

THIS AGREEMENT IS MADE ON THIS ___ DAY OF JULY, 2014.

AMONG:

THE MUNICIPALITY OF THE DISTRICT OF YARMOUTH,
(herein referred to as the "MODY"), a municipal body corporate
pursuant to the Municipal Government Act;

and

THE TOWN OF YARMOUTH,
(herein referred to as the "TOY"), a municipal body corporate
pursuant to the Municipal Government Act;

and

THE MUNICIPALITY OF THE DISTRICT OF ARGYLE,
(herein referred to as the "MODA"), a municipal body corporate
pursuant to the Municipal Government Act;

BACKGROUND

- A. The MODY and TOY entered into a Joint Venture Agreement dated January 21, 1997 with respect to the management and operation of the Mariners Centre, a recreational facility located within the Town of Yarmouth.
- B. The MODY and TOY amended the aforementioned Joint Venture Agreement by way of an Addendum dated June 6, 2001.
- C. Since the Joint Venture Agreement was signed the MODY and TOY have managed and operated the Mariners Centre pursuant to the terms of the Joint Venture Agreement.
- D. The MODA wishes to become an equal partner in the management and operation of the Mariners Centre with the MODY and TOY.
- E. The parties have agreed to formalize their relationship for the management and operation of the Mariners Centre by entering into this intermunicipal service agreement to create a body corporate under Section 60 of the **Municipal Government Act** (MGA).

DEFINITIONS

1. In this Agreement these terms shall have the following meaning:
 - a) Tangible capital assets (TCA) means non-financial assets having physical substance that:
 - i) Are held for use in the production or supply of goods and services, for rental to others, for administrative purposes or for the development, construction, maintenance or repair of other tangible capital assets;
 - ii) Have useful economic lives extending beyond five years;
 - iii) Have a cost exceeding \$5,000
 - iv) Are to be used on a continuing basis; and
 - v) Are not for sale in the ordinary course of operations.
 - b) Operating deficit means the excess of operating expenses over operating revenues generated by the Mariners Centre's day to day operations. Operating revenues includes but is not restricted to ice and facilities rental, canteen revenues, ticket sales and advertising sales. Operating expenses includes but is not restricted to wages and benefits, cost of canteen sales, advertising, utilities and other costs related to the delivery of services. The calculation of operating deficits shall exclude any cost of TCA and shall exclude any revenues directly associated with the construction of a TCA, including but not restricted to government grants and corporate sponsorship.
 - c) CAO means the Chief Administrative Officer of a Municipal Unit.

BODY CORPORATE

2. This Intermunicipal Services Agreement is for the joint provision of services and facilities by the parties under Section 60 of the MGA.
3. By this agreement and under the provisions of Section 60(4) of the MGA, the parties hereby create a body corporate under the name "The Mariners Centre Management Authority" and shall register same with the Registrar of Joint Stock Companies.
4. This agreement comes into force on April 1, 2014.
5. The parties hereby delegate to The Mariners Centre Management Authority ("Authority") power to provide the services of a recreational facility at land jointly owned by the MODY and the TOY as tenants in common located at

the corner of Starrs Road and Jody Shelley Drive in the town of Yarmouth, Yarmouth County, Nova Scotia (PIDS 90293719 and 90219189). The ownership of the TCA such as the lands, buildings and equipment shall remain with the MODY and TOY, and the MODA shall not obtain any interest in the TCA by virtue of this Agreement.

DIRECTORSHIP

6. Each party to this agreement appoints 3 non-elected people to be that party's voting directors of the Authority and those directors serve at the pleasure of his/her Council for a term of office specified by his/her Council and hold office until his/her successor is named.

