints of establishing a viable and sustainable economic operations model for the Project. Processes, policies and procedures will include establishing:

- the standards of program performance,
- Appropriate user fees for “a la carte” options based on the prevailing Spectrum fees applicable at other City community recreation centres
- The appropriate and reasonable proportion of spaces available under different access mechanisms
- Processes for opening unused program spaces available through one access mechanisms to access through other mechanisms (e.g. windows of time) to maximize program participation

- Processes for reviewing and modifying, as necessary, the menu of program services available at the Project.

The Program Services and Access Agreement will establish other transfer or subsidy payments between the parties to the agreement necessary to ensure the fiscal soundness of the Project's operational budget while delivering the mutually agreed to program services and access\_plan from year to year.

Finally, the Program Services and Access Agreement will establish a committee, comprised of representatives of the parties and whoever else the parties might mutually agree to include, for the purposes of:

- Monitoring the agreement
- Resolving ambiguities or conflicts within the scope of the agreement
- Maintaining open communication between the parties to the agreement
- Recommending modifications to the agreement

(iii) Library Agreement:

The Library Agreement, under which a portion of the Project is set aside and reserved for use by the Library as a public library. The Library will be responsible for payment of its utilities, contribution for Reserve Funds for the Library space, and its proportionate share of utilities, maintenance charges and Reserve Funds for common areas of the Project. The common area maintenance charges to be shared in by the Library and the proportionate share thereof will be negotiated between the Joint Venture, the Library and the YMCA.

(iv) Arena and Service London Agreement

The Arena and Service London Agreement, under which a portion of the Project is set aside and reserved for use as an arena. In addition, space may be dedicated within the Project to the City for its use as a Service London common counter to offer other municipal services yet to be determined. The City will be responsible for payment of its utilities for the arena, and its proportionate share of utilities, maintenance charges and Reserve Funds for common areas of the Project. For greater certainty, the City is solely responsible for any reserve funds for the arena. The common area maintenance charges to be shared in by the City and the proportionate share thereof will be negotiated between the Joint Venture, the City and the YMCA. The Arena and Service London\_Agreement will be subject to the same maintenance and repair obligations as are provided for in the YMCA Lease Agreement.

## **9. Construction of the Project:**

The Project will be constructed by a third party contractor under a fixed price construction contract. The City will manage the tendering and construction process on behalf of the Joint Venture however, each Joint Venturer will have access to the tender bids and Project site. The City will provide regular reports to the Management Committee as construction of the Project progresses.

Once the detailed design has been agreed upon by the Management Committee, no design changes may occur without the mutual agreement of the Joint Venturers. Any Joint Venturer who wishes to initiate a change to the design of the Project will be responsible for funding that change. Any other cost overruns for the Project will be funded by the City, and its Project Interest will be adjusted accordingly; any amount by which the Project comes in under budget will be shared between the parties in proportion to their respective Project Interests.

## **10. Operations:**

The day to day operations of the Project, excluding the portion of the Project occupied by the Library and the City for the arena, will be supervised and managed by the YMCA. In addition, the YMCA will have primary responsibility for:

- (i) preparation of detailed operating budgets of revenues and expenditures;
- (ii) development and implementation of an equipment maintenance program;
- (iii) third party contract management and operational issues.

The YMCA shall also prepare the reports and budgets referred to in Section 7 for consideration by the Management Committee.

All operating losses shall be the responsibility of the YMCA. The City and the Library will have no obligation to provide funding to the Project for operations over and above the Capital Contribution of the City and the Library and except as otherwise provided in the Program Services and Access Agreement, the Arena and Service London Agreement and/or the Library Agreement.

Any operating surpluses shall firstly be applied to fund capital repair reserves as established by the Management Committee, and thereafter any operating surpluses shall be paid to the YMCA.

## **11. Maintenance of the Project:**

Other than as set out in the Arena and Service London Agreement and the Library Agreement, the YMCA shall be responsible for maintaining the balance of the Project at all times in a commercially reasonable state of repair and in good operating condition. The standard of maintenance to be met shall be agreed upon and provided for in the Joint Venture Agreement. The parties will identify a similar existing facility whose current standards will serve as a benchmark for the level of maintenance required for the Project.

The YMCA shall be responsible for maintenance of the interior of the Library space together with mechanical or electrical systems which serve only the Library space.

The City shall be responsible for maintenance of the interior and exterior and of the arena space and any mechanical or electrical systems which serve only the arena space. The City will include in its capital plan and will manage the lifecycle renewal of the arena and its key components independent of the YMCA capital lifecycle management of the balance of the Project. The City will make contributions to the capital

reserve for any shared components associated with the arena as determined by a lifecycle study to be undertaken to identify any appropriate contributions.

The YMCA and the City agree that a lifecycle study will be undertaken to determine the appropriate contributions to a reserve fund (the "Reserve Fund") to provide the means to effect capital repairs and replacements to the Project, excluding the arena.

