

**Memorandum of Understanding**

**August 27, 2009**

**Between**

**The City of Owen Sound**

**Hereinafter called "the City"**

**And**

**The Owen Sound Family Y.M.C.A.**

**Hereinafter called "Family Y"**

**A. BACKGROUND**

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Guided by the City's Strategic Plan and the Recreation Master Plan and the Family Y's expertise and history in providing health, fitness and recreation services to all people in the community (see Appendix A), the City and the Family Y entered into a Memorandum of Understanding dated January 9, 2008, to establish the goals and principles around a new "Regional Recreation Centre".

The partnership between the City and the Family Y has been developed in the spirit of mutual cooperation and support with a common goal of providing access to quality recreation facilities for the residents of and visitors to the Owen Sound region.

On the basis of the initial Memorandum of Understanding and as per a resolution of City Council dated April 27, 2009, regarding a Regional Recreation Centre, the City made an application May 1, 2009, under the Community Component of the Build Canada Federal infrastructure program for funding for a new Regional Recreation Centre at an estimated cost of \$32,615,581.00. Funding in the order of \$22,000,000 was confirmed June 5, 2009, and announced June 8, 2009.

## **B. PURPOSE**

The purpose of this Memorandum of Understanding is:

- i) To outline the Terms and Conditions of the partnership between the City and the Family Y that are related to the Regional Recreation Centre;
- ii) To identify the “higher level” shared outcomes and principles which will guide future discussions on the specific collaborative initiatives relating to the joint project to be located on lands known as Victoria Park within the City, as well as creating an understanding of the key agreement components for overall project supervision, legal, design, construction, capital funding and operations;
- iii) To communicate the intentions of the City and the Family Y in advance of completing the due diligence required and final project approvals as required for the formal agreement
- iv) To recognize that the Health, Fitness and Recreation (HFR) component of the facility will only be successful if the Family Y is successful in reaching the fundraising targets and long range operational sustainability.

## **C. OUTCOMES**

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A key theme of the City’s Strategic Plan is for the City to identify partners and stakeholders for the development of a regional recreation centre that would meet existing and future demand. This Memorandum of Understanding will guide the City and Family Y in achieving the following outcomes that will result from the construction and operation of the new facility.

1. To promote the objectives of Healthy Communities through facility and program development and achieve the City’s Strategic plan goal of identifying partners in the development of a new regional recreation centre.
2. To support the Family Y in its vision to be a recognized and valued leader in making a positive difference to the health and well being of the community.
3. To support the healthy development of individuals and families.
4. To provide quality programs and facilities for the benefit of the community.

5. To respond to evolving community needs.
6. To encourage staff and volunteers to explore new effective and efficient service delivery methods.
7. To realize the provision of desired recreational opportunities for the region.
8. To work together to establish a financially sound and environmentally sustainable design based on Leadership in Energy & Environmental Design (LEED) design principles.
9. The Facility will include:
  - *Health Fitness Recreation Component (HFR)*
    - An aquatic centre with a 25 m pool and warm water therapeutic pool;
    - Fitness/conditioning/wellness centre
    - A gymnasium;
    - Walking/running track
    - Program rooms (seniors, youth, child care, etc)
    - Related support amenities and common/shared space
  - *Double Ice Pad*
  - *Common/shared space* (the area inside and outside the building that is accessible to the patrons of, and/or under the control of, both the City and the Family Y including mechanical and equipment space).
  - Seniors centre at a location to be determined and subject to a separate agreement between the City and the Family Y.
10. The Facility may include:

Other services as deemed acceptable by Council and Family Y Board from time to time based on community needs and proposed business cases.

## **D. GENERAL PRINCIPLES**

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The following general principles will guide the City and the Family Y in their decision

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making regarding the project and in the eventual operation of the facility.

Both parties agree on the importance of:

1. **Access** – Programs and services will be accessible to all people regardless of their economic status, age, gender, ability, race, and religion.

