

THE CORPORATION OF THE CITY OF PETERBOROUGH

BY-LAW NUMBER 05-165

**BEING A BY-LAW TO THE EXECUTION OF AN AGREEMENT
BETWEEN THE CORPORATION OF THE CITY OF
PETERBOROUGH AND THE PETERBOROUGH FAMILY YMCA**

THE CORPORATION OF THE CITY OF PETERBOROUGH BY THE COUNCIL
THEREOF HEREBY ENACTS AS FOLLOWS:

1. That the Mayor and Clerk be hereby authorized to execute an agreement between the Corporation of the City of Peterborough and The Peterborough Family YMCA, in the form attached hereby as Schedule "A", and to affix the Seal of the Corporation thereto.

By-law read a first and second time this 8th day of August, 2005.

By-law read a third time and finally passed this 8th day of August. 2005.

(Sgd.) Sylvia Sutherland, Mayor

(Sgd.) Leigh Doughty, Deputy Clerk

SCHEDULE "A"

This agreement dated this _____ day of _____, 2005
(date to be filled in by City)

B E T W E E N

THE CORPORATION OF THE CITY OF PETERBOROUGH
(the "City")

and

THE PETERBOROUGH FAMILY YMCA
(the "YMCA")

WHEREAS the City and the YMCA (collectively, the "Parties") have identified certain common objectives for certain site plan design issues for the New YMCA; and the Existing YMCA;

AND WHEREAS the City acknowledges that the YMCA is an integral component in the community's health, fitness and recreational needs and the Existing YMCA is an important contributor to the functionality of the City's downtown;

AND WHEREAS the City has identified the Existing YMCA as a recreational, cultural and heritage asset;

AND WHEREAS the City has undertaken to provide the YMCA with One and a Half Million (\$1,500,000.00) dollars to the YMCA's Capital Campaign;

AND WHEREAS the YMCA is acknowledging the City's contribution to the YMCA's Capital Campaign;

AND WHEREAS the Parties acknowledge that they have each obtained final approval from their respective governing body concerning this agreement;

NOW THEREFORE in consideration of the mutual covenants set forth below the City and the YMCA agree as follows:

DEFINITIONS

The following words shall have the following meanings:

Capital Campaign – means the fundraising campaign for the New YMCA;

Existing YMCA – means the YMCA site and building (composed of the Old Phase and the New Phase) located at the southwest corner of George Street North and Murray Street in the City of Peterborough;

Former King Edward School Site – means the land bounded by Aylmer Street (on the east), Romaine Street (on the north), Park Street South (on the west) and Princess Street (on the South), and excluding the land upon which the Peterborough Daycare is located;

New YMCA – means the new building that the YMCA will construct within the YMCA Site;

YMCA Site – means the Former King Edward School Site upon which the New YMCA will be built;

1.0 TIMELINE HIGHLIGHTS

The Parties agree and acknowledge that:

1.1 The development of the New YMCA will occur according to the following timeline:

- i. During the second quarter of 2005, the City shall commence its study of the Existing YMCA and following the completion of that study, issue an RFP for the Existing YMCA;

- ii. During the third quarter of 2005, construction of the New YMCA shall commence. In the event construction of the New YMCA is delayed, the events described in 1.1(iv), 1.1(v), 3.1 and 3.3 below will be delayed for an equal length of time;
- iii. Prior to the commencement of the third quarter of 2006, the City shall notify the YMCA of its intention concerning the Existing YMCA;
- iv. During the first quarter of 2007, YMCA shall complete the construction of the New YMCA;
- v. In the event the City is purchasing the Existing YMCA, it shall complete the purchase during the second quarter of 2007.

2.0 THE NEW YMCA

Financial Aspects

The Parties agree and acknowledge that:

- 2.1 The City shall make a cash contribution of One and a Half Million (\$1,500,000.00) dollars to the YMCA's Capital Campaign. The City's contribution shall be made in two equal installments, the first during the second quarter of 2006 and the second during the second quarter of 2007.
- 2.2 The City shall designate the New YMCA as a Municipal Capital Facility ("MCF") in accordance with the *Municipal Act, 2001*. The City agrees that the development of the New YMCA shall be exempt from all development charges. The Parties project that this MCF designation will save the YMCA approximately Two Hundred Thousand (\$200,000.00) in development charges otherwise attributable to the New YMCA.
- 2.3 The New YMCA will be an MCF and therefore be exempt from having municipal realty taxes levied against it.
- 2.4 The City shall guarantee the mortgage (including the construction financing, long-term take-out financing and equipment financing) for the New YMCA to an amount not to exceed Seven Million, Two Hundred and Fifty Thousand (\$7,250,000.00) dollars. The YMCA recognizes that the City is a preferred borrower, and that, with the City's assistance, the YMCA will be able to obtain a mortgage at a more competitive rate. The Parties estimate the savings to the YMCA to be at least Seven Hundred and Fifty Thousand (\$750,000.00) dollars over the life of the mortgage.
- 2.5 The City shall conduct the traffic impact study concerning the development of the New YMCA and related neighbourhood traffic issues, which will be subject to review and input by the YMCA prior to being finalized. The City shall make available up to one hundred and twenty thousand (\$120,000.00) dollars, including the cost of the traffic impact study, toward the cost of any recommended remedial improvements.
- 2.6 Prior to the YMCA proceeding with the development of the New YMCA, it will need to:
 - i. Reach a fundraising target of two million (\$2,000,000.00) dollars toward its Capital Campaign;
 - ii. Obtain satisfactory construction pricing and enter into a construction contract with its general contractor;
 - iii. Obtain satisfactory construction and related financing;
 - iv. Obtain the approval of the YMCA Board of Directors concerning this agreement.
 - v. Obtain all required municipal approvals respecting the construction of the New YMCA.

