

Updated Employment Agreement  
Position: President & CEO  
YMCA of Hamilton/Burlington/Brantford

Memorandum of Agreement Made the 28th day of January 2014.

BETWEEN: The YMCA of Hamilton/Burlington/Brantford, a body corporate incorporated by act of the Provincial Parliament and having its head office situated at 79 James Street South, Hamilton, Ontario, L8P 2Z1

Hereinafter called the "YMCA"

OF THE FIRST PART

AND Jim Commerford of the City of Burlington, in the Province of Ontario

Hereinafter called the "Executive"

OF THE SECOND PART

WHEREAS the YMCA has employed the Executive as its President & Chief Executive Officer since April 7, 2003;

AND WHEREAS the Executive's employment by the YMCA has been in accordance with the Employment Agreement dated April 7, 2003 that was freely negotiated by the YMCA and the Executive;

AND WHEREAS the YMCA and the Executive have freely agreed to update the terms and conditions of the Executive's Employment Agreement for their mutual benefit and so that the Updated Employment Agreement accurately delineates their respective rights, obligations, duties and responsibilities;

NOW THEREFORE the YMCA and the Executive agree as follows:

**1. CONTINUATION AS PRESIDENT & CHIEF EXECUTIVE OFFICER**

The YMCA and the Executive agree that the latter shall continue in the position of the YMCA's President & Chief Executive Officer ("President & CEO"), the general nature and scope of which is understood and accepted by the Executive and the YMCA. The YMCA and the Executive agree the Executive's continued performance of the duties and responsibilities of the position of President & CEO shall be in accordance with the terms and conditions set out in this Agreement

**2. TERM**

The Employment of the Executive as the YMCA's President & CEO shall continue until terminated in accordance with the provisions of this Agreement.

**3. COMPENSATION**

a) The Executive's annual salary, as approved by the Board of Directors, is \$225,330.00 effective January 1, 2014.

b) The Executive's salary shall be reviewed annually by the YMCA's Board of Directors.

- c) At least every three years, the salary review may include contracting the services of an independent compensation consultant to conduct a labour market review of similar Executive positions within the Hamilton/Burlington geographic areas, and similar size Canadian YMCAs, in establishing salary adjustments.

4. BENEFITS

a) Expenses

The YMCA will reimburse the Executive for all reasonable and normally acceptable expenses incurred by him during the course of his employment, payment being subject to the production of all proper vouchers and/or itemized accounts in accordance with the policies of the YMCA.

b) Automobile

The YMCA will provide a taxable allowance of \$800.00 per month to reimburse the Executive for usage of his vehicle inclusive of mileage reimbursement required to complete the duties of the Executive.

The YMCA agrees to pay a reasonable monthly parking fee to provide for the parking of the Executive's automobile in a location convenient to his office or to otherwise reimburse him for such expense.

c) Retirement Plan

The YMCA wishes to assist the Executive with his retirement planning. With this in mind, the YMCA will match the contribution of the Executive to the YMCA Canada Retirement Fund up to the maximum allowable by the Canada Revenue Agency. In addition to the matching contribution to the YMCA Canada Retirement Fund, the YMCA will match the Executive's contribution to other retirement savings vehicles up to a combined total of 18% of the Executive's salary (9% contributed by the Executive and 9% contributed by the YMCA). It is understood that the purpose of the matching arrangement is to assist the Executive with his/her retirement plans. Upon request of the Board of Directors, the Executive shall produce evidence that the matching funds in excess of the contributions to the YMCA Canada Retirement Fund were used to invest in a long term retirement savings vehicle for him or herself or his or her spouse.

d) Training and Development

The Executive shall have authority to attend any training and development program offered by the YMCA or other organization at the expense of the YMCA provided such training and development programs relate to the duties of the Executive. The annual cost of these training and development opportunities shall not exceed 10% of the base salary of the Executive. The Executive shall inform the Board of Directors in advance of these training and development opportunities and any unused professional development funds may only be carried forward for a maximum of three years.

e) Employee Benefits

As an employee of the YMCA, the Executive shall be entitled to all employee benefits of the Association as identified in the Human Resources Policies and Benefit Plans of the YMCA. However, since all aspects of the Executive's compensation are subject to approval by the Board of Directors, any changes to the Human Resources Policies and Benefit Plans of the YMCA do not apply to the Executive unless approved by the Board of Directors.

f) Health Spending Account

The Executive shall have access to a Health Spending account through the YMCA's Benefit Provider. The YMCA shall provide additional coverage, through the carrier, with a limit not to exceed \$2,500 annually.

5. **AUTHORITY, DUTIES AND RESPONSIBILITIES**

- a) Subject to general and/or specific instructions and directions from the YMCA Board of Directors, the Executive shall have full power and authority to manage and direct the business and related affairs of the YMCA as its President & Chief Executive Officer. Those matters and duties that according to the YMCA Constitution and By-Laws may only be carried out by the Board of Directors or by the members of the YMCA in general meeting assembled are excluded from this authority. The Executive's power and authority includes the authority to enter into contracts, engagements or commitments of any nature on behalf of and in the name of the YMCA provided these actions are consistent with the Executive Limitations policies of the YMCA of Hamilton/Burlington/Brantford. The Executive shall assist and direct the Board of Directors and its committees in carrying out their respective duties and mandates and direct and implement such programs as may generally promote the mission of the YMCA.
- b) The Executive shall conform to all lawful instructions and directions given to him by the Board of Directors of the YMCA and obey and carry out the Constitution and By-Laws of the YMCA.
- c) The Executive hereby agrees to faithfully serve the YMCA, to use his best efforts to promote the interest and the mission of the YMCA and to devote his full time and effort to the business and affairs of the YMCA.