The regional recreation centre will serve public recreation requirements and will always be owned or leased and operated by a non-for-profit agency. Unless the Family Y acquires some or all of the land in the future, The City will always continue to own the land upon which the facility is built.

The HFR will be operated according to the membership based Y model which is inclusive of all ages, backgrounds and financial situations.

2. **Program Co-operation** – The importance of the expansion and diversification of programs and services offered to the community based on evolving community need.
3. **Community Involvement** – Participation by citizens in the planning, implementation, and operation of the facility, programming and services.
4. **Market Orientation** – The notion that projects must be operationally sound and economically viable as determined by each respective organization.
5. **Sustainability** – The planning and implementation of programs and services to create and sustain the development of a healthy community.
6. **Flexibility** – The use of flexible terms that are able to deal with unforeseen future issues and create opportunities for monitoring and evaluation to respond to the needs of the community.
7. **Communication** – ongoing communication between the parties and with the public is paramount to the success of the partnership.

## E. LEASE AND TAXES

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### *Lease*

1. As required by the Building Canada Fund criteria, the City will own, for a minimum of 10 years, the Regional Recreation Centre.
2. The Family Y will have a lease for at least the minimum 10 year time period required to satisfy Building Canada Fund criteria with a mutually agreed upon option to renew the lease. The lease will be for a nominal fee of \$1/year with the City for shared use of land and use and operation of the health, fitness and recreation component and common spaces. Renewal will be at the same rate of \$1/year. Option for renewal will occur in accordance with all relevant statutes and meet the requirements of the funding conditions.
3. The City and Family Y shall develop a legal agreement relating to the lease and other requirements of the parties to this agreement.
4. A further legal agreement between the parties will provide for the ownership of the HFR component by the Family Y and the terms and conditions for such a transfer at a nominal fee. The agreement will strive to not impair any rights of ownership including the ability of the Family Y to pledge the asset as collateral as is its current practice. The agreement will make provisions that should the Family Y decide to dispose of the building for any reason, then its ownership will remain with or revert to the City or, at the City's discretion, the transfer could be to another bona fide non profit group who will operate the HFR. Such transfer will be under the same terms and conditions in place when the Family Y received the building without amendment or profit. Also, the agreement will detail the ownership of all space within the whole complex so it is clearly understood which space is included in the HFR component.

### **Taxes**

5. The City and Family Y will work together to achieve real property tax exempt status for the HFR component of the facility. If tax exempt status is confirmed for the Family Y, the City will explore receiving payment-in-lieu from the Province of Ontario.

## F. FINANCING

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1. The City and the Family Y agree to pay any expenses they incurred with respect to the project prior to June 5, 2009. Expenses after that date are considered part of the overall project cost.
2. The estimated overall project cost is \$31.5 million. The estimated “green” cost is \$1,085,680.00 for a total of \$32,615,581.00. The following split in project cost is estimated:

Health Fitness Recreation	\$21.7 million
Arenas (2 ice pads)	\$10.9 million
3. The allocations of project costs described above are based on the best information and estimates available at this time. Concrete project costs will be obtained and considered for approval by the City and the Family Y. Cost estimates and allocations included in this document are estimates only. Approval of the final project costs and allocation of those costs to the arenas, HFR and common areas will be required by the City and the Family Y.
4. Cost allocation – the cost allocation of the project is to be:
  - 2/3 funding of the overall project from the Federal and Provincial orders of government with the remaining 1/3 to be raised locally.
  - For the HFR component, the 1/3 local would be split between the Family Y and Fundraising and a contribution from the City of Owen Sound, Township of Georgian Bluffs and Municipality of Meaford. The municipal contribution is to be based on historic usage of the facility.
  - The City contribution to the HFR is estimated at \$2,350,833.
  - For the Arena component, the City is responsible for the 1/3 contribution (less fundraising). One third of the estimated arena cost is \$3,638,519.00.
  - Based on current cost estimates, the City contribution is \$5,989,352.00
5. The City and Family Y will work collaboratively to secure the financial support of the partner municipalities (Georgian Bluffs and Meaford) as well as from other municipalities. Contributions to be based on historic usage of the HFR by

residents from the municipality. Fundraising efforts will continue until any shortfall in municipal contributions for HFR is achieved.

