

**THE CORPORATION OF THE CITY OF PETERBOROUGH**

**BY-LAW NUMBER 05-091**

**BEING A BY-LAW TO AUTHORIZE THE EXECUTION OF AN AGREEMENT BETWEEN THE CORPORATION OF THE CITY OF PETERBOROUGH AND NUSTADIA RECREATION INC.**

**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 Nustadia Recreation Inc., 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 May 2005

By-law read a third time and finally passed this 2<sup>nd</sup> day of May 2005

(Sgd.) Sylvia Sutherland, Mayor

(Sgd.) Nancy Wright-Laking, City Clerk

## MANAGEMENT AGREEMENT

**THIS MANAGEMENT AGREEMENT** is made and entered into as of the 13th day of September 2004.

**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 -  
Nustadia Recreation Inc.,  
777 Walkers Line, Suite C,  
Burlington, Ontario, L7N 2G1

(hereinafter referred to as "Nustadia")

OF THE SECOND PART

**WHEREAS** Nustadia is engaged in the business of providing management services, including operations and marketing services, for sports and entertainment facilities.

**AND WHEREAS** Nustadia submitted a response to the City's Request for Proposals Document No. P 11-04 seeking Contract Management Services for the Peterborough Memorial Centre and Morrow Park operations.

**AND WHEREAS** at its meeting held August 16, 2004 Council of the City of Peterborough resolved that Request for Proposals Document P11-04 be awarded to Nustadia.

**AND WHEREAS** at its meeting held August 16, 2004 Council further resolved that staff be authorized to negotiate a contract for the Mayor and Clerk to sign that reflects an approximate three-year term September 13, 2004 to August 31, 2007, subject to a further renewal based on satisfactory performance and Council approval, and which includes an incentive fee structure over and above the base fee.

**NOW THEREFORE** in consideration of the mutual covenants, terms, conditions, privileges and obligations herein set forth, the parties agree as follows:

### **ARTICLE 1 INTERPRETATION**

1.01. Definitions: Unless otherwise specifically indicated in this Agreement, the following words and phrases shall have the following meanings:

"Agreement", "this Agreement", "the Agreement", "hereto", "hereof", "herein", "hereby", "hereunder" and similar expressions mean this Agreement as amended from time to time and any agreement or instrument supplemental hereto and the expressions "Article", "Section", "Subsection" and "Schedule" followed by a number or letter mean and refer to the specified Article, Section, Clause or Schedule of or attached to this Agreement;

"Approval of the City and "Approved by the City" means, unless specifically provided to the contrary herein, approval in writing by or on behalf of the City which when communicated to any third party by either the City's City Administrator or such other person or persons as he may specifically delegate in writing in respect of specific matters, may be relied upon by such third party as constituting Approval of the City or Approved by the City, as the case may be;

"Base Fees" has the meaning ascribed thereto in Section 4.01;

"Business Day" means a day, which is not:

- (i) a Saturday or Sunday; or
- (ii) a day observed as a holiday under the laws of the Province of Ontario or the federal laws of Canada applicable in the Province of Ontario;

"Capital Expenditures" means furniture, fixtures, machinery or equipment, either additional or replacement having an expected useful life of more than one year and funds for which will appear in the City's capital budget document;

"Capital Improvements" means additions, alterations, renovations and or improvements

(including leasehold improvements) to the Facility which are not temporary in nature;

"Centre" means the Peterborough Memorial Centre

"Confidential Information" means any and all information disclosed (orally, in writing, by inspection or otherwise) by each party to the other pursuant to this Agreement, whether or not marked as confidential, which the receiving party ought reasonably to know that confidentiality is important to protect the trade secrets, copyrighted materials, strategies, methodologies, policies, pricing, plans and competitive advantage and competitive position of the disclosing party.

"Effective Control" means, with respect to the relationship between or among two or more persons, the possession, directly or indirectly, of the power to direct or cause the direction of the affairs or management of a person, whether through the ownership of voting securities, as trustee or executor, by contract or otherwise including, without limitation, the Ownership, directly or indirectly, of securities having the power to elect a majority of the board of directors or similar body governing the affairs of such person;

"Facility" means Peterborough Memorial Centre and Morrow Park at 151 Lansdowne Street West, Peterborough, Ontario K9J 1Y4;

"Force Majeure" means any bona fide event beyond the control of a party (other than as a result of financial incapacity) and not caused by an act or omission of such party or a person that is a Related Person to such party, in the nature of:

- (i) an inability to obtain materials, goods, equipment, services, utilities or labour;
- (ii) any new statute, law, by-law or order-in-council or any regulation or order or amendment thereto passed or made pursuant thereto;
- (iii) an order or direction of any administrator, controller or board, or any governmental department or officer or other authority;
- (iv) an inability to procure any licence, permit, permission or authority;
- (v) a strike, lockout, slow-down or other combined action of workmen; or;
- (vi) an act of God;

and which in any such case shall cause such party to be unable to fulfill or to be delayed or restricted in the fulfillment of any obligation hereunder;

"Management Services" means the services described in Article 2 contained in this Agreement;

"Management Term" means the period commencing on September 13, 2004, and ending December 31, 2007.

"Manager" means the Nustadia's on-site personnel acting as the Manager of the Peterborough Memorial Centre.

"Related Persons" means "related persons" as defined in Section 251(2) of the Income Tax Act (Canada) S.C. C. 63, as amended, as of the date hereof;

- 1.02 **Canadian Dollars** - All dollar amounts referred to in this Agreement are in Canadian funds unless otherwise provided.
- 1.03 **Extended Meanings** - In this Agreement, where the context requires, the singular number includes the plural and vice versa, the masculine gender includes the feminine and neuter genders and vice versa and the word "person" is not limited to an individual but includes any entity recognized by law.
- 1.04 **Headings** - All headings are included solely for convenience of reference and are not intended to be full or accurate descriptions of the contents of any Article or section in this Agreement.
- 1.05 **Accounting Terms** - All accounting terms not specifically defined in this Agreement are to be construed in accordance with generally accepted accounting principles, consistently applied.
- 1.06 **Recitals** - Each of the parties acknowledges that the recitals of this Agreement, so far as they relate to such party, are true and correct in substance and in fact.

**ARTICLE 2**  
**SCOPE OF SERVICES TO BE PROVIDED BY NUSTADIA**

2.01 **Engagement:** The City hereby appoints Nustadia, during the Management Term, to provide a Manager and Box Office Supervisor to manage the Facility and to undertake the specific duties of each set out as follows:

2.02 **Duties of Manager:** The Manager is charged with overseeing, in accordance with the City's policies and procedures, all activities of the Memorial Centre and Morrow Park (excluding ball fields and green space).

