



## Attachment 1

*Lease Agreement between the City  
and the YMCA BC*

**təməsewtx<sup>w</sup> AQUATIC AND COMMUNITY CENTRE  
CHILD CARE FACILITY LEASE AGREEMENT**

THIS LEASE is dated for reference the 1 day of May, 2024.

BETWEEN:

**CORPORATION OF THE CITY OF NEW WESTMINSTER**  
511 Royal Avenue, New Westminister, B.C. V3L 1H9

(the "City")

AND:

**YMCA BC**  
Charitable Registration Number: 119 307 148 RR0001  
10 - 620 Royal Ave,  
New Westminister, BC, V3M 1J2

(the "Society")

WHEREAS:

- A. The City is the registered owner in fee simple of those lands and improvements in the City of New Westminister legally described as the təməsewtx<sup>w</sup> Aquatic and Community Centre:

Parcel Identifier: 009-207-732

LOT 86, NEW WEST DISTRICT, PLAN NW24862 SUBURBAN BLOCK  
4&13, GROUP 1, EXCEPT PLAN28208 & 37542 & LMP8088

(the "Land")

- B. There is located on the Land a Building known as the təməsewtx<sup>w</sup> Aquatic and Community Centre (the "Building"), having a civic address of 65 E Sixth Avenue, New Westminister, BC.
- C. The Society is a not-for-profit society;
- D. The Society wishes to lease the space in təməsewtx<sup>w</sup> Aquatic and Community Centre shown on the sketch plan attached as Schedule "A" (the "Premises") for the purpose of operating a licensed child care facility, and the City wishes to grant to the Society a lease to use and occupy the Premises on the terms and conditions of this Lease;
- E. In accordance with section 24 of the *Community Charter* (British Columbia), the City has published notice of its intention to provide assistance to the Society by leasing the Premises at a cost recovery rate;

THIS LEASE is evidence that, in consideration of the lease fee to be paid and the promises exchanged below, and other good and valuable consideration (the receipt and

sufficiency of which the parties hereby acknowledge), the parties covenant and agree as follows:

**1. Lease**

- I. The City hereby grants to the Society a lease to enter upon and use the Premises for the Term, on the terms and conditions set out in this Lease.
- II. The Society acknowledges and agrees that this Agreement creates a lease and nothing in this Agreement creates any other property rights or interest in the Society, the Building or the Land.

**2. Term**

- I. The term of this Lease is five years (the "Term"), commencing on May 1, 2024 (the "Commencement Date") and expiring on April 30, 2029 (the "Expiry Date").

**3. Renewal**

- I. If the Society wishes to renew this lease, the Society may provide a written request to the Manager – Recreation Services and Facilities *təməsewtxw* Aquatic and Community Centre no less than 6 months before the expiry date. If upon receiving such a request, the City wishes, in its sole discretion, to grant the renewal, the City shall provide notice of the renewal to the Society. The Lease fee for the renewal period shall be determined by City's cost to operate the Premises and may vary from the annual consumer price index (CPI).

**4. Lease Fee**

- I. The Society shall pay to the City a monthly Lease Fee of \$3,375.00 for 2024 (the "Lease Fee") on the Commencement Date and monthly, on the 1st day of the month, thereafter. The Society acknowledges and agrees that the Lease Fee amount does not include PST or GST (as applicable). The Lease Fee includes janitorial services and utilities and is based on the City's estimated costs to operate the Premises, not including depreciation or unscheduled maintenance (unknown and unexpected work). Operating costs include all of the items listed in Schedule "C".
- II. The City shall deliver to the Society a written estimate of the Operating Cost for each year of the lease (the Annual Estimate) by December of each year, which may be revised by the City from time to time, but will not exceed the previous year's CPI rate for BC. Following the first year, on the first day of each month of the Term, the Society shall pay the City an amount equal to 1/12 of the Annual Estimate, which is the Lease Fee. The City will adjust the Operating Costs to the Actual Operating Costs when calculating each Annual Estimate, as the method by which the updated lease fee for the following year is calculated.

- III. The Society shall not be entitled to any refund of their Lease Fee as a result of any planned or unplanned temporary closures or partial closures of the building with a duration under 3 business days.

## **5. Termination**

- I. In the event that the City requires the premises for its own use, or in its sole discretion considers that it is in the public interest to cancel the rights herein granted in whole or in part, or the Society ceases to use the Premises for the purposes permitted herein, the City may terminate this Lease on ninety (90) days written notice to the Society.
- II. Either party may terminate this agreement for any reason on sixty (60) days written notice to the other party. Without limiting the foregoing, the City may terminate this agreement under this section 5.2 if it determines, in its sole discretion, that the Building should be repurposed for another use.

