

**THE CORPORATION OF THE CITY OF PETERBOROUGH**

**BY-LAW NUMBER 03-096**

**BEING A BY-LAW TO AUTHORIZE THE EXECUTION OF AN AGREEMENT BETWEEN THE CORPORATION OF THE CITY OF PETERBOROUGH AND THE SIR SANDFORD FLEMING COLLEGE OF APPLIED ARTS AND TECHNOLOGY FOR OPERATIONS OF THE PETERBOROUGH SPORT AND WELLNESS CENTRE**

**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 The Sir Sandford Fleming College Of Applied Arts And Technology for Operations of the Peterborough Sport And Wellness Centre 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 2<sup>nd</sup> day of June, 2003

By-law read a third time and finally passed this 2<sup>nd</sup> day of June, 2003

(Sgd.) Sylvia Sutherland, Mayor

(Sgd.) Nancy Wright-Laking, City Clerk

A G R E E M E N T made this 2 day of June, 2003.

B E T W E E N :

**THE SIR SANDFORD FLEMING COLLEGE OF APPLIED ARTS AND TECHNOLOGY**

hereinafter referred to as the "College",

OF THE FIRST PART

- and -

**THE CORPORATION OF THE CITY OF PETERBOROUGH**

hereinafter referred to as the "City"

OF THE SECOND PART

WHEREAS the College and the City have entered into a lease agreement dated September 16, 2002, in order to jointly develop a recreation centre, to be known as the Peterborough Sport and Wellness Centre at Fleming;

AND WHEREAS the parties now wish to set out the terms and conditions under which the Centre will operate.

NOW THEREFORE THE PARTIES HERETO AGREE AS FOLLOWS:

#### **1.00 DEFINITIONS**

- 1.01 "Centre" means the Peterborough Sport and Wellness Centre at Fleming.
- 1.02 "Aquatic Component" means those portions of the Centre which include the leisure and therapy pool, pool instructor and pool manager's office, pool storage and janitor's room, handicapped washroom adjacent to the pool deck, basement tunnel, and City administrative office area.
- 1.03 "Gymnasium Component" means that portion of the Centre which includes the triple gymnasium, the gymnasium storage area, the referee's change rooms, four (4) team change rooms, laundry room, coaches room, and College administrative office area.
- 1.04 "Lease Agreement" means the lease agreement dated September 16, 2002, between the City and the College.
- 1.05 "Shared Space" means that portion of the Centre which includes the shipping and receiving area, the aerobics/dance room, the fitness centre and storage room, three (3) multi-purpose rooms, male and female washrooms adjacent to the main corridor, youth room, multi-use/male/female change rooms, janitor's room adjacent to the fitness corridor, handicapped washroom adjacent to the fitness corridor, therapy and first aid rooms, lobby and corridors, vending niche, Customer Service/control centre, basement mechanical/electrical maintenance space; and also includes those areas exterior to the Centre which include the east and south parking lot, the storm water management pond and wooded area, and the driveway.
- 1.06 "Steering Committee" means the Steering Committee for the Peterborough Sport and Wellness Centre, as constituted through the Lease Agreement

#### **2.00 TERM AND RENEWALS**

- 2.01 This agreement shall have a term of fifty (50) years (the "Term"), commencing on the 1<sup>st</sup> day of October, 2002, and terminating on the thirtieth (30<sup>th</sup>) day of September, 2052.
- 2.02 In the event that the Lease Agreement is renewed, this agreement shall thereupon also be deemed to be renewed, upon the same terms and conditions as are herein contained, including this right of renewal.
- 2.03 In the event that the Lease Agreement is terminated by either party, for any reason, this agreement shall thereupon also be deemed to be terminated.

#### **3.00 MANAGEMENT TEAM**

- 3.01 A Management Team, consisting of the Manager of Recreation for the City and the Executive Director of Student Life for the College, or such other staff representative as may be appointed

from time to time by either the City or the College, will oversee the operations of the Centre and the development and usage of the Centre by the parties as well as the community, including, but not limited to, commercial opportunities, security, energy efficiency, maintenance, and development of joint programming. The Management Team shall report to the Steering Committee. The Management Team shall establish the hours of operation of the Centre, and shall authorize the payment of any shared operational expenses which, have been approved as part of an annual budget.

