ATTACHMENT "A"

PROPOSED TERMS AND CONDITIONS FOR AN UPDATED USER AGREEMENT OF PAN AM POOL TRAINING TANK (from 1993) LOCATED AT 25 POSEIDON BAY, WINNIPEG, MANITOBA

Owner	1. The City of Winnipeg (hereinafter called the "City").
User	2. Swim/Natation Manitoba Inc. (hereinafter called "Swim MB").
Location	3. 25 Poseidon Bay, Winnipeg, Manitoba (hereinafter called the "Facility").
Areas of Use	4. The Training Tank, Timing Booth, Office Space, Canteen and associated amenities including the scoreboard, video board, and identified facility equipment. Areas of use to be identified on the Floor Plan attached hereto as Schedule "A" (hereinafter collectively called the "Areas of Use").
Sub-Users:	5. Swim MB will have the right to allocate the Training Tank to provincial sport organizations during the Scheduled Hours set out below for the purpose of amateur sport development in competitive swimming, diving, water polo, artistic swimming, and triathlon as identified in a schedule to the User Agreement. 6. Swim MB will charge the named provincial organizations at a rate which reasonably reflects a recovery of Swim MB's costs. 7. Any revenue received by Swim MB from such allocation will remain the property of Swim MB with conditions of use as outlined in this Agreement.
Primary Use:	8. Use of Training Tank will be for the sole purpose of carrying out amateur and competitive aquatic sports programming and uses ancillary thereto, and for no other purpose except with the prior written consent of the City of Winnipeg's Director of Community Services. 9. Use of the "Kitchen Area" (main floor adjacent to front entrance) and/or 2nd Floor "Serving Room" – no cooking permitted (Note: This amenity may be at or near the end of its lifecycle, but for the duration of its existence or the end of this agreement, whichever comes first.) during Swim MB events, at no additional cost for the sole purpose of providing supplementary food services to volunteers, athletes, coaches and public for minimal profits towards their revenue. Must be in compliance with Public Health and Food Handling requirements under necessary permits. Criteria for determining priority access will be at the discretion of the City

	i.e. "Major Aquatics Group" (MAG) Schedule as the primary tool. 10. Use of the Office Space for the purpose of storage and business operations of Swim MB
Non-Exclusive Storage Areas:	11. Non-exclusive access to the following Storage Areas for the storage of equipment incidental to its use of the Facility: a. the timing office storage space b. pool deck in training tank and main tank c. audio room 12. An inventory of equipment owned and stored by Swim MB identified as "User's Equipment" in Schedule "B" attached hereto. City will not be responsible for User's Equipment.
Additional Amenities:	13. Swim MB will have regular public access to the Pan Am Pool facility such as the washrooms, change rooms, universal change room providing access during public operating schedules. 14. Swim MB will be provided access to the Scoreboard, PA System, Video Board, and Timing Booth. 15. Swim MB will be provided non-exclusive use of the equipment identified as "Shared Equipment" and the equipment identified as "City Equipment" in Schedule "B" attached hereto, where the City will be responsible for the repair or replacement of those items listed due to regular wear and tear. 16. Swim MB's use of amities such as the Score Board, Video Board, PA system, associated equipment, and access to the Timing Booth are all at the sole risk Swim MB and who would be responsible for any damage or theft of associated components caused as a result of their use.
Video Board Use:	17. Video Board may only be used to display text, images or video related to Swim MB's use of the Training Tank 18. Not to display any text, images, or video which may be considered obscene, offensive, pornographic, illegal, discriminatory, or otherwise objectionable in the sole discretion of the City. 19. Not to display any text, images, or video, the display of which violates or could violate the copyright, trademark, or other intellectual property rights of third parties.

