EAST ELGIN COMMUNITY COMPLEX - CO-OWNERSHIP & OPERATING AGREEMENT

BETWEEN:

THE CORPORATION OF THE TOWNSHIP OF MALAHIDE

AND

THE CORPORATION OF THE TOWN OF AYLMER

Version July 2, 2026

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CO-OWNERSHIP & OPERATING AGREEMENT

THIS AGREEMENT as of the [●] day of [●], [●].

BETWEEN:

THE CORPORATION OF THE TOWNSHIP OF MALAHIDE,
a municipality within the meaning of the *Municipal Act*, 2001

(hereinafter referred to as "**Malahide**"),

PARTY OF THE FIRST PART

and

THE CORPORATION OF THE TOWN OF AYLMER,
a municipality within the meaning of the *Municipal Act*, 2001

(hereinafter referred to as "**Aylmer**"),

PARTY OF THE SECOND PART

WHEREAS Malahide and Aylmer (collectively the "**Municipalities**" and each a "**Municipality**") jointly own the real property municipally described as 531 Talbot Street West, Aylmer, Ontario, and legally described as PT LT 80 CON NTR MALAHIDE PT 1 TO 3 11R7891; S/T ML26935 TRANSFERRED BYE301577; MALAHIDE, being all of PIN 35300-0249 (the "**Lands**").

AND WHEREAS Aylmer entered a funding agreement with the Province of Ontario, effective as of June 25, 2003 (the "**Funding Agreement**"), pursuant to which each of the Municipalities were designated as recipients of funding for the construction of a recreational facility on the Lands.

AND WHEREAS the Municipalities used the funding received pursuant to the Funding Agreement to construct a facility on the Lands known as the East Elgin Community Complex, which includes a multi-purpose community hall, two (2) meeting rooms, two (2) National Hockey League sized ice rinks, thirteen (13) dressing rooms, administrative offices, office space for community groups and parking for six hundred (600) vehicles (the "**Facility**").

AND WHEREAS the Municipalities entered into a terms of reference agreement on the 15th day of December, 2005, as may have been amended, supplemented, superseded, or replaced from time to time (collectively the "**Original Agreement**"), which governs the use, operation, and maintenance of the Facility and the Lands (collectively the "**EECC**").

AND WHEREAS the Municipalities wish to terminate the Original Agreement and enter into this Agreement, to clarify and establish new terms for the use, operation, maintenance, and public funding of the EECC.

NOW, THEREFORE, THIS AGREEMENT WITNESSETH THAT, in consideration of the mutual covenants set out below together with other good and valuable consideration (the receipt of which is acknowledged), the parties agree as follows:

ARTICLE 1
DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement, the following terms and expressions shall have the following meanings:

(a) "**Agreement**" means this agreement and all instruments amending it including any renewals thereof.

(b) "**Applicable Standards**" means, at any particular time during the Term: (i) all then-applicable municipal, provincial and federal laws, by-laws, policies, statutes, regulations, treaties, judgements, orders and decrees or any like decision having the force of law, of any governmental authorities or persons having authority over any person, property, transaction or event; (ii) the rules, guidelines and regulations for the EECC established by the General Manager from time to time pursuant to the terms of this Agreement; and, (iii) all other requirements set out in this Agreement.

(c) "**Applicable Term**" has the meaning given to it in Section 2.2(f).

(d) "**Appraisal**" has the meaning given to it in Section 18.3(a).

(e) "**Appraiser**" has the meaning given to it in Section 18.3(a).

(f) "**Approved Capital Improvement Plan**" has the meaning given to it in Section 12.1.

(g) "**Aylmer Procurement Policy**" has the meaning given to it in Section 6.1(a).

(h) "**Benchmark Targets**" has the meaning given to it in Section 15.1.

(i) "**Business Day**" means a day other than a Saturday, Sunday or statutory holiday in the Province of Ontario.

(j) "**Capital Improvement Assessment**" means the annual review of all capital components of the EECC, completed for the purpose of initially preparing and thereafter updating the Capital Improvement Plan, as detailed further in Article 12.

(k) "**Capital Improvement Expenditures**" has the meaning given to it in Section 12.1.

(l) "**Capital Improvement Plan**" means the annual implementation strategy and schedule, developed on a five (5) year projection cycle, for all capital improvements required at the EECC, setting out: (i) all anticipated Capital Improvement Expenditures for the EECC; (ii) a reasonable reserve to account for any unanticipated Capital Improvement Expenditures, as detailed further in Article 12.

(m) "**Corporate Records**" has the meaning given to it in Section 7.2(c).

(n) "**Defaulting Party**" has the meaning given to it in Section 18.1(a).

(o) "**EECC**" has the meaning given to it in the Recitals.

(p) "**Emergency**" means any circumstance(s) or event(s) involving danger to, or the safety of, persons, danger or property damage or loss and/or the suspension of any utility or service to the EECC, whether actually occurring or imminent.

(q) "**Emergency Expenditures**" has the meaning given to it in Section 13.1(a).

(r) **"Employee Inventory**" has the meaning given to it in Section 5.3(a).

(s) "**Event of Default**" has the meaning given to it in Section 18.1(a)

(t) "**Facility**" has the meaning given to it in the Recitals.

(u) "**Financial Records"** has the meaning given to it in Section 7.2(a).

(v) "**Funding Agreement**" has the meaning given to it in the Recitals.

(w) "**General Manager**" has the meaning given to it in Section 3.4(d).

(x) "**Indemnified Party**" has the meaning given to it in Section 16.4(a).

(y) "**Indemnifying Party**" has the meaning given to it in Section 16.4(a).

(z) "**Independent Work**" has the meaning given to it in Section 16.4(b).

(aa) "**Initial Term**" has the meaning given to it in Section 2.1(a).

(bb) "**JMSB**" has the meaning given to it in Section 3.1(a).

(cc) "**Joint EECC Procurement Policy**" has the meaning given to it in Section 6.1(a).

(dd) "**Lands**" has the meaning given to it in the Recitals.

(ee) "**Losses**" means any and all loss, liability, obligation, damage, cost, expense, charge, fine, penalty or assessment, suffered, incurred, sustained or required to be paid by a person seeking compensation or indemnification (including lawyers', experts' and consultants' fees and expenses), directly resulting from or arising out of any demand, action, investigation, inquiry, suit, proceeding, claim, assessment, judgment, settlement, or compromise (collectively a "**Claim**"), including the costs and expenses of the Claim itself, but: (i) reduced by any recovery or settlement under or pursuant to any insurance coverage, or pursuant to any claim, recovery, settlement or payment by or against any other persons; (ii) excluding any contingent liability until it becomes actual; and (iii) excluding any loss of profits, or indirect, incidental, special, punitive or consequential damages.

(ff) "**Municipal Employees**" has the meaning given to it in Section 5.1.

(gg) "**Notice of Non-Renewal**" has the meaning given to it in Section 2.2(b).

(hh) "**Operating Budget**" means the annual operating budget for the EECC, submitted by the JMSB for the collective review of the Municipalities pursuant to the terms of this Agreement, which shall include in reasonable detail: (i) all anticipated revenues and income from the EECC; (ii) all anticipated Operating Expenditures; and, (iii) lender reserves, if any, and a reasonable reserve to account for any unanticipated Operating Expenditures, as detailed further in Article 7

(ii) "**Operational Components**" means any equipment, furnishings, appurtenances, structures, improvements, or building systems used in connection with the EECC's operation (including, without limitation: (x) any heating, ventilating, air-conditioning, plumbing, electrical, and elevator equipment, and, (y) the EECC ice making plant, and any equipment, machinery, piping, valves, compressors, chillers, boards, and ice surfaces comprising or used in connection with the EECC ice rinks).

(jj) "**Operating Expenditures**" means all operating costs and expenses connected with the operation of the EECC that are not considered Capital Improvement Expenditures, which shall include, without limitation, salaries and other employment costs incurred in connection with the operation of the EECC pursuant to the terms of this Agreement, including but not limited to the salary and remuneration of the General Manager, and any Shared Employee Costs determined pursuant to Section 5.2.

(kk) "**Original Agreement**" has the meaning given to it in the Recitals.

(ll) "**Phase-Out Notice**" has the meaning given to it in Section 7.3.

(mm) "**Phase-Out Period**" has the meaning given to it in Section 7.3.

(nn) "**Re-Branding Campaign Materials**" has the meaning given to it in Section 10.1(a).

(oo) "**Renewal Notice**" has the meaning given to it in Section 2.2(b).

(pp) "**Renewal Notice Period**" has the meaning given to it in Section 2.2(c).

(qq) "**Renewal Term**" has the meaning given to it in Section 2.2(a).

(rr) "**ROR**" has the meaning given to it in Section 18.3(b)(iii).

(ss) "**Service Delivery Assessment**" has the meaning given to it in Section 5.3(a).

(tt) "**Shared Employee Costs**" has the meaning given to it in Section 5.2.

(uu) "**Term**" has the meaning given to it in Section 2.2(b).

(vv) "**Terminating Municipality**" has the meaning given to it in Section 18.3(a).

(ww) "**Transition Date**" has the meaning given to it in Section 3.1(b).