In the event any of the conditions in Section 2.6 are not satisfied, the YMCA may give notice in writing terminating this agreement.

Site Design

The Parties agree and acknowledge that:

- 2.7 The New YMCA shall be a fully accessible barrier free building. The City is aware that the YMCA's preferred design option for the New YMCA is for the construction of a one-storey building with approximately 240 on-site parking spaces;
- 2.8 The Parties have equally shared the costs associated with the preliminary site design phase.

3.0 THE EXISTING YMCA

The Parties agree and acknowledge that:

- 3.1 For the purposes of this Agreement, the Existing YMCA is composed of two (2) Phases, namely the Old Phase, meaning the portions of the building constructed in 1895 and 1930, and the New Phase, meaning the portions of the building constructed in 1967 and 1976. Because each of the Old Phase and the New Phase has a separate and independent mechanical and HVAC system, each phase is capable of operating as a distinct and independent facility. The City shall have the option to purchase the Existing YMCA for One Million Five Hundred Thousand (\$1,500,000.00) dollars (subject to the usual adjustments) by giving notice to the YMCA on or before 30 June 2006. The transaction shall be completed no later than the first business day of the second quarter of 2007. In the event the City purchases the Existing YMCA, its contribution to the YMCA's Capital Campaign pursuant to Section 2.1, shall be credited against the purchase price.
- 3.2 The Existing YMCA has a value of Two Million, Two Hundred Thousand (\$2,200,000.00) dollars. City Council has approved the City's donation to the YMCA's Capital Campaign as follows, the City will guarantee a purchase price for the Existing YMCA of One Million, Five Hundred Thousand (\$1,500,000.00) dollars. In the event the City, following its purchase of the Existing YMCA, sells the Existing YMCA for an amount greater than one million six-hundred and twenty thousand (\$1,620,000.00) dollars (the "City's Cost"), it shall share the amount of the purchase price which exceeded the City's Cost equally with the YMCA. Any such funds shall be transferred to the YMCA within sixty (60) days of the transfer from the City to the purchaser.
- 3.3 In the event the City purchases, or facilitates the purchase by a third party, of the Existing YMCA, the YMCA shall, for the period commencing no later than the later of:
 - i. The end of the first quarter of 2007; or
 - ii. The date the City or a third party purchases the Existing YMCA;lease the New Phase of the Existing YMCA (the "Leased Premises") from the City, or the third party purchaser, at no charge. The YMCA shall retain a lease interest in the Leased Premises for a period of ten (10) years, with right(s) of renewal.
- 3.4 In the event the City sells or leases the Existing YMCA to any third party, the terms and conditions of any such sale or lease shall include adequate protections concerning the YMCA's ten (10) year lease and its right(s) of renewal. The terms and conditions of that lease will be contained in a separate document to be entered into no later than the fourth quarter of 2006.

- 3.5 Following the opening of the New YMCA, and the YMCA entering into a Lease with the City, or a third party purchaser, and the YMCA concerning the Leased Premises, the YMCA shall maintain the following spaces within the Leased Premises for a period of ten (10) years (the "Lease Period"):
- i. The Minty swimming pool;
 - ii. The Menzie Gym (a.k.a. the Triple Gym);
 - iii. The space currently occupied by the racquet ball court, two squash courts and the cycle fit room;
 - iv. Adequate change room facilities and showers for persons using the Leased Premises;
 - v. Such further and other ancillary areas required to maintain the above-noted spaces.
- 3.6 During the Lease Period, the YMCA will retain the revenues from the programmes offered within the Leased Premises. The YMCA shall also be solely responsible for the operating and capital costs normally attributable to a tenant within the Leased Premises, which will exclude the major capital investments described below. In the event the Leased Premises require a major capital investment (E.g. for boiler, pool filtration system, mechanical and electrical systems, door, window and roof repairs and/or replacement and costs to allow the New Phase to operate independently from the Old Phase), then the City may:
- i. Terminate the lease without penalty; or
 - ii. Enter into discussions with the YMCA concerning cost-sharing such major capital investments. If no agreement is reached, the YMCA may terminate the Lease without penalty.
- 3.7 Notwithstanding Sections 3.3 to 3.6 inclusive, the City specifically retains:
- i. The right, prior to entering a lease with the YMCA concerning the Leased Premises, to seek and obtain proposals from third parties concerning the future use and/or development of the Existing YMCA or a portion thereof; and
 - ii. In the event it obtains an acceptable proposal concerning the future use and/or development of the Existing YMCA or a portion thereof, the right not to enter into any lease agreement with the YMCA concerning the Leased Premises.
- 3.8 Following the completion of the Lease Period and in the event the City has retained ownership of the Existing YMCA, the City shall be free to:
- i. Sever and sell the Leased Premises;
 - ii. Renew the Lease with the YMCA, provided the YMCA agrees to such renewal;
 - iii. Retain the Leased Premises for any purpose;
 - iv. Demolish the Leased Premises, or a portion thereof, and construct a new building, surface parking lot or addition to the remaining building;
- 4.0 MISCELLANEOUS**
The Parties agree and acknowledge that:
- 4.1 The City shall waive the requirement for any payment of cash in lieu of parkland associated with the currently-submitted site plan for the New YMCA, as amended by the addition of the land upon which the King Edward School is now situate.