	20. The City will reserve the right to not display any text, images, or video on the Video Board which the City determines is contrary to the User Agreement. 21. The City will train one or more individuals from Swim MB/provincial sport organizations who are authorized to operate the Video Board, use of the timing booth, Video Board, PA System and associated equipment. 22. Only representatives of Swim MB who have been authorized by City will have access to the Video board, timing booth, PA System and associated equipment. 23. The placement of any software or hardware owned by Swim MB is done in a manner which does not pose a risk of damage or injury to any person or property.
Initial Term and Scheduled Hours:	24. Twenty (20) year term to commence effective September 1st, 2024 and ending on August 31st, 2044. 25. The right of use of the Training Tank herein granted may be exercised by Swim MB for a total of 46 weeks in any year of the Term. Swim MB shall have exclusive use of the Training Tank on the days and at the times listed in Schedule "C" hereto. 26. Swim MB prior to August 1 in each year of the Term to provide the City with a schedule of weeks in the ensuing year during which the provincial sport organizations request use of the Training Tank for a period of 46 weeks per year. 27. The City will review and confirm the schedule no later than August 31 in each year of the Term. 28. If requested by the City, prior to August 31 in each year Swim MB may need to amend schedule to accommodate special events specified by the Manager of Recreation. 29. The City will identify for the 46 weeks which blocks of time Swim MB will have rights to allocate and will be included as a schedule in the User Agreement. 30. The City will maintain the right to use the Training Tank at no cost during the blocked Scheduled Hours if Swim MB is not using the time as identified by Swim MB. 31. The City will allow the User the right to use the Training Tank during times other than the Schedule Hours at applicable fees and charges rates as per the facility reservation process.

Extension Option:	32. None.
Rent and Applicable Fees:	33. Swim MB will pay an annual base rent of $200,000.00 (beginning in year one of the term) which will be subsequently adjusted annually for the CPI rate, plus GST for the first ten years of the Term. 34. Swim MB will pay an annual base rent of $275,000.00 commencing September 1st, 2034 which will be subsequently adjusted annually for the CPI rate, plus GST for the second ten years of the Term. 35. The CPI rate for which both the annual base rate and fees and charges are based will be provided to Swim MB once approved by the City's Chief Financial Officer (CFO) each year, as outlined in the City of Winnipeg's FEES AND CHARGES BY-LAW NO. 196/2008 City Clerk's eGovernment (winnipeg.ca). 36. The City will provide an annual notification of base rent and fee changes. 37. Swim MB to pay additional costs, such as additional staff costs, or additional lane or pool rental rates outside the "Initial Term and Scheduled Hours" – as per City of Winnipeg Council approved fees and charges and Community Services facility reservation processes (hereinafter referred to as "Additional Costs"). 38. Interest rate will apply to any outstanding balances at a rate determined by the City. Interest rates on outstanding balances are currently determined by the Late Payment Penalty By-law No. 7136/97 (amended 8162/2002). Current Rate = Late Payment Penalty >30 days O/S 1.50%. 39. Annual Base Rent payable in 12 equal monthly instalments due by the 20th day of each and every month of the Term. 40. Additional Costs will be invoiced and payable monthly and due by the 20th day of each and every month of the Term. 41. Swim MB to pay GST, where applicable.
Insurance Requirements:	42. The User shall provide and maintain the following insurance coverage at all times for the duration of this Agreement: (a) A commercial general liability policy including, but not limited to, the following provisions: (i) The City to be included as an additional insured;

(ii) The policy to contain a cross liability clause or severability of interest clause;

(iii) Protection for claims of bodily injury and property damage, personal injury liability, in the inclusive amount of at least five million dollars ($5,000,000.00) per occurrence with a minimum of five million dollars ($5,000,000.00) general aggregate, including injury to participants

(iv) Shall not contain any special limitations on the scope of coverage afforded the City, its officers, officials, employees, agents or volunteers.

(b) If required, a broad form property insurance policy, for the full replacement cost insuring their contents and equipment.

43. All applicable deductibles shall be borne by the User

44. The User shall take all policies out with insurers licensed to and carrying on business in the Province of Manitoba.

45. The User shall not cancel, materially alter or cause any such policy or policies to lapse without providing at least thirty (30) calendar days' prior written notice to the City.

46. The User shall provide written notice to the City of any material changes to their policies within thirty (30) days of the change taking effect.

47. The City shall have the right to alter the limits and/or coverages as reasonably required from time-to-time during the continuance of this Agreement or any subsequent extensions thereof, provided that the City shall give the User reasonable notice and shall request reasonable change.