## **6. Society Use of Premises**

- I. The Society shall only use the Premises during regular facility operational hours for the purpose of carrying on a licensed child care facility and hosting parents' programs to support child development. The Manager - Recreation Services and Facilities - tēməsewtx<sup>w</sup> Aquatic and Community Centre must be notified of the Society's regular program hours to support events or programs additional hours of operations as janitorial service scheduling would need to be modified.
- II. The Society shall not use the Premises for any other purpose.

## **7. City Use of Premises**

The City will not use the Premises for City programs or services for the duration of the lease agreement without prior consent of the Society.

## **8. Furnishings and Equipment**

- I. The Society shall not store any poisonous, toxic or combustible materials in the Building. Any such materials stored by the Society in the Building as of the date of the execution of this Agreement by the Society must be removed immediately. Failure to do so will result in the City removing and disposing of such property at the cost of the Society. The Society may store batteries required for the proper functioning of their equipment. Materials necessary for cleaning and disinfecting surfaces are permitted and must be stored in a safe manner.

## **9. Outdoor Play Equipment**

- I. The Society and its employees, volunteers and invitees may use all outdoor "as is" condition play equipment situated on the Land (the "Play Equipment").

- II. If the Society or any of its employees, volunteers or invitees observes any deficiencies in the Play Equipment, the Society shall promptly notify: The Manager - Recreation Services and Facilities - tēmāsewtx<sup>w</sup> Aquatic and Community Centre at 604 773-1696 (cell) or 604 636-4348 (office).
- III. The Society acknowledges that any use of the Play Equipment is at the Society's own risk.

## 11. Parking Facilities

- I. There is no designated parking for staff. The Manager, Recreation Services and Facilities - tēmāsewtx<sup>w</sup> Aquatic and Community Centre will work with the Society to identify areas that would be suitable for staff parking. There will be a drop off area located near the entrance of the child care facility.

## 11. Society's Covenants

- I. The Society covenants and agrees as follows:
  - a. to use the Premises only for the purpose set out in section 6 of this Lease;
  - b. to promptly pay the Lease Fee when due;
  - c. to provide all additional equipment and supplies (including learning materials and toys) that may be required to use the Premises for the purpose of this Lease pursuant to the community care regulations and licensing requirements governing the Society's operations;
  - d. not to, suffer or permit anything that may be or become a nuisance or annoyance in, on or from the Premises to other occupiers or users of the Building, the Land, or to the owners, occupiers or users of adjoining lands, or to the public; noise from playing children will not be considered a nuisance;
  - e. not to commit or allow any wilful or voluntary waste or destruction of the Premises, and not to, suffer or permit any act or neglect that may in any manner directly or indirectly cause injury to the Premises;
  - f. not to allow any animals within the Premises without the City's prior written consent;
  - g. to take all precautions to ensure the safety of all persons using the Premises;
  - h. to obtain in respect of every employee or volunteer of the Society a complete and
  - i. subject to section 13, to repair and maintain and replace all furnishings and equipment listed in Schedule "B", and any additional furnishings or equipment brought into the Premises by the Society, in a safe and sanitary condition;
  - j. to notify The Manager, Recreation Services and Facilities - tēmāsewtx<sup>w</sup> Aquatic and Community Centre promptly of any extraordinary repair and maintenance issues in relation to the Premises. In the case of an emergency, to notify the Manager, Recreation Services and Facilities - tēmāsewtx<sup>w</sup> Aquatic and Community Centre at 604-773-1696 (cell) or 604-

636-4348 (office)

- k. not to erect or display any permanent sign or notice on or in the Premises or adjoining City lands without the City's prior written consent;
- l. to keep the Premises free of any rubbish, litter and debris and keep the areas adjacent to the Premises free of any rubbish, litter and debris originating from the Premises
- m. to dispose of all non hazardous domestic waste and recycling materials associated with its use of the premises in the appropriate receptacles provided at the building, the removal of which shall be dealt with by the City;
- n. to arrange for appropriate pickup and removal of all hazardous or non-domestic waste associated with its use of the premises;
- o. to carry on and conduct its activities on the premises in compliance with any and all laws (including environmental laws), statutes, enactments, bylaws, regulations and orders from time to time in force and to obtain all required approvals, licenses and permits thereunder and not to do or omit to do anything on or from the Premises in contravention thereof;
- p. not to store, dispose, treat, use, release or transport any environmental contaminants on or from the Land, except in compliance with applicable environmental laws, and to promptly remove all environmental contaminants from the Land which it has released or permitted to be released into the Land;
- q. to pay to the City all PST and GST (as applicable) payable in respect of this Lease;
- r. to arrange and pay all costs and expenses for the provision of telephone, internet and cable services to the Premises;
- s. to promptly discharge any builders lien which may be filed against the title to the Land relating to any work or construction that the Society undertakes on the Premises, and to comply at all times with the *Builders Lien Act* (British Columbia) in respect of any such work or construction undertaken on the Premises;
- t. to observe and comply with all fire regulations pertaining to the use of the Building;
- u. not to permit the consumption of liquor as defined in Liquor Control and Licensing Act R.S.B.C. 1966, c. 267 or the use or consumption of cannabis products as defined in the *Cannabis Control and Licensing Act* R.S.B.C. 2018, c.26 within or around the Building;
- v. to designate a liaison person to work with the Manager, Recreation Services and Facilities - tēmәsewtx<sup>w</sup> Aquatic and Community Centre and provide the City with the name and contact information for the liaison prior to the commencement of the Term and thereafter promptly notify the City of any changes to the name or contact information for the liaison and to maintain this line of communication without recourse to public announcements;
- w. To provide a list of Society board members with the signed Lease agreement.