(xx) "**Uncontrollable Circumstance**" means an event which occurs that is beyond the control of either party, but which renders one or both parties unable to comply with and/or causes one or both parties to be delayed in performing one or more terms of this Agreement. Such event includes, but is not limited to, an accident; fire; flood; lightning; earthquake; explosion; act of God; hostile or warlike action in time of peace or war; insurrection; rebellion; revolution; civil war; act of terrorism; sabotage; civil disobedience; usurped power; action taken by a governmental authority in hindering, combatting or defending against such occurrence; strikes, slowdowns, lockouts or other labour or employee interruptions or disturbances; and/or acts, regulations or directives of a governmental authority of competent jurisdiction.

(yy) "**Underperforming Employee**" has the meaning given to it in Section 5.4(a).

(zz) "**Utilities**" means collectively, hydro electricity, gas, sewage, water, cable, and telecommunications services, and "**Utility**" means any one of them.

1.2 Gender and Number

Any reference in this Agreement to gender includes all genders. Words importing the singular number only shall include the plural and vice versa.

1.3 Headings

The division of this Agreement into Articles and Sections and the insertion of headings are for convenient reference only and are not to affect its interpretation.

1.4 Currency

All references in this Agreement to dollars, or to $ are expressed in Canadian currency unless otherwise specifically indicated.

1.5 Schedules

Any schedules attached to this Agreement form an integral part of this Agreement.

1.6 Non-Business Days

Whenever payments are to be made or an action is to be taken on a day which is not a business day, such payment shall be made or such action shall be taken on or no later than the next succeeding business day.

1.7 Governing Law

This Agreement shall be governed by and construed and interpreted in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein. Subject to provisions for mediation and arbitration contained herein, the parties hereby irrevocably attorn to the exclusive jurisdiction of the courts of Ontario with respect to any matter arising under or related to this Agreement.

1.8 Severability

Each of the provisions contained in this Agreement is distinct and severable and a declaration of invalidity or unenforceability of any such provision or part thereof by an arbitrator or court of competent jurisdiction shall not affect the validity or enforceability of any other provision hereof.

1.9 Entire Agreement

This Agreement constitutes the entire agreement between the parties with respect to the operations and management of the EECC and supersedes all prior agreements, understandings, negotiations, and discussions, whether written or oral, regarding operations and management of the Lands and the Facility. There are no conditions, covenants, agreements, representations, warranties, or other provisions, express or implied, collateral, statutory or otherwise, relating to the operations and management of the EECC except provided in this Agreement.

1.10 Terms of Reference

The parties agree that the Original Agreement shall be terminated effective as of the date hereof, and immediately replaced by this Agreement.

1.11 Waiver and Amendment

Except as expressly provided in this Agreement, no amendment or waiver of this Agreement shall be binding unless executed in writing by the party to be bound. No waiver of any provision of this Agreement shall constitute a waiver of any other provision, nor shall any waiver of any provision of this Agreement constitute a continuing waiver, even if similar in nature, unless otherwise expressly provided.

1.12 Relationship of Parties

The parties agree and declare that nothing in this Agreement shall be construed as creating a partnership, joint venture or agency relationship between the parties. Neither party has any authority to enter into legally binding obligations on behalf of the other party without the other party's prior written consent.

1.13 Successors and Assigns

This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns. Neither party may assign all or any part of this Agreement without the written approval of the other party, which approval shall not be unreasonably withheld.

1.14 Notice

(a) Any notice required to be given to Malahide shall be in writing, and shall be sufficiently delivered if given to Malahide's Clerk by personal delivery, registered mail or courier, or email to:

The Corporation of the Township of Malahide

87 John Street South

Aylmer, ON N5H 2C3

info@malahide.ca

(b) Any notice required to be given to Aylmer shall be in writing and shall be sufficiently delivered if given to the Town Clerk by personal delivery, registered mail or courier, or email to:

The Corporation of the Town of Aylmer

46 Talbot Street West, Aylmer, ON N5H 1J7

Clerks@town.aylmer.on.ca

(c) The parties further agree that any notice required to be given to the JMSB, pursuant to this Agreement, shall be in writing and shall be sufficiently delivered if given to the General Manager by personal delivery, registered mail or courier, or email to:

EECC Joint Municipal Services Board

531 Talbot Street West, Aylmer, ON N5H 2T8

[**insert email**]

(d) Notice delivered by registered mail shall be deemed to have been received on the fifth (5^{th}) Business Day following the date of such mailing.

(e) Notice delivered by personal delivery or courier shall be deemed to have been received on the date the recipient acknowledges receipt on the notice or a copy of it with a signature and date of acceptance.

(f) Notice delivered by email shall: (i) if such email is sent before 5:00 PM EST on a given Business Day, be deemed to have been delivered on the same Business Day; (ii) if such email is sent after 5:00 PM EST on a given Business Day, be deemed to have been delivered on the following Business Day; or (iii) if such email is not sent on a Business Day, be deemed to have been delivered on the next Business Day.

1.15 EECC a Funded Public Service

The parties acknowledge and agree that the EECC is a public service that must be funded. The parties further acknowledge that the EECC, like almost all recreational facilities in the Province of Ontario, will not either break even or operate with a surplus except in very unusual circumstances. The parties acknowledge these financial obligations are necessary in order to provide the EECC facility and its services for their communities and hereby agree to fund the EECC in accordance with the terms of this Agreement.

ARTICLE 2
TERM

2.1 10-year Term

(a) Subject to earlier termination of this Agreement in accordance with the provisions of Article 18 herein, this Agreement shall be effective as of the date first written above and shall continue for a ten (10) year period thereafter (the "**Initial Term**").

2.2 Renewal

(a) Any renewals of this Agreement shall be for additional periods (each a "**Renewal Term**") not exceeding ten (10) years at any one time.

(b) At least twelve (12) months before the end of the Initial Term or any applicable Renewal Term (the Initial Term and all Renewal Terms being referred to collectively herein as the "**Term**"), either party may: (i) request to renew this Agreement by serving written notice to the other party (a "**Renewal Notice**"); or, (ii) confirm that it does not wish to renew this Agreement by serving written notice to the other party (a "**Notice of Non-Renewal**").

(c) In the event that a party provides a Renewal Notice to the other, the other party shall have one hundred and twenty (120) days from receipt thereof (the "**Renewal Notice Period**") to reply, in writing, and either: (i) confirm they are willing to negotiate the terms and conditions for a Renewal Term; or, (ii) provide a Notice of Non-Renewal.

(d) In the event that a party provides a Notice of Non-Renewal to the other pursuant to Section 2.2(b) or Section 2.2(c), this Agreement shall thereafter be terminated pursuant to the procedures set out in Section 18.3.

(e) In the event that neither party provides a Renewal Notice or Notice of Non-Renewal to the other pursuant to Section 2.2(b); or, (ii) a party in receipt of a Renewal Notice fails to reply to the Renewal Notice before the expiration of the Renewal Notice Period pursuant to Section 2.2(c), then this Agreement shall be deemed to be automatically renewed for a further five (5) year Renewal Term, with the same terms and conditions of this Agreement remaining in full force and effect.

(f) In the event that a party responds to a Renewal Notice and confirms that it wishes to negotiate the terms and conditions for a Renewal Term, but the parties are unable to agree to such terms and conditions before the expiration of the Initial Term or then-current

Renewal Term, as applicable (the "**Applicable Term**"), then: (i) the Applicable Term shall be deemed to be automatically extended for a further one (1) year, with the same terms and conditions of this Agreement remaining in full force and effect; and, (ii) either party shall be permitted to refer any unresolved terms or conditions with respect to the Renewal Term then subject to negotiations for dispute resolution pursuant to Article 17.

ARTICLE 3
JOINT MUNICIPAL SERVICE BOARD

3.1 Formation and Composition

(a) The Municipalities acknowledge and agree that they have already established a joint municipal services board, pursuant to Section 202 of the *Municipal Act* (the "**JMSB**"), with a mandate to oversee and govern the operation and management of the EECC pursuant to the terms of the Original Agreement. Upon execution of this Agreement, the Original Agreement shall be terminated effective immediately, and thereafter the JMSB's mandate shall be to oversee and govern the operation and management of the EECC as a service to, and funded by, the Municipalities, pursuant to the terms of this Agreement. For greater certainty, the JMSB shall not be responsible for making day-to-day management decisions with respect to the EECC's operation, which the parties acknowledge shall instead be the responsibility and duty of the General Manager.

(b) The JMSB shall be comprised of five (5) members with the following composition:

(i) One (1) member from each Municipality's respective Council;

(ii) One (1) member from the citizenry of each Municipality, appointed by the relevant Municipality's Council; and,

(iii) One (1) independent member who, unless otherwise agreed by the parties, is not from the citizenry of either Municipality, and who has expertise with respect to management of facilities similar to the EECC, as determined pursuant to Section 3.1(c).

The parties agree that the above composition shall be implemented by no later than January 31, 2027, or by such other date as the parties may agree in writing (the "**Transition Date**"), and that until the Transition Date, the JMSB, as currently composed as of the date hereof, shall be responsible for carrying out the Mandate (as defined below).

(c) The independent board member referred to in Section 3.1(b)(iii) shall be interviewed, assessed, and selected by an independent interview panel consisting of: (i) each of the JMSB members referred to in Section 3.1(b)(i); and, (ii) an independent human resources professional employed with the County of Elgin.

(d) A member of the JMSB shall be appointed by the relevant Municipality's Council for a term of no more than four (4) years.

(e) The parties hereto acknowledge and agree that, for purposes of this Agreement, any covenants and/or obligations on the part of the JMSB herein shall be construed and interpreted as a covenant and/or obligation on the part of each Municipality to instruct or direct the JMSB to perform and comply with such covenants and/or obligations.