6. Financing shall be accommodated within the existing contribution model and is included in the overall project cost subject to terms of grant funding.
7. The Family Y guarantees a commitment of one sixth (estimated to be \$3.4 million) of the HFR facility costs through fundraising. If fundraising does not generate this amount, then the Family Y will look to other financing options.
8. The City and Family Y acknowledge that the present costs are estimates and that as final costs are established the approval of City Council and Family Y Board is required.

## **G. DESIGN and CONSTRUCTION**

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1. The Family Y retained the services of an architect to prepare preliminary site plans, building plans and cost estimates in order that the City would have the required information on which to base an application to the Communities Component of the Building Canada Fund.
2. In accordance with City purchasing policy, the City prepared and issued a Request for Proposal (RFP) for an Architect - Prime Consultant. The City of Owen Sound is seeking a qualified Architect to act as the Prime Consultant for the new Regional Recreation Centre. The Consultant will design and provide other required services as covered in this proposal. The Prime Consultant Architect will be required to work closely with the Construction Manager and vice versa at every aspect of this project. A separate RFP will be issued for the Construction Manager.

The Construction Manager will be responsible for tendering all sub trades of the project (not the Architect Prime Consultant) after working closely with the Architect and is also responsible for all aspects of the construction until completion and hand over to the City.

The selection of the Architect – Prime Consultant and Construction Manager will follow the City's Purchasing Policies and be approved by City Council

through review and recommendation of the Steering Committee as described in Section J of this agreement.

3. The City and the Family Y will participate in joint design and construction through the Steering Committee identified in Section J of this memorandum.
4. The Family Y will actively participate to ensure the size, scope and relationships of the program spaces are sufficient and efficient to sustain its operations and will be required to provide final approval of the design and costing for the HFR component and joint approval for the shared common spaces including land in the building envelope.
5. Municipal Official Plan, Zoning Bylaw, Site Plan Policies and Engineering Standards will be met and the project will be required to obtain a Building Permit with the applicable fee from the City.
6. Signage will ensure that each party (the City and the Family Y) is adequately represented and appropriately visible and recognizable.
7. To meet the requirements of Build Canada Fund the project must be substantially complete by March 2011. In order to achieve this timing, the City and the Family Y recognize that the use of “construction management” will be required. The City and the Family Y agree that construction timing will be reviewed relative to cash flow considerations.
8. The Regional Recreation Centre will be considered and constructed as one project.
9. Consideration will be given to space/land for future expansion.

## **H. OPERATIONS**

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1. The relationship between the City and the Family Y provides that the Family Y will deliver health, fitness, aquatic and recreation services to the community. The relationship recognizes that each party has responsibilities and associated obligations and that from time to time the scope of services offered to the community may change.

2. The City and Family Y agree, that six months prior to opening, a Joint Operations Management Committee will be established to make recommendations to the City and Family Y regarding policies, procedures and standards for shared operations and space that should be adopted by the City and Family Y (either singularly or jointly) to ensure the efficient operation of the entire facility.
3. The Family Y will be operated according to the membership based Y model which includes public member and non-member access. The Family Y programs, services and facilities will be operated in accordance with the Family Y mission, values and capacity to meet their obligations as a charitable organization consistent with their established systems, practices and standards. The management of the HFR component will be with the Family Y Board of Directors as its governing body.
4. The City will be responsible for the arena component of the facility and will assume the financial responsibility for this component of the project. The facility shall be operated by the City and ice time will be allocated in accordance with the City's Ice Allocation Policy. The management of the arenas will be with City Council as the governing body.
5. The Family Y will set fees as required to maintain its financial sustainability as a non-profit organization. The City will establish the rate charged for ice and floor time within the arena component. Fees related to the use of common space within the facility will be recommended to each party by the Joint Operations Committee.
6. The City and the Family Y will ensure their respective aquatic services are planned in a complementary manner. The Family Y will provide swim lessons for purchase to members and non-members.
7. The Family Y membership philosophy is to ensure its programs and services are inclusive and accessible to everyone in the community and the Family Y will strive to ensure, subject to available resources, that no one is unable to participate due to financial barriers.
8. The City and the Family Y will investigate opportunities to work collaboratively to provide opportunities for "free" recreation (swimming, gym and skating