## **12. Workers Compensation**

- I. The Society shall, in its use of and activities on the Premises, comply with the *Workers Compensation Act* (British Columbia) and all regulations and orders from time to time in force thereunder, including the Occupational Health and Safety Regulations, and, upon request from the City, shall provide evidence of any required registration under that Act and evidence of compliance with any requirement under that Act to make any payments or pay assessments.
- II. In addition, the Society shall be the “prime contractor” for the Premises under the *Workers Compensation Act* (British Columbia) and shall fulfill all of the “prime contractor’s” obligations under that Act, including by ensuring that the activities of any employers, workers, volunteers and other persons on the Premises relating to occupational health and safety are coordinated and by doing everything that is reasonably possible to establish and maintain a process that shall ensure compliance with that Act and regulations thereunder, including the Occupational Health and Safety Regulations.

## **13. City’s Maintenance and Repairs**

- I. The City shall maintain and repair the Building infrastructure at its own cost, other than repairs and maintenance resulting from the Society’s misuse of the Premises in contravention of this Lease, the costs for which the Society shall be solely responsible in accordance with Schedule “B”.

## **14. Utilities**

- I. The City shall provide heat, water and electricity to the Premises and non hazardous domestic waste and recycling collection from the Premises as part of the lease agreement. The City will not be liable for any loss or damage to the Society arising or resulting from the interruption of, or failure to supply, any utility to be provided by the City nor shall the City be liable for any loss or damage to the Society, its goods, equipment, business or other property caused by any overflow or leakage of water, electricity, gas or fuel oil from any part of the Building, however caused, nor shall the City be liable for any damage to the Society, its invitees, agents, employees, members, its goods or other property by reason of any accident, however caused, occurring to the machinery, fixtures, equipment, lights, gas or water pipes and any other apparatus located in the Building.

## **15. Janitorial Services**

- I. The City shall provide janitorial services and related supplies at the Premises at its own cost, in accordance with Schedule “B”.

## **16. Security**

- I. The City shall provide electronic security monitoring at the Building, including at the Premises, at its own cost. The Society shall lock and secure the Premises at the end of its daily use. Damages and costs resulting from theft shall be the sole responsibility of the Society if it can be shown that the Society did not properly secure the premises.
- II. The City shall provide the Society with keys and/or codes to the Premises. The Society will not change the keys and/or codes, or install new locks without consultation with the City.
- III. The Society shall be responsible to ensure that the Premises is locked and secured when a Society member is not present.
- IV. In the event that the Society wishes to implement a security system within the Building, the Society must first receive the City's written approval. The Society shall be responsible for all the associated costs.

## **17. Liaison**

- I. The Society shall appoint a liaison to work with the and Manager, Recreation Services and Facilities - t̄m̄es̄ew̄tx̄w Aquatic and Community Centre the Society shall notify the City of the name and contact information for its appointed liaison upon execution of this Lease. The Society's appointed liaison shall attend all meetings scheduled by the City from time to time for the purpose of discussing this Lease and addressing related concerns.

## **18. Society's Representations and Warranties**

- I. The Society represents and warrants that:

it is a not-for-profit society validly incorporated and in good standing under the laws of British Columbia, and it does not carry on its activities for profit or gain;

it has the power and capacity to enter into and carry out its obligations under this Lease;

all necessary resolutions and other preconditions to the validity of this Lease have been completed by the Society; and

it will apply for and maintain a valid provincial child care licence for the Premises through the Fraser Health – Community Care Facilities Licencing for the term of this contract.



## **19. Condition of Premises**

- I. The Society accepts and uses the Premises and the Play Equipment “as is”, without any representations, warranties or assurances from the City as to their state or condition or their suitability for the Society’s purposes.

## **20. No Interest in Land**

- I. The Society acknowledges and agrees that this is a Lease and the Society acquires no interest in the Land but only the right to use the Premises and the Play Equipment in accordance with the terms and conditions of this Lease.

## **21. Further Interests**

- I. Subject to the Society’s rights of exclusive possession pursuant to section 6 of this Lease, the City will not grant additional licenses and other rights and privileges to third parties with respect to use of the Premises.