#### **4.00 FACILITY MANAGER**

4.01 The City, with the approval of the College, shall hire a Facility Manager. The Facility Manager will be responsible for the day-to-day operation of the Centre, including:

- (a) customer service;
- (b) facility scheduling;
- (c) cleaning and maintenance;
- (d) landscaping and grounds keeping;
- (e) contracted services;
- (f) promotions and community use of Centre;
- (g) rental agreements;
- (h) concessions and vending;
- (i) telecommunications;
- (j) hiring and supervising of staff;
- (k) accounting; and
- (l) security.

4.02 The City and the College will share equally in the costs of salary, benefits, and other expenses in connection with the Facility Manager.

#### **5.00 ADDITIONAL STAFF**

5.01 The City and the College will share the costs of the following staffing components:

- (a) a clerk, either employed by the City, or on contract, who will oversee the creation of memberships for both students and the public, be responsible for facility bookings of all spaces within the Centre, and oversee any operational setups which relate to the computerization of the control system of the Centre;
- (b) a wellness/lifestyle recreationist, either employed by the City, or on contract;
- (c) customer service/reception staff, either employed by the City, or on contract, who will monitor and control the main reception desk;
- (d) monitor(s), either employed by the City, or on contract, who will supervise the Fitness Centre at all times that the Centre is open to the public; and
- (e) cleaning/maintenance staff, either employed by the City, or on contract.

The City and the College will share equally in the costs of salary, benefits, and other expenses in connection with the customer service staff described in subparagraph (c).

The parties shall agree on the proportion of costs to be borne by each of them with respect to each of the other additional staff listed above, and this allocation shall take place as part of the annual budget process in each year. In the event that the parties fail to agree on an appropriate allocation with respect to any such staff in any budget year, the parties shall share the expenses equally. Any special functions which require additional monitoring and/or customer service staff, and/or which take place outside of regular hours of operation, shall be the responsibility of the party undertaking such additional usage.

#### **6.00 ANNUAL BUDGET**

6.01 On or before November 30<sup>th</sup> in each year, the Steering Committee shall propose an annual budget, which shall set out the financial obligations of each party. The proposed budget shall be submitted to the Council of the City and the Board of Governors of the College for approval. The fiscal year for the purposes of such budget shall be the calendar year, and a reconciliation statement shall be prepared semi-annually, covering the periods January 1<sup>st</sup> to June 30<sup>th</sup> and July 1<sup>st</sup> to December 31<sup>st</sup>, on or before July 31<sup>st</sup> and January 31<sup>st</sup>, respectively. Any adjustment owing from one party to the other as a result of any such reconciliation statement shall be paid within thirty (30) days of the date of the statement.

**7.00 COSTS OF OPERATION**

- 7.01 The City will pay all costs associated with the operation of the Aquatic Component.
- 7.02 The College will pay all costs associated with the operation of the Gymnasium Component.
- 7.03 The College and the City shall share equally all costs in connection with the operation of the Shared Space including, but not limited to, security, cleaning, repair, public utilities, stocking or supplying, exterior ground maintenance, computerized registration system, telephone system and insurance.

**8.00 CAPITAL CONSERVATION FUND**

- 8.01 The City and the College shall each contribute at least Twenty-Five Thousand Dollars (\$25,000.00) in each budget year, beginning with the first full year of operation of the Centre (January to December) into a capital conservation fund, which shall be used to undertake necessary capital projects to improve or maintain the Centre. Any expenditure from the fund shall be proposed by the Steering Committee and approved by the Council of the City and the Board of Governors of the College. The funds shall be contributed by each party by December 15<sup>th</sup> in each year, and shall be held by the City in an interest bearing account.

**9.00 SURPLUS REVENUES**

- 9.01 The City agrees that, in the event that, in any year, revenues earned by the City from community programming at the Centre exceed the total of all operating and capital expenses, including the City's annual contribution to the capital conservation fund, for such year, the City shall pay to the College fifty per cent (50%) of such surplus, to a maximum cumulative payment of Five Hundred Thousand Dollars (\$500,000.00), in order to recognize the additional One Million Dollars (\$1,000,000.00) contributed by the College for the capital cost of construction of the Centre.