3.2 Procedural Matters

The JMSB shall, as determined by the JMSB at its discretion throughout the Term, elect to operate under one of the Municipality's procedural by-laws or pass its own procedural by-law that aligns with best governance practices for joint service boards in the Province of Ontario and in accordance with the applicable legislation, including the *Municipal Act, 2001*.

3.3 Guiding Principles and Objectives

(a) The JMSB shall be a governance board with the operation of the EECC being the responsibility of the General Manager and employees under the General Manager's supervision. This principle is paramount. In addition, the JMSB shall discharge its Mandate (defined below) in a manner consistent with the following objectives:

(i) <u>Collaboration and Communication</u>: Ensure the Municipalities are provided with timely, relevant, and regular information that provides for effective operational integration and political awareness.

(ii) <u>Transparency and Accountability</u>: Maintain transparent operations and decision-making processes, with regular reporting and accountability to the Municipalities.

(iii) <u>Sustainability</u>: Promote sustainable practices in the management and operation of the recreation centre, including environmental, financial, and social sustainability.

(iv) <u>Community Engagement</u>: Engage with the community to understand their needs and preferences, ensuring the EECC continues to serve the diverse interests of the population of both Municipalities.

(v) <u>Quality and Excellence</u>: Strive for high standards in the services and facilities provided, ensuring quality and excellence in all aspects of the EECC's operations.

(vi) <u>Safety and Accessibility</u>: Prioritize the safety and accessibility of the EECC for all users, ensuring compliance with relevant Applicable Standards.

(vii) <u>Innovation and Improvement</u>: Encourage innovation and continuous operational improvement, adapting to changing community needs and industry best practices.

(b) The JMSB shall as determined by the JMSB at its discretion throughout the Term, elect to operate under the operational policies and procedures of one of the Municipalities or pass its own operational policies and procedures that align with best operational practices for recreational facility joint services boards in the Province of Ontario and in accordance with the applicable legislation, including the *Municipal Act, 2001*.

3.4 Mandate

The JMSB shall be responsible for, and shall have full and absolute discretion in performing, the following (being the JMSB's "**Mandate**"):

(a) maintaining open and ongoing communication between the Municipalities regarding all aspects of the EECC;

(b) approving contracts negotiated by the General Manager pursuant to Section 4.2(j), all of which must be executed and entered by the JMSB in the name of the JMSB, and not in the name of either Municipality;

(c) promptly communicating to each Municipality, the financial contributions required in connection with the Operating Budget, the Approved Capital Improvement Plan, and the Capital Budget, pursuant to Article 7 and Article 12, respectively, unless otherwise agreed by the parties;

(d) hiring an employee to serve as the general manager of the EECC (the "**General Manager**"), pursuant to the terms of an employment agreement between the JMSB and such General Manager, on terms and conditions acceptable to the JMSB and each Municipality, which terms shall include the General Manager's scope of authority set out under Section 4.2, and address any other roles and responsibilities required of the General Manager in this Agreement.

(e) ensuring that the General Manager reasonably performs all responsibilities set out in Section 4.1;

(f) terminating and replacing the General Manager if the JMSB deems it necessary to do so; and,

(g) determining any changes or additions to the Benchmark Targets, taking into account key performance metrics expected of similar facilities in Ontario;

(h) undertaking other tasks as jointly directed by the Municipalities;

(i) appointing JMSB auditors and reporting the results of any audits to the Municipalities; and,

(j) approving extraordinary expenditures not exceeding $50,000, with any non-budgeted extraordinary amounts above this amount to be approved by the Municipalities.

ARTICLE 4
GENERAL MANAGER

4.1 Initial Appointment and Transition

(a) To ensure that a candidate is appointed to serve as General Manager prior to the Transition Date, as soon as practicable following the date hereof, the JMSB shall:

(i) initiate a process for identifying prospective candidates to be hired as the General Manager;

(ii) strike an independent hiring committee to assess such candidates for General Manager, which shall be composed of: (i) the Chief Administrative Officer of Aylmer; and, (ii) the Chief Administrative Officer of Malahide, which hiring committee shall first prepare a proposed job description and salary range for the General Manager position; and,

(iii) hire a candidate to serve as General Manager based on the recommendations of the independent hiring committee, subject and pursuant to Section 3.4(d), and approve an interim budget to ensure the JMSB has sufficient funding to provide for such General Manager's salary, remuneration, and other employment costs until the next proposed Operating Budget is approved in accordance with Section 7.1. Such budgeted amount shall be allocated equally by the Municipalities, and each Municipality shall pay their respective portions thereof to the JMSB by the later of the date that is sixty (60) days following the JMSB's approval thereof, or such later date fixed by the JMSB.

(b) Notwithstanding the foregoing in this Section 4.1:

(i) if the JMSB is unable to hire a General Manager at least sixty (60) days before the proposed Operating Budget for the 2027 calendar year is due pursuant to Section 7.1(a) (in this Section 4.1(b), the "**2027 Operating Budget**") then, instead of the General Manager, Aylmer shall appoint one of its employees to prepare and submit such 2027 Operating Budget for approval, pursuant to the same process established under Section 7.1; and,

(ii) if the JMSB is unable to hire a General Manager at least sixty (60) days before a first proposed Capital Budget for the 2027 calendar year is due pursuant to Section 12.4(a) (in this Section 4.1(b), the "**2027 Capital Budget**") then, instead of the General Manager, Aylmer shall appoint one of its employees to prepare and submit such 2027 Capital Budget for approval pursuant to the same process established under Section 12.4, notwithstanding that an Approved Capital Improvement Plan shall not yet have been settled in accordance with Section 12.3. For greater certainty, such 2027 Capital Budget shall be an estimate of the Capital Improvement Expenditures to be incurred in the 2027 calendar year, without the assistance of an Approved Capital Improvement Plan.

(c) Following the Transition Date, the JMSB shall be responsible for proposing any replacement candidates to serve as General Manager, and may propose such replacements at its discretion without any requirement to strike an independent hiring committee, but at all times subject and pursuant to Section 3.4(d).

4.2 Scope of Authority

The parties acknowledge and agree that the General Manager shall be responsible for, and shall have full and absolute discretion in performing, the following:

(a) general management of the affairs of the EECC, including developing and implementing policies and procedures regarding: (i) the day-to-day management, use, and operation of the EECC; (ii) Operational Components of the EECC shared by the Municipalities; and (iii) any other elements of the EECC, including matters requiring cooperation in response to repair, maintenance, programming, staffing, and scheduling;

(b) addressing issues related to the day-to-day use and operation of the EECC where such issues require or would benefit from the coordination of each of the Municipalities;

(c) establishing and administering a public complaints resolution procedure with respect to the use of the EECC;

(d) ensuring the EECC is kept in good and substantial repair, condition, and decoration, and for the effective safe and economical operation of the EECC, pursuant to this Agreement and all Applicable Standards, and preparing an annual maintenance plan with respect to the foregoing that shall accompany each proposed Operating Budget;

(e) subject to Section 3.4(f), 3.4(b) and the parameters of the Service Delivery Assessment approved pursuant to Section 5.3, making recommendations to the JMSB with respect to hiring, managing, terminating, and otherwise engaging such employees of the JMSB and such independent contractors as may be required to carry out EECC operations safely, economically and within the Operating Budget approved by the JMSB;

(f) preparing and submitting the Operating Budget for approval pursuant to Article 7 and, following the Municipalities' approval of the Operating Budget, using diligence and commercially reasonable efforts to ensure that the EECC is operated within all budgetary constraints set out therein.

(g) retaining appropriate persons qualified to conduct Capital Improvement Assessments and create draft Capital Improvement Plans to recommend to the Municipalities;

(h) coordinating the implementation of Approved Capital Improvement Plans in accordance with Article 12;

(i) preparing and submitting the Capital Budget for approval pursuant to Section 12.4, and, following the Municipalities' approval of the Capital Budget, using diligence and commercially reasonable efforts to ensure that the EECC is operated within all budgetary constraints set out therein;

(j) negotiating and administering, on behalf of the JMSB, all contracts and agreements with third parties engaged to provide services, materials, and supplies related to the day-to-day management, use, and operation of the EECC for the proper and efficient management and operation of the EECC, subject to the following:

 (i) procurement of any services, equipment, or property must be carried out in a manner consistent with applicable public procurement laws and the Joint EECC Procurement Policy;

(ii) all such contracts shall be at market rates and reasonable commercial terms;

(iii) the General Manager shall not be authorized to commit either of the Municipalities to sell, mortgage, lien, or otherwise encumber the EECC or any assets used in the operation thereof; and,

(iv) the JMSB shall have final approval as to the execution of such contracts and agreements, which must be executed by a signatory authorized by the JMSB, and the execution of such contracts must not, subject to the terms of this Agreement, result in the JMSB exceeding the then-current Operating Budget approved by the Municipalities. For greater certainty, the foregoing budgetary restriction shall not apply in respect of contracts relating to capital improvement projects or contracts to be entered in connection with Emergency Expenditures.

