

THE CORPORATION OF THE CITY OF PETERBOROUGH

BY-LAW NUMBER 05-259

BEING A BY-LAW TO AUTHORIZE THE EXECUTION OF AN AGREEMENT BETWEEN THE CORPORATION OF THE CITY OF PETERBOROUGH AND THE PETERBOROUGH FAMILY YMCA FOR THE PROVISION OF A MUNICIPAL CAPITAL FACILITY

WHEREAS Section 110(1) of the *Municipal Act 2001*, S.O. 2001, c.25, provides that a municipality may enter into agreements for the provision of municipal capital facilities

AND WHEREAS The Peterborough Family YMCA municipally known as 123 Aylmer Street North, in the City of Peterborough, is deemed to be a municipal capital facility to be used as a municipal community centre;

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

1. That The Corporation of the City of Peterborough is hereby authorized to enter into an agreement with The Peterborough Family YMCA for the provision of a municipal capital facility, namely a municipal community centre at 123 Aylmer Street North, in the City of Peterborough.
2. 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 Peterborough Family YMCA, in the form attached hereto as Schedule "A", and to affix the seal of the Corporation thereto.

By-law read a first, second and third time this 5th day of December, 2005

(Sgd.) Sylvia Sutherland, Mayor

(Sgd.) Nancy Wright-Laking, City Clerk

THIS AGREEMENT made in triplicate this 15th day of June, 2006.

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 *Municipal Act, 2001*, and the O. Reg. 46/94, as amended, permits the City to enter into an agreement for the provision of municipal capital facilities;

AND WHEREAS, By-law Number 05-259, of The Corporation of the City of Peterborough, authorized the City to enter into this agreement with the Peterborough Family YMCA for the provision of a municipal community centre, pursuant to Section 110 of the *Municipal Act, 2001*;

NOW THEREFORE THE PARTIES HERETO AGREE AS FOLLOWS:

1.00 THE FACILITY

1.01 The parties acknowledge that the YMCA is the owner of the property, municipally known as 119 and 123 Aylmer Street South, Peterborough, and more particularly described in Schedule "A" (the "Property").

1.02 The YMCA hereby agrees to construct and operate a municipal community centre, known as the Peterborough Family YMCA, on the Property.

2.00 TERM OF AGREEMENT

2.01 This agreement shall be in full force and effect from the date of execution, unless or until it is terminated by the City, pursuant to the provisions of this agreement. Upon termination on or before the date that is twenty (20) years from the date of this agreement, the Property shall, at the option of the City (to be exercised within thirty (30) days of termination and completed within thirty (30) days of exercise), be transferred to the City, free of financial encumbrances (other than the YMCA's mortgages/charges of the Property), unless the YMCA pays to the City, on or before the date the transfer is completed, an amount equal to the unamortized portion of the aggregate of: (i) the development charges (\$137,839.00) and park levy (\$11,000.00) forgone by the City at the time this agreement was entered into; and (ii) the City monetary contribution to the new facility to be constructed on the Property, being \$1,750,000.00 (or \$0 in the event the City exercises its option to acquire the YMCA's property located at the southwest corner of George Street North and Murray Street, Peterborough pursuant to the agreement between the City and the YMCA dated August 23, 2005 (collectively, the "City Contribution")). The City Contribution will be amortized on a straight line basis without interest over the twenty (20) year period from the date of this agreement.

3.00 TERMINATION OF AGREEMENT

3.01 The City may terminate this agreement upon written notice to the YMCA, in the event that the YMCA fails to perform any of its obligations, or is in breach of any of its covenants, pursuant to this agreement, and has failed to perform such obligations or remedy such breach within thirty (30) days from the date of written notification to the YMCA by the City.

4.00 USE OF THE PROPERTY

4.01 The YMCA shall use the Property only for the purpose of a municipal community centre, and such ancillary uses as may be permitted pursuant to the Zoning By-law of the City.

5.00 MAINTENANCE OF THE PROPERTY

5.01 The YMCA shall maintain the property as a prudent owner, and may make such capital improvements to the Property, as are necessary to operate the municipal community centre.

6.00 INDEMNIFICATION AND INSURANCE

6.01 The YMCA agrees that it will indemnify and hold harmless the City from any liability, claims or costs, including solicitor's fee and reasonable disbursements, which may be incurred as a result of the City entering into this agreement and which does not result from the City's or its agent's wilful act, negligence, breach of contract or breach of law.

6.02 During the term of this agreement, the YMCA shall, at its expense, maintain a policy of insurance for property damage and third party public liability, in the minimum amount of Two Million Dollars (\$2,000,000.00). Evidence of insurance shall be provided to the City annually.

7.00 INSPECTION BY THE CITY

7.01 The City or its agents may, upon reasonable prior written notice, inspect the Property.

7.02 The YMCA shall forthwith, after written notice from the City, repair any deficiency in the Property that represents a breach of law or discontinue any illegal use, which shall be specified in the aforementioned written notice.

8.00 TAXES

8.01 The City shall enact a by-law pursuant to Section 110 (6) of *the Municipal Act, 2001*, exempting the Property from taxation for municipal and school purposes, development charges and parks levies.