48. The User shall file with the City an annual Certificate of Insurance in a form satisfactory to the City's Supervisor of Insurance. All certificates of insurance are to be sent to:

The City of Winnipeg
Risk Management Division
3rd Floor - 185 King Street, Winnipeg, Manitoba, R3B 1J1
Attention: Supervisor of Insurance
Fax: 204-986-6132
Email: insurance@winnipeg.ca

The User shall provide to the City, on an annual basis, a listing of all Sub-Users and Swim Manitoba member clubs that are using the facility or plan to use the facility for the upcoming year. All Sub-Users are to provide evidence of insurance to the City

	as outlined in Sections 42-48 herein. All Swim Manitoba member clubs shall be required to provide confirmation of membership status under the Swim Manitoba policy.
Termination:	49. Upon 120 days written notice by either party; or 50. Should Swim MB be in default of any of the terms and conditions of the Agreement, the City shall provide Swim MB with fifteen (15) days written notice to remedy the default along with a description of the nature of the default (or such longer period as may be reasonably required to cure such default considering the nature thereof and as agreed to by the City). Should Swim MB not remedy the default to the satisfaction of the City, the City, at its sole discretion, may terminate this Agreement immediately upon the expiration of the fifteen (15) days' notice period. Upon termination or cancellation of the Agreement, Swim MB shall remove its property (including both fixtures and chattels) from the Areas of Use and leave same in a condition satisfactory to the Director. Should the Lessee default in so doing, the City may: a. Restore the Areas of Use at the sole risk and expense of Swim MB; and b. Remove and/or dispose of the Swim MB's property (including fixtures and chattels) at the City's sole discretion without the Swim MB's consent and at the risk and expense of Swim MB. The City shall not be required to provide any compensation to Swim MB for such removal and/or disposal. 51. Notwithstanding the forfeiture or termination of the Agreement in any manner herein provided for, Swim MB shall be and remain liable to the City for all payments due and obligations and liabilities incurred hereunder up to the date of such forfeitures or termination and for the fulfillment of all obligations on the part of Swim MB to be observed and performed upon after the said termination.
Development:	52. Written approval of the Director of Assets and Project Management or their designate required for any development in Training Tank or shared amenities (constructed, erected, attached, installed, removed, or modified any device, fixture, improvement)
Repairs and Maintenance:	53. The City will maintain the Facility and Training Tank in good repair and a clean condition. 54. The City will meet provincial legislation with respect to the operation and maintenance of a public swimming pool.

	55. Swim MB will be responsible to reimburse the City for any damages caused as a result of Swim MB's use and occupancy of the Areas of Use, facility or shared equipment, and without limiting the generality of the foregoing, caused as a result of any negligent or willful act of Swim MB, its contractors, agents, servants or employees, reasonable wear and tear excluded.
Signage:	56. Limits to signage, advertisements in Facility. Prior written approval of the City required. 57. Sponsorship or advertising opportunities require prior written approval by City and in compliance with the City's Sponsorship Policy by August 1 annually.
Assignment or Sub-let:	58. Swim MB is not permitted to assign or sub-let all or any part of the Areas of Use beyond scope of section listing Sub-users.
Destruction of Facility:	59. In the event of total destruction or partial destruction of the Facility, the User Agreement terminates at the option of the City. 60. Swim MB pays any outstanding balance up to the date of destruction. 61. In the event of partial destruction of the Facility, and the City does not opt to terminate the Agreement then the Facility may be partially used for the operation while the repairs are being made, if safe to do so in the opinion of the City. 62. In the case of partial destruction and usage, fees will be adjusted proportionally for that period of time. 63. The Director of Assets and Project Management or their designate will determine extent of damage and whether the extent of damage is total or partial destruction.
Dispute Resolution	64. In the event a dispute shall arise between the City and Swim MB as to any matter herein contained, excepting a matter herein provided to be determined solely by the City or its consultants and excepting a dispute as to Rent and Fees payable, then such dispute shall be resolved by arbitration in accordance with the provisions of The Arbitration Act, C.C.S.M. c. A120. The costs of arbitration shall be shared by the parties hereto.
Conditions:	65. Swim MB accepts the Areas of Use and Facility on an "as is" basis. Swim MB acknowledges this agreement without any expectation that the City would be doing the work to update the Facility and accepting the Facility in its current state. 66. Usage will not be anything of illegal or unlawful purpose, or in any manner which would result in the cancellation of any