2.02.1 Specifically the Manager shall perform the following duties over the management term:

- i) Provide leadership and direction in the management of the Nustadia Box Office Supervisor position and all the Centre staff.
- ii) Identify staffing requirements; establish an effective utilization of staffing resources; set performance objectives; monitor, measure and provide feedback to staff regarding performance; establish effective communication and information sharing within the Centre; and establish effective recruitment, selection, training, coaching, motivating, and disciplining of staff.
- iii) Implement and manage a strategic facility booking and marketing program to attract new events to the Centre. Provide financial analysis and recommendations to the City for co-promotion opportunities in accordance with council's approved "Purchase of Entertainment Policy as set out in Report CSAD03-004 and as may be amended from time to time.
- iv) Negotiate and approve contracts for special events and organizations renting the facility, participate in meetings regarding these contracts and events, and acting reasonably coordinate all events, facilitate, monitor and assign details of events to appropriate staff members.
- v) Establish, maintain and foster excellent working relationships with major tenants such as the Peterborough Petes, Senior and Junior Lacrosse Teams, Peterborough and District Sports Hall of Fame, Peterborough Figure Skating Club, the Festival of the Trees, and many other user groups and to monitor and oversee contractual arrangements.
- vi) Develop and maintain working relationship with other arena operations within the Arenas Division of the City; develop and maintain working relationship with other local and regional performance venues and special events
- vii) Acting reasonably, facilitate positive labour relations within the Centre through the effective, fair, and consistent application of applicable Collective Agreements and workplace policies. Respond to and participate in the resolution of all Step 2 grievances.
- viii) Acting reasonably, operate the Centre and Morrow Park in adherence to the statutes and regulations of the Occupational Health and Safety Act, the Ontario Human Rights Code and all other relevant employment and labour legislation. Complete incident reports related to Health and Safety issues.
- ix) Prepare, monitor, and control the Centre and Morrow Park operating and capital budgets and acting reasonably, effectively allocate resources within the Memorial Centre and Morrow Park in accordance with City Financial Policies and Procedures.
- x) Implement a continuous improvement process for the Centre and Morrow Park to optimize service delivery to customers. Develop, guide and monitor long-term operational plans for the Centre and Morrow Park.
- xi) Write and present reports to Council dealing with the Centre and Morrow Park issues requiring Council approval.

- xii) Assist in the preparation of Request for Quotes, Proposals, or Tender documents that may be required from time to time.
- xiii) Arrange Arena Committee meetings, prepare agendas, attend the Arena Committee meetings, produce minutes and follow up on action items.

2.03 **Duties of the Box Office Supervisor:** The Box Office Supervisor will provide leadership and coordination of all financial and administrative functions or activities of the Memorial Centre and Morrow Park including the supervision of front office staff; preparation of payroll information, personnel records and purchasing documentation; and undertaking work assignments and special projects for the Centre Manager as requested.

2.03.1 Specifically the Box Office Supervisor responsibilities include the following:

- i) Coordinate and perform a variety of financial/accounting functions for all operations/contracts of the Centre and Morrow Park including:
- ii) Reconcile and deposit revenues including: special event ticket sales; annual advertising revenue sales/Peterborough Petes' staff; rent collection for Morrow Park facilities; revenues for the annual Home and Outdoor show, and box suites billings.
- iii) Maintain records and generate spreadsheets for monthly submissions to the Financial Services Division and other tenant/user groups of the Centre.
- iv) Administer expenses for the annual Home and Outdoor Show. Work with contract sales staff to meet budget projections. Providing invoicing and financial collection support.
- v) Maintain a numeric client invoice listing, including ice rental clients, and overseeing the preparation of invoices. Summarizing monthly, recording and forwarding payment to Finance and following up on unpaid overdue accounts.
- vi) Enter and maintain Jr. A Hockey prepaid season ticket sales revenue and single game ticket sales including any special sales on computerized ticket system. Prepare prepaid season ticket sales reconciliation prior to beginning of regular season including all sales and complimentary tickets for Box Office sales and Jr. A. Club requirements according to contract between the City of Peterborough and Peterborough Petes Ltd. Prepare single game reconciliations for payment immediately following each exhibition, regular season and playoff game as set out in the contract.
- vii) Undertake preparation of special event contracts and follow up with organizers on the financial details of the events. Prepare financial statements and following up with financial reconciliations with the organizers during each event.
- viii) Administer suite lease arrangements
- ix) Assist with budget preparation and monitoring
- x) Coordinate the administrative operations of the Centre and Morrow Park including:
- xi) Oversee and authorize weekly payroll reports from daily time sheet records and forwarding to Payroll for processing. Prepare and maintain a listing of overtime hours, vacation, sick hours and entering absences in HR system File Folder for full-time Memorial Centre employees.
- xii) Develop and design spreadsheets and reports for the Manager. Training staff on use of these spreadsheets, acting as a resource person for new computer applications and recommend training.
- xiii) Respond to customer complaints regarding operations of management office. Respond to queries and concerns by clients and user groups.

- xiv) Oversee user information on Facility Booking System and ensure all groups are invoiced on a regular basis.
- xv) Maintain an effective financial filing system for the Centre by: preparing new files; preparing and updating the file index; securing confidential files including event contracts and legal documents, operational agreements, etc.
- xvi) Develop effective methods and financial collection and control procedures and recommending policy and procedure changes to establish the efficient operation of the Centre and Morrow Park operations.
- xviii) Process and maintain Lost Time Management records for staff of the Centre; prepare WSIB forms; oversee and retain all records.
- xix) Complete telephone and Internet research of information as required and special projects as assigned by the Manager.
- xx) Coordinate and supervise administrative staff by
  - a) Defining scheduling requirements, preparing and approving schedules for employees, and maintaining record of absenteeism. Acting reasonably, track and implement the City's Attendance Awareness Program.
  - b) Training, coaching and motivating of administrative staff by identifying and supporting opportunities for staff development and recognizing excellent performance.
  - c) Participating in the ongoing monitoring and management of staff regarding: their performance by keeping records of work habits; dealing with work issues in a timely and reliable manner; and providing regular feedback and guidance to staff.
- xxi) Identify staffing requirements and participating in the recruitment and selection process.
- xxii) Process financial accounting for all Peterborough Petes' Box Office operations that are carried out in the Box Office including: season ticket sales; daily sales; and special events. Prepare all reconciliation reports and statements required by both the City of Peterborough and Peterborough Petes regarding these transactions.
- xxiii) Support the effective, consistent and fair implementation of organization and department-wide policies and procedures and relevant legislation, and applicable collective agreements within the work unit.
- xxiv) Operate the division in adherence to the statutes and regulations of the Ontario Health and Safety Act, RSO 1990, and all relevant labour legislation.
- xxv) Administer the existing ticketing system, and/or assess the existing system and identify and assist with the potential selection of an alternative.

2.04 **Standard of Performance:** Nustadia personnel shall perform the Manager and Box Office Supervisor duties in a diligent and efficient manner consistent with first-class operations of similar facilities, in keeping with the standards of the industry for comparable Facilities and in that regard, shall exercise the same degree of care, skill and supervision as would be exercised by a reasonable and prudent person who is experienced in performing like services and functions for similar facilities.