## **22. Society Alterations**

- I. The Society shall not make any improvements or alterations to the Premises without the prior written consent of the City, which consent may be withheld at the City’s sole discretion. Any approved alterations shall be provided at the Society’s expense.

## **23. Notice under *Builders Lien Act***

- I. The Society acknowledges that the City may file a notice against the title to the Land pursuant to section 3(2) of the *Builders Lien Act* (British Columbia).

## **24. Insurance Requirements**

- I. The Society shall, without limiting its obligations or liabilities herein and at its own expense, provide and maintain throughout the Term of the Lease and any renewal term the following insurances in forms and amounts acceptable to the City from insurers registered, licensed and authorized to conduct business in the Province of British Columbia:
  - (a) Commercial General Liability insurance on an occurrence basis, in an amount not less than \$5 million dollars (\$5,000,000.00) inclusive per occurrence against death, bodily injury, personal injury and property damage arising directly or indirectly out of the work or operations of the Society, its employees, agents, and subcontractors. The insurance policy will be endorsed to add the City of New Westminster as Additional Insured and will include Cross Liability and Severability of Interests such that the coverage shall apply in the same manner and to the same extent as though

a separate policy had been issued to each insured. The insurance shall include, but not be limited to:

- (i) premises and operations liability,
  - (ii) broad form products and completed operations,
  - (iii) owners and contractors protective liability,
  - (iv) blanket contractual,
  - (v) volunteers and employees as additional insureds,
  - (vi) non-owned automobile,
  - (vii) contingent employers liability,
  - (viii) broad form loss of use,
  - (ix) personal injury,
  - (x) broad form tenants legal liability,
  - (xi) injury to participants for sports and events;
- (b) Automobile Liability insurance on all vehicles owned, operated or licensed in the name of the Society in an amount not less than \$5 million dollars (\$5,000,000.00) per occurrence for bodily injury, death and damage to property; and
- (c) "All risk" property insurance for replacement cost on all of the Society's improvements on or to the Premises and all of the Society's fixtures and personal property on the Premises.
- (d) the City recommends the following insurances where they are applicable.
- (i) Business Interruption Insurance to insure that the Tenant has some policy provisions that will assist with covering their rent and operating expenses in the event of a loss.
  - (ii) Equipment Breakdown Insurance to ensure that the Tenant's equipment is not at risk in the event of a loss.
  - (iii) Auto Liability Coverage for owned and non-owned auto liability in the event that any Society or member owned vehicles cause damages to the Buildings or the Premises with a minimum of \$2,000,000.

(iv) Cyber and Media Liability Insurance – please provide evidence of this coverage with a minimum of \$1,000,000.

- II. The Society will provide the City with evidence of the required insurance prior to the Commencement Date. When requested by the City throughout the Term or any renewal term, the Society shall provide certified copies of required insurance policies. Certificates of Insurance shall include the contract title, number, policyholder and the scope of work. Certificates of Insurance may not contain any qualifications or disclaimers whatsoever.
- III. All required insurance policies shall remain in full force and effect at all times during the Term and for the period not less than 2 years following the expiry of the Lease.
- IV. All required insurance shall be endorsed to provide the City with 30 days advance written notice of cancellation.
- V. All required insurance shall include that the City is protected notwithstanding any act, neglect or misrepresentation by the Society which might otherwise result in the avoidance of a claim and that such policies are not affected or invalidated by any act, omission or negligence of any third party which is not within the knowledge or control of the insured.
- VI. The Society hereby waives all rights of recourse against the City for loss or damage to the Society's property, except as a result of the City's use of the Premises, as specified herein.
- VII. All required insurance will contain a clause that waives the insurer's rights of subrogation against the City and the City's personnel.
- VIII. The Society shall require and ensure that each subcontractor maintains insurances comparable to those required above. Upon request, the Society will provide the City with Certificates of Insurance for the policies it has obtained from its subcontractors and a copy of the applicable insurance clauses from its subcontractor's agreements.
- IX. The Society shall be responsible for deductible amounts under the insurance policies.
- X. All the foregoing insurance shall be primary and not require the sharing of any loss by the City or any insurer of the City.
- XI. The City reserves the right to require such higher limits of insurance or other types of insurance appropriate to this Lease as the City may reasonably require from time to time. The Society acknowledges that any requirement by the City as to the type and amount of coverage under any policy of insurance will not constitute a representation by the City that the amount required is adequate and the Society

acknowledges and agrees that it is solely responsible for obtaining and maintaining policies of insurance in adequate amounts. The Society and each of its subcontractors will provide at its own cost any additional insurance which is required by law to provide or which it considers necessary.

