

**THE CORPORATION OF THE CITY OF PETERBOROUGH**

**BY-LAW NUMBER 02-153**

**BEING A BY-LAW TO AUTHORIZE THE  
EXECUTION OF AN AGREEMENT BETWEEN THE  
CORPORATION OF THE CITY OF  
PETERBOROUGH AND JOHN VAN DYK**

**THE CORPORATION OF THE CITY OF PETERBOROUGH by the Council  
thereof hereby enacts as follows:**

1. That the Mayor and the Clerk be and they are hereby authorized to execute an Agreement between The Corporation of the City of Peterborough and John Van Dyk, in the form attached hereto as Schedule "A", and to affix the seal of the Corporation thereto.

By-law read a first and second time this 18<sup>th</sup> day of November, 2002.

By-law read a third time and finally passed this 18<sup>th</sup> day of November, 2002.

(Sgd.) Sylvia Sutherland, Mayor

(Sgd.) Nancy Wright-Laking, City Clerk

## **SCHEDULE A**

A G R E E M E N T made this 18<sup>th</sup> day of November, 2002.

B E T W E E N :

**THE CORPORATION OF THE CITY OF PETERBOROUGH**

hereinafter referred to as the "City",

OF THE FIRST PART

- and -

**JOHN VAN DYK**

hereinafter referred to as the "Construction Manager"

OF THE SECOND PART

WHEREAS the City has retained the Construction Manager to manage and control all aspects of the construction of the Peterborough Sport and Wellness Centre Project (the "Project"), currently being undertaken in the City of Peterborough

AND WHEREAS the City desires the Construction Manager to undertake the management of the Project, in accordance with the responsibilities described in the Construction Manager's Proposal, which is attached hereto as Schedule A (hereinafter called the "Work");

AND WHEREAS the Construction Manager agrees to perform the Work in accordance with the provisions of this agreement;

NOW THEREFORE THIS AGREEMENT WITNESSETH THAT in consideration of the mutual covenants and agreements herein contained, and subject to the terms and conditions hereinafter set out, the parties hereto agree as follows:

### **1.00 RETAINER AND CONSULTING SERVICES TO BE PROVIDED**

1.01 The City retains the Construction Manager to perform and, subject to early termination of this agreement as hereinafter provided, to complete the Work.

1.02 All services performed by the Construction Manager shall be undertaken in accordance with recognized Association of Professional Managers of Ontario requirements and practice.

1.03 The parties estimate that the Project will take approximately eighty-four (84) weeks to complete. It is agreed that the City may, at any time and upon seven (7) days written notice to the Construction Manager, terminate or abandon this agreement without penalty, save and except payment to the Construction Manager for services actually performed to the date of termination. In addition, the Construction Manager may, at any time and upon seven (7) days written notice to the City, terminate or abandon this agreement without penalty or responsibility to complete the Project.

### **2.00 COMPENSATION AND FEES**

2.01 The City shall pay to the Construction Manager the sum of Thirty Dollars (\$30.00) per hour, exclusive of GST, to be invoiced monthly. The total compensation paid to the Construction Manager shall not exceed the sum of Seventy Thousand Dollars (\$70,000.00), exclusive of GST.

### **3.00 ADDITIONAL SERVICES/CHANGES IN WORK**

3.01                    In the event that any additional work, services, disbursements or materials are required as a result of the Work which is not included in this agreement and which has been authorized in writing by the City's Recreation Manager, the Construction Manager shall be entitled to compensation in accordance with such written authorization.

#### **4.00 CO-OPERATION BETWEEN PARTIES**

4.01 The City shall give due consideration to all drawings, plans, reports, proposals and other information provided by the Construction Manager, and shall make any decisions which it is required to make in connection therewith within a reasonable time.

4.02 The Construction Manager shall not divulge any confidential information communicated to or acquired by him, or disclosed by the City, in the course of carrying out the Work. No such information shall be used by the Construction Manager on any other project or for any other purpose without the approval, in writing, of the City.

#### **5.00 OWNERSHIP OF DOCUMENTS ARISING FROM THE WORK**

5.01 All plans, drawings and documents prepared and collected by the Construction Manager pursuant to this agreement shall be the property of the City. The Construction Manager shall deliver all plans, drawings and documents to the City immediately upon completion or abandonment of the Project.