2.05 **Minimum skill sets of Nustadia on-site personnel :** Nustadia on-site personnel will possess the following skill sets:

2.05.1 well-developed written and verbal communication skills, facilitation, negotiation, and public relations skills to build effective relationships within the corporation, throughout the community and with a wide variety of contacts

- 2.05.02 good marketing skills and have a good knowledge of the sports and entertainment industry.
  - 2.05.03 demonstrated leadership, management, administration, and team-building skills to effectively coach, motivate and direct the work of others.
  - 2.05.04 excellent planning, organization, forecasting, and financial/budget management skills.
  - 2.05.05 ability to function in a computerized work environment including proficiency using word processing, spreadsheet and database software applications.
  - 2.0,06 possess knowledge of effective performance management practices, training and development techniques, and of the Collective Bargaining process.
  - 2.05.07 ability to interpret and apply the City's various collective agreements and to achieve positive labour-management relations.
  - 2.05.08 a creative/innovative focus on service delivery, a commitment to continuous improvement and customer service, respect for the diversity of opinions and perspectives, and be comfortable with a certain level of ambiguity and constantly changing priorities.
  - 2.05.09 demonstrated conflict resolution and mediation skills.
- 2.06 **General Corporate Support to be provided by Nustadia:** In addition to the specific duties the Manager and Box Office Supervisor positions will undertake as outlined sections 2.02 and 2.03 Nustadia will, as required, and at no additional cost to the City over the fees set out in Section 4.0 call on Nustadia corporate expertise as required to assist with the management of the facility.
- 2.07 **Specific Corporate Support to be provided by Nustadia:** In addition to general corporate support and expertise, Nustadia will undertake the following specific initiatives through a combination of on-site personnel and corporate support at no additional costs to the City over the fees set out in Section 4.0:
- 2.07.01 **Revenue and Expense Analysis** using pro-forma modeling to compare the Centre's operations to other similar facilities operated by Nustadia and to determine areas of potential improvements and where marketing efforts should be focused.
  - 2.07.02 **Tenant lease structure analysis** where Nustadia will review all tenant lease arrangements as they become due and make recommendations as to how they might be changed upon renewal to benefit the Centre's operations
  - 2.07.03 **Detailed operation systems and practices analysis** to determine if any aspects of the Centre's operation can be run more efficiently
  - 2.07.04 **Event Marketing** where Nustadia will cross market potential shows amongst the Guelph and Peterborough operations
  - 2.07.05 **Sponsorship and Naming Rights Review** where Nustadia will use their resources to actively pursue additional revenue dollars through obtaining sponsorships and additional naming rights
- 2.08 **City must approve Nustadia personnel on site:** Nustadia's on-site personnel must be approved by the City, such approval shall not be unreasonably withheld. This includes not only the initial on-site personnel but also any subsequent personnel that might be brought in as replacements during the term of the assignment.
- 2.09 **Hours of operation:** Nustadia acknowledges many of the Centre's events are held outside what are considered normal working hours and Nustadia will use its best efforts to have at least one of its employees at the Centre during major events such as OHL hockey games and concerts.

- 2.10 **Nustadia Interim Manager to commence September 13, 2004:** Nustadia will appoint Mr. Mike Bigelli, who is currently General Manager of the Guelph Sports & Entertainment Centre to assume the Manager's role at the Centre, effective September 13, 2004, and until such time Nustadia has completed a recruitment process for the Manager's position at the Centre and a fully trained replacement satisfactory to the City is on-site.
- 2.11 **Nustadia interim manager minimum hours at site:** Nustadia agrees that until such time a permanent manager has been hired and is on site, Mr. Bigelli will be at the Centre for a total average of at least 35 hours per week and will be at the Centre during most major events.
- 2.12 **Nustadia Box Office Supervisor to be hired:** Nustadia **acting reasonably** agrees to provide a Box Office Supervisor no later than October 30, 2004.
- 2.13 **Uninterrupted service must be provided:** Nustadia agrees that if the Manager or Box Office Supervisor become unavailable for work at the Centre for whatever reason a replacement will be provided almost immediately with sufficient skills and expertise such that the service is uninterrupted.
- 2.14 **Interim personnel to be used:** If Nustadia is required to undertake a recruitment process to replace the Manager or Box Office Supervisor during the Management Term, Nustadia will provide interim personnel satisfactory to the City until such time the recruitment is complete.

**ARTICLE 3  
ITEMS PROVIDED BY THE CITY**

- 3.01 **City to provide Box Office Supervisor on limited interim basis:** Ms. Sue Warrington who is a City of Peterborough employee will remain at the Centre as the Box Office Supervisor until October 29, 2004 or such earlier date upon which Nustadia has hired a Box Office Supervisor and the Box Office Supervisor is on site.
- 3.02 **City to provide working space, and office equipment:** The City will provide an office, furniture, and computer for the Manager and Box Office Supervisor personnel within the office area at the Centre. The contracted personnel will have access to the City's standard software packages including Microsoft Word, Excel, Adobe, and Explorer and will be connected to and expected to use GROUPWISE which is the City's internal email and calendaring program.
- 3.03 **City to provide Cell Phone to Manager:** The City will provide a cell phone to the manager and pay the associated monthly charges.
- 3.04 **Home connections:** Nustadia on-site personnel will also be given access to the City's computer system through dial-in connections from home – if desired.
- 3.05 **Accounting records:** The City shall keep full and accurate accounting records relating to the management and operation of the Centre that will be kept in accordance with generally accepted accounting principles.
- 3.06 **Purchasing Cards:** The City will provide, if required, a Corporate Purchasing Card to the Manager and Box Office Supervisor which will be used in strict accordance with the City's Purchasing Card Policies and which will be used only to secure goods and services required for the operation of the Facility.

**ARTICLE 4  
NUSTADIA'S COMPENSATION**

4.01 **Base Compensation:** The monthly base compensation payable to Nustadia for providing the services herein specified for the period September 13, 2004 to August 31, 2005 will be \$19,742 including GST comprised of the amounts set out below:

<b>Ref C1</b>	<b>Description C2</b>	<b>Monthly \$ Amount C3</b>
1.00	Corporate support/ minimum annual return	6,250
2.00	Salaries & Benefits	
2.01	Manager	6,250
2.02	Box Office Supervisor	3,750
2.03	Benefits	2,200
2.04	<b>Subtotal</b>	<b>12,200</b>
2.05	Total Base Fee	18,450
2.06	Plus GST	1,292
<b>2.07</b>	<b>Total Including GST</b>	<b>19,742</b>

Note

(a) Item 2.00 Salaries and Benefits are estimated amounts and will be adjusted either up or down based on actual salary rates upon the hiring of the permanent Manager and Box Office Supervisor subject to prior approval of the City.

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4.02 **The base indexing:** The monthly fee will be indexed in accordance with the following schedule:

4.02.1 The base monthly fee will be indexed at September 1, 2005 - based on the change in Consumer Price index for the Province of Ontario as reported by Statistics Canada for the month of July 2004 compared to July 2005.

4.02.2 The base monthly fee will be indexed at September 1, 2006 based on the change in Consumer Price index for the Province of Ontario as reported by Statistics Canada for the month of July 2005 compared to July 2006.

4.02.3 The base monthly fee will be indexed at September 1, 2007 based on the change in Consumer Price index for the Province of Ontario as reported by Statistics Canada for the month of July 2006 compared to July 2007.

