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**The Municipal Corporation of the
Town of Fort Erie**

BY-LAW NO. 31-05



**BEING A BY-LAW TO AUTHORIZE THE ENTRY INTO A
PARTNERSHIP AGREEMENT WITH THE
FORT ERIE COMMUNITY YMCA FOR SWIM PROGRAM
AND WADING POOL PROGRAM**

WHEREAS Section 8 of the *Municipal Act, 2001* provides 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 Section 9(1) of the said *Municipal Act* provides Sections 8 and 11 shall be interpreted broadly so as to confer broad authority on municipalities, to enable them to govern their affairs as they consider appropriate and to enhance their ability to respond to municipal issues, and

WHEREAS Section 11(2) of the said *Municipal Act* provides a lower-tier municipality and an upper-tier municipality may pass by-laws respecting matters within the spheres of jurisdiction described in the Table to this section, subject to certain provisions, and

WHEREAS Item 5 of the Table referenced in Section 11(2) of the said *Municipal Act* provides for the sphere of jurisdiction for culture, parks, recreation and heritage, and

WHEREAS Report No. IS-71-04 was approved at the Council-in-Committee meeting of December 20th, 2004 authorizing a partnership with the E.J. Freeland Community YMCA to provide a Swim Program at the Kinsmen Pool and two wading pools for the Summer of 2005 with the agreement to be for one year and reviewed in the Fall of 2005, and

WHEREAS the terms and conditions of the Partnership Agreement with the Fort Erie Community YMCA have been settled and agreed upon by the parties in the form of Schedule "A" annexed hereto to this by-law;

NOW THEREFORE the Municipal Council of The Corporation of the Town of Fort Erie hereby enacts as follows:

1. **THAT** the entry into a Partnership Agreement with the Fort Erie Community YMCA for the delivery and operation of an Outdoor Summer Swim Program in the form of Schedule "A" annexed hereto to this by-law be and it is hereby authorized and approved.
2. **THAT** the Mayor and Clerk be and they are hereby authorized and directed to execute the Partnership Agreement in the form of Schedule "A" annexed hereto and to affix the corporate seal thereto.
3. **THAT** the said Partnership Agreement shall be reviewed in the Fall of 2005.

4. THAT pursuant to the provisions of Section 227 of the *Municipal Act 2001*, the Clerk of the Town of Fort Erie is hereby authorized to effect any minor modifications or corrections of an administrative, numerical, grammatical, semantical or descriptive nature or kind to the by-law and schedule(s) as may be deemed necessary after the passage of this by-law.

READ A FIRST, SECOND AND THIRD TIME AND FINALLY PASSED THIS 28th DAY OF FEBRUARY, 2005.



MAYOR



CLERK

I, Carolyn J. Kett, the Clerk, of The Corporation of the Town of Fort Erie hereby certifies the foregoing to be a true certified copy of By-law No. 31-05 of the said Town. Given under my hand and the seal of the said Corporation this day of _____, 200 .

SCHEDULE "A" to BY-LAW NO. 31-05

This Partnership Agreement made in triplicate this day of , 2005.

BETWEEN:

THE CORPORATION OF THE TOWN OF FORT ERIE

(hereinafter referred to as the "Town")

OF THE FIRST PART;

- AND -

FORT ERIE COMMUNITY YMCA

(hereinafter referred to as the "YMCA")

OF THE SECOND PART;

WHEREAS the Town has operated an outdoor swim program and operated two wading pools in the Town of Fort Erie during the summer months, and

WHEREAS the YMCA has agreed to assume responsibility for the delivery and operation of the swim program for the municipal pool and operate the municipal wading pools in the Town of Fort Erie pursuant to certain terms and conditions, and

WHEREAS the parties named herein have agreed to enter into a partnership agreement for the provision of a swim program for the municipal pool and to operate the municipal wading pools in the Town of Fort Erie;

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the terms and conditions hereinafter set forth the parties hereto mutually agree as follows:

1. Name

- (a) The name of the swim program shall be the "Town of Fort Erie/YMCA Outdoor Summer Swim Program" (hereinafter called the "Swim Program").
- (b) The name of the wading pool program shall be the "Town of Fort Erie/YMCA Wading Pool Program" (hereinafter called the "Wading Pool Program").

2. Objects

- (a) The Swim Program shall provide opportunities to youth and adults to learn how to swim thereby creating a safe environment for a community that is surrounded by water;

- (b) The Swim Program shall offer the citizens of Fort Erie various swim related learning and recreational opportunities in an outdoor pool environment during the summer months of the year.
- (c) The Wading Pool Program shall offer the citizens of Fort Erie the opportunity for family recreation.