The parties agree to develop a formula for the minimum annual contributions required to be deposited to the Reserve Fund, payments of which are subject to there being sufficient funds from operating surplus each year, any shortfall in deposits to the Reserve Fund shall accumulate and will be paid from future years operating surpluses as prior year commitments not realized but expected.

The YMCA will maintain the Reserve Fund, including accrued interest, through its foundation provided that the Reserve Fund is identifiable and restricted to the Project.

The YMCA will be responsible for providing regular reports on maintenance standards to the Management Committee.

**12. Naming Rights:**

The YMCA shall be entitled to have naming rights for the Project, subject to the prior approval of the City which approval is not to be unreasonably withheld; provided, however, the Library shall be entitled to separately name the Library space. The City retains the rights to name the arena and/or two (2) other suitable portion of the Project to recognize the contributions of the vendor of a portion of the Lands gifted to the City.

**13. Government Capital Grants:**

In the event that capital grants are made by any federal or provincial authority which are specific to the Project the benefit of such grants shall be allocated to the YMCA, the City and the Library on the basis of their respective Project Interest. Where grants from part of global funding received by the YMCA, the City or the Library and the YMCA, the City and the Library, as the case may be, applies all or any part of such grant to the Project the amount applied shall form part of the Capital Contribution of the contributing party.

**14. Default/Termination:**

The Joint Venture Agreement shall contain default provisions to be negotiated between the parties, and in any event shall include provisions for termination of the Joint Venture Agreement and/or the YMCA Lease Agreement in the event that the YMCA fails to operate and/or maintain the Project, including the programs and activities agreed to be carried on at the Project, to the standard established in the YMCA Lease Agreement. The Joint Venture Agreement shall also provide the mechanism or parameters for allocation of the community meeting space among the City, the YMCA and the Library.

This MOU sets out the terms under which the City, YMCA and Library have agreed to proceed with the Project this \_\_\_day of February, 2015. The parties agree to negotiate in good faith and to use their respective best efforts to conclude the Material Agreements in accordance with the terms of this MOU.



**IN WITNESS WHEREOF** the parties hereto have executed this MOU.

**THE CORPORATION OF THE CITY OF LONDON**

Per: \_\_\_\_\_  
Mayor Matt Brown

Per: \_\_\_\_\_  
Catharine Saunders, City Clerk

**YMCA OF WESTERN ONTARIO**

Per: \_\_\_\_\_  
Chair

Per: \_\_\_\_\_  
Shaun Elliott, Chief Executive Officer

**LONDON PUBLIC LIBRARY BOARD**

Per: \_\_\_\_\_  
Margaret Wilkinson Director, Customer Services &  
Branch Operations

Per: \_\_\_\_\_  
Barbara Jessop, Director, Financial Services

## **SCHEDULE "A"**

### **DEFINITIONS**

Where used in the MOU the following terms will have the following meanings:

- (a) "Approved Lender" means a Canadian Chartered Bank or Loan and Trust Company that provides financing for the YMCA's Capital Contribution;
- (b) "Arena and Service London Agreement" means the agreement between the City and the Joint Venture for use of a part of the Project as an arena, and for a Service London kiosk;
- (c) "Capital Contribution" means the capital required to be contributed by the City, the YMCA and the Library as set out in Section 5 of the MOU;
- (d) "City" means the Corporation of the City of London;
- (e) "Joint Venture" means the joint venture to be entered into by the City, the YMCA and the Library under the terms of this MOU;
- (f) "Joint Venture Agreement" means the definitive agreement to be entered into between the City, the YMCA and the Library;
- (g) "Joint Venturers" mean collectively the City, the YMCA and the Library, and "Joint Venturer" means the City, the YMCA and the Library as the case may be;
- (h) "Lands" means the approximately 11 acres of lands owned by the City and described as Part of Lot 38, Concession 2 (Geographic Township of Westminster) City of London, County of Middlesex, designated as Parts 1 to 16 inclusive, Plan 33R-19067.
- (i) "Library" means the London Public Library;
- (j) "Library Agreement" means the agreement between the Library and the Joint Venture for use of a part of the Project as a public library;
- (k) "Management Committee" means the committee established under Section 6 of the MOU to supervise and manage the Joint Venture;
- (l) "Material Agreements" mean the agreements to be entered into in connection with the Project as set out in Section 8 of this MOU;
- (m) "MOU" means this memorandum of understanding entered into by the City, the YMCA and the Library;
- (n) "Program Services and Access Agreement" means the agreement between the City, the YMCA and the Library providing for the use by the City of a portion or portions of the Project for City sponsored programs;
- (o) "Project" means the multi-use community facility described in Section 2 of the MOU;

- (p) "Project Interest" means the interest of a Party in the Project from time to time which is equal to the percentage as set out in Section 5 of the MOU;
- (q) "Service London" means a Service London counter that supports access to information about a broad range of City of London services;
- (r) "Term" means the term of the YMCA Lease Agreement as set out in Section 8 of this MOU;
- (s) "YMCA" means YMCA of Western Ontario;
- (t) "YMCA Lease Agreement" means the agreement between the YMCA and the Joint Venture providing for the use of a portion of the Project by the YMCA.