4.03 **Base fee due** The monthly base fee will be payable as of September 16, 2004 for month of September 2004 and at the start of each month thereafter during the management term.

#### 4.04. **Incidental Expenses**

4.04.1 In addition to the base compensation set out in section 4.01 Nustadia shall be entitled to receive up to \$8,500 per year of the term to cover travel, accomodation, and meals/entertainment expenses incurred by the Manager, Box Office Supervisor, and any other Nustadia personnel based on invoices submitted to the City for payment which provides all relevant details.

4.04.2 During the first year of the term Nustadia shall be entitled to receive up to an additional \$3,500 accomodation allowance.

4.04.3 Nustadia shall be entitled up to receive up to \$5,000, including taxes, to cover relocation expense incurred for the the Manager. It is understood the \$5,000 maximum applies only to the initial Manager.

4.04.4 Nustadia shall be entitled up to receive up to \$5,000, including taxes, to cover relocation expense incurred for the the Box Office Supervisor. It is understood the \$5,000 maximum applies only to the initial Box office Supervisor.

#### 4.05 **Payment of Incidental Expenses**

Incidental expenses will be paid by the City within 14 days after the invoice has been submitted.

4.06 **Incentive Fees:** In addition to the base fee as set out in clause 4.01 and incidental fees as set out in clause 4.04, Nustadia shall be entitled to incentive fees during the period January 1, 2005 to December 31, 2007 based on the improvements to selected revenues and cost reductions as compared to "benchmark" figures as will be mutually established by both the City and Nustadia as of December 31, 2004, and Commission rates as set out in the following table:

Incentive Table							
Item #	Description	Maximum Achievable	Illustrative Base Benchmark	Basis for Base Benchmark	At this applicable unit rate	And if Nustadia Commission rate is this	And commission is based on this
C1	C2	C3	C4	C5	C6	C7	C8
1	Suite sales	24	19	# of suites leased as of Dec 31 2004	\$11,000 per suite sold	20%	of additional gross revenue
2	Club seats	948	703	# of seats licensed for 2004/2005 as of Dec 31,2004	\$175	20%	of additional gross revenue
3	Sponsorships	\$ 125,000	\$ 16,500	\$ Value of sponsorship revenue in addition to Pepsi, Quaker, Molson	\$ 1.00	20%	of additional gross revenue
4	Petes attendance	3,963	2,800	Average season attendance (2005 Budget number Calendar basis)	\$1.30 Fixed rate exclusive of ticket price changes	20%	of City's net share of additional gate receipts
5	Events - Rental	n/a	77	# of events held 03-04 season excluding Petes games	N/A	\$ 500	Flat fee per additional event
6	Events - (Co-) Promoted	n/a	0	N/A	Varies	20%	of City's net revenue from each event
7	Ice & Floor Rentals	n/a	2,150	Hours of floor Time 2004	\$114 Exclusive of any hourly rate increases	20%	of additional gross revenue generated
8	Morrow Building Events	n/a	15	# of events based on average of 2002 & 2004	\$785 Exclusive of any daily rate increases	20%	of additional gross revenue generated
9	Net Parking Revenue	n/a	\$32,400	Net parking revenue for 2004		20%	of net increase in parking revenues exclusive of any parking rate increase
10	Other cost reductions	n/a				20%	of net cost reductions as agreed upon by City and Nustadia

4.07 Appendix B attached to this agreement provides an illustrative example of how the incentive clause would work based on certain benchmark assumptions.

4.08 **Payment of Incentive Fee:** The Incentive Fees shall be payable to Nustadia within 30 days after the City's receipt of an invoice from Nustadia accompanied by a detailed statement certified by a senior officer of Nustadia setting out the calculation of the incentive fee and once the calculation has been verified by the City.

## ARTICLE 5 RECORDS AND REPORTS

- 5.01 **Accounting Records:** The City shall keep full and accurate accounting records relating to the Facility, such accounting records shall be kept in accordance with generally accepted accounting principles. The City shall give Nustadia personnel access to, and the right to review, such books and records both on-line and through printed copies of the records.
- 5.02 **Annual Financial Statements:** Within 120 days following the end of each Calendar year the City shall submit to Nustadia financial statements for the preceding year.

## ARTICLE 6 REPORTING RELATIONSHIPS AND PERFORMANCE MONITORING

- 6.01 **Nustadia's on-site personnel to be experienced:** Nustadia on-site personnel, together with Nustadia Corporate support, are expected to possess sufficient experience and management expertise to provide the required services immediately when their personnel start on site and over the management term.
- 6.02 **Nustadia – City Reporting Relationship:** Nustadia's on-site personnel will report to Nustadia's corporate office and will report to the City through Mrs. Sandra Clancy, The Manager of Financial Services, until March 29, 2005 Effective March 29, 2005, Nustadia's reporting contact with the City is Mr. Ken Doherty, Director of Community Services.
- 6.03 **City role to be limited:** Nustadia acknowledges Mrs. Clancy's role will not be one of ongoing day to day oversight or supervision of the contracted personnel but rather one of a more transitional nature to provide some continuity for the Centre's current staff, to provide Nustadia with recent background on a variety of issues, and to assist Nustadia to get acquainted with the operation of the facility and numerous contacts. Mrs. Clancy will be available to answer questions and to meet with the successful proponent on a regular basis and as required, especially during the transition period
- On an ongoing basis, Mr. Doherty's role will continue at a high level, chairing the Arena Committee meetings, being involved in issues with City staff at the Centre and providing any required guidance to local or political issues.
- 6.04 **Performance Measurement:** The City and Nustadia will meet periodically during the Management Term to review Nustadia's overall performance and to discuss any issues of general concern. The City will evaluate Nustadia's performance based on how well Nustadia has addressed a number of expected outcomes set out in this agreement and listed on Appendix A to this agreement.

## ARTICLE 7 PERSONNEL

- 7.01 **Employees Not Employees of City:** Employees of Nustadia at the Facility shall not for any purpose be considered employees of the City, and the Nustadia shall be solely responsible for their supervision and control and for establishing and paying all compensation and benefits, including all withholding taxes required by law and any employee benefits.

## ARTICLE 8 INDEMNIFICATION AND INSURANCE

- 8.01 **Indemnification by the Nustadia:** Nustadia shall indemnify and hold harmless the City, its councillors, officers, agents and employees from and against any and all loss of, or damage to, property, or injuries to, or death of, any person or persons, and shall defend, indemnify and hold harmless the City, its councillors, officers, agents and employees from any and all claims, damages, suits, costs, expense, liability, actions or proceedings of any kind or nature whatsoever of or by anyone whatsoever, resulting from, or arising out of, directly or indirectly, any negligent act or omission or willful misconduct of Nustadia or its officers, agents, or employees;

8.02 **Certificate of Comprehensive General Liability Insurance:** Nustadia will obtain, maintain, and deposit with the City, a Certificate of Comprehensive General Liability Insurance, which is in all respects acceptable to the City Solicitor. Evidence of insurance will be signed by the insurer or its authorized representative and submitted to the City Solicitor .

