THE CORPORATION OF THE CITY OF PETERBOROUGH

BY-LAW NUMBER 09-160

BEING A BY-LAW TO AUTHORIZE THE EXECUTION OF AN AGREEMENT BETWEEN THE CORPORATION OF THE CITY OF PETERBOROUGH AND THE YWCA OF PETERBOROUGH, VICTORIA AND HALIBURTON

THE CORPORATION OF THE CITY OF PETERBOROUGH BY THE COUNCIL THEREOF HEREBY ENACTS ASfollows:

That the Mayor and Clerk be hereby authorized to execute an agreement between The Corporation of the City of Peterborough and the YWCA of Peterborough, Victoria and Haliburton for the provision of a municipal capital facility at 369 Stewart Street, in the City of Peterborough, 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 14th day of December, 2009

(Sgd.) D. Paul Ayotte, Mayor

(Sgd.) Kevin Arjoon, Deputy Clerk
FUNDING AGREEMENT

THIS FUNDING AGREEMENT made as of the 14th day of December 2009.

BETWEEN:

THE CORPORATION OF THE CITY OF PETERBOROUGH

(hereinafter called the “City”)

-and-

YWCA OF PETERBOROUGH, VICTORIA AND HALIBURTON

(hereinafter called the “YWCA”)

WHEREAS:

1) The YWCA intends to construct a new Crossroads Shelter (the “Project”) to be located at 369 Stewart Street, Peterborough, Ontario;

2) The City wishes to provide funding for the Project on the terms and conditions set out herein;

3) The YWCA has agreed to utilize such City funding for the Project on the terms and conditions set out herein; and

4) The Municipal Act, 2001, and Ontario Regulation 46/94, as amended, permits the City to enter into an agreement for the provision of municipal capital facilities.

NOW THEREFORE in consideration of the mutual covenants hereinafter set out and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree to the following terms, conditions and covenants:

ARTICLE I – THE PROJECT

Section 1.01 Undertaking of Project by the YWCA

For all purpose of this agreement, “the Project” means the construction of a new Crossroads Shelter to accommodate and support vulnerable women and children experiencing domestic violence. The YWCA agrees to undertake the Project, to commence work forthwith, and to complete the Project not later than March 31, 2011, at a cost of approximately $4,500,000.00.

Except for the provision of the funding described in this agreement, the YWCA acknowledges and agrees that the City shall have no other obligations or responsibilities in connection with the Project and its completion.

Section 1.02 Disclosure

The YWCA shall disclose to the City without delay any fact or event that the YWCA is aware of from time to time which may compromise the YWCA’s chances of success in carrying out the Project.

ARTICLE II – FUNDING

Section 2.01 Funding

Subject to the reduction set out in Section 2.03 below, the City shall provide a total of $750,000.00 in funding to the YWCA for the Project (the “Funding”).
Section 2.02 Timing of Funding

The Funding shall be payable in three installments with the initial installment in the amount of $250,000.00 due on September 1, 2009, the second installment in the amount of $250,000.00 due on April 1, 2010 and the last installment in the amount of $250,000.00 due on April 1, 2011.

Section 2.03 Reduction – Development Charges

The first Funding installment of $250,000.00 shall be reduced by the amount of actual development charges which would otherwise be payable to the City in connection with the Project and which the City has waived and forgiven, which the City calculates to be $38,101.00 (the “Development Charges”). Upon request from the YWCA, the City shall provide verification of the calculation of all such Development Charges.

Section 2.04 Reversionary Interest - Municipal Capital Facility

Notwithstanding any contrary policies of the YWCA or the City, the parties acknowledge and agree that in the event the Project is sold or ceases to operate as a shelter at any time from the date hereof until the 25th anniversary thereof, the City shall have the right to request the return of an amount of money equal to: (i) $525,000.00 less $21,000.00 multiplied by the number of years which the YWCA has operated the Project as a shelter at the time it is sold or ceases operating as a shelter.

ARTICLE III – FIRST RIGHT OF REFUSAL

Section 3.01 First Right of Refusal Option

In consideration of the sum of $100,000.00, which sum is included in the Funding, the YWCA hereby grants an option to the City, by way of first right of refusal, to acquire the YWCA’s head office premises located at 216 Simcoe Street in Peterborough, Ontario (the “Head Office Property”) should the YWCA decide to sell the Head Office Property.

The YWCA and the City agree that provided that the City is not in default of its obligations under this Agreement, the YWCA shall first provide notice (the "Sale Notice") to the City:

(i) offering to sell, transfer or otherwise convey the Head Office Property to the City;

(ii) stipulating the sale price for which the YWCA is prepared to sell, transfer or otherwise convey the Head Office Property (the "Sale Price"); and

(iii) setting out the terms and conditions (other than the Sale Price) on and subject to which the YWCA is prepared to sell, transfer or otherwise convey the Head Office Property (the "Sale Terms").

The City shall have the right to purchase and acquire the Head Office Property from the YWCA at the Sale Price on and subject to the Sale Terms in the event that it provides notice (a "Purchase Notice") to the YWCA of its election to purchase the Head Office Property at the Sale Price on and subject to the Sale Terms within ninety (90) business days from receipt by the City of the Sale Notice. In the event that the City provides a Purchase Notice to the YWCA in the manner and within the time herein specified then, without further documentation, a binding agreement of purchase and sale of the Head Office Property at the Sale Price and on the Sale Terms shall be constituted between the YWCA, as Vendor, and the City, as Purchaser.