(k) making commercially reasonable efforts to ensure that all liabilities incurred in respect of the EECC are paid and satisfied when due;

(l) carrying out the coordination and assembly of the advertising and promotion of the EECC, including the preparation and use of the Re-Branding Campaign Materials detailed in Article 10;

(m) coordinating all aspects of the provision of food, beverage, and alcohol services in the EECC, including all aspects of the provision of vending machines in the EECC, and ensuring that all necessary licenses with respect to the foregoing are obtained in the name of the JMSB;

(n) implementing Applicable Standards and operating and maintaining the EECC in accordance with Applicable Standards to a level consistent with the quality of operations and maintenance by a prudent owner of a regional sport and community centre complex;

(o) implementing and monitoring plans and strategies for achieving Benchmark Targets;

(p) supporting the JMSB in achieving the objectives identified in Section 3.3(a); and,

(q) coordinating all matters related to the hosting and delivery of special events at the EECC, including the rental of all or any portion of the EECC for such events.

ARTICLE 5
EMPLOYEES

5.1 Municipal Employees

The parties acknowledge that, as of the date hereof, employees of one or both of the Municipalities are engaged in EECC operations (the "**Municipal Employees**") and that, notwithstanding that the General Manager shall be an employee of the JMSB, each Municipality may have its respective Municipal Employees working at the EECC from time to time throughout the Term. To the extent reasonably possible, the JMSB shall endeavor to transition to an employee model with respect to the EECC that minimizes reliance on Municipal Employees at the EECC and minimizes Shared Employee Costs, as defined below.

5.2 Shared Employee Costs

The parties agree to share the costs of any Municipal Employees engaged in EECC operations (collectively "**Shared Employee Costs**") as follows:

(a) In each operating year, the General Manager shall project the number of hours that each Municipal Employee is anticipated to work at the EECC for the following operating year, taking into account: (i) a description of such Municipal Employee's role at the EECC; and, (ii) the average number of hours worked by such Municipal Employee in the last two (2) years of such Municipal Employee's employment, if applicable, and shall furnish this projection to each Municipality. Within thirty (30) days of receiving such projection, each Municipality shall supply an hourly rate for each of the relevant Municipal Employee(s), and Shared Employee Costs shall be calculated by multiplying the foregoing projected hours and rates.

(b) The parties agree that all Shared Employee Costs shall constitute Operating Expenditures and be shared between the Municipalities as follows:

(i) The total annual estimated Shared Employee Costs shall be reflected in each proposed Operating Budget and shall be derived from the General Manager's projections pursuant to Section 5.2(a). Following acceptance of such Operating Budget in accordance with Section 7.1, each Municipality shall be responsible for fifty percent (50%) of such estimated Shared Employee Costs.

(ii) At the end of each operating year to which a respective approved Operating Budget applies, the General Manager shall conduct a reconciliation of: (A) the projected hours to be worked by each Municipal Employee, as reflected in the approved Operating Budget; and, (B) the actual hours worked by each Municipal Employee during the operating year. In the event that the General Manager determines the actual aggregate hours worked by Municipal Employees in the operating year materially exceeded the projected hours reflected in the approved Operating Budget, the General Manager shall have the discretion to add such excess hours to the aggregate projected hours for Municipal Employees in the proposed Operating Budget for the following operating year.

(iii) Each Municipality shall remain responsible for paying the respective salaries of its own Municipal Employees, but shall bill the JMSB an amount calculated by multiplying the projected hours and rates identified for the relevant Municipal Employee(s) pursuant to Section 5.2(a).

(c) Subject to Section 5.2(e), with respect to severance or termination costs for Municipal Employees, such costs shall only form part of Shared Employee Costs if:

(i) the termination results from the elimination of a Municipal Employee's role at the EECC pursuant to a Service Delivery Assessment accepted by the Municipalities in accordance with Section 5.3(e) below; provided however that, while each Municipality shall comply with the recommendations of an accepted Service Delivery Assessment to remove any Municipal Employees from their respective roles at the EECC, neither Municipality shall be required to terminate such removed Municipal Employees from their employment with the employer Municipality;

(ii) the termination results from any other recommendation from the General Manager, as accepted by the JMSB, that a Municipal Employee be removed from performing duties at the EECC, including without limitation in accordance with Section 5.4; provided however that, while each Municipality shall comply with such recommendations, neither Municipality shall be required to terminate such removed Municipal Employees from their employment with the employer Municipality;

(iii) an employer Municipality has decided to terminate the employment of a Municipal Employee and, prior to proceeding with the termination has provided Notice to the General Manager of its decision and the JMSB has agreed that the termination costs shall form part of the Shared Employee Costs having regard to the following factors: (I) length of tenure at the EECC (II) percentage of hours working at the EECC (III) reasons for termination (IV) performance issues of the terminated employee (V) impact of the terminated employee's continued service with the employer Municipality and/ or the EECC (VI) whether the terminated employee's service at the EECC was recent (VII) such other factors that the General Manager considers reasonable in the circumstances; and/or,

(iv) such severance or termination costs applicable to the Municipal Employee have been incurred by a Municipality as a result of transferring its Municipal Employee to being an employee of the JMSB.

(d) Irrespective of which scenario in Section 5.2(c) may result in severance or termination costs forming part of Shared Employee Costs, in each instance in which a Municipal Employee is terminated by an employer Municipality, the employer Municipality shall make commercially reasonable efforts to reduce any severance or termination costs that may be incurred by the JMSB or the Municipalities. If the JMSB exercises its discretion under Section 5.2(c)(iii), but fails, in the opinion of either Municipality acting reasonably, to provide each Municipality with a detailed calculation of the total Shared Employee Costs to be shared between the Municipalities (taking into account each of the factors set out in items (I) through (VII) therein), then either Municipality may, within ten (10) business days of becoming aware of the JMSB's decision to exercise such discretion (in this Section 5.2(d), the "**JMSB Decision**"), provide notice to the JMSB, in writing, advising that it objects to the JMSB Decision and setting out the reasons for such objection (in this Section 5.2(d), a "**Municipal Objection**"). If a Municipality delivers a Municipal Objection to the JMSB, such objecting Municipality shall grant the JMSB at least ten (10) business days from the date of the JMSB's receipt of the Municipal Objection (in this Section 5.2(d), the "**JMSB Review Period**") to review the JMSB Decision, and reassess its calculation of total Shared Employee Costs. If the objecting Municipality also objects to the JMSB's reassessment of its calculation of total Shared Employee Costs, or if the JMSB has not completed its reassessment of such calculation prior to the expiration of the JMSB Review Period, then the objecting Municipality shall have the right to submit such matter for dispute resolution pursuant to Article 17.

(e) In the event that severance or termination costs for Municipal Employees are deemed to form part of Shared Employee Costs pursuant to Section 5.2(c), the amount of such costs that will form part of Shared Employee Costs to be shared equally by each Municipality shall be prorated, taking into account:

(i) the portion of such Municipal Employee's tenure with the employer Municipality spent performing duties at the EECC, in relation to their total tenure with the employer Municipality; and,

(ii) the average hours worked by such Municipal Employee at the EECC in relation to their total hours worked for their employer Municipality.

By way of example, if a terminated Municipal Employee has spent four (4) years of a total twenty (20) year tenure (i.e. twenty percent (20%) of their total tenure) with a Municipal employer performing duties at the EECC, and spent an average of forty percent (40%) of their hours during such four (4) year period working at the EECC, the total severance or termination costs that will form Shared Employee Costs will be equal to:

(A) the total of such severance or termination costs; *multiplied by,*

(B) twenty percent (20%), representing the portion of such Municipal Employee's tenure performing duties at the EECC; *with such result multiplied further by*,

(C) forty percent (40%), representing the average hours worked by such Municipal Employee at the EECC during the time they were engaged in performing duties at the EECC.

The total result of the foregoing calculation will form Shared Employee Costs to be shared equally by the Municipalities.

Notwithstanding the foregoing, neither party shall be required to pay any share of severance or termination costs resulting from a Municipal Employee's claim for damages related to a bad faith, wrongful, or constructive dismissal by the employer Municipality.

(f) All termination costs which are to be shared are subject to approval by the JMSB, shall be included in the Operating Budget for the year following the termination and shall remain the responsibility of the Municipality which employs the relevant Municipal Employee, unless and until the JMSB has approved the inclusion of the termination cost in the Operating Budget and the relevant Operating Budget has been approved by the Municipalities.

5.3 Service Delivery Assessment

(a) Within one (1) year of the date of this Agreement, the General Manager shall conduct, or recommend for the JMSB's approval appropriately qualified personnel to conduct, an inventory of all employees (the "**Employee Inventory**") engaged in performing duties at the EECC, which shall include a compilation of:

(i) the number of employees engaged to perform duties at the EECC, and an allocation of how many employees are employed by each Municipality as of the date hereof;

(ii) each employee's respective job description, including any skills, education, and experience required for such employees to perform their respective duties;

(iii) the number of hours worked by each employee per week;

(iv) details of each employee's salary and any other forms of compensation received, including any benefit plans, pension plans, insurance, bonuses, commissions, incentive-based pay, or other forms of compensation; and,

(v) any other material terms of each employee's respective employment, including vacation, sick leave, and entitlements to severance or termination pay.

(b) Upon completion of the Employee Inventory, the General Manager shall recommend for the JMSB's approval appropriately qualified personnel to perform a service delivery assessment of the EECC (the "**Service Delivery Assessment**"), to:

(i) review the Employee Inventory;

(ii) identify any specific employment needs required for the diligent and efficient operation of the EECC, including any recommendations as to any additional employees that should be hired, or any current employees that should be terminated;

(iii) identify any recommendations for additional Benchmark Targets with respect to the EECC's expected performance standards and targets; and,

(iv) advise as to which employees should be employed by each respective Municipality, and which employees should be hired by or transitioned to being employees of the JMSB.