8.02.1 In respect to the Comprehensive General Liability insurance, such coverage will include:

- i). Third party personal injury and property damage coverage;
- ii). Not less than a \$2,000,000.00 per occurrence, limit of liability;
- iii). The City named as an additional insured without subrogation;
- iv) A cross liability and/or severability of interest clause, which protects each insured to the same extent as if they were separately insured; and
- v) A clause providing that thirty (30) days notice of cancellation or a material change in writing that may reduce the coverage will be personally delivered or sent by registered mail to the Director of Finance & Administrative Services.

8.03 **Indemnification by the City:** The City shall indemnify and hold harmless Nustadia and its partners and their respective directors, officers, agents and employees from and against any and all loss of, or damage to, property, or injuries to, or death of, any person or persons, including without limitation, directors, officers, agents and employees of the City, and shall defend, indemnify and hold harmless Nustadia and its partners, and their respective directors, officers, agents and employees from any and all claims, damages, suits, costs, expense, liability, actions or proceedings of any nature or kind whatsoever of or by anyone whosoever, resulting from, or arising out of, directly or indirectly:

- (a) any negligent act or omission or willful misconduct of the City or its councillors, officers, agents (other than Nustadia) or employees, except City personnel acting under the Nustadia's direction or supervision;
- (b) any obligation or liability under or in respect of any contract, agreement or other instrument entered into by Nustadia as agent for the City as authorized herein, provided that Nustadia was acting within the scope of its authority;
- (c) the termination of any employees of the City, including without limitation, any claims for termination notice and severance pay (statutory or common law);
- (d) any act or omission by Nustadia under the express direction of the City;

8.04 **Terms and Conditions:** The foregoing policies of insurance shall contain or shall be subject to the following terms and conditions:

- (a) all policies of insurance required to be taken out by Nustadia shall be placed with insurers Approved by the City, acting reasonably;
- (b) each policy shall contain an endorsement requiring the insurers to notify the City in writing, by registered mail, at least 30 days prior to any material change that restricts or reduces the insurance required under this section, or cancellation thereof;
- (c) the insurance policies required pursuant to this section shall be primary and shall not call into contribution any insurance available to the City;
- (d) the City, acting reasonably, may require the limits of the insurance policies provided by Nustadia to be increased from time to time;
- (e) Nustadia shall deliver to the City evidence of the insurance required thereby in the form of Certificates of Insurance, in form and detail satisfactory to the City Solicitor acting reasonably, signed by an authorized representative of the insurer; the Nustadia will make available the complete original copies of all applicable policies for examination if required by the City; Certificates of Insurance evidencing renewal or replacement of policies shall be delivered to the City 15 days prior to the expiration of then current policies, without demand by the City;
- (f) Nustadia shall duly and punctually pay all premiums under the aforesaid policies as they become due and payable;

**ARTICLE 9  
ASSIGNMENT: NON-COMPETITION;**

- 9.01 **Assignment:** The Agreement, and each of the rights, duties and obligations hereunder, , shall not be assigned, pledged, transferred, sublet or otherwise disposed of, in whole or in part, by Nustadia without the express prior approval of the City which shall not be unreasonably withheld.
- 9.02 **Change of Control:** Nustadia shall not permit a change in Effective Control of Nustadia without the prior approval of the City which shall not be unreasonably withheld.
- 9.03 **Restriction re Management Services:** During the management term commencing on the date hereto and ending one year after the termination of this Agreement, except with the City's prior written consent, Nustadia will not, for any reason, provide management services similar to Management Services as defined herein to a spectator sports arena over 2,000 seats and under 5,000 seats within the City or County of Peterborough

**ARTICLE 10  
CONFIDENTIALITY/NONDISCLOSURE**

- 10.01 **Confidential Information:** In connection with the performance of Management Services hereunder, the parties acknowledge that each party may provide to the other party and to the other party's employees, agents and subcontractors Confidential Information.
- 10.02 **Confidentiality and Nondisclosure:** Each party agrees that it shall keep secret and confidential any and all Confidential Information already disclosed and/or to be disclosed to it by the other party, and that the receiving party shall not divulge any such Confidential Information, in whole or in part, to any third party except as is expressly permitted below in this Article.
- 10.03 **Permitted Use:** The receiving party shall not use the Confidential Information, except for the express purpose of utilizing it in connection with the Facility. The receiving party shall not directly or indirectly disclose or discuss any such information with any person or entity, other than employees, agents and subcontractors of the receiving party who are directly concerned with the management of the Facility, provided however that in the event of any such disclosure to its employees, agents and subcontractors, the receiving party:
- (a) shall first inform the disclosing party of its desire to make such disclosure;
  - (b) if requested by the disclosing party, shall require such employees, agents or subcontractors to execute and deliver to the disclosing party prior to any disclosure by the receiving party to him/her/it, an agreement acknowledging a receipt of a copy of the provisions of this Article and agreeing to be bound by such provisions to the same extent as the receiving party; and
  - (c) in any event, shall advise in writing all such persons or entities of the existence of the provisions of this Article and of their responsibility to comply with such provisions. The restrictions upon confidentiality and use of Confidential Information set forth in this Article do not apply to information which the receiving party can demonstrate was publicly available or lawfully in its possession at the time of its disclosure to the receiving party by the disclosing party;
- 10.04 **Copyright:** With respect to any information or material which is protected by copyright, no part of such materials may be reproduced, stored in a data base and retrieval system or transmitted in any form or by any means, graphic, electronic, photocopying, recording, mechanical or otherwise, without the prior written permission of the party whose material is protected by copyright.
- 10.05 **The provisions Survive:** The provisions of this Article 10 survive the termination of this Agreement.
- 10.06 **Municipal Freedom of Information and Protection of Privacy Act:** The provisions of this Article are subject to the provisions of the Municipal Freedom of Information and Protection of Privacy Act, R.S.O. 1990, c. M.56.

**ARTICLE 11  
LAWS, PERMITS CITY POLICIES AND PROCEDURES**

- 11.01 **Governmental Compliance:** Nustadia, its officers, agents and employees shall comply with all federal, provincial, local and municipal regulations, by-law's, statutes, rules and laws applicable to or affecting directly or indirectly Nustadia or its operations and

activities on or in connection with the Facility subject however to the City's funding obligations hereunder.

**11.02 Labour Union Obligations:**

- (a) Nustadia personnel on site shall conform with and abide by all labour agreements in force and effect from time to time between the City and any labour unions or organizations and shall, without restricting the generality of the foregoing:
  - (i) obtain any required clearance from any labour union or organization having any jurisdiction over any part of work to be done in or at the Facility; and
  - (ii) endeavour not to prejudice any relationship between the City and any labour union or organization.

**11.03 Purchasing Policies and Procedures:** Nustadia personnel on site shall conform with and abide by the City's Purchasing Policies and Procedures when procuring any good or services for the facility on behalf of the City.

**11.04 Voice and Email:** Nustadia personnel on site shall have access to the City's computer and phone system and will abide by the City's policies and procedures for both

**11.05 Human Resources:** Nustadia personnel shall conform with and abide by the City's Human resources Policies and Procedures.