	insurance, or in the refusal of any insurer to issue any insurance as requested. 67. Swim MB shall maintain books and records regarding the proper financial management of the Training Tank which includes but is not limited to a record of all revenues and their application and a record of all expenditures together with supporting documentation (i.e. invoices, payroll records and bank records including canceled cheques). 68. Swim MB is to comply with all laws, by-laws and regulations of any federal, provincial or municipal or other applicable authority pertaining to the use, development and occupancy of the Facility. 69. The City will conduct programs at the Program Pool at the same time with the User Agreement Scheduled Hours. 70. The City is not responsible for damage to or loss of any personal property, inventory, equipment, fixtures, alterations and improvements of Swim MB's participants or Sub-Users, brought onto the Areas of Use and the Facility. 71. The Swim MB shall release and indemnify and save the City harmless from and against any and all claims for damages or injuries, including death, which may arise from the use of the Areas of Use by Swim MB or its Sub-Users. This provision shall survive any termination or expiration of this Agreement. 72. Swim MB acknowledges and agrees that it will not be entitled to an abatement or reduction in Rent as a result of any nuisance, disruption to or interference with Swim MB's use and enjoyment of the Areas of Use where such nuisance, disruption to or interference is caused by the construction by the City or others of improvements, alterations, additions or repairs to the Areas of Use. Swim MB further agrees not to make any claim against the City for such nuisance, disruption to or interference with the use of the Areas of Use. 73. Notwithstanding anything to the contrary contained in the Agreement, if either party hereto is bona fide delayed or hindered in or prevented from the performance of any term, covenant or act required hereunder by reason of a force majeure event including, but not limited to: strikes; walkouts; labor troubles; industrial disturbances; inability to procure materials or services; failures, fluctuations governmental laws, regulations or controls; riots; civil commotions; insurrections; sabotage; terrorism; invasion; rebellion; military or usurped power; war or warlike operations; blockades; epidemics; pandemics; washouts; nuclear and radiation activity or fallout; explosions; natural disasters; acts of God; or other reason whether of a similar nature or not which is not the fault of the

party delayed in performing Work or doing acts required under the terms of the Agreement, then performance of such term, covenant or act shall be excused for the period of the delay and the party so delayed shall be entitled to perform such term, covenant or act within the appropriate time period after the expiration of the period of such delay. This provision shall not operate to excuse Swim MB from the payment of Rent/Fees in the amounts and at the times specified in the Agreement nor shall they apply so as to extend the period of time for Swim MB to complete Swim MB's work or to extend the fixturing period, if any, nor shall they entitle Swim MB to compensation for any inconvenience, nuisance or discomfort thereby occasioned.

74. Swim MB will submit an annual audited financial statement with respect to use of the Training Tank to the Manager of Recreation Services and Controller, Community Services within 150 days of Swim MB's fiscal year end.

75. Any operating surplus generated by Swim MB's use of the Training Tank and allocation of use to provincial sports organizations will be placed in a reserve account to be utilized for the purpose of amateur aquatic sport development and facility improvement at the Pan Am facility (the "Reserve Fund"). City Chief Financial Officer or delegate to audit reserve account upon City's request.

    a. Swim MB and the City shall mutually determine and jointly agree as to how the Reserve Fund is allocated and what improvements in the Facility are to be supported by the Reserve Fund.

76. Swim MB will make the Facility available to the City for the hosting of international, national and local sporting events upon the receipt of 180 days' written notice. During such special events, Swim MB will be unable to use the Areas of Use and will not be compensated for this loss of use, nor will the Term be extended in any way. The City will be responsible for any repairs or damages caused by such use. The City will act in good faith to accommodate Swim MB's scheduled events with the understanding that the City will incur no additional costs to do so.

77. Swim MB will adhere to the City of Winnipeg guidelines and follow direction provided in the event of an emergency or Facility evacuation. The care and control of the Facility remains the responsibility of The City of Winnipeg.