(c) Such Service Delivery Assessment shall first be subject to JMSB approval and shall be submitted to the JMSB by no later than September 1, 2027, or by such other date as the parties may agree in writing. The JMSB shall communicate its approval or any objections to such proposed Service Delivery Assessment to the General Manager within thirty (30) days following the General Manager's submission and, if the JMSB provides any objections, the JMSB shall work with the General Manager to resolve such objections, before proceeding to the next stage of the Service Delivery Assessment approval process set out in Section 5.3(d).

(d) Following the JMSB's approval of the Service Delivery Assessment, promptly thereafter and in any event no later than ten (10) days following the JMSB's approval, the JMSB shall submit such Service Delivery Assessment to each Municipality for its respective review and approval promptly. Each Municipality shall communicate its approval of any objections to such Service Delivery Assessment to the JMSB within thirty (30) days following the JMSB's submission. If either Municipality provides any objections, such Municipality shall work with the JMSB, and the JMSB shall in turn work with the General Manager, to resolve such objections, and only once such objections are resolved to each Municipality's satisfaction shall the Service Delivery Assessment be considered approved. Notwithstanding the foregoing, if the Municipalities are unable to agree on a settled Service Delivery Assessment within one hundred and eighty (180) days of such objection being raised, either party shall then have the right to submit such matter for dispute resolution pursuant to Article 17.

(e) Upon acceptance of the Service Delivery Assessment by the Municipalities:

(i) the Municipalities shall cooperate with the General Manager to implement the recommendations of the Service Delivery Assessment including by redeploying any Municipal Employee who has been identified as redundant to the operation of the EECC or, if necessary, terminating the employment of such employee without cause; and,

(ii) The General Manager shall implement any other recommendations set out therein including assisting the JMSB to hire new employees.

5.4 General Manager Disciplinary Authority

(a) Each Municipality hereby acknowledges and agrees that the General Manager shall have the authority and discretion, subject to each employer Municipality's human resource policies (if provided to the General Manager pursuant to Section 5.4(b)) and, after reasonable consultation with the relevant employer Municipality, to implement the following disciplinary actions for Municipal Employees who are underperforming or who commit infractions while carrying out their duties at the EECC (in each case an "**Underperforming Employee**"):

(i) For a minor issue, the General Manager may issue a verbal warning to an Underperforming Employee and, if advised of such warning by the General Manager, the employer Municipality shall meet with the Underperforming Employee to discuss performance improvement.

(ii) For a subsequent minor issue, the General Manager may issue a written warning to an Underperforming Employee and, if advised of such warning by the General Manager, the employer Municipality shall again meet with the Underperforming Employee to discuss performance improvement.

(iii) For a major issue, or if an Underperforming Employee continues to underperform or commit infractions following the issuance of both a verbal and written warning, the General Manager may recommend that such Underperforming Employee be suspended from carrying out duties at the EECC for such period of time as the General Manager may determine in their sole and absolute discretion, and the employer Municipality shall ensure that such suspension is enforced.

(iv) For a major issue that constitutes severe misconduct, or if the Underperforming Employee continues to underperform or commit infractions following a suspension under 5.4(a)(iii), the General Manager may recommend that such Underperforming Employee be permanently removed from performing any duties at the EECC, and the employer Municipality shall ensure that such permanent removal is enforced.

Each Municipality further acknowledges that, in the event that it fails to provide the General Manager with its most current human resource policies pursuant to Section 5.4(b), the General Manager shall be under no obligation to consider such policies in implementing any of the foregoing disciplinary actions.

The parties acknowledge that a minor issue shall not include a matter that constitutes cause or near cause at common law whereas major issues shall include (A) repeated failures of the employee to perform in accordance with their supervisor's instructions after having been warned; and (B) matters that may constitute cause or near cause at common law For greater certainty, the General Manager shall have the sole and absolute discretion, acting reasonably, to determine whether an Underperforming Employee's underperformance or infractions, as the case may be, rise to the level of a minor issue, a major issue, or a major issue that constitutes severe misconduct.

(b) Each Municipality which currently employs a Municipal Employee as defined in this Agreement shall, on or before January 15th of each calendar year, provide the General Manager with current copies of all human resource policies applicable to the employees of such Municipality.

ARTICLE 6
JOINT PROCUREMENT POLICY

6.1 Procurement

(a) To ensure uniform compliance with public procurement laws, the parties acknowledge that any procurement of services, equipment, or property to be implemented or used in connection with the operation of the EECC shall be carried out pursuant to a joint procurement policy approved by the JMSB from time to time throughout the Term (the "**Joint EECC Procurement Policy**").

(b) On commencement of the Term, the Joint EECC Procurement Policy shall be identical to Aylmer's procurement policy in place as of the date hereof (the "**Aylmer Procurement Policy**").

(c) The JMSB shall review the Joint EECC Procurement Policy on a five (5) year basis, provided that the parties may only revise the Joint EECC Procurement Policy by written agreement. For greater certainty, any changes made by Aylmer to the Aylmer Procurement Policy shall not automatically result in changes to the Joint EECC Procurement Policy, and any such changes shall only be incorporated into the Joint EECC Procurement Policy with the parties' written agreement.

ARTICLE 7
OPERATING BUDGET, BANK ACCOUNT, AND FINANCIAL REPORTING

7.1 Annual Operating Budget

(a) The parties agree that the General Manager shall, on an annual basis, submit an Operating Budget for approval to the JMSB by the following dates:

(i) October 1st of each calendar year during the Term that is not a municipal election year; or,

(ii) in respect of any calendar year during the Term that is a municipal election year, by January 31st of the calendar year following the municipal election.

Notwithstanding the foregoing and irrespective of the date on which a given Operating Budget is due, each Operating Budget shall set out anticipated revenues and Operating Expenditures for: (x) in the case of any Operating Budget delivered on October 1st of a calendar year, the period through December 31 of the subsequent calendar year; and, (y) in the case of any Operating Budget delivered on January 31st of a calendar year, the period through December 31 of the same calendar year. Without limiting the foregoing, such Operating Expenditures shall include appropriate cost allocations for all intended upkeep, repair and maintenance of the EECC for the year to which such Operating Budget relates, in such detail as is considered satisfactory to the JMSB. The JMSB shall communicate its approval or any objections to such proposed Operating Budget to the General Manager within thirty (30) days following the General Manager's submission, and will consider any direction provided by the Municipalities through that budget approval process. If the JMSB provides any objections, the JMSB shall work with the General Manager to resolve such objections before proceeding to the next stage of the Operating Budget approval process set out in Section 7.1(b).

(b) Following the JMSB's approval of any proposed Operating Budget, promptly thereafter and in any event no later than ten (10) days following the JMSB's approval, the JMSB shall submit such proposed Operating Budget to each Municipality for its respective review and approval. Each Municipality shall communicate its approval or any objections to such proposed Operating Budget to the JMSB within thirty (30) days following the JMSB's submission. If either Municipality provides any objections, such Municipality shall work with the JMSB, and the JMSB shall in turn work with the General Manager, to resolve such objections, and only once such objections are resolved to each Municipality's satisfaction shall the proposed Operating Budget be considered approved. Notwithstanding the foregoing, if the Municipalities are unable to agree on a settled Operating Budget within one hundred and eighty (180) days of such objection being raised, either party shall then have the right to submit such matter for dispute resolution pursuant to Article 17.

7.2 Financial Records, Corporate Administration, and EECC Website

The JMSB and the General Manager shall ensure that:

(a) Complete, detailed, proper, and accurate records of all financial transactions related to and involved in the management and operation of the EECC are kept and maintained, including without limitation: (i) books of account and records in accordance with good accounting practice; and (ii) records of all revenues and expenditures of the EECC, and copies of all contracts, invoices, receipts, and other documents relating thereto (collectively, the "**Financial Records**").

(b) The correct and efficient administration of the JMSB's payroll obligations with respect to any JMSB employees, including without limitation, the General Manager.

(c) Complete, detailed, proper, and accurate records of all board, corporate, municipal, or other proceedings related to the operation and administration of the JMSB are kept and maintained, including without limitation preparation of agendas, meeting minutes with respect to all JMSB board meetings, and all notices, documents, and filings ancillary thereto that may be required pursuant to applicable laws (collectively, the "**Corporate Records**").

(d) The EECC website remains up to date, always reflecting current information with respect to EECC events and services.

7.3 Assistance to JMSB

The Municipalities agree, as of the date of this Agreement, to provide the following assistance to the JMSB:

(a) Aylmer shall assist the General Manager and the JMSB with administering the JMSB's payroll, benefits, WSIB accounts and records, and with managing and maintaining all Financial Records in Aylmer's possession.

(b) Malahide shall assist the General Manager and the JMSB with managing and maintaining all Corporate Records, and with managing and maintaining the EECC website.

In the event that either Municipality wishes to cease providing the General Manager and the JMSB with their respective services set out above, such Municipality may, at any time, provide notice to the JMSB and the other Municipality to that effect (the "**Phase-Out Notice**") at least one (1) year prior to ceasing such services (the "**Phase-Out Period**"). The JMSB shall, prior to the expiration of the Phase-Out Period, have implemented an alternative arrangement for the provision of the services being ceased by a Municipality; provided however that, such Municipality shall remain obligated to continue providing such services diligently throughout the Phase-Out Period, in order to permit the JMSB to determine an appropriate substitute service provider.