The parties acknowledge and agree that in the event such an agreement is entered into, $125,000.00 (which sum is included in the Funding) shall represent a down payment by the City on the Sale Price and such amount shall be credited against the Sale Price.
If the City does not deliver a Purchase Notice to the YWCA in accordance with the preceding paragraphs, the YWCA shall have the right, within the period of 180 days following the expiry of the period in which the City had to deliver a Purchase Notice, to sell, transfer or otherwise convey the Head Office Property (the "Third Party Sale") at a sale price which is greater than or equal to the Sale Price and on terms and conditions which in the aggregate are not more favourable than the Sale Terms.

In the event the City does not deliver a Purchase Notice in response to the Sale Notice of the YWCA such that an agreement of purchase and sale is not reached, the amount of $125,000.00, which sum is included in the Funding, shall be considered a grant to the YWCA and shall not be refundable in any way.

For greater certainty, the parties acknowledge and agree that an offer from the City to the YWCA to purchase the Head Office Property shall not trigger any rights of the City set out in this Article III unless such offer is accepted by the YWCA.

ARTICLE IV – INSURANCE AND INDEMNITY

Section 4.01 Indemnification

The YWCA agrees that it will indemnify and save harmless the City and its officers, employees, servants, agents, successors, and assigns from and against any and all claims whatsoever including all damages, liabilities, expenses, costs, including legal or other fees incurred in respect of any such claim, or any cause or proceeding brought thereon arising directly or indirectly from or in connection with this Agreement, unless such claims are as a result of the negligence of the City or its officers, employees, servants, agents, successors, and assigns.

ARTICLE V - MISCELLANEOUS

Section 5.01 Publicity

The YWCA shall ensure that in any and all communication activities, publications, advertising and press releases referring to the services there shall be included an appropriate acknowledgement, in terms satisfactory to the City, of the City’s contribution.

Section 5.02 Freedom of Information

This Agreement and all schedules and attachments are subject to the Municipal Freedom of Information and Protection of Privacy Act (referred to as MFIPPA). Any information collected by the City pursuant to this Agreement is subject to the rights and safeguards provided for in the MFIPPA.

Section 5.03 Amendment of Agreement

This Agreement may be amended by the mutual consent of the Parties. Any such amendment must occur through a written amendment agreement approved by the parties and executed on behalf of the City by its Mayor and Clerk following approval through By-law enacted by the Municipal Council of the City.

Section 5.04 Binding Agreement

This Agreement is binding upon the YWCA and its successors and assigns and supersedes all previous agreements between the Parties. The YWCA shall not assign or in any way transfer this Agreement or any of its rights, privileges, duties or obligations under this Agreement without the prior written consent of the City which consent may be unreasonably withheld or delayed.
Section 5.05  Relationship

The Parties hereto declare that nothing in this Agreement shall be construed as creating a legally binding partnership or agency relationship between them. The YWCA is not in any way authorized to make a promise, Agreement or contract on behalf of the City.

Section 5.06  Currency

All dollar amounts referred to in this Agreement are in lawful money of Canada.

Section 5.07  Further Assurances

Each of the parties hereto shall from time to time at the other’s request and expense and without further consideration, execute and deliver such other instruments of transfer, conveyance, and assignment and take such further action as the other may require to more effectively complete any matter provided for herein.

Section 5.08  Entire Agreement

This Agreement constitutes the entire agreement between the parties and, except as herein stated and in the instruments and documents to be executed and delivered pursuant hereto, contains all of the representations and warranties of the respective parties. There are no oral representations or warranties among the parties of any kind. This Agreement may not be amended or modified in any respect except by written instrument signed by both parties.

Section 5.09  Applicable Law

This Agreement shall be interpreted in accordance with the laws of the Province of Ontario and shall be treated in all respects as an Ontario contract.

Section 5.10  Notices

Any notice required or permitted to be given hereunder shall be in writing and shall be effectively given if (i) delivered personally, (ii) sent by prepaid courier service or mail, or (iii) sent prepaid by facsimile, telex, or other similar means of electronic communication and confirmed on the same or following day by prepaid mail, addressed, in the case of notice to the City, as follows:

City Clerk
The Corporation of the City of Peterborough
500 George Street North
Peterborough, Ontario   K9H 3R9

and in the case of notice to the YWCA, if addressed to it as follows:

Executive Director
216 Simcoe Street
Peterborough, ON K9H 2H7
Attention: Executive Director

and in all cases so delivered personally or by courier or so sent by means of electronic communication, so confirmed. Any notice so given is deemed conclusively to have been given and received when so personally delivered or sent by telex, facsimile, or other electronic communication or on the second day following the sending thereof by private courier or mail. Any party hereto or others mentioned above may change any particulars of its address for notice by notice to the others in the manner aforesaid.

Section 5.11  Successors and Assigns

This Agreement enures to the benefit of and is binding upon the parties hereto and their respective heirs, executors, successors and assigns, including, but not limited to, any corporation resulting from an amalgamation.
IN WITNESS WHEREOF the parties have heretofore set their hands and seals as of the date above written.

SIGNED, SEALED AND DELIVERED

in the presence of:

THE CORPORATION OF THE
CITY OF PETERBOROUGH

D. Paul Ayotte, Mayor

Nancy Wright-Laking, Clerk

YWCA OF PETERBOROUGH,
VICTORIA AND HALIBURTON

Lynn Zimmer, Executive Director
I have authority to bind the Corporation

Theresa Butler-Porter, President
I have authority to bind the Corporation