

THIS FUNDING AGREEMENT dated the 1st day of September, 2018.

BETWEEN:

THE TOWN OF AMHERST, and the Municipal Corporation with its head office located at 98 East Victoria Street, Amherst, Nova Scotia (the "Town")

OF THE FIRST PART

-and-

THE CUMBERLAND YMCA, a Society incorporated pursuant to the Societies Act of Nova Scotia ("the Cumberland YMCA")

OF THE SECOND PART

WHEREAS the Town has been requested by the Cumberland YMCA to provide financial assistance in order to maintain its level of services to the Community;

AND WHEREAS the parties to this Agreement wish to ensure that the Cumberland YMCA continues to remain financially sustainable;

AND WHEREAS the parties to this agreement wish to set out their respective rights and obligations with respect to the provision of said funding;

IN CONSIDERATION of the premises and the mutual covenants contained in this Agreement, and other good and valuable consideration, the parties agree as follows:

1. Effective Date

1.1 The parties agree to enter into this funding agreement, effective the day of the 1st day of September 2018, and subject to the terms, conditions and stipulations set forth herein.

2. Term of Agreement

2.1 Term. Subject to any provisions contained herein, this Agreement shall be in effect from the date set out herein, up to and including March 31, 2024.

2.2 End of Funds. Notwithstanding anything in this Agreement, the Town shall not be obligated to provide funds pursuant to this Agreement after March 2024.

2.3 The parties shall, no later than October 1, 2023, meet with the purpose of negotiating either an extension to this agreement or a completely new agreement.

3. Requirements

3.1 As the basis of this funding is the financial need of the Cumberland YMCA, the Cumberland YMCA undertakes to provide the Town with reports, including but not limited to quarterly statements of revenue and expenditures, an annual report on program and services, strategic, risk management and business plans as they are

updated, board meeting minutes on a quarterly basis, annual audited financial statements and other information reasonably requested by the Town from time to time.

- 3.2 The Cumberland YMCA recognizes that the pool is an integral part of its organization and funding and agrees to keep the pool open, operational and utilized to deliver programs to the Community.
- 3.3 The Cumberland YMCA agrees that it will, through its Board of Directors, continue to develop, implement, and revise its strategies, risk management and business plans based on its financial position and assessment of community needs.
- 3.4 The Cumberland YMCA agrees that a member of the Town's Council shall be a member of the Cumberland YMCA Board of Directors.
- 3.5 The Town shall not be obligated to provide funds pursuant to this Agreement should the Cumberland YMCA become unsustainable, as evidenced by significant program reduction or partial or complete facility closure.

4. Funds

- 4.1 The Town agrees during the term of this Agreement, and subject to the conditions contained herein, to provide to the Cumberland YMCA a contribution to its operational requirements.
- 4.2 The parties agree that the maximum operational funding to be provided to the Cumberland YMCA is \$100,000 annually (subject to CPI indexing described below) payable in four equal installments on April 1, July 1, October 1 and January 1 of each year.
- 4.3 The maximum annual funding shall be adjusted on April 1 of each year during the life of the Agreement by the year over year change in the Consumer Price Index – all items NS calculated at December of the preceding year.

5. Transition

- 5.1 The Town has provided accounting services up to and including the July 2018 month end.
- 5.2 The Town will continue to provide payroll services up to December 31, 2018 including the preparation of T4's for the 2018 year.
- 5.3 The Town will absorb water and sewer costs up to and including August 31, 2018.
- 5.4 The Town will absorb solid waste costs up to and including August 31, 2018.
- 5.5 The Town will make a cash payment to the Cumberland YMCA of \$16,667 on the signing of the Agreement representing the pro-rated amount for the months of August and September 2018. Regular quarterly payments shall commence on October 1, 2018.

6. Insurance

- 6.1 The Cumberland YMCA shall put in effect and maintain in full force and effect or cause to be put in full force and effect and maintained for the period during which this

Agreement is in effect all the necessary property and liability insurance that would be considered appropriate, and further agrees to provide to the Town upon request, written proof of the same.