#### **6.00 CONFLICT OF INTEREST**

6.01 The Construction Manager covenants that the Work will be undertaken without a conflict of interest, and that during the course of the Work, the Construction Manager shall not undertake any work for any other client which would result in a conflict of interest, without the prior written consent of the City.

#### **7.00 INDEMNIFICATION**

7.01 The Construction Manager shall indemnify and save harmless the City from and against all claims, actions, losses, expenses, costs or damages of every nature and kind whatsoever, whether direct or indirect, which the City, its agents, servants or officers, may suffer as a result of the errors, omissions or negligence of the Construction Manager in the performance of the Work.

#### **8.00 INSURANCE**

8.01 The Construction Manager shall obtain, and keep in force until the Work is completed, professional liability insurance with minimum inclusive limits of One Million Dollars (\$1,000,000.00). The City shall be added as an additional third party insured, with a cross-liability endorsement.

#### **9.00 USE OF SITE**

9.01 The Construction Manager shall ensure the confinement of all apparatus, the storage of materials, and the operations of workers to limits required by law or directed by the City, and shall ensure that the site is not unreasonably encumbered with materials.

#### **10.00 TERMINATION OF CONTRACT**

10.01 In the event that:

(a) The Construction Manager makes an assignment for the benefit of creditors or becomes bankrupt or insolvent;

(b) The Construction Manager fails to perform the Work in the manner and to the standards required under this agreement, or fails to observe and comply with any law, by-law or regulation now or hereinafter in force which pertains to or affects the Work, or

(c) The Construction Manager fails to institute appropriate corrective action forthwith after verbal notification by the City (which shall be confirmed subsequently in writing) of any failure on the part of the Construction Manager to comply with any of the terms and specifications of this agreement, notwithstanding that such failure is the result of any cause beyond the control of the Construction Manager, the City may, without prejudice to any of its rights or remedies, terminate this agreement forthwith upon notice in writing to the Construction Manager, and take possession of the site and of all materials required in connection with the Work and finish the Work by whatever method the City may deem expedient, but without undue delay or expense. Any such action taken by the City hereunder shall be without prejudice to the City's rights against the Construction Manager for breach of contract, set off or otherwise.

#### **11.00 ARBITRATION/DISPUTES**

11.01 Any matter in dispute between the parties hereto in relation to this agreement may be referred to arbitration, or to a private court. The matter in dispute shall be submitted to arbitration unless the parties can agree on the terms of submission and hearing in a private court.

11.02 No person shall be appointed or act as arbitrator or judge who is in any way interested, financially or otherwise, in the conduct of the Work, the Project, or in the business or other affairs of either the City or the Construction Manager.

11.03 The award of the arbitrator or judge shall be final and binding upon the parties.

11.04 The provisions of the *Arbitrations Act* shall apply to any arbitration arising from this agreement.

#### **12.00 NOTICES**

12.01 Any notice required to be given pursuant to this agreement may be served or given by prepaid registered mail, by personal service, or by service by facsimile transmission at the following addresses:

To the Construction Manager at:

270 Carolyn Avenue  
Peterborough, Ontario K9J 6X3

To the City at:

500 George Street North  
Peterborough, Ontario K9J 3R9  
Attention: Recreation Manager  
Facsimile Number: (705) 748-8824

#### **13.00 SUCCESSORS AND ASSIGNMENT**

13.01 This agreement shall enure to the benefit of and be binding upon the parties hereto, and their executors, administrators, successors and assigns.

13.02 If the Construction Manager dies before the Work has been completed, this agreement shall automatically terminate as of the date of his death and the City shall pay for services actually rendered to such date.

13.03 Neither party shall assign this agreement without the consent in writing of the other.

IN WITNESS WHEREOF the parties hereto have hereunto set their respective hands and seals.

SIGNED, SEALED AND DELIVERED )  
in the presence of:

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THE CORPORATION OF THE )  
CITY OF PETERBOROUGH )

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Sylvia Sutherland, Mayor

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Nancy Wright-Laking, Clerk

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John Van Dyk

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