**10.00 PROGRAM DELIVERY**

- 10.01 The City shall have the exclusive right to offer community recreation and leisure programs in the Centre. Without limiting the generality of the foregoing, the City shall specifically have the exclusive right to offer programs within the Aquatic Component. The City shall pay all costs associated with such programs, and shall retain all revenues.
- 10.02 The City and the College will jointly develop fitness and lifestyle programs to maximize cost efficiencies in the Centre. These programs will be offered by the City to both students and members of the public. In these cases, the College shall reimburse the City for a proportionate share of the program costs, based on the number of students who participate, and the City shall retain all revenues. This shall not prevent the College from offering fitness and lifestyle programs exclusively to students of the College, at the sole expense of the College.
- 10.03 Acknowledging the City's exclusive right to offer community recreation and leisure programs, the College agrees not to offer, or permit the use of the Gymnasium Component for, programs which would compete with such community programs. Nevertheless, the City acknowledges and agrees that the College may offer, to the public, academic/educational credit programs, such as the National Coaching Certification Program, at the Centre. The College shall advise the City in writing, on or before November 1 in each year, regarding any such programs which the College intends to offer in the following calendar year, and shall not thereafter offer any such programs in such year without the specific written approval of the City. The College shall pay all costs associated with such programs, and shall retain all revenues.
- 10.04 In the event that any third party rents space in the Centre for the purpose of offering National Coaching Certification Programs, the rental income will be divided equally between the City and the College.
- 10.05 The City and the College shall cooperatively schedule, with the Facility Manager, usage of the Shared Space for each of their purposes. Any unused portion of the Shared Space may be booked by the City for third parties, and the net revenue from such bookings shall be shared equally by the parties. The City shall not book the Shared Space for any activity which would compete with any program or activity offered by either the College or the City pursuant to this Agreement.
- 10.06 The College will be solely responsible for offering programs within the Gymnasium Component, to students of the College. The College may also rent the Gymnasium Component, or parts thereof, to third parties, and the College shall pay all costs and retain all rent. Notwithstanding the foregoing, the College shall make available to the City at least seventy (70) hours usage of a single gymnasium per week, and the City shall pay to College rent equal to 50% of the rental rate charged by the College to non-profit community users.

**11.00 STUDENT AQUATIC MEMBERSHIPS**

11.01 Members of the Student Association of the College may purchase aquatic memberships for the academic year September to April, at a fee of \$40, or \$20 per academic semester or term. These fees shall be adjusted each year by the same proportionate adjustment as is charged by the City for community memberships. The student aquatic membership will entitle the student to access all public swims and drop-in pool programs on a first-come, first-served basis. Any student not purchasing a student aquatic membership shall pay the standard public rate for individual usage of the Aquatic Component.

**12.00 ARBITRATION**

12.01 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.

12.02 No person shall be appointed or act as arbitrator or judge, who has a pecuniary interest in the Centre, or in the business or other affairs of either the City or the College.

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

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

**13.0 ASSIGNMENT**

13.01 Neither party may assign this agreement, in whole or in part, without the written consent of the other.

**14.00 WHOLE AGREEMENT**

14.01 This agreement constitutes the entire agreement between the City and the College, and there is no representation, warranty, collateral agreement or condition affecting this agreement other than as expressed herein in writing.

**15.00 AGREEMENT BINDING**

15.01 This agreement shall binding upon the parties hereto and their respective successors and assigns.

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

SIGNED, SEALED AND DELIVERED )  
in the presence of:

**THE SIR SANDFORD FLEMING**  
**COLLEGE OF APPLIED ARTS AND**  
**TECHNOLOGY**  
\_\_\_\_\_  
Name:  
Title:  
\_\_\_\_\_  
Name:  
Title:  
**THE CORPORATION OF THE**  
**CITY OF PETERBOROUGH**  
\_\_\_\_\_  
Sylvia Sutherland, Mayor  
\_\_\_\_\_  
Nancy Wright-Laking, Clerk