6.2 In no event shall the Town be liable for:

(a) Any bodily injury, death or property damages to the Cumberland YMCA, its employees, agents or consultants or for any claim, demand or action by any Third Party against the Cumberland YMCA, its employees, agents or consultant, arising out of or in any way related to this Agreement; nor

(b) Any incidental, indirect, special or consequential damages, or any loss of use, revenue or profit to the Cumberland YMCA, its employees, agents or consultants arising out of or in any way related to this Agreement.

6.3 The Cumberland YMCA agrees to indemnify and hold harmless the Town, its officers, employees or agents from and against all claims, demands, loss, costs, damages, actions, suits or other proceedings by whomsoever brought or prosecuted in any manner based upon, or occasioned by any injury to persons, damage to or loss or destruction of property, caused by or arising directly or indirectly in any way related to this Agreement.

7. Default and Termination

7.1 The Town may declare in writing that an "Event of Default" has occurred if the Cumberland YMCA has not complied with any condition, undertaking or material term in this Agreement. The Town will not declare in writing that an "Event of Default" has occurred unless it has first consulted with the Cumberland YMCA, and requested that the default be rectified within a specified time frame.

7.2 The Town may withdraw its notice of an "Event of Default" if the Cumberland YMCA, within the time frame specified by the Town, either corrects the condition or event or demonstrates to the satisfaction of the Town that it has taken such steps as necessary to correct the condition.

7.3 If the Town declares that an "Event of Default" has occurred, which has not been satisfactorily addressed by the Cumberland YMCA, it may immediately terminate or suspend its obligations to pay funds under this Agreement. If the Town suspends payment, it may in its sole and absolute discretion pay the suspended funds, at some future time, if the Town is satisfied that the default has been cured.

8. Notice

8.1 Any notice, information or document provided for under this Agreement will be effectively given if delivered or sent by letter, postage or other charges prepaid, or by facsimile or email. Any notice that is delivered will have been received on delivery; and

any notice mailed shall be deemed to have been received on the third (3) calendar day following the date upon which it was mailed.

DRAFT

8.2 Notice can be given at the following addresses:

(a) To the Town:
Chief Administrative Officer
PO Box 516
Amherst, NS
B4H 4A1

(b) To the Cumberland YMCA:
Executive Director
99 Church Street
Amherst, NS
B4H 3B3

9. Governing Law

9.1 This Agreement and the application or interpretation of it shall be governed exclusively by the terms and by the laws of the Province of Nova Scotia.

10. Time

10.1 Time shall be of the essence of this Agreement.

11. Headings

11.1 The headings appearing throughout this Agreement shall not form part of this Agreement. The parties desire that this Agreement shall be given a broad and liberal interpretation.

12. Severability

12.1 Each provision of this Agreement shall be severable. If any provision of this Agreement that is not a fundamental term is found to be or become invalid or unenforceable, in whole or in part, it will be deemed to be severable and will be deleted from this Agreement, but all other terms and conditions will continue to be valid and enforceable.

13. Waiver

13.1 The failure of the Town to insist in one or more instances on performance by the Cumberland YMCA of any of the terms or conditions of this Agreement shall not be construed as a waiver of the Town's right to require further performance of any such terms or conditions, and the obligations of the Cumberland YMCA with respect to such performance shall continue in full force and effect.

14. No Authority to Represent

14.1 Nothing in this Agreement is to be construed as authorizing one party to contract for or incur any obligation on behalf of the other to act as agent for the other.

15. Agreement Binding

This Agreement shall ensure to the benefit of and be binding on the respective representatives and assigns of each of the parties to it.

IN WITNESS WHEREOF this Agreement has been executed by the parties as of the ____ day of _____, 2018.

Gregory D. Herrett, CAO
Town of Amherst

Witness

David Kogon, Mayor
Town of Amherst

Witness

Trina Clarke, Executive Director
Cumberland YMCA

Witness

Charles Seymour, Chair
Cumberland YMCA Board of Directors

Witness