## **25. Society Release and Indemnity**

- I. The Society shall at all times and does hereby indemnify, save harmless, release and forever discharge the City from and against all manner of actions, causes of action, claims, debts, suits, damages, demands, promises, and costs (including all legal costs associated with defending a claim) at law or in equity whether known or unknown, including without limitation for injury to persons or property, including death of any person, directly or indirectly arising or resulting from, or attributable to, any act, omission, negligence or default of the Society in connection with or in consequence of this Lease and its operations at the Premises, including its use of the Play Equipment.
- II. Fines, expenses, and costs suffered or incurred by the City including, without limiting the foregoing, any liability, costs or expenses whatsoever insured by reasons of liens for non-payment of labour or materials, workers' compensation assessments, unemployment insurance, federal or provincial tax or check-off, which are based upon or arise out of this Agreement or use of the Premises by the Society or any of its members, licensees or invitees.

## **26. City Release and Indemnity**

- I. The City shall at all times and does hereby indemnify, save harmless, release and forever discharge the Society from and against all manner of actions, causes of action, claims, debts, suits, damages, demands, promises, and costs (including all legal costs associated with defending a claim) at law or in equity whether known or unknown, including without limitation for injury to persons or property, including death of any person, directly or indirectly arising or resulting from, or attributable to, any act, omission, negligence or default of the City in connection with its operations at or use of the Premises.

## **27. Survival of Indemnities**

- I. The obligations under sections 25 and 26 survive the expiry or earlier termination of this Lease.

## **28. Termination Due to Default**

- I. If and whenever:

any of the Society's goods or chattels are at any time seized or taken in execution or attachment by any creditor of the Society or under bill of sale or chattel mortgage;

a writ of execution issues against the goods and chattels of the Society;

the Society makes any assignment for the benefit of creditors or becomes insolvent or bankrupt;

proceedings are begun to wind up the Society;

the Society ceases to be a not-for-profit society in good standing under the *Society Act* (British Columbia);

the Society is in default in the payment of the Lease Fee or any other amount payable under this Lease and the default continues for 30 days after delivery of written notice by the City to the Society;

the Society does not fully observe, perform and keep each and every term, covenant, agreement, stipulation, obligation, condition and provision of this Lease to be observed, performed and kept by the Society, and persists in such default for 30 days after written notice by the City or, in the case of a default that cannot with due diligence be cured within the period of 30 days, the Society does not fully proceed promptly after the giving of such notice to cure such default; or

the Society vacates or abandons the Premises or uses or permits or suffers the use of the Premises for any purpose other than the purposes permitted by this Lease, and such default persists for 30 days after written notice by the City,

then the City may, at its option, terminate this Lease and the Term shall then become immediately forfeited and void and the Society shall immediately cease all use and occupation of the Premises and shall vacate and deliver up possession of the Premises and the City may without notice or any form of legal process and without any adherence to public law duties or procedural fairness or the principles of natural justice, forthwith re-enter the Premises and repossess and enjoy the same.

## **29. Surrender**

- I. Within 30 days after the Expiry Date or earlier termination of this Lease (unless this Lease is terminated for default in accordance with section 28, in which case the Society shall comply with the requirements under this section immediately upon termination), the Society shall cease its use of the Premises, remove all equipment and supplies brought into the Premises and leave the Premises in a safe, clean and tidy condition, and otherwise in the condition in which the Premises are required to be kept throughout the Term.

## **30. Condition of Premises**

- I. If the Society fails to leave the Premises in the condition required by this Lease

and the condition of the Premises agreed to by the Society and the City under section 11.1 (y), the City may do so on behalf of the Society and the Society shall, on demand, compensate the City for all costs incurred.

### **31. Entry by City**

- I. The City may enter onto the Premises with prior arrangement for the purpose of inspecting the Premises in order to determine whether the Society is complying with the requirements of this Lease and to access the janitorial room.

### **32. No Assignment or Sublease**

- I. The Society shall not assign the Society's interest in this Lease or sublease the Premises or any portion of the Premises, nor may the Society charge, mortgage or encumber or purport to charge, mortgage or encumber the Land or the Building.

### **33. Entire Agreement**

- I. The provisions in this Lease constitute the whole of the agreement between the parties and supersede all previous communications, representations, warranties, covenants and agreements, whether verbal or written, between the parties with respect to the subject matter of this Lease.

### **34. No Joint Venture**

- I. Nothing contained in this Lease creates the relationship of principal and agent or of partnership, joint venture or business enterprise or entity between the parties or gives the Society any power or authority to bind the City in any way.

### **35. Notices**

- I. Where any notice, request, direction or other communication (any of which is a "Notice") shall be given or made by a party under this Lease, it shall be in writing and is effective if:
  - a) delivered in person,
  - b) sent by registered mail addressed to the party for whom it is intended at the address set forth above in the Lease,
  - c) sent by email to the City at [InvTACC@newwestcity.ca](mailto:InvTACC@newwestcity.ca) as the case may be,

provided that any Notice to the City shall be to the attention of the Manager - tēməsewtx<sup>w</sup> Aquatic and Community Centre with a copy to the City Solicitor. Any Notice is deemed to have been given if delivered in person, when delivered; if by registered mail, when postal receipt is acknowledged by the other party; if by fax, when transmitted. The

address or fax number of a party may be changed by notice in the manner set out in this provision.