6. **VACATION**

The Executive shall be entitled to a paid vacation equal to 30 days per year.

7. **DISABILITY**

- a) Notwithstanding the provisions of the employee benefit plan of the YMCA, should the Executive become disabled for any reason and unable to perform his duties, the YMCA will continue to pay his full salary for a period up to six (6) months.
- b) If the disability continues beyond four (4) months, the YMCA long-term disability policy shall apply.

8. **TERMINATION**

- a) The parties understand and agree that this contract may be terminated in the following manner:
  - i) by the YMCA in its absolute discretion on giving the Executive advance notice in writing or on paying the Executive the equivalent pay in lieu of notice in accordance with the following:
    - 1 month per year of YMCA service to a maximum of 24 months. The payment in lieu of notice is conditional upon a reduction of 50% of the balance owing should the former CEO find employment within the time specified.
  - ii) By the YMCA in its absolute discretion without notice or pay in lieu for situations of cause.
  - iii) By the Executive on giving 3 months written notice to the YMCA which may be waived in whole or in part by the YMCA.
- b) On termination of employment, the Executive shall immediately resign all offices held in the YMCA or any of its branches or programs or facilities. If the Executive fails to resign as stipulated, the YMCA is hereby

irrevocably authorized to appoint some person in his name and on his behalf to sign any documents and do any things necessary to give effect to it.

- c) Any amounts advanced by the YMCA to the Executive shall immediately become repayable on termination and shall bear interest at the current prime rate per annum on any amounts remaining unpaid after 10 days of termination.

**9. EMPLOYER'S PROPERTY**

The Executive acknowledges that all items created or used by the Executive pursuant to the Executive's employment under this Agreement or furnished by the YMCA to the Executive and all equipment, automobiles (if any), credit cards, books, records, reports, files, manuals, literature, confidential information, computers and technological equipment or other materials relevant to his position as President & Chief Executive Officer shall remain and be considered the exclusive property of the YMCA. At all times, these items shall be surrendered to the YMCA promptly on the termination of the Executive's employment irrespective of the time, manner and cause of termination.

**10. ASSIGNMENT OF RIGHTS**

The rights that accrue to the YMCA under this Agreement shall pass to its successors. The rights of the Executive under this Agreement cannot be assigned or transferred in any manner whatsoever.

**11. NOTICES**

Any notice required or permitted to be given to the Executive and/or to the YMCA shall be sufficiently given if delivered to the Executive or to the Chair of the Board of Directors personally or mailed by pre-paid, registered mail to the Executive at his address last known to the YMCA and to the YMCA at 79 James Street South, Hamilton, Ontario, L8P 2Z1. The parties agree that service by personal delivery shall be deemed to have been received on the date of such service and service by mail shall be deemed to have been made three days after the date of mailing respectively.

**12. EMPLOYMENT OF THE EXECUTIVE IN OTHER OCCUPATIONS**

The Executive agrees that he will not engage in or become connected in any capacity with the promotion, undertaking or carrying on of any business or facility or any other operation that is or may be against the interest of the YMCA during the term of his employment.

**13. HUMAN RESOURCES POLICIES AND BENEFIT PLANS**

- a) The Executive may amend the provisions of the Human Resources Policies and Benefit Plans of the YMCA within the limits of his authority as described in the policies of the Board of Directors and within the Constitution and By-Laws of the YMCA. However, any amendments made by the Executive will not apply to the Executive unless approved by the Board of Directors.
- b) Once approved by the Board of Directors, the Executive shall be covered by and must comply with the amended Human Resources Policies and Benefit Plans so long as these amendments are consistent with any provisions in this Agreement, which shall take precedence over such policies.
- c) In the event that the Board of Directors does not approve an amendment to the Human Resources Policies and Benefit Plans of the YMCA in terms of its Agreement with the Executive, such discrepancy between the Human Resources Policies and Benefit Plans of the YMCA and the Agreement with the Executive shall be specifically included in a revision or amendment to the Agreement.

**14. SEVERABILITY**

In the event that any provision or part of this Agreement shall be deemed void or invalid by a court of competent jurisdiction, the remaining provisions or parts thereof shall be and remain in full force and effect.

15. ENTIRE AGREEMENT

This contract shall constitute the entire agreement between the parties and any and all previous agreements, whether written or oral, expressed or implied between the parties or on their behalf relating to the employment or appointment of the Executive by the YMCA are hereby terminated and cancelled and each of the parties releases and forever discharges the other of and from all manner of actions, causes of actions, claims and demands whatsoever under or in respect of any such agreement.

16. MODIFICATION OF AGREEMENT

Any modification or amendment to this Agreement must be in writing and signed by the parties or it shall have no effect and shall be void. The Board and CEO may review and update this agreement every three years.

17. HEADINGS

The headings used in this agreement are for convenience only and are not to be construed in any way as additions or limitations of the covenants and agreements contained in it.

18. GOVERNING LAW

This agreement shall be construed in accordance with the laws of the Province of Ontario.

IN WITNESS WHEREOF this Agreement has been executed by the parties hereto the day, month and year first above written.

SIGNED, SEALED AND DELIVERED

In the presence of:

YMCA of Hamilton/Burlington/Brantford Per:

  
Mary Williams  
Chair, YMCA Board of Directors

January 30/14  
Date

  
Jim Commerford  
President & Chief Executive Officer

30 Jan 2014  
Date