7. A majority of the voting directors constitutes a quorum for the transaction of business.

8. If a vacancy occurs, the Human Resources and Nominating Committee shall undertake to identify potential candidates, through an established process, considering board competency requirements. The HR and Nominating committee shall engage the CAO of a municipality for whom a nomination process is commencing, and the CAO may participate fully in the process. The Human Resources and Nominating Committee shall make a recommendation to the Council responsible for appointing the member, and the Council shall appoint a replacement as soon as possible and notify the Authority of the appointment.

RULES OF PROCEDURE

9. The Authority shall establish its own rules of procedure in accordance with the MGA. The Authority shall not authorize any activity or expenditure that would cause the expenditure and cost to the parties to exceed that set forth in their budget, without the prior, written consent of all parties.

10. There shall be a Chairperson of the Authority who shall be elected annually from amongst the directors of the Authority.

11. The Authority may appoint standing, special and advisory committees. Each Committee shall perform the duties conferred on it by the Authority.

12. The Authority may appoint persons who are not directors of the Authority to a committee.

13. The CAOs of each of the parties to this agreement shall be ex-officio, non-voting directors of the Authority and its appointed committees.

14. All directors, including the Chairperson or other person presiding, vote on every question before the Authority except in the case of conflict of interest. In the event of a tie vote, the motion is declared defeated.

15. The Authority may hire a General Manager and such other employees as determined by the Authority to effectively operate the facility. The General Manager shall be an ex-officio, non-voting member of the Authority and its appointed committees.

16. The Authority may appoint or engage such officials and employees and professional, scientific or technical experts as it considers advisable for the attainment of its objects or the exercise of its powers and may pay them such remuneration as the Authority from time to time determines.

17. The Chairperson and the CAO's of the partnering municipalities shall advise on the formation the Human Resources and Nominating Committee. The Committee shall advise the board on Human Resource matters, and provide nominations for appointment to the board, to the partnering municipalities.

SERVICES AND CONTRACTS

18. The Authority is empowered to make provision for the use of equipment, facilities, services and personnel necessary or advisable to carry out the operation of a recreational facility.

19. The Authority may contract with any person, including, but not limited to, a municipal unit and a municipal unit that is a party to this agreement, for the provision of any service or facility necessary or advisable to carry out the operation of a recreational facility.

20. The Authority shall administer and manage on behalf of the parties the facility and the determination by the Authority on all matters respecting the repair, renovation, maintenance, use and activities carried out at the facility shall be final and binding on the parties hereto.

BOARD AND GENERAL MANAGER RELATIONSHIP

21. The General Manager is the head of the operations of Mariners Centre and is responsible to the Board for the proper administration of the affairs of Mariners Centre in accordance with the by-laws of Mariners Centre and the policies adopted by the Board.

22. The Board shall communicate with the employees of Mariners Centre solely through the General Manager, except that the Board may communicate directly with employees of Mariners Centre to obtain or provide information.

23. The Board shall provide direction on the administration, plans, policies and programs of Mariners Centre to the General Manager.

24. No Board member, committee or member of a committee established by the Board shall instruct or give direction to, either publicly or privately, an employee of Mariners Centre.

ANNUAL BUDGETS

25. The Authority shall cause to be prepared an annual TCA budget for the facility, to be presented to the TOY and MODY for approval as owners of the facility.

26. The Authority shall cause to be prepared an annual operating budget and management plan for the facility and shall present such budget and plan to the parties before each fiscal year and shall further cause audited, annual financial statements to be prepared and submitted to each of the parties forthwith after each fiscal year-end. Such annual financial statements shall include a listing of each party's outstanding financial contribution and shall be conclusive unless objected to within 90 days of receipt of the statements by that party. Provided, however, that a projection of the operating budget shall be completed no later than 45 days before the end of the fiscal year and if it is projected at that time that the operating budget shall be lower or higher than first budgeted then the contribution of each party shall be adjusted by either a concordant reduction or increase of the final quarterly instalment to be made by each party, as the case may be; if, as a result of the aforementioned projection, it is anticipated that the total yearly operating budget shall be higher or lower than \$ 100,000 then the provisions of Clause 28 herein shall apply.