**11.06 Employment Insurance & Workplace Safety & Insurance Act**

11.06.1 Nustadia clearly understands and agrees that they are not, nor is anyone hired by them, covered by the City of Peterborough under the Workplace Safety and Insurance Act, Employee Insurance Act, or any other Act whether Provincial or Federal in respect of themselves, their employees and operations. Nustadia, through its parent company the Cochrane Group shall furnish the City with such satisfactory evidence that they have complied with the provisions of any such Acts. If they fail to do so, the City shall have the right to withhold payment of such sum or sums of money due to them that would be sufficient to cover their default and the City shall have the right to pay same. Information on coverage under the Workplace Safety and Insurance Act can be obtained directly from the Workplace Safety and Insurance Board.

11.06.2 Nustadia, through its parent company the Cochrane Group, shall provide a certificate from the Workplace Safety Insurance Board (WSIB) prior to the commencement of work indicating all payments by the proponent to the WSIB in conjunction with the work to be undertaken by the proponent for the City have been made, and that the City will not be liable to the WSIB for future payments in connection with the Nustadia's fulfillment of the Contract.

11.06.3 Nustadia, through its parent company the Cochrane Group, shall file a "Certificate of Clearance" from the WSIB prior to commencing the Management Term. Clearance certificates must be renewed every sixty (60) days (minimum) during the term of the Contract.

11.06.4 The City shall have the right to retain, out of any monies payable by the City to Nustadia under this agreement, the total amount from time to time outstanding of all damage claims by third parties arising out of the agreement, which have not been settled by Nustadia or its insurers. For the purposes of this paragraph, a claim has been settled if a payment has been made to, and accepted by, the claimant and a complete release has been obtained once the claim has been fully investigated by the WSIB.

**ARTICLE 12  
BONDING**

**12.01 Nustadia personnel to be bonded:** In accordance with the requirements of the Requests for Proposals Document P11-04, Nustadia will provide employees who are bonded. Additionally, Nustadia will provide at its sole expense, a Comprehensive Crime Policy providing the following coverages:

- i) Employee Dishonesty for an amount of \$250,000 under either a primary commercial bond or blanket position bond. The Employee Dishonesty Coverage must also include a "Service Extension Endorsement" to

protect the City of Peterborough for any loss caused by a dishonest or fraudulent act of the Nustadia employees

- ii) Loss of Money and Securities both inside and outside the premises for an amount of \$10,000.
- iii) Money Orders and Counterfeit Paper Currency Coverage for \$10,000.
- iv) Depositors Forgery Coverage for \$10,000.

## **ARTICLE 13 TERMINATION**

13.01 **Termination Upon Default:** Either the City or Nustadia may terminate this Agreement upon a default by the other party hereunder. A party shall be in default hereunder if:

- (a) such party fails to pay any sum payable herein within 30 days after same is due and payable;
- (b) such party fails to perform or comply with any of the other terms, covenants, agreements or conditions hereof and such failure continues for more than 60 days after written notice thereof from the other party.

13.02 **Effect of Termination:** In the event termination is effected pursuant to this Article:

- (a) Nustadia shall be entitled to payment with respect to Base Fees owing for the period up to such date as well as for any Incentive Fees owing for the period up to such date;
- (b) Base Fees shall be prorated on a per diem basis for the period in question and shall be paid within 30 days following the date of termination; Incentive Fees shall also be prorated on a per diem basis for the period in question

13.03 **Non-Exclusive Remedies:** The exercise by the City or Nustadia of remedies and rights provided herein shall in no way affect any other right or remedy available to the City or Nustadia except that no form of double recovery shall be allowed.

13.04 **Surrender of Premises:** Upon the expiration of this Agreement or in the event of a termination, Nustadia personnel shall vacate the Facility upon the effective date of such expiration or termination. All reports, records, including financial records, and documents required to be maintained under this Agreement shall be immediately surrendered to the City by Nustadia upon termination.

## **ARTICLE 14 DISPUTE RESOLUTION**

14.01 **Submission to Arbitration:** Any dispute arising between the City and the Nustadia concerning any matter pertaining to this Agreement, which such parties are unable to resolve within 20 Business Days following the written notice by one to the other that such dispute be resolved, may be submitted to arbitration by either party pursuant to this Section.

14.02 **Selection of Arbitrator:** Whenever any arbitration is permitted or required under this Agreement, arbitration proceedings shall be commenced by a party desiring arbitration (hereinafter called the "Initiating Party") giving notice to the other party (the "Responding Party") specifying the matter to be arbitrated and requesting the arbitration thereof. In the event that the Initiating Party and Responding Party are unable to agree upon a single arbitrator having requisite experience and expertise relative to the matter in dispute (an "Arbitrator") within ten (10) Business Days after delivery of such notice, the Initiating Party shall, by written notice to the Responding Party, designate an Arbitrator. The Responding Party shall, within ten (10) Business Days thereafter, be entitled to appoint an Arbitrator by written notice to the Initiating Party, and the two (2) Arbitrators so appointed shall thereupon meet and select a third Arbitrator acceptable to both. In the event that the Responding Party fails to appoint an Arbitrator within the time limit aforesaid and deliver notice thereof to the Initiating Party, then the arbitration shall proceed before the Arbitrator appointed by the Initiating Party who shall act as sole Arbitrator. In the event that the two (2) Arbitrators so appointed are unable to agree upon a third Arbitrator within ten (10) Business Days after the appointment of an Arbitrator by the Responding Party, then at any time thereafter either the Initiating Party or the Responding Party shall be entitled to make application to a Judge of the Ontario Court (General Division), or such other official as may have jurisdiction from time to time under the Arbitration Act, 1991, S.O. 1991, c. 17, as amended or replaced from time to time (the "Act") in accordance with the provisions of the Act, to appoint a third Arbitrator, and the provisions of the Act shall govern such appointment.

- 14.04 **Process:** The resultant arbitration panel, whether composed of one (1) Arbitrator or three (3) Arbitrators, shall thereupon proceed to hear the submissions of the parties within twenty (20) Business Days after the appointment of a single Arbitrator agreed upon by the Initiating Party and the Responding Party, if applicable, or within twenty (20) Business Days after the appointment of the third Arbitrator, if there are three (3) Arbitrators, or within thirty (30) Business Days after the Initiating Party has designated its Arbitrator, if such Arbitrator is the sole Arbitrator, and in each case, render a decision within (10) Business Days after hearing such submissions. If there are three (3) Arbitrators, the decision of a majority of the arbitration panel shall be deemed to be the decision of the arbitration panel, and such decision, or the decision of the sole Arbitrator, as the case may be, shall be final and binding upon the parties and not subject to appeal. Except as otherwise provided herein, the arbitration panel, or the sole Arbitrator, as the case may be, shall have the authority to assess the costs of the arbitration panel against either or both of the parties, provided, however, that each party shall bear its own witness and counsel fees. In all other respects, unless otherwise agreed between the parties, the arbitration shall be conducted in accordance with the provisions contained in the Act.

