

**THE CORPORATION OF THE CITY OF PETERBOROUGH**

**BY-LAW NUMBER 07-125**

**BEING A BY-LAW TO AUTHORIZE THE EXECUTION OF A  
REVISED OPERATING AGREEMENT BETWEEN THE  
CORPORATION OF THE CITY OF PETERBOROUGH AND  
THE SIR SANDFORD FLEMING COLLEGE OF APPLIED  
ARTS AND TECHNOLOGY**

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 a Revised Operating Agreement between The Corporation of the City of Peterborough and The Sir Sandford Fleming College of Applied Arts and Technology for the Peterborough Sport and Wellness Centre, in the form attached hereby as Schedule "A", and to affix the Seal of the Corporation thereto.

By-law read a first, second and third time this 10<sup>th</sup> day of September, 2007.

(Sgd.) D. Paul Ayotte, Mayor

(Sgd.) Nancy Wright-Laking, City Clerk

A G R E E M E N T made this                      day of                      , 2007.

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, a copy of which is attached hereto for reference as Schedule "A";

AND WHEREAS the parties entered into an operational agreement dated June 2, 2003 to set out the terms and conditions under which the Centre operates, and now wish to update that agreement as hereinafter set forth.

NOW THEREFORE THE PARTIES HERETO AGREE AS FOLLOWS:

**1.00 DEFINITIONS**

- 1.01 "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.
- 1.02 "Budget Year" means a calendar year from January 1 to December 31.
- 1.03 "Centre" means the Peterborough Sport and Wellness Centre at Fleming.
- 1.04 "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.
- 1.05 "Lease Agreement" means the lease agreement dated September 16, 2002, between the City and the College.
- 1.06 "Member" includes both City Members and Student Members.
- 1.07 "City Member" means a person who has paid the City for a membership at the Centre and is in good standing.
- 1.08 "Student Member" means a student of the College who has paid the required student fees and is in good standing.
- 1.09 "Members' Fitness and Lifestyle Programs" means programs that are open to all Members.
- 1.10 "Open Gym" means periods of time when Members have access to the gymnasium.

- 1.11 "Public Swim" means an open swim for all ages where there is a fee charged, save and excepting for Members , who are admitted free as part of their membership rights.
- 1.12 "Registered Programs" means programs offered at the Centre where there is an additional fee charged over and above the cost of a membership fee.
- 1.13 "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, staff lunch room, 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.
- 1.14 "Steering Committee" means the Steering Committee for the Peterborough Sport and Wellness Centre, as constituted through the Lease Agreement.
- 1.15 "Student Term" means the period from September 1 to August 31.

## **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 two persons, being a representative of the City who has responsibility for Recreation Services and a representative of the College who has overall responsibility for athletics and recreation, 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 COORDINATOR**

- 4.01 The City, with the participation and approval of the College, shall hire a Facility Coordinator. The Facility Coordinator 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) budgeting and 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 Coordinator.

## **5.00 ADDITIONAL STAFF**

5.01 The City will hire additional shared staff with the participation and approval of the College and the College will share the costs of the following staffing components:

- (a) a customer services administrator, either employed by the City, or on contract, who will oversee 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) fitness 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 fitness monitor(s) and the cleaning/maintenance staff described in subparagraphs (d) and (e). 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 March 31, April 1<sup>st</sup> to August 31<sup>st</sup>, and September 1<sup>st</sup> to December 31<sup>st</sup> on or before April 30<sup>th</sup>, September 30<sup>th</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, as well as a proportionate share of the costs of public utilities and the computerized membership and facility booking systems, as such costs relate to the operations of the College.
- 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, stocking or supplying, exterior ground maintenance, telephone system and insurance.

## **8.00 CAPITAL CONSERVATION FUND**

- 8.01 In each budget year, the City and the College shall each contribute a minimum of Twenty-Five Thousand Dollars (\$25,000.00), or such greater amount as is established by mutual agreement, 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 Management Team to the Steering Committee with final approval by the parties through their respective annual budget processes. 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 EQUIPMENT FUND**

- 9.01 In each budget year, the City and the College shall each contribute a minimum of Twenty Thousand Dollars (\$20,000.00), or such greater amount as is established by mutual agreement, into an equipment fund, which shall be used to finance the purchase of shared equipment in the Centre. Any expenditure from the fund shall be proposed by the Management Team to the Steering Committee with final approval by the parties through their respective annual budget processes. The funds shall be contributed by each party no later than December 15<sup>th</sup> in each year, and shall be held by the City in an interest bearing account.

## **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 members' fitness and lifestyle programs to maximize cost efficiencies in the Centre. In these cases, the College shall reimburse the City for a proportionate share of the program costs. This shall not prevent the College or the City from offering fitness and lifestyle programs exclusively to Student Members or City Members respectively at the sole expense of the party offering the activity. Either party may elect to charge and retain a user fee for the exclusive activity.
- 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 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 The City and the College shall cooperatively schedule, with the Facility Coordinator, 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.
- 10.05 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 RECIPROCAL FACILITY USE**

- 11.01 The City and the College will permit Student Members and City Members respectively limited reciprocal facility use of their dedicated facilities at no extra charge. In particular, the City will permit Student Members to use the pool during all public swims, and the College will permit City Members use of the gymnasium during open gym times.

## **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.