ARTICLE 8
REPAIR AND MAINTENANCE

8.1 Shared Operational Components

(a) The parties acknowledge and agree that, as joint owners of the EECC, all Operational Components used in connection with the operation of the EECC throughout the Term shall also be jointly owned by the Municipalities save and except for any Operational Components separately purchased in full by a Municipality prior to the date of this Agreement.

(b) Notwithstanding whether any Operational Components may be exclusively owned by one Municipality, the parties acknowledge that they both receive benefit from such Operational Components being in good and substantial repair, condition, and decoration, and as such, the parties agree that the costs for the repair and maintenance of such exclusively owned Operational Components shall still be included in the Operating Budget and shared equally by each Municipality pursuant to Article 11.

ARTICLE 9
UTILITIES

9.1 Billing

(a) All accounts for Utilities shall be in the name of the JMSB, and the JMSB shall use commercially reasonable efforts to minimize all Utility costs. The General Manager shall ensure that anticipated annual costs of Utilities are reflected in every proposed Operating Budget.

ARTICLE 10
ADVERTISING

10.1 Advertising and Promotion of EECC.

(a) The parties agree that the General Manager shall have the full authority and discretion to separately and independently market, advertise, and promote activities, amenities, and services available at the EECC; provided that, the General Manager must prepare promotional materials and advertising copy to be used as part of a new re-branding campaign for the EECC (the "**Re-Branding Campaign Materials**"), and submit such materials to the JMSB for approval concurrently with the submission of the first proposed Operating Budget.

ARTICLE 11
RESPONSIBILITY FOR OPERATING COSTS AND USE OF EXCESS FUNDS

11.1 Responsibility for Operating Expenditures

(a) The parties acknowledge and agree that, in connection with any proposed Operating Budget:

(i) if such proposed Operating Budget is approved by the Municipalities pursuant to Section 7.1(b), then each Municipality shall, by no later than sixty (60) days following the Municipalities' approval of the Operating Budget (or such later date fixed by the JMSB), contribute fifty percent (50%) of the Operating Expenditures set out in the approved Operating Budget to the JMSB; or,

(ii) if such proposed Operating Budget is subject to any objections that remain unresolved within the thirty (30) day approval period set out in Section 7.1(b), then each Municipality shall, by no later than sixty (60) days following the JMSB's approval of the Operating Budget pursuant to Section 7.1(a) (or such later date fixed by the JMSB) contribute to the JMSB an amount equal to:

(1) fifty percent (50%) of the Operating Expenditures set out in the last approved Operating Budget; *less*,

(2) fifty percent (50%) of any material one-time expenses identified in the last approved Operating Budget.

Thereafter, once all objections to the proposed Operating Budget are resolved, the JMSB shall reconcile each Municipality's prior contributions against the fifty percent (50%) share of the Operating Expenditures due from each Municipality under the approved Operating Budget, and each Municipality shall make any required additional contribution to the JMSB by no later than sixty (60) days following the approval of the Operating Budget (or such later date fixed by the JMSB).

(b) Notwithstanding the foregoing in Section 11.1(a), in any municipal election year:

(i) prior to the submission and approval of a proposed Operating Budget before the applicable January 31st deadline set out in Section 7.1(a)(ii), each Municipality shall, by no later than December 15th of the applicable municipal election year, contribute to the JMSB an amount equal to:

(1) twenty-five percent (25%) of the Operating Expenditures set out in the last approved Operating Budget; *less*,

(2) twenty-five percent (25%) of any material one-time expenses identified in the last approved Operating Budget.

Thereafter, the provisions of Section 11.1(a) shall continue to govern the proposed Operating Budget delivered by January 31st of the following year, provided that each Municipality's December 15th contribution shall be credited against any contributions required under the proposed Operating Budget.

11.2 Excess Funds

(a) In the event that the EECC should have an operating surplus in any given fiscal year, such operating surplus shall be reserved for future EECC Capital Improvement Expenditures or returned to the parties at the discretion of the JMSB.

ARTICLE 12
CAPITAL IMPROVEMENTS OF EECC

12.1 Responsibility for Capital Improvement Expenditures

The Municipalities acknowledge and agree that all costs and expenses to renew, replace, revitalize, improve, or renovate any capital component of the EECC beyond its original condition ("**Capital Improvement Expenditures**"), shall be reflected in the Capital Improvement Plan approved by the Municipalities pursuant to this Article 12, as may be amended by written agreement of each Municipality from time to time during the Term ("**Approved Capital Improvement Plan**"), and shall be funded on a fifty percent (50%) share between the Municipalities.

12.2 Responsibility, Management, and Oversight of Capital Improvement Projects

(a) The General Manager shall ensure that all Capital Improvement Expenditures are consistent with the applicable Approved Capital Improvement Plan and meet the requirements of all Applicable Standards and any applicable insurance underwriters.

(b) The General Manager may recommend, and the JMSB may authorize, the engagement of appropriately qualified third-party contractors and project management personnel to implement any capital improvement projects identified in an Approved Capital Improvement Plan. The estimated cost of such engagements shall constitute Capital Improvement Expenditures and shall be included in the Capital Improvement Plan.

12.3 Capital Improvement Assessment and Capital Improvement Plan

The parties agree that the following shall constitute the framework for the Capital Improvement Plan approval process:

(a) Within a year of the date of this Agreement and every three (3) years thereafter or at such earlier time as the JMSB deems necessary, the General Manager shall ensure that a Capital Improvement Assessment is conducted, to identify current conditions and gauge future capital improvement requirements on the basis of five (5) year projections. The Capital Improvement Assessment shall be coordinated and carried out by the General Manager, who may draw on additional expertise as needed

(b) The Capital Improvement Assessment shall provide information for a Capital Improvement Plan, setting out all Capital Improvement Expenditures anticipated in connection with such Capital Improvement Plan, and the priorities for Capital Improvement Expenditures according to the hierarchy, in descending order, of:

(i) life safety;

(ii) preventative improvement;

(iii) improved service and/or efficiency; and

(iv) aesthetic upgrades.

(c) On completion of each Capital Improvement Assessment, the General Manager shall submit a Capital Improvement Plan to the JMSB for its review and approval either before or together with the General Manager's submission of the then-current proposed Operating Budget. The JMSB shall communicate its approval or any objections to such proposed Capital Improvement Plan to the General Manager within thirty (30) days following the General Manager's submission. If the JMSB provides any objections, the JMSB shall work with the General Manager to resolve such objections before proceeding to the next stage of the annual Capital Improvement Plan approval process set out in Section 12.3(d)

(d) Following the JMSB's approval of any proposed Capital Improvement Plan, promptly thereafter and in any event no later than ten (10) days following the JMSB's approval, the JMSB shall submit such Capital Improvement Plan to each Municipality for its respective review and approval promptly. Each Municipality shall communicate its approval or any objections to such Capital Improvement Plan to the JMSB within sixty (60) days following the JMSB's submission. If either Municipality provides any objections, such Municipality shall work with the JMSB, and the JMSB shall in turn work with the General Manager, to resolve such objections, and only once such objections are resolved to each Municipality's satisfaction shall the Capital Improvement Plan be considered approved. Notwithstanding the foregoing, if the Municipalities are unable to agree on a settled Capital Improvement Plan within one hundred and eighty (180) days of such objection being raised, either party shall then have the right to submit such matter for dispute resolution pursuant to Article 17; provided that, each party acknowledges and agrees that the Capital Improvement Plan recommended by the General Manager, as approved by the JMSB, shall be considered within the context of the overall capital budget for each Municipality respectively.

(e) The Municipalities shall ensure they have a Council approved plan to fund their fifty (50%) share of the Capital Improvement Expenditures set out in the Approved Capital Improvement Plan.

12.4 Capital Budget

(a) Following the determination of each Approved Capital Improvement Plan pursuant to Section 12.3, the parties agree that the General Manager shall, on an annual basis in each year of the Term, prepare a capital budget setting out the portion of the total Capital Improvement Expenditures from the Approved Capital Improvement Plan to be paid by the Municipalities to the JMSB in such year (the "**Capital Budget**"), which shall be submitted for approval to the JMSB by the following dates:

(i) in respect of any Capital Budget that may be due during a year in which a Capital Improvement Plan is to be submitted for approval, before the date that is sixty (60) days following the determination of the Approved Capital Improvement Plan pursuant to Section 12.3; and,

(ii) in respect of any Capital Budget due during any year in which a Capital Improvement Plan is not to be submitted for approval, by the same date that the Operating Budget for such year is due, as determined pursuant to Section 7.1.

The JMSB shall communicate its approval or any objections to any proposed Capital Budget to the General Manager within thirty (30) days following the General Manager's submission, and will consider any direction provided by the Municipalities through that budget approval process. If the JMSB provides any objections, the JMSB shall work with the General Manager to resolve such objections before proceeding to the next stage of the Capital Budget approval process set out in Section 12.4(b).

(b) Following the JMSB's approval of any proposed Capital Budget, promptly thereafter and in any event no later than ten (10) days following the JMSB's approval, the JMSB shall submit such proposed Capital Budget to each Municipality for its respective review and approval. Each Municipality shall communicate its approval of any objections to such proposed Capital Budget to the JMSB within thirty (30) days following the JMSB's submission. If either Municipality provides any objections, such Municipality shall work with the JMSB, and the JMSB shall in turn work with the General Manager, to resolve such objections, and only once such objections are resolved to each Municipality's satisfaction shall the proposed Capital Budget be considered approved. Notwithstanding the foregoing, if the Municipalities are unable to agree on a settled Capital Budget within one hundred and eighty (180) days of such objection being raised, either party shall then have the right to submit such matter for dispute resolution pursuant to Article 17.