78. The City of Winnipeg will receive branding opportunities at all swim meets. Without limiting the foregoing, User athletes who access the Facility pursuant to the User Agreement will acknowledge The City of Winnipeg in all media, public activities,

	or promotions connected with the athletes' participation at international swimming competitions. City to provide logo specifications. 79. Swim MB will ensure its members and participating athletes preserve and maintain good order, discipline, and safety in the use of the Facility including, but not limited to maintaining a respectful environment free of behaviors such as discrimination, harassment, disruptive conflict, disrespectful behavior, and violence. 80. The City shall have the right at any time to eject from the Facility or refuse admittance to any person who, in the opinion of the Manager of Recreation Services is creating a disturbance or behaving in an objectionable or unacceptable manner. 81. The City shall have the right of access to the Areas of Use at any time (24 hours a day, seven days a week) by its employees or other persons acting with authorization, with or without equipment for any purpose whatsoever, including, but not limited to, those purposes related to viewing the state of repair, safety, protection, preservation or improvement of the Facility, and for doing any work to maintain, operate, repair, inspect or rehabilitate its existing water mains, sewer lines, and appurtenances, in or near to the Areas if Use, without being responsible for any damage occasioned thereby.
<u>Other:</u>	82. Swim MB shall enter into a formal agreement with the City embodying the foregoing Proposed Terms and Conditions and such other Terms and Conditions as the Director of Legal Services deems necessary and, in a form, satisfactory to the Director of Legal Services following approval from the City's Standing Committees and Council, or its delegated authority, or such other date as mutually agreed upon and approved by the City's Director of Community Services. 83. All terms and conditions contained herein, are subject to the approval of the City's Standing Committees and Council, or its delegated authority, and are not binding until such time as that approval is obtained.

Swim/Natation Manitoba Inc. hereby agree(s) to enter into a User Agreement with the City of Winnipeg for the use of the property identified as "**Areas of Use"** on the attached Floor Plan and in accordance with the terms and conditions as outlined herein.

Per: _____
Name:
Title:

I am authorized to bind the Corporation

_____
Date

Per: _____
Name:
Title:

I am authorized to bind the Corporation

_____
Date

Please provide the following User contact information:

Contact Person:

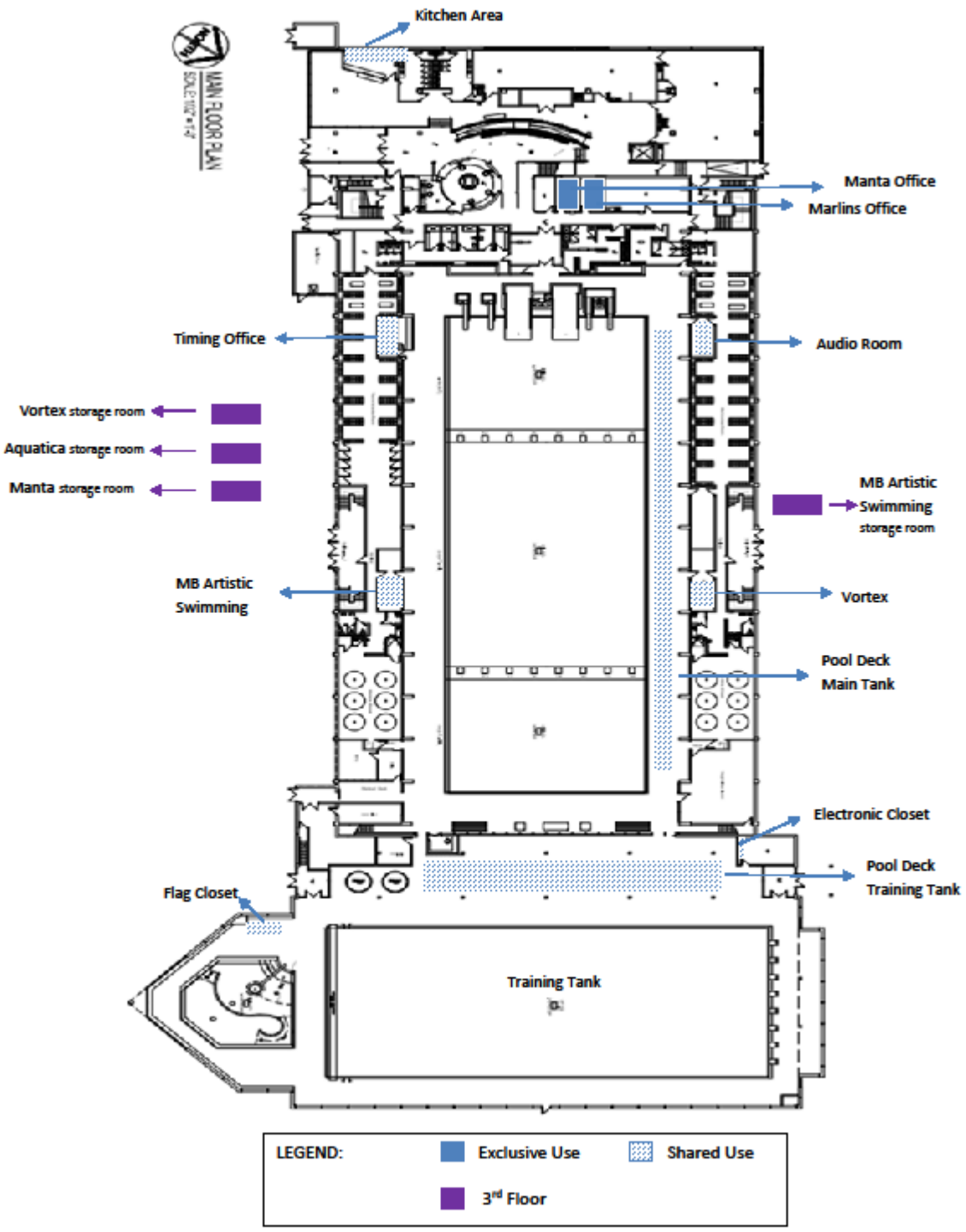
Daytime: _____ Phone No.:_____

After Hours: _____ Phone No.:_____

Fax No.: _____

E-mail Address: _____

SCHEDULE "A"


MAIN FLOOR PLAN
Kitchen Area
Manta Office
Marlins Office
Timing Office
Audio Room
Vortex storage room
Aquatica storage room
Manta storage room
MB Artistic Swimming storage room
MB Artistic Swimming
Vortex
Pool Deck Main Tank
Electronic Closet
Pool Deck Training Tank
Flag Closet
Training Tank
LEGEND:
Exclusive Use
Shared Use
3rd Floor

SCHEDULE "B"

User's Equipment:

- 2 cages of electronic located in the audio room
- Certain electronics located in the timing office
- Event banners (10) audio room
- Event display sandwich boards (10) audio room
- Durable plastic deck cable covers (6) yellow jacket with accessibility ramps
- Linebacker cable management (audio room)
- Backstroke start bars (16)
- Mastercraft Platform Cart (1) audio room
- Rubber cable covers (13) North Training Tank
- 35 Plunges for start blocks
- 40 stop watches
- Touch pads (32)

Shared Equipment:

- Certain electronics located in the timing office

City Equipment:

- 3 lane reels
- 50m lane ropes (9)
- Pace clocks
- Training Tank Electronic Board
- Back stroke flag poles)4) Gold and White located at Training Tank and (4) Red and White located in TT storage closet
- False start pole markers (3) TT storage closet
- Video Board and support IT equipment

SCHEDULE "C"

September 1 – July 18 refers to the 46 weeks of the following training tank usage schedule:

Scheduled Hours		
Days	Times	Hours
Monday	5:45am – 8:00am	2.25
	4:00pm – 9:30pm	5.5
Tuesday	5:45am – 8:00am	2.25
	4:00pm – 9:30pm	5.5
Wednesday	5:45am – 8:00am	2.25
	4:00pm – 9:30pm	5.5
Thursday	5:45am – 8:00am	2.25
	4:00pm – 9:30pm	5.5
Friday	5:45am – 8:00am	2.25
	4:00pm – 9:30pm	5.5
Saturday	6:30am – 5:00pm	10.5
	Total Hours	**49.25**

Any other requests beyond the above identified times is subject to availability and the City of Winnipeg facility reservation permit process and applicable fees as authorized by Council. City of Winnipeg program requirements are priority.