27. The TOY and MODY may approach MOA for financial assistance for TCA additions, and the decision to assist shall be made on a case by case basis. Ownership of the TCA additions, regardless of MOA's potential funding, shall be in accordance with the provisions of paragraph 5 in the Body Corporate section of this agreement.

28. Each of the parties agrees to allocate and contribute to the Authority for the operation of the facility the amount set out in the annual operating budget prepared by the Authority and implemented pursuant to paragraph 26 of this Agreement. The parties agree that any operating deficits will be funded equally

between the parties. Each party will fund their share of such deficit on a quarterly basis with installments due of 35%, 35%, 15% and 15% for each quarter respectively.

29. The parties agree that if the budgeted operating deficit is below \$100,000, the approval of all three of its respective CAO's shall constitute appropriate approval. The parties also agree that a budgeted operating deficit exceeding \$100,000 requires approval of all three of its municipal councils, but only on the portion of the deficit exceeding \$100,000.

30. If either of the parties fails to approve the annual operating budget and management plan, within 60 days of receipt from the Authority, it is agreed that the budget of the Authority, and each party's financial contribution thereto, will be limited to the previous year's annual operating budget adjusted for any increase in the Consumer Price Index, as published by Statistics Canada, for the previous 12-month period.

31. The Authority shall have the exclusive right to manage the facility each year in the manner it deems best, provided it operates within the annual operating budget and management plan as hereinabove described and approved.

32. The Authority shall further advise the parties on such matters as the parties may from time to time seek advice.

33. The Authority has the power to establish a reserve fund for non-TCA capital replacement and a reserve fund for anticipated equipment maintenance.

34. The Authority, on behalf of the owners, may receive from any government or government body or agency grants of money or land and use, apply or convey them in accordance with the terms upon which they were made or for any purposes of the Authority that are not inconsistent with the grant.

35. The Authority, on behalf of the owners, has the power to accept gifts, assignments, devises and bequests of real and personal property and to apply them to the general purpose of the Authority or to a specific purpose of the Authority.

GENERAL

36. This Agreement shall be for a period of five (5) years commencing on the date of the Agreement herein. Thereafter, unless the parties agree otherwise, the Agreement shall automatically renew for successive one (1) year periods.

37. This Agreement shall not be assigned by any party without the prior, written consent of the other.

38. If any disagreement arises among or between the parties under this agreement, the parties agree to use their best efforts to resolve the dispute through negotiation, and if that is unsuccessful, then by mediation, under the "Schedule C Mediation Procedure" under the **Commercial Arbitration Act**, and if that is unsuccessful then by arbitration under the "Schedule B Expedited Arbitration Procedure", under the **Commercial Arbitration Act**.

39. This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

40. This Agreement may be amended from time to time by written agreement of all the parties.

41. The parties each acknowledge and agree that this Agreement has been duly authorized, executed and delivered and is valid and binding upon them and enforceable according to its terms.

42. No waiver by a party of any condition of this Agreement, or of any breach of any provision of this Agreement shall take effect or be binding upon the party unless in writing and signed by the party.

43. This agreement is governed by the laws of the Province of Nova Scotia.

BEFORE WITNESSES the parties have executed this agreement by their respective officials, duly authorized on the dates noted above each of the signatures.


SIGNED, SEALED and DELIVERED


Witness

**THE MUNICIPALITY OF THE
DISTRICT OF YARMOUTH**

Per 

Per _____


Witness

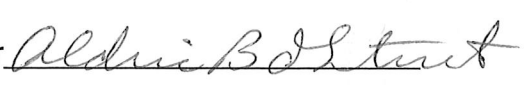
THE TOWN OF YARMOUTH

Per 

Per _____


Witness

**THE MUNICIPALITY OF THE
DISTRICT OF ARGYLE**

Per 

Per _____