12.5 Timing for Capital Budget Payments

Following the approval of a proposed Capital Budget by the Municipalities pursuant to Section 12.4(b), the Municipalities shall each contribute fifty (50%) of the Capital Improvement Expenditures set out in the approved Capital Budget to the JMSB, and each Municipality's respective contribution of funds shall be due to the JMSB by the later of the date that is sixty (60) days following the JMSB's approval of the Capital Budget (or such later date fixed by the JMSB).

12.6 Unused Capital Contributions

If any capital projects anticipated in an Approved Capital Improvement Plan should be cancelled or deferred, then any contributions made by the Municipalities for Capital Improvement Expenditures on account of such projects shall be reserved for future EECC Capital Improvement Expenditures, and allocated towards any contributions required of the Municipalities in connection with the following year's Capital Budget, or returned to the Municipalities at the discretion of the JMSB.

12.7 EECC Debt

Each Municipality may, at its discretion, decide to issue debt in order to fund its respective share of Capital Improvement Expenditures; provided however that neither Municipality shall secure any such debt against the EECC, or any assets used for EECC operations.

ARTICLE 13
EMERGENCY

13.1 Emergency Repairs or Capital Expenditures

(a) The parties acknowledge that, in the event of an Emergency requiring repairs or other interventions which are not contemplated in an approved Operating Budget, or in the event that the General Manager determines that the JMSB is at risk of failing to satisfy its liabilities with respect to EECC operations as they come due, the General Manager may advise the JMSB that expenditures exceeding the approved Operating Budget will be required before a new Operating Budget can be approved ("**Emergency Expenditures**"). As soon as reasonably practical following approval of Emergency Expenditures by the JMSB: (i) each Municipality shall contribute fifty percent (50%) of the cost of the Emergency Expenditures to such account as directed by the JMSB from time to time during the Term; and (ii) the General Manager shall provide specific quoted costs or reports on the repairs to the JMSB and the Municipalities.

13.2 Closures for Emergency

(a) The parties agree that the General Manager shall have the discretion to close all or any portion of the EECC in the case of an Emergency. Any costs or expenses incurred in connection with such Emergency closure shall be borne equally by the Municipalities and paid by each Municipality in a timely manner.

13.3 Use of EECC as Relief Centre

(a) Either Municipality shall have the right, to direct that the General Manager open all or any portion of the EECC to the public for use as a community relief centre during an emergency, and during that time to direct that any or all regular EECC use be suspended.

Any costs or expenses associated with a Municipality exercising its rights under this Section 13.3(a) shall be borne exclusively by such Municipality, save and except that such costs and expenses shall be borne equally by the Municipalities in the event of an Emergency impacting both Municipalities.

ARTICLE 14
CONFIDENTIALITY AND PROTECTION OF PRIVACY

14.1 Strict Confidence

(a) Each party shall maintain any confidential information of the other party in accordance with the *Municipal Freedom of Information and Protection of Privacy Act* R.S.O. c M. 56 ("**MFIPPA**") and using at least the same degree of care as it employs in maintaining in confidence its own proprietary and confidential information, but in no event less than a reasonable degree of care.

(b) The receiving party shall disclose confidential information only in accordance with MFIPPA.

(c) Upon expiry or termination of this Agreement, any and all confidential information shall be managed according to the party's records retention policies.

14.2 Privacy

(a) The JMSB and each Municipality shall comply with all privacy laws applicable to it and acknowledges that it is bound by MFIPPA. As such, any information provided to the Municipalities in connection with this Agreement is subject to disclosure in accordance with that Act.

(b) The JMSB and each Municipality shall immediately advise the other if it believes that any practice or procedure in which the other party is engaging contravenes an applicable privacy law, or if either party receives or learns of any complaint or allegation to that effect.

14.3 No Termination

(a) The provisions of this Article 14 shall survive any termination or expiration of this Agreement.

ARTICLE 15
EECC PERFORMANCE MANAGEMENT

15.1 Benchmarking Targets and Metrics

The parties agree that the EECC shall be expected to perform to the standards and achieve the targets established by the JMSB (collectively being the "**Benchmark Targets**"), as may be updated by the JMSB from time to time, pursuant to Section 3.4(g). The JMSB shall establish the initial Benchmark Targets by no later than June 1, 2027.

15.2 Reporting

(a) The parties agree that the General Manager shall include a report on the performance of the EECC with each proposed Operating Budget, which report shall include a summary on whether each Benchmark Target has been achieved. If either party is not satisfied with the findings of any performance report, such party can request a meeting to reassess any EECC Benchmark Targets.

ARTICLE 16
LIABILITY, INDEMNITY, AND INSURANCE

16.1 Liability Insurance

(a) The JMSB shall acquire and maintain, throughout the Term, at its own expense and as an Operating Expenditure, liability insurance on activities related to the EECC, to an inclusive amount of not less than ten million dollars ($10,000,000.00) per occurrence.

(b) The policy shall include the following:

(i) Each Municipality shall be named as an additional insured;

(ii) a cross-liability clause;

(iii) a severability of interests clause;

(iv) blanket contractual liability coverage; and

(v) a 30-day written notice of cancellation, termination or material change.

(c) Proof of insurance which meets the terms of this Article 16 shall be provided to the Municipalities upon request.

16.2 Notice

(a) The General Manager, JMSB, and the parties shall immediately notify the Municipalities or other Municipality as the case may be of any occurrence, incident or event which may reasonably be expected to expose a party to material liability of any kind in relation to the EECC.

16.3 Property Insurance

(a) The JMSB shall acquire and maintain throughout the Term, joint building and contents insurance for the EECC, including, but not limited to insurance coverage for all equipment and furnishings located and used at the EECC, with coverage equal to the replacement cost value for such building and contents. The policy applicable to such insurance shall include all of the requirements set out in Section 16.1(b) and the costs of such insurance shall be considered an Operating Expenditure.

16.4 Indemnification

(a) Each party (the "**Indemnifying Party**") shall defend, indemnify, and save harmless, the other party, its elected representatives, officers, employees, contractors, and agents (collectively the "**Indemnified Party**") from and against any Losses that arise out of, or result from, and are directly related to:

(i) the breach by the Indemnifying Party of any representations, warranties, covenants or obligations (including without limitation, any payment obligations) contained in this Agreement; and/or,

(ii) the negligent or willful misconduct by the Indemnifying Party, or any of its elected representatives, officers, employees, contractors, and agents, with respect to the performance of the Indemnifying Party's obligations under this Agreement.

(b) Notwithstanding the foregoing, in the event that either party undertakes to perform any work, repairs, services, or capital improvements at or on the EECC at the request of the JMSB ("**Independent Work**"), the parties acknowledge that they would each receive a benefit from such Independent Work, and as such, each party hereby waives any right to seek indemnification from the other (or any of its elected representatives, officers, employees, contractors, and agents) for any Losses incurred in connection with a third party Claim related to or arising from such Independent Work; provided however that, such waiver shall not extend to any Losses incurred as a result of the negligent or willful misconduct of either party, or any of its respective elected representatives, officers, employees, contractors and agents, for which the other party may still seek indemnification pursuant to Section 16.4(a)(ii).

16.5 No Termination

(a) The provisions of Section 16.4 shall survive any termination or expiration of this Agreement provided the loss occurred prior to the expiration or termination of this Agreement or any renewals thereof.

ARTICLE 17
DISPUTE RESOLUTION

17.1 Reference to Mediation and Arbitration

(a) All differences or disputes which arise between the parties, whether in relation to the interpretation, application or alleged violation of this Agreement or to any act or omission of the parties in dispute or to any acts which are to have been done by the parties in dispute, which cannot be resolved by the parties following a period of discussion or with respect to decision making, shall be resolved with the procedure outlined in this Article 17, subject only to the circumstances of Article 18 which permit termination of this Agreement.

(b) The parties shall appoint a third-party mediator who shall attempt to mediate a resolution. This will not limit or otherwise change any legal rights of the parties. The mediator shall be chosen by and be acceptable to both parties. The parties agree to equally share the cost of mediation.

(c) Subject to the negotiation and mediation provisions set out above, if any dispute or controversy occurs between the parties relating to the application, interpretation, implementation, or validity of any of the provisions of this Agreement, the dispute will be referred to and finally resolved by arbitration pursuant to the Ontario *Arbitration Act*. Any party may serve notice of its desire to refer a dispute to arbitration. The arbitration shall be conducted by a single arbitrator. The arbitration shall be held in St. Thomas, Ontario. The decision arrived at by the arbitrator shall be final and binding and no appeal shall lie therefrom. The costs of the arbitrator shall be divided equally between the parties.