3. **Programming**

- (a) The YMCA shall design and deliver water safety, water certification and public recreational Swim Programs.
- (b) The YMCA shall manage all aspects of the Swim Program including but not limited to program registration, administration and operation.
- (c) The YMCA shall manage the operation of the Wading Pool Program.

4. **Term**

The term of this agreement shall be for one year commencing on or about June 20th, 2005 and terminating September 6th, 2005. Upon review of the Swim Program in the Fall of 2005, the parties may agree to extend the agreement.

5. **Location**

The Swim Program shall be operated at the municipal pool known as the "Kinsmen Pool" and the Wading Pool Program shall be operated at the municipal wading pools known as the "Ferndale Park Wading Pool" and the "Stevensville Wading Pool".

6. **Operation**

- (a) The Swim Program shall operate from May 30th, 2005 and terminating September 6th, 2005.
- (b) The Swim Program shall operate on a daily basis with hours of operation to be approved by the Manager of Facilities and Leisure Services of the Town of Fort Erie.

7. **Costs and Provisions**

- (a) The Town shall provide to the YMCA the following:
 - (i) Forty Thousand Dollars (\$40,000) plus g.s.t. to cover all costs associated with the Swim Program and the Wading Pool Program including staffing, training, marketing and promotion of the Swim Program, materials, supplies and direct programming expenses. The Town shall remit such payment to the YMCA by June 10th, 2005.

- (ii) Should a catastrophic event occur during the term of this agreement the parties shall mutually agree upon a cancellation fee based on direct fixed expenses calculated on a pro-rata basis from the date of the event. Otherwise the YMCA shall receive the full sum of funding as set out under Section 7(a)(i) herein.
 - (iii) The YMCA shall collect all revenues generated from mutually agreed upon rates for swim lessons and public swimming admissions for the Kinsmen Pool and such funds shall be delivered directly to the Manager of Facilities and Leisure Services of the Town of Fort Erie by June 10th, July 10th, August 10th and September 10th, 2005.
- (b) The YMCA, at its expense, shall provide the following:
- (i) Qualified personnel to operate the Swim Program and the Wading Pool Program, and to offer instruction under the Swim Program;
 - (ii) Any Swim Program staff recertification training including first aid/CPR;
 - (iii) All Swim Program materials and supplies directly associated with the delivery of the Swim Program;
- (c) Notwithstanding Article 7(a) the Town, at its expense shall provide but is not limited to the following:
- (i) Responsibility and manpower associated with the operation of the municipal pool and wading pools including daily maintenance, opening/closing of the municipal pools in the spring and fall, pool fouling, water quality duties with respect to filtration and chemicals;
 - (ii) All utility costs;
 - (iii) Pool deck and building maintenance and costs;
 - (iv) All equipment and supplies directly related to the Programs.
- (d) The YMCA shall be permitted to offer a free swimming lesson program to all youths who reside in the Town of Fort Erie who have completed the second grade in recognition of its 100th Anniversary.
- (e) The YMCA shall be permitted to offer financial assistance for those youth unable to pay the fee associated with the swimming lesson program.

8. Liability Insurance Policy

The YMCA shall furnish the Town with a copy of liability insurance, covering public liability and property damage, in the minimum amount of Ten Million Dollars (\$10,000,000) naming the Town as additional insured. An endorsement shall be included in the policy to the effect that the policy will not be altered, cancelled or allowed to lapse without thirty (30) days advance written notice to the Town.

9. **Indemnification of the Town**

Except to the extent caused by the Town, or any of its agents, contractors, employees or servants, the YMCA shall indemnify and save the Town harmless from and against any and all claims, actions, damages, liability and expense in connection with loss of life, personal injury and/or damage to property arising from or out of any occurrence, upon the operation and delivery of the Swim Program and the Wading Pool Program, or occasioned wholly or in part by an act or omission of the YMCA, its agents, contractors, employees or servants.

10. **Default**

Failure to comply with all terms and conditions of this agreement, shall be just cause for the cancellation of the agreement provided that the defaulting party has received at least thirty (30) days written notice from the non-defaulting party and an opportunity to rectify prior to cancellation to the sole satisfaction of the non-defaulting party.

11. **Assignability**

This agreement shall not be assigned by either party.

12. **Notice**

Any notice or communication required or permitted to be given under this agreement shall be in writing and shall be serviced personally, delivered by courier or sent by registered mail, postage prepaid with return receipt requested, addressed to the other party as follows:

Notice to the Town: The Corporation of the Town of Fort Erie
1 Municipal Centre Drive
Fort Erie, ON L2A 2S6
Attention: Municipal Clerk

Notice to the YMCA: Fort Erie Community YMCA
1555 Garrison Road
P.O. Box 536
Fort Erie, ON L2A 5Y1
Attention: Chief Executive Officer

and/or to such other persons or places as either of the parties may hereafter designate in writing. All such notices that have been delivered shall be effective when received. Mailed notices shall be considered received within three (3) business days after the same are deposited in the mail.