activities) through sponsorships and special programs.

9. The Family Y agrees to be responsible for the annual operations and all repair and capital costs related to the ongoing operation and upkeep of the HFR component.
10. The City agrees to be responsible for the annual operations and all repair and capital costs related to the ongoing operation and upkeep of the arena component.
11. The City and Family Y agree to ensure access to common areas as well as mechanical areas of the building for repairs, inspections or other matters on a reciprocal basis.
12. An agreement to share between the City and the Family Y the costs of the annual operations and all repair and capital costs related to the common shared areas will be developed. The common shared areas will include certain areas exterior to the facility itself. The agreement will establish a capital revitalization approach to address common area refurbishment.
13. Food Services may be located in the common/shared space in accordance with the terms and conditions of the Joint Operations Agreement. Incidental food services may be located in the HFR or arena areas. Contracted food services may be an option executed by the City and Family Y in the common area. A healthy approach will be taken by any food services offered.

## **I. CAPITAL FUNDING**

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1. The \$32.6 million estimate capital requirements for the construction of the Regional Recreation Facility is based on preliminary estimates and was the basis for the Proposed Project Budget component of the BCF. The City and Family Y agree that these are estimates based on assumptions of planning and construction costs available at the time of the application and that material variances to the capital components or final capital components must be mutually agreed upon prior to the finalization of the construction budget.
2. The Steering Committee will work with the prime consultant/architect to

finalize the budget and present the same for approval by City Council and the Family Y Board.

3. Contributions of the municipal partners of Georgian Bluffs and Meaford will be considered as part of the one third local contribution to the HFR component.
4. City Council will be requested to consider a grant equal to the cost of the building permit and development charges. These costs will be in addition to the City's overall contribution to the cost of the facility described in Section F. The cost of site servicing is a project cost and will be shared by the City and the Family Y.
5. The City will be responsible for ongoing administration of the lease agreement with the Owen Sound Agricultural Society.
6. The City and Family Y agree that the Family Y will lead a Fundraising Campaign for the facility. The fundraising target is \$5 million net of campaign costs. The Family Y will issue an RFP for a Fundraising Consultant to lead the capital campaign and will establish a Fundraising Committee.
7. The Family Y contribution commitment of an estimated \$3.4 million is based on this fundraising campaign. To assist the partner municipalities to reduce their municipal contribution, the Family Y's campaign will be conducted as a total facility campaign for the project. To that end the fundraising target is \$5 million net of campaign costs.
8. Non-designated fundraising dollars will be allocated to the overall project based on the following chart. If through designated funds one party should reach its fundraising objectives prior to the completion of the fundraising campaign, the allocation chart may be revisited.

Fundraising Amount Raised (\$) *	Distribution (%)		Cumulative Distribution (\$)	
	Family Y	City	Family Y	City
Up to \$1,000,000	90	10	900,000	100,000
1,000,000-2,000,000	80	20	1,700,000	300,000
2,000,000-3,000,000	70	30	2,400,000	600,000

3,000,000-4,000,000	67	33	3,070,000	933,000
4,000,000-5,000,000	67	33	3,740,000	1,260,000
Additional Amounts	50	50		

\* The numbers are net of payment of fundraising costs.