ARTICLE 18
EVENTS OF DEFAULT, TERMINATION, AND TERMINATION PROCEDURE

18.1 Events of Default

(a) A party shall be in default under this Agreement (for purposes of this Article 18, the "**Defaulting Party**") if any one of the following events shall occur and not be remedied as herein provided (each an "**Event of Default**"):

(i) the Defaulting Party fails to make a required payment when due, and fails to remedy such non-payment within thirty (30) days of receipt of written notice thereof from the other party;

(ii) the Defaulting Party fails to observe or perform any other covenants, agreements, terms, or conditions of this Agreement on the part of the Defaulting Party to be kept and performed, and such failure continues for a period of sixty (60) days after written notice thereof from the other party; provided however, that with respect to any failure that cannot be reasonably remedied within said sixty (60) day period, an Event of Default shall not be deemed to have occurred if the Defaulting Party has commenced reasonable efforts to remedy such failure within said sixty (60) day period, and actually remedies the failure within a reasonable amount of time thereafter;

(iii) the Defaulting Party attempts to sell, in any manner other than in accordance with the termination procedures set out in Section 18.3, all or any part of: (i) the EECC; or, (ii) its ownership interest in the EECC, without the other party's express written consent; and/or,

(iv) the Defaulting Party attempts to lease all or any portion of the EECC without: (i) the other party's express written consent; and, (ii) the JMSB's express written consent.

18.2 Remedies for Default

(a) Upon the occurrence of an Event of Default set forth in Section 18.1(a), the non-defaulting party may, at its option, exercise any and all remedies listed below:

(i) The non-defaulting party shall have the right (but shall not be so obligated) to perform or cause to be performed and to do or cause to be done such things as may be necessary or incidental to remedy the Event of Default (including without limiting the foregoing, the right to make any repairs or replacements of Operational Components, or any other capital elements or property forming part of the EECC), and all reasonable payments, expenses, charges, fees and disbursements incurred or paid by or on behalf of the non-defaulting party in respect thereof shall be paid by the Defaulting Party to the non-defaulting party upon written demand therefor, together with all reasonable legal and administrative costs incurred in connection with doing so.

(ii) The non-defaulting party shall have the right to terminate this Agreement, effective immediately upon written notice thereof to the Defaulting Party, pursuant to the termination procedure set out in Section 18.3.

No such remedy herein or otherwise conferred upon or reserved to the non-defaulting party shall be considered exclusive of any other remedy, but same shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity, and every power and remedy given by this Agreement or at law to the non-defaulting party may be exercised from time to time and as often as the occasion may rise or may be deemed expedient.

18.3 Termination Procedure

(a) If either Municipality elects to terminate this Agreement in accordance with the terms herein or wishes to conclude its involvement with the EECC at the end of the Initial Term, or any Renewal Term (the "**Terminating Municipality**"), the Terminating Municipality shall give notice in writing to that effect to the JMSB and the other Municipality. Thereafter, the JMSB shall recommend an independent, certified appraiser having objectively demonstrable experience in valuing real estate (the "**Appraiser**") to the Municipalities for their joint approval, failing which the determination of an acceptable Appraiser may be referred by either Municipality for dispute resolution pursuant to Article 17. Upon the selection of an agreed Appraiser by the Municipalities, the JMSB shall instruct the Appraiser to determine the fair market value of the EECC within 60 days following the Appraiser's appointment in an appraisal (the "**Appraisal**"). The Appraiser shall appraise the EECC's fair market value, and such determination of the Appraiser shall be final and binding upon the Municipalities. The Municipalities shall be equally responsible for all fees and disbursements charged by the Appraiser, except in the event that the Terminating Municipality is electing to terminate the Agreement as a result of the other Municipality's default pursuant to Section 18.2(a)(ii), in which case the other Municipality shall be solely responsible for such fees and disbursements.

(b) Upon the Appraiser's determination of the fair market value of the EECC:

(i) If the Terminating Municipality is terminating the Agreement as a result of the other Municipality's default pursuant to Section 18.2(a)(ii), the Terminating Municipality shall have the right, but not the obligation, to purchase the other Municipality's interest in the EECC from the other Municipality for a purchase price equal to:

(1) fifty percent (50%) of the fair market value of the EECC (as reflected in the Appraisal; *less,*

(2) any Losses incurred by the Terminating Municipality directly arising from the other Municipality's default.

(ii) In connection with any election to terminate or not renew this Agreement by the Terminating Municipality other than as a result of the other Municipality's default pursuant to Section 18.2(a)(ii), the other Municipality shall have the right, but not the obligation, within sixty (60) days after receiving the Appraisal, to purchase the Terminating Municipality's interest in the EECC from the Terminating Municipality for a purchase price equal to fifty percent (50%) of the fair market value of the EECC (as reflected in the Appraisal).

(iii) In the event that neither Municipality wishes to purchase the other Municipality's interest in the EECC pursuant to Section 18.3(b)(i) or 18.3(b)(ii), as applicable, the EECC (including for greater certainty, the Lands, the Facility, and all chattels, fixtures, and personal property used in connection with the EECC's operations), shall be listed for sale to a third party purchaser, with each Municipality having a right of refusal ("**ROR**") to match any offer for the EECC (less fifty (50%) percent, representing the interest already owned by that Municipality), subject to the following order of priority:

(1) If the EECC has been listed for sale in connection with a Terminating Municipality's termination of this Agreement due to the other Municipality's default pursuant to Section 18.2(a), the Terminating Municipality shall have the first ROR, which must be exercised within thirty (30) days of such third-party offer being received by the Municipalities. If the Terminating Municipality does not exercise its ROR prior to the expiration of such thirty (30) day period, the other Municipality shall then have the second ROR, which must be exercised within thirty (30) days of such expiration;

(2) If the EECC has been listed for sale in connection with a Terminating Municipality's termination or non-renewal of this Agreement arising in a context other than the other Municipality's default pursuant to Section 18.2(a), the other Municipality shall have the first ROR, which must be exercised within thirty (30) days of such third-party offer being received by the Municipalities. If the other Municipality does not exercise its ROR prior to the expiration of such thirty (30) day period, the Terminating Municipality shall then have the second ROR, which must be exercised within thirty (30) days of such expiration.

If neither Municipality exercises its respective ROR within the applicable time periods set out above, the sale of the EECC to the third party shall take place pursuant to the terms of the third-party offer.

In any circumstance in which a Municipality wishes to exercise its respective ROR, it may only do so if it is willing to match the same terms and conditions as set out in the third-party offer. In the event that a Municipality exercises its respective ROR, the third-party offer shall not be accepted and the terms of sale for the EECC shall proceed, as between the Municipalities, on the same terms and conditions as set out in the third party offer; provided that, any sale of the EECC arising from a Municipality exercising its respective ROR must be completed within ninety (90) days from the date such right was exercised, failing which the selling Municipality may list the EECC for sale to a third party once again, in connection with which neither Municipality shall have an additional ROR.

18.4 Mandatory Review Prior To End of Term

(a) On or before the end of the eighth (8^{th}) year of the Term of this Agreement, the Municipalities shall meet to discuss the future of the EECC and confirm each Municipality's intentions to either terminate or renew this Agreement.

18.5 Funding Agreement

(a) The parties acknowledge that Section 52 of the Funding Agreement prohibits transferring the ownership of all or any part of the EECC prior to March 31, 2027 without the Province of Ontario's prior written consent. As such, the parties agree that neither Municipality may resort to the termination procedures set out in Section 18.3 until the date following March 31, 2027 without accepting all responsibility and liability for repaying the Province if demanded as a result of said actions.

18.6 Transition on Termination

(a) The parties shall co-operate with each other, at their own respective expense, to facilitate the transition of all EECC program and service delivery being provided at the time of termination.

(b) In the event that the EECC is sold pursuant to this Article 18, concurrently with the termination of this Agreement the Municipalities shall thereafter dissolve the JMSB and, to the extent that they are assignable and transferable, the JMSB shall assign and transfer any supply or other contracts relating to the EECC to the Municipality or other third party who purchased all title and interest in the EECC, as the case may be. In the event that any such contracts are not assignable or transferrable, the JMSB shall terminate such contracts and the Municipalities shall equally share any termination costs that result from such terminations.

18.7 Conduct on Termination

(a) In the event of termination of this Agreement, the parties shall use best efforts to demonstrate respect and goodwill towards each other.

18.8 Use of information

(a) After the termination of this Agreement, neither party may use any information gained from the files or business of the other party to its own advantage, or to the advantage of any other person or corporation.

18.9 Finances

(a) Upon termination of this Agreement, both parties shall provide to the other notice in writing of any outstanding financial issues. Subject to Section 18.2(a)(i), any debts owing by one party to the other shall be paid in full within six (6) months of the receipt of written notice. Any disputes with respect to such financial issues shall continue to be resolved pursuant to Article 17, which shall survive any termination of this Agreement.

ARTICLE 19
UNCONTROLLABLE CIRCUMSTANCES

19.1 Force Majeure

Neither party shall be liable for breach, default or delay in the performance of any of its obligations under this Agreement (except an obligation to make payment when due) in the event such party is rendered unable, wholly, or in part, to carry out its respective obligations as a result of an Uncontrollable Circumstance. Such party shall be excused from performance only during the period and to the extent that the affected party, acting with all due diligence and dispatch, is prevented from performing by the Uncontrollable Circumstance.

[Signature page follows]

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the day and year set out above:

THE CORPORATION OF THE TOWNSHIP OF MALAHIDE	**THE CORPORATION OF THE TOWN OF AYLMER**
Per: ______________________________	Per: ______________________________
[Name] Mayor	[Name] Mayor
Per: ______________________________	Per: ______________________________
[Name] City Clerk	[Name] City Clerk
We have authority to bind the Corporation	We have authority to bind the Corporation