## ARTICLE 15 MISCELLANEOUS

- 15.01 **No Partnership - Joint Venture:** The relationship of the parties shall be that of independent contractors, whereby Nustadia is serving as the City's agent to the extent provided herein. Nothing herein contained is intended or shall be construed in any way to create or establish the relationship of partners or a joint venture between the City and the Nustadia. None of the officers, agents or employees of Nustadia shall be or be deemed to be employees of the City for any purpose whatsoever.
- 15.02 **Written Amendments:** This Agreement shall not be altered, modified or amended in whole or in part, except in writing executed by each of the parties hereto.
- 15.03 **Governing Law:** This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario.
- 15.04 **Time:** Time is of the essence hereof, and every term, covenant and condition on shall be deemed to be the essence hereof, and any breach by the City or Nustadia shall be deemed to be of the very substance of this Agreement.
- 15.05 **Successors and Assigns:** This Agreement shall be binding upon and shall inure to the benefit of the successors and permitted assigns of the parties hereto. As the City is a municipality, successors and permitted assigns shall include any federal, provincial or municipal government or any other governmental body, agency, or commission that assumes authority over the Facility.
- 15.06 **Severability:** The invalidity or unenforceability of any particular Section or provision of this Agreement, or any part of any Section or provision, shall not affect the other Sections or provisions or parts thereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provisions or parts were omitted.
- 15.07 **Reasonableness:** Unless otherwise specifically provided in this Agreement, if the City or Nustadia has the right to give any approval or consent to any item hereunder, each shall act in a reasonable manner in connection with such approval or consent and shall not unreasonably withhold such approval or consent or unreasonably delay responding to a request for such approval or consent.
- 15.08 **Solicitation of Employees:** Nustadia acknowledges the City may wish to use –in house management to operate the facility upon expiry of the management term and nothing in this agreement prevents the City from offering employment to Nustadia's on-site Manager and/or Nustadia's Box Office Supervisor.
- 15.09 **Management Term:** The management term for this agreement will be September 13, 2004 to December 31, 2007.
- 15.10 **Options when Management Term expires:** Within six months of the termination date of the Management Term, the City may proceed with item (i) below so that the option can be implemented as of the Management Term expiry date.
- i) The City may negotiate and discuss in good faith a new agreement or arrangement with Nustadia to continue to provide the engagement services following the completion of the Management Term. Such a renewal would be subject to City Council approval. In the event that the parties negotiating in good faith, are unable to agree upon the terms of a renewal of this agreement then the City may proceed with options ii) or iii) below.

- ii) The City may issue a Request for Proposals Document to secure Contract management Services for the Peterborough Memorial Centre.
- iii) The City may undertake a recruitment process to hire City employees to carry out the duties of the Manager and Box Office Supervisor

15.11 **Non-Waiver:** A failure by either party to take any action with respect to any default or violation by the other of any of the terms, covenants or conditions of this Agreement shall not in any respect limit, prejudice, diminish or constitute a waiver of any rights of such party to act with respect to any prior, contemporaneous or subsequent violation or default or with respect to any continuation or repetition of the original violation or default.

15.12 **Entire Agreement:** This Agreement constitutes the entire agreement among the parties pertaining to the subject matter of this Agreement and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, of the parties, and there are no warranties, representations or other agreements between the parties in connection with the subject matter of this Agreement except as specifically set out in this Agreement. No supplement, modification, waiver or termination of this Agreement shall be binding, unless executed in writing by the party or parties to be bound thereby.

15.13 **Notices:** Any notice, consent or other communication given pursuant to this Agreement will be in writing and will be effective either (a) when delivered personally to the party for whom intended, (b) on the second Business Day following mailing by an overnight courier service that is generally recognized as reliable, (c) on the fourth Business Day following mailing by certified or registered mail, return receipt requested, postage prepaid, or (d) on the first Business Day following the day on which it is transmitted by telecopy as shown on the telecopy confirmation therefore as long as such telecopy transmission is followed by mailing of such notice by certified or registered mail, return receipt requested, postage prepaid, in any case addressed to such party as set forth below or as a party may designate by written notice given to the other party in accordance herewith:

(a) to the City at

The Corporation of the City of Peterborough  
 500 George Street North  
 Peterborough, Ontario K9H 3R9  
 Attention: City Clerk  
 Facsimile No.: 705.742.4138

(b) to the Nustadia at:

Nustadia Recreation Inc.,  
 777 Walkers Line, Suite C,  
 Burlington, Ontario, L7N 2G1  
 Attention: **Mr. B. Sproule**  
 Facsimile No.: 1-905-632-3883

**IN WITNESS WHEREOF**, this Agreement duly executed by the parties hereto as of the day and year first above written.

NUSTADIA RECREATION INC.

\_\_\_\_\_

I/We have authority to bind the corporation/partnership

The Corporation of the City of Peterborough

\_\_\_\_\_

(Sgd.) Sylvia Sutherland, Mayor

(Sgd.) Nancy Wright-Laking, City Clerk

## Appendix A

### Expected Outcomes to be reviewed with Nustadia

	DATE:
REVIEW PERIOD:	

Rating Legend  
 1 Unsatisfactory  
 2 Satisfactory  
 3 Excellent

Ref C1	Description C2	1 C3	2 C4	3 C5
1.0	How successful has Nustadia been in implementing and managing a strategic facility booking and marketing program that has attracted new events to the Memorial Centre? Specify new major events that have occurred over the reporting period  _____  _____  _____  _____			
2.0	Has Nustadia established maintained and fostered excellent working relationships with major tenants and stake holders such as			
3.0	Peterborough Petes			
3.1	Senior and Junior Lacrosse Teams			
3.2	Peterborough and District Sports Hall of Fame			
3.3	Peterborough Figure Skating, Club			
3.4	Festival of Trees			
3.5	Club Seat Holders			
3.6	Suite Holders			
3.7	Season Ticket Holders			
3.8	Others (Specify			
4.0	Has Nustadia developed and maintained working relationship with other arena operations within Arenas Division of the City?			
5.0	Has Nustadia developed and maintained working relationship with other local and regional performance venues and special events?			
6.0	Has Nustadia ensure facilitated positive labour relations with Centre staff through the effective, fair, and consistent application of applicable Collective Agreements and workplace policies?			
6.1	Have there been any significant staffing issues over the review period? Specify			
7.0	Has Nustadia ensured an effective allocation of resources within the Memorial Centre and Morrow Park in accordance with organization wide Financial Policies and Procedures?			
8.0	Has Nustadia shown an ability to write and present reports to Council dealing with the Centre and Morrow Park issues requiring Council approval in a clear concise manner? Specify examples.			
9.0	Has Nustadia ensured the operations of the Facility are in adherence to the statutes and regulations of the Ontario Health and Safety Act, RSO 1990, and all relevant labour legislation?			
10.0	Has Nustadia assessed the existing system/ identifying and assisting with the potential selection of an alternative?			