9.00 GUARANTEE

9.01 The City has agreed to provide a guarantee for mortgage financing to the Toronto Dominion Bank in the principal amount of \$7,250,000.00. In consideration of this guarantee, the YMCA covenants to faithfully pay the mortgage indebtedness when due. In the event that the YMCA defaults on the said indebtedness, and the City makes any payment to the Bank under the terms of the guarantee, the YMCA shall, at the option of the City (to be exercised within thirty (30) days of the payment and completed within thirty (30) days of exercise), convey the Property to the City (subject to the YMCA's mortgages/charges of the Property), without consideration, unless the YMCA pays to the City, on or before the date the purchase is completed, an amount equal to the payments made by the City to the Bank.

10.00 NOTICES AND CHANGES OF ADDRESS

10.01 Any notice required to be given pursuant to this agreement shall be either personally delivered or sent by facsimile transmission to the parties at the following addresses:

- (a) to the City at: City Hall
500 George Street North
Peterborough, Ontario K9H 3R9
Attention: City Clerk
Facsimile Number: 705.743.7825
- (b) to the YMCA at: Peterborough Y.M.C.A.
123 Aylmer Street South
Peterborough, Ontario
Attention: Chief Executive Officer
Facsimile Number: 705 741 3719
- with a copy to: Lockington, Lawless Fitzpatrick
Barristers & Solicitors
332 Aylmer Street North
P.O. Box 1146
Peterborough, Ontario K9J 7H4
Attention: Mr. Randy Northey
Facsimile Number: 705.742.4677

10.02 The City will provide a copy of every notice delivered by it under this agreement to any lender to the YMCA that has a registered charge on title to the Property at the time of such notice.

11.00 ENUREMENT

11.01 It is understood and agreed that the within agreement shall enure to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns.

12.00 RIGHT OF FIRST OFFER

12.01 If, at any time while this agreement is in effect, the YMCA wishes to sell the Property, it shall first provide notice (the "Sale Notice") to the City offering to sell the Property to the City at the cash price (the "Sale Price") and upon the other terms and conditions (the "Sale Terms") set out in the Sale Notice. The City shall have the right to purchase the Property at the Sale Price and upon the Sale Terms in the event that it provides notice (the "Purchase Notice") to that effect to the YMCA within thirty (30) days from receipt of the Sale Notice. In the event the City provides the Purchase Notice in accordance with the foregoing, a binding agreement of purchase and sale of the Property at the Sale Price and upon the Sale Terms shall thereby be constituted between the YMCA and the City. If the City does not deliver the Purchase Notice within the time limited therefore, the YMCA shall have the right, within the two (2) year period following the expiry of the period in which the City had to deliver the Purchase Notice, to complete the sale of the Property to a third party at the price (the "Third Party Sale Price") that the YMCA is prepared to accept, free of this right of first offer in favour of the City, provided that the Third Party Sale Price is equal to or greater than the Sale Price. If the Third Party Sale Price is less than the Sale Price, the YMCA shall provide notice (the "Third Party Sale Notice") to the City of the Third Party Sale Price and the City shall have the right to purchase the Property at the Third Party Sale Price and upon the Sale Terms by providing notice (the "Second Purchase Notice") to the YMCA to that effect within thirty (30) days from receipt of the Third Party Sale Notice. In the event the City provides the Second

Purchase Notice in accordance with the foregoing, a binding agreement of purchase and sale of the Property at the Third Party Sale Price and upon the Sale Terms shall thereby be constituted between the YMCA and the City. If the City does not deliver the Second Purchase Notice within the time limited therefore, the YMCA shall have the right to complete the sale of the Property to the third party. The closing of any agreement of purchase and sale of the Property to the City as a result of a Purchase Notice or Second Purchase Notice shall take place on the first business day that is at least thirty (30) days after the provision of the Purchase Notice or Second Purchase Notice to the YMCA, as the case may be. In the event of a sale of the Property to the City pursuant to this provision, the Sale Price or Third Party Sale Price, as the case may be, will be reduced at closing by the unamortized portion of the City Contribution, as determined in accordance with section 2.01 of this agreement.

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

**THE CORPORATION OF THE
CITY OF PETERBOROUGH**

Sylvia Sutherland, Mayor

Nancy Wright-Laking, City Clerk

THE PETERBOROUGH FAMILY YMCA

Name:
Office:

Name:
Office:

SCHEDULE "A"

Those lands situate, lying and being in the City of Peterborough, in the County of Peterborough, described as follows:

FIRSTLY:

PART PARK LOT 3 & PART PARK LOT 4 TWP LOT 14 CONCESSION 12 (NORTH MONAGHAN)
as in M1064 & M7718 EXCEPT R231708, EXCEPT PART 1 ON 45R12969; PETERBOROUGH

SECONDLY:

PART PARK LOT 4 TWP LOT 14 CONCESSION 12 (NORTH MONAGHAN), DESIGNATED AS
PART 1 ON 45R12969; PETERBOROUGH