13. **Governing Law**

This agreement and the rights, obligations and relations of the parties hereto shall be governed by and construed in accordance with the laws of the Province of Ontario.

**2005 TRACKING SHEET FOR
CORRECTIONS MADE TO BY-LAWS AFTER PASSAGE**

THAT pursuant to the provisions of Section 227 of the *Municipal Act, 2001*, the Clerk of the Town of Fort Erie is hereby authorized to effect any minor modifications or corrections of an administrative, numerical, grammatical, semantical or descriptive nature or kind to the by-law and schedule(s) as may be deemed necessary after the passage of this by-law.

1. Enter any changes made to a By-law after passage as indicated below.
2. Print off hard copy for **CJK to initial and date.**
3. **File** original of this form with **Original By-law** and a copy of this form with the **Office Copy By-law.**
4. Copy of **Red-line Revision By-law** that has been initialed and dated by the Clerk to be filed with original by-law.
5. **File** copy in “**By-law Corrections Register**”.

By-law No.	Date of Passage	Nature of By-law	Correction FROM:	Alteration TO:
31-05	February 28, 2005	To authorize the entry into a Partnership Agreement with the Fort Erie Community YMCA for Swim Program and Wading Pool Program	<p>Section 7(b)(ii) <i>Delete</i> “certification.”</p> <p>Section 11 of the Agreement: Except to the extent caused by the Town, or any of its agents, contractors, employees or servants, the YMCA shall indemnify and save the Town harmless from and against any and all claims, actions, damages, liability and expense in connection with loss of life, personal injury and/or damage to property arising from or out of any occurrence, upon the operation and delivery of the Camp, or occasioned wholly or in part by any act or omission of the YMCA, its agents, contractors, employees, servants, licenses, or concessionaires or invitees. In case the Town shall, without fault on its part, be made a party to any litigation commenced by or against the YMCA, then the YMCA shall</p>	Except to the extent caused by the Town, or any of its agents, contractors, employees or servants, the YMCA shall indemnify and save the Town harmless from and against any and all claims, actions, damages, liability and expense in connection with loss of life, personal injury and/or damage to property arising from or out of any occurrence, upon the operation and delivery of the Camp, or occasioned wholly or in part by any act or omission of the YMCA, its agents, contractors, employees or servants.

			protect and hold the Town harmless and shall pay all costs, expenses and solicitor and counsel fees on a solicitor and his client basis incurred or paid by the Town in connection with such litigation.	
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Clerk's Initial	Date	Copy of Form attached to Original and Office Copy By-laws
<i>[Handwritten Initial]</i>	<i>Aug 25 05</i>	31-05

(ii) Should a catastrophic event occur during the term of this agreement the parties shall mutually agree upon a cancellation fee based on direct fixed expenses calculated on a pro-rata basis from the date of the event. Otherwise the YMCA shall receive the full sum of funding as set out under Section 7(a)(i) herein.

(iii) The YMCA shall collect all revenues generated from mutually agreed upon rates for swim lessons and public swimming admissions for the Kinsmen Pool and such funds shall be delivered directly to the Manager of Facilities and Leisure Services of the Town of Fort Erie by June 10th, July 10th, August 10th and September 10th, 2005.

(b) The YMCA, at its expense, shall provide the following:

(i) Qualified personnel to operate the Swim Program and the Wading Pool Program, and to offer instruction under the Swim Program;

(ii) Any Swim Program staff recertification training including first aid/CPR certification;

(iii) All Swim Program materials and supplies directly associated with the delivery of the Swim Program;

(c) Notwithstanding Article 7(a) the Town, at its expense shall provide but is not limited to the following:

(i) Responsibility and manpower associated with the operation of the municipal pool and wading pools including daily maintenance, opening/closing of the municipal pools in the spring and fall, pool fouling, water quality duties with respect to filtration and chemicals;

(ii) All utility costs;

(iii) Pool deck and building maintenance and costs;

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Notice to the YMCA:	Fort Erie Community YMCA 1555 Garrison Road P.O. Box 536 Fort Erie, ON L2A 5Y1 Attention: Chief Executive Officer

and/or to such other persons or places as either of the parties may hereafter designate in writing. All such notices that have been delivered shall be effective when received. Mailed notices shall be considered received within three (3) business days after the same are deposited in the mail.