Ref C1	Description C2	1 C3	2 C4	3 C5
11.0	Have Nustadia on-site personnel demonstrated well-developed written and verbal communication skills, facilitation, and negotiation public relations skills to build effective relationships within the corporation, throughout the community and with a wide variety of contacts? Provide examples			
12.0	Have Nustadia on-site personnel possessed good marketing skills and do they have a good knowledge of the sports and entertainment industry?			
13.0	Have Nustadia on site personnel demonstrated leadership, management, administration, and team-building skills to effectively coach, motivate and direct the work of others?			
14.0	Have Nustadia on-site personnel demonstrated excellent planning, organization, forecasting, and financial/budget management skills?			
15.0	Have Nustadia on-site personnel shown an ability to function in a computerized work environment including proficiency using word processing, spreadsheet, database and Group Wise Calendaring software?			
16.0	Have Nustadia on-site personnel shown knowledge of effective performance management practices, training and development techniques.			
17.0	Has Nustadia undertaken the following specific initiatives through a combination of on-site personnel and corporate support and how successful have they been			
17.1	Revenue and Expense Analysis			
17.2	Tenant lease structure analysis			
17.3	Detailed operation systems and practices analysis			
17.4	Event Marketing where Nustadia			
17.5	Sponsorship and Naming Rights Review			
18.0	Has Nustadia had at least one of their management personnel at the Centre during major events such as OHL hockey games, and concerts?			
19.0	During the period September 13, 2004 to such time Nustadia had hired a permanent Manager, was Mr. at the Centre for at least 35 hours per week and at the Centre during most major events?			
20.0	Did Nustadia provide a Box Supervisor at the centre no later than October 30, 2004?			
21.0	Has Nustadia been able to provide uninterrupted service over this reporting period?			
22.0	Has Nustadia Personnel followed the City's Corporate Purchasing Card policies and procedures with no issues?			
23.0	Has Nustadia respected the formal reporting relationship to the City through Mrs. Sandra Clancy, The Manager of Financial Services and kept her properly informed of all significant issues?			
24.0	Has Nustadia promptly taken actions that have been requested by Mrs., Clancy?			
25.0	Has Nustadia obtained, maintained, and deposited with the City, a Certificate of Comprehensive General Liability Insurance, which is in all respects acceptable to the City Solicitor and provided evidence of insurance signed by the insurer or its			

Ref C1	Description C2	1 C3	2 C4	3 C5
	authorized representative?			
26.0	Has Nustadia respected the Confidentiality and Nondisclosure aspects of this agreement?			
27.0	Have Nustadia personnel on site consistently conform with and abided by the City's Purchasing Policies and Procedures when procuring any good or services for the facility on behalf of the City?			
28.0	Have Nustadia on site personnel complied with the City's Information Technology policy and procedures?			
29.0	Have Nustadia on-site personnel complied with all Human resources Policies and Procedures?			
30.0	<b>Has Nustadia</b> provided a certificate from the Workplace Safety Insurance Board (WSIB) indicating all payments by the proponent to the WSIB in conjunction with the work to be undertaken by the proponent for the City have been made, and that the City will not be liable to the WSIB for future payments in connection with the Nustadia's fulfillment of the Contract.			
31.0	Did Nustadia file a "Certificate of Clearance" from the WSIB prior to commencing the Management Term and has the Clearance certificates must be renewed every sixty (60) days (minimum) during the term of the Contract.			
32.0	Has Nustadia provided a Comprehensive Crime Policy providing the following coverages?			
32.1	i) Employee Dishonesty for an amount of \$250,000 under either a primary commercial bond or blanket position bond. The Employee Dishonesty Coverage must also include a "Service Extension Endorsement" to protect the City of Peterborough for any loss caused by a dishonest or fraudulent act of the Nustadia employees			
32.2	ii) Loss of Money and Securities both inside and outside the premises for an amount of \$10,000			
32.3	iii) Money Orders and Counterfeit Paper Currency Coverage for \$10,000			
32.4	iv) Depositors Forgery Coverage for \$10,000			

## CITY=S COMMENTS

### OVERALL PERFORMANCE RATING

(1) UNSATISFACTORY

(2) SATISFACTORY

(3) EXCELLENT

**NUSTADIA COMMENTS:**

--

NUSTADIA SIGNATURE	DATE:
CITY SIGNATURE	DATE:

**Appendix B  
Nustadia Incentive Clause (Illustrative Example)**

Item # C1	Description C2	Maximum Achievable C3	Illustrative Base Benchmark C4	Basis for Base Benchmark C5	If Nustadia achieves this many new units C6	At this applicable unit rate C7	Then this additional revenue will be generated C8	And if Nustadia Commission rate is this C9	And commission is based on this C10	Then Nustadia incentive is this C11	And PMC gets this C12
1	Suite sales	24	19	# of suites leased as of Dec 31, 2004	2	\$11,000 per suite sold	\$ 22,000.00	20%	of additional gross revenue	\$ 4,400.00	\$ 17,600.00
2	Club seats	948	703	# of seats licensed for 2004/2005 as of Dec 31, 2004	150	\$175	\$ 26,250.00	20%	of additional gross revenue	\$ 5,250.00	\$ 21,000.00
3	Sponsorships	\$ 125,000	\$ 16,500	\$ Value of sponsorship revenue in addition to Pepsi, Quaker, Molson	\$ 50,000.00	\$ 1.00	\$ 50,000.00	20%	of additional gross revenue	\$ 10,000.00	\$ 40,000.00
4	Petes attendance	3,963	2,800	Average season attendance (2005 Budget number Calendar basis)	200	\$1.30 Fixed rate exclusive of ticket price changes	\$ 10,140.00 if this many games played 39	20%	of City's net share of additional gate receipts (Col 7 times Col 6)	\$ 2,028.00	\$ 8,112.00
5	Events - Rental	n/a	77	# of events held 03-04 season excluding Petes games	10	N/A	N/A	\$ 500	Flat fee per additional event	\$ 5,000.00	Varies
6	Events - (Co-) Promoted	n/a	0	N/A		Varies	Varies	20%	of City's net revenue from each event	Varies	Varies
7	Ice & Floor Rentals	n/a	2,150	Hours of floor Time 2004	200.00	\$114 Exclusive of any hourly rate increases	\$ 22,800.00	20%	of additional gross revenue generated (Col 7 times Col 6)	\$ 4,560.00	\$ 18,240.00
8	Morrow Building Events	n/a	15	# of events based on average of 2002 & 2004	5	\$785 Exclusive of any daily rate increases	\$ 3,925.00	20%	of additional gross revenue generated	\$ 785.00	\$ 3,140.00
9	Net Parking Revenue	n/a	\$32,400 Net revenue after Securitas fees	Net parking revenue for 2004	\$6,250 Net revenue increase after Securitas fees and exclusive of any parking rate fee increases		\$6,250 Net revenue increase after Securitas fees and exclusive of any parking rate fee increases	20%	of net increase in parking revenues exclusive of any parking rate increase	\$ 1,250.00	\$ 5,000.00
10	Other cost reductions	n/a			\$ 20,000		\$ 20,000	20%	of net cost reductions as agreed upon by City and Nustadia	\$ 4,000.00	\$ 16,000.00
11	<b>TOTAL</b>									<b>\$ 37,273.00</b>	<b>\$ 129,092.00</b>