### **36. No Effect on Law or Powers**

- I. Nothing contained or implied herein prejudices or affects the City's rights and powers in the exercise of its functions pursuant to the *Community Charter* (British Columbia) or its rights and powers under any enactment to the extent the same are applicable to the Lands and the Building (including the Premises), as if this Lease had not been fully executed and delivered.

### **37. Interpretation**

- I. In this Lease:

reference to the singular includes a reference to the plural and vice versa, unless the context requires otherwise;

a particular numbered section is a reference to the correspondingly numbered section of this Lease;

an "enactment" is a reference to an enactment as that term is defined in the *Interpretation Act* (British Columbia) of the day this Lease is made;

any enactment is a reference to that enactment as amended, revised, consolidated or replaced;

section headings are inserted for ease of reference and are not to be used in interpreting this Lease:

a reference to a party is a reference to a party to this Lease;

time is of the essence;

where the word "including" is followed by a list, the contents of the list shall not circumscribe the generality of the expression immediately preceding the word "including"; and

a reference to a party is deemed to include the heirs, executors, administrators, successors, assigns, servants, employees, agents, contractors, elected and appointed officials, officers, directors, licensees and invitees of such party where the context so requires or allows.

### **38. City Discretion**

- I. Wherever in this Lease the approval or consent of the City is required, some act or thing is to be done to the City's satisfaction, the City is entitled to form an opinion, or the City is given the sole discretion:

the relevant provision is not deemed to have been fulfilled or waived unless the approval, consent, opinion or expression of satisfaction is in writing signed by the City or its authorized representative;

the approval, consent, opinion or satisfaction is in the discretion of the City, acting reasonably; and

the sole discretion of the City is deemed to be the sole, absolute and unfettered discretion of the City.

### **39. Severance**

- I. If any portion of this Lease is held invalid by a court of competent jurisdiction, the invalid portion shall be severed and the decision that it is invalid shall not affect the validity of the remainder of the Lease.

### **40. No Public Law Duty**

- I. Whenever in this Lease the City is required or entitled at its discretion to consider granting any consent or approval, or is entitled to exercise any option to determine any matter, or to take any action or remedy including, without limiting the generality of the foregoing, the termination of this Lease, the City may do so in accordance with the contractual provisions of this Lease and no public law duty of procedural fairness or principle of natural justice shall have any application.

### **41. Binding on Successors**

- I. This Lease ensures to the benefit of and is binding upon the parties and their respective successors and assigns, notwithstanding any rule of law or equity to the contrary.

### **42. Laws of British Columbia**

- I. This Lease shall be construed according to the laws of the Province of British Columbia.

### **43. Waiver or Non-Action**

- I. Waiver by the City of any breach of any term, covenant or condition of this Lease by the Society shall not be deemed to be a waiver of any subsequent default by the Society. Failure by the City to take any action in respect of any breach of any term, covenant or condition of this Licence by the Society shall not be deemed to be a waiver of such term, covenant or condition.



As evidence of their agreement to be bound by the above terms, the City and the Society each have executed this Lease on the respective dates written below:

**CITY OF NEW WESTMINSTER** by its authorized signatory:

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Date

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**YMCA BC**

By its authorized signatories:

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Authorized Signatory:

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Authorized Signatory:

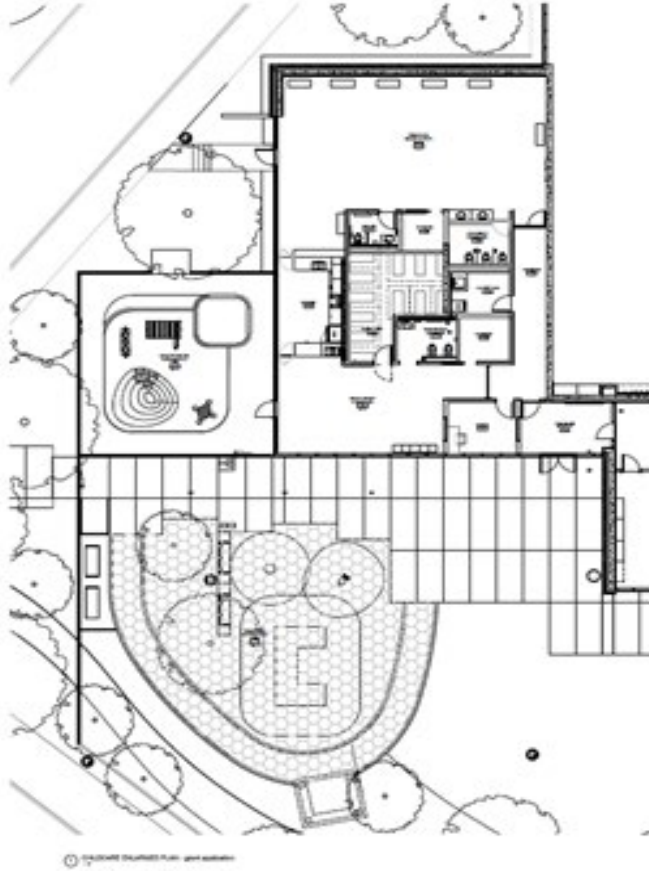
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Date:

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## Schedule "A"

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**Licensed for 37 children – 12 infant and toddler/ 25 preschool**

**2695 Square Feet**

## SCHEDULE "B"

### Lease Terms and Service Level Agreements LEASE TERMS AND SERVICE LEVEL AGREEMENTS

Item	Description	Party to Perform the Work	Party Responsible to Pay for Work
<b>1.</b>	<b>Heating, Ventilation and Air Conditioning</b>		
a.	- annual inspection	City	City
b.	- routine maintenance and repair	City	City
c.	- provision & replacement of filter material	City	City
d.	- cleaning of ducts	City	City
e.	- life cycle replacement (Capital Maintenance)	City	City
<b>2.</b>	<b>Plumbing Systems</b>		
a.	- preventative maintenance and repairs to hot water heating systems	City	City
b.	- major repairs and replacement of hot water heating systems	City	City
c.	- repairs to all fixtures including faucets, unplugging toilets and all other routine repairs	City	City
d.	- life cycle replacement of hot water systems, fixtures and piping	City	City
<b>3.</b>	<b>Mechanical Systems</b>		
a.	- annual inspection, preventative maintenance and repairs	City	City
b.	- life cycle replacement	City	City
c.	-installation, maintenance and replacement of additional equipment provided and installed by the occupant (subject to prior approval of the City)	Society	Society
<b>4.</b>	<b>Fire Protection &amp; Suppression</b>		
a.	annual inspection of fire extinguishers and smoke detectors within the premises	City	City
b.	- annual inspection of fire extinguishers within premises	City	City
c.	- repairs/recharging of fire extinguishers	City	City
d.	- fire safety evacuation requirements and training provided to staff on a regular basis	Society	Society
<b>5.</b>	<b>Security Systems</b>		
a.	- system monitoring, inspection, maintenance and repair	City	City

Item	Description	Party to Perform the Work	Party Responsible to Pay for Work
b.	- life cycle replacement	City	City
c.	- repair, replacement or re-keying of all locks	City	City
d.	- replacement of keys/access cards/fobs if lost	City	Society
<b>6.</b>	<b>Electrical Distribution Systems</b>		
a.	- repairs and upgrades required by Code or initiated by the City	City	City
b.	- inspection, maintenance and repair of wiring, breakers and electrical panels	City	City
c.	- life cycle replacement of wiring, breakers and panels	City	City
d.	- repair or replacement of switches, receptacles, cover plates	City	City
e.	- extensions, increases or enhancements to meet occupant's needs and future maintenance	City	Society
<b>7.</b>	<b>Lighting Systems</b>		
a.	- bulb/tube replacement for interior lighting	City	City
b.	- annual inspection and maintenance of interior emergency/exit lighting	City	City
c.	- life cycle replacement of fixtures	City	City
d.	- cleaning of interior light fixtures	Society	Society
e.	- provision, maintenance, repair and replacement of portable lighting fixtures	City	City
<b>8.</b>	<b>Interior Windows</b>		
a.	- breakage occurring and routine repair required during Society's permitted operating hours	City	City
b.	- breakage occurring and routine repair required outside Society's permitted operating hours, unless caused by the Society's employees or those for whom it is responsible in law	City	City
b.	- cleaning	City	City
c.	- replacement due to normal wear and tear	City	City
<b>9.</b>	<b>Exterior Windows</b>		
a.	- breakage and routine repair	City	City
b.	- cleaning of exterior surfaces	City	City