9. Funds designated by a donor to a specific portion of the project will be allocated directly to that part of the project.
10. Gifts in kind will be allocated in the same manner as monetary gifts and will be treated as part of the capital campaign in accordance with the laws on charitable contributions of gifts in kind.
11. The Fundraising Committee, as part of the capital campaign, will develop naming opportunities for major gifts and shall develop a donor recognition policy for this campaign. The naming opportunities and donor recognition will be developed in consideration of City Policy (CS33, Site and Facility Naming Policy).
12. The Family Y will maintain accounts in accordance with Canada Revenue Agency regulations and Canadian accounting requirements. The Family Y will issue donation receipts for the campaign.
13. Donation pledges may be taken over a 5 year pledge period.
14. The City, as owner of the building, will directly pay the contracted costs for construction. As invoices come forward, payments of available funds from the capital campaign shall be made by the Family Y to the City on a quarterly basis. Available funds are defined as those donations received less the costs of the campaign. It is possible that in the first months of the campaign the costs of the campaign will exceed funds available and no funds will be available for transfer.
15. Should the City incur financing costs as the result of the timing of campaign pledge payments for the Family Y contribution to the facility, the City may charge these costs to the Family Y. The cost of funds shall be equal to the actual cost incurred by the City and will contain no premium. The Family Y may chose to obtain financing to meet their obligations under this agreement

- and costs incurred as the result of obtaining financing shall be the sole obligation of the Family Y.
16. Financing costs incurred by the City in relation to their contributions to the HFR and arena will be the obligation of the City.
  17. Should the City incur financing costs due to delays in receipt of Federal and Provincial grant monies these costs will be allocated to the project based on project costs. The cost of funds shall be equal to the actual cost incurred by the City and will contain no premium.
  18. The City and the Family Y agree to pay their required obligations in terms of Goods and Services Tax (GST) and the City and the Family Y agree that they will work together to address how to manage and apply the applicable Goods and Services Tax.
  19. Should the Province of Ontario implement the proposed Harmonized Sales Tax (HST) during the currency of this agreement then the City and the Family Y shall apply the protocols as outlined for GST in the preceding paragraph.

#### **J. AD HOC REGIONAL RECREATION CENTRE STEERING COMMITTEE STRUCTURE**

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1. An Ad Hoc Regional Recreation Centre Steering Committee has been established to guide the City and the Family Y forward from the submission of the application and confirmation of funding through the design and construction of the Regional Recreation Centre.
2. Based on a resolution of City Council dated July 6, 2009, the Steering Committee will be composed of seven members, 4 appointed by City Council and 3 appointed by the Family Y with staff support from each organization and consultants.
3. The term of the Committee will extend the length of the project and is anticipated to terminate in 2011.
4. The Steering Committee will report to City Council and the Family Y Board as required.

5. All project purchasing shall be done in accordance with the City's Purchasing Bylaw.
6. The Steering Committee will determine the structure, composition and number of members for the various sub-committees. Sub-committees are anticipated to include, but are not limited to: Design, Financing, Joint Operations and Project Communication.
7. The Fundraising Committee will be set up and managed by the Family Y. There will be ongoing liaison with, and regular fundraising reports to the Steering Committee.
8. The decisions made by the Steering Committee will be based on a principle of consensus. Minutes of the meetings will be presented for approval to Council and the Family Y Board.



IN WITNESS WHEREOF the parties hereto have executed the within Memorandum on the dates show hereunder,

Dated at Owen Sound, Ontario this \_\_\_\_\_ day of \_\_\_\_\_, 2009

**The Owen Sound Family Y.M.C.A.**

per: \_\_\_\_\_  
Evelyn Dean, Chair, Board of Directors

per: \_\_\_\_\_  
Gayle Graham, Chief Executive Officer

**The Corporation of the City of Owen Sound**

per: \_\_\_\_\_  
Mayor Ruth Lovell Stanners

per: \_\_\_\_\_  
Marion Koepke, Clerk