Item	Description	Party to Perform the Work	Party Responsible to Pay for Work
c.	-window blinds cleaning & repairs	City	City
<b>10. Interior Doors</b>			
a.	- maintenance & repair (regular wear and tear)	City	City
b.	- maintenance & repair (due to improper use)	City	City
c.	- life cycle replacement	City	City
<b>11. Exterior Doors</b>			
a.	- maintenance and repair	City	City
b.	- life cycle replacement	City	City
<b>12. Interior Surfaces</b>			
a.	- interior life cycle repainting	City	City
b.	- maintenance and cleaning of window applications including, but not limited to, blinds and curtains	City	City
c.	- repairs to interior walls and ceilings, including minor painting	City	City
d.	- interior repairs due to building system failures such as roof leaks, exterior walls and foundation leaks not caused by the occupant or operations	City	City
e.	- maintenance and repairs of floor coverings, including carpet and tile	City	City
f.	- life cycle replacement of flooring	City	City
g.	- maintenance, repair and replacement of millwork (other than regular wear and tear)	City	City
<b>13. Major Structural Systems</b>			
a.	- repairs or replacements of foundations, flooring sub-structure, building envelope including bearing walls and roofing and parking lots due to damage not related to the tenancy	City	City
b.	-repairs and painting of exterior surfaces including windows, trim, fascia and soffits	City	City
c.	- cleaning and repair of eaves troughs and gutters	City	City
d.	- cleaning of roof drains and roof areas	City	City
e.	-elevator maintenance	City	City

Item	Description	Party to Perform the Work	Party Responsible to Pay for Work
<b>14.</b>	<b>Site Services</b>		
a.	- landscaping repairs and maintenance, excluding outdoor play area dedicated to the Childcare facility	City	City
b.	- grass cutting	City	City
c.	- general cleaning of grounds, litter disposal	City	City
d.	- snow and ice removal from steps, walkways, entrances	City	City
e.	- removal of snow from entrance to parking areas	City	City
f.	- provision and application of de-icing materials	City	City
g.	- repairs of water and sewage systems (beyond the building perimeter)	City	City
h.	- maintenance, repair and replacement of gates and fences	City	City
i.	- maintenance and repair of parking areas	City	City
j.	- snow and ice removal from roof areas	City	City
k.	- all costs related to controlling and/or eliminating pests, rodents, insects or wildlife within the Premises	City	City
<b>15.</b>	<b>Signage</b>		
a.	- maintenance, repair and replacement of interior (subject to prior approval of the City)	City	City
<b>16.</b>	<b>Outdoor Play Area Equipment</b>		
a.	- inspection, maintenance, and repair of playground equipment and structures	City	City
b.	- lifecycle replacement of play equipment and structures	City	City
c.	- maintenance, repair and replacement of general outdoor surfaces, and fences	City	City
d.	- maintenance, repair, replacement of sand and rubber materials	City	City
e.	- maintenance of landscaping (plantings)	City	City
<b>17.</b>	<b>Janitorial Services</b>		
a.	- routine janitorial/custodial services	City	City
b.	- pest control services (interior and exterior)	City	City
c.	- provision of all washroom supplies	City	City
d.	- removal of hazardous material	City	City

Item	Description	Party to Perform the Work	Party Responsible to Pay for Work
<b>18.</b>	<b>Appliances, Program and Other Equipment</b>		
a.	- inspection, maintenance and repair of all appliances and equipment including stoves, refrigerators, microwaves, coolers, free standing cabinets –	City	City
b.	- replacement of all appliances, program and non-installed equipment	City	City
c.	- maintenance, repair and replacement of furniture	Society	Society
<b>19.</b>	<b>Renovations and Upgrades</b>		
a.	- any upgrades, additions, enhancements or improvements beyond what was originally provided during construction (subject to prior approval by the City)	City	Society
<b>20.</b>	<b>Utilities</b>		
a.	- electricity	City	City
b.	- gas	City	City
c.	- water and sewer	City	City
d.	- garbage and recycling	City	City
<b>21.</b>	<b>Business Operations</b>		
a.	- staff costs	Society	Society
b.	- telephone, internet & cable services	Society	Society
c.	- insurance (CGL, business interruption, contents, etc., subject to approval by the City)	Society	Society
d.	- supplies and equipment, including for bathroom and kitchen (non-janitorial supplies)	Society	Society
e.	- security services	City	City

Note: Any other items not qualified above that would be classified as infrastructure, mechanical, electrical or building envelope are the responsibility of the City. Any needs related to the Society's function and delivery of services are the responsibility of the Society.

## Schedule "C"

Operating Costs
Annual backflow preventer test
Boiler(1) permit
Burglary security Monthly monitoring
DDC control system maintenance
Elevator 24 hours monitoring services annual billing
ULC fire monitoring annual inspection
ULC fire 24 hours monitoring Monthly monitoring
Dual Cellular "active" ULC monitoring
Fire alarm/Emergency lighting annual test
Fire Alarm Monitoring and Repair
Fire damper (10) drop test
Fire sprinkler/backflow/fire extinguisher inspection annual inspection
Fire sprinkler/backflow/fire extinguisher inspection Quarterly inspection
Grease trap cleaning Quarterly cleaning
Hazardous gas monitoring and repair
HVAC system Quarterly and annual inspection, including backflow preventer test
HVAC system repair
Kitchen exhaust system cleaning
Pest Control
Roof inspection and Maintenance
Heating loop and glycol loop Water treatment
Annual Insurance Premium (building)
Elevator emergency call out phone line
Exterior window cleaning