

THE CORPORATION OF THE TOWN OF AMHERSTBURG

BY-LAW NO. 2008-70

Being a By-law Authorizing the execution of a Agreement for Development Management Services between the Corporation of the Town of Amherstburg and Nustadia Recreation Inc.

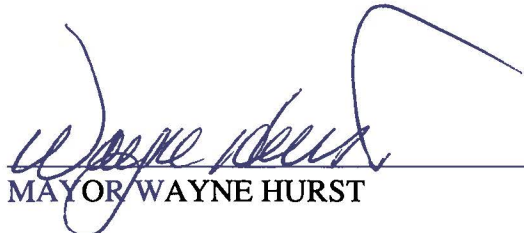
WHEREAS Nustadia Recreation Inc. continues to investigate the feasibility of developing a recreation facility;

AND WHEREAS Nustadia Recreation Inc. has offered to provide development management services for the project and programs as set out in the Agreement and schedules attached hereto with the Corporation of the Town of Amherstburg as its designated Development Manager, and to carry out these services in accordance with established quality, time and budget objectives;

AND WHEREAS the specifics of such Agreement have been negotiated and are set out in the Agreement for Development Management Services attached to and forming part of this bylaw;

**NOW THEREFORE THE CORPORATION OF THE TOWN
OF AMHERSTBURG HEREBY ENACTS AS FOLLOWS:**

- 1) An Agreement between the Municipality and Nustadia Recreation Inc. is attached hereto and is hereby approved and the Mayor and Clerk are hereby authorized to execute the Agreement on behalf of the municipality.
- 2) This By-law shall come into force and take effect immediately upon the final passing thereof.


MAYOR WAYNE HURST


CAO/CLERK PAMELA MALOTT

1st Reading – October 27th, 2008

2nd Reading – October 27th, 2008

3rd Reading – October 27th, 2008

AGREEMENT FOR DEVELOPMENT MANAGEMENT SERVICES

These Articles of Agreement made in duplicate this 06 day of October 2008
between:

Town of Amherstburg.

(Referred to in this Agreement as the “**Client**”)

and

Nustadia Recreation Inc. (NRI)

(Referred to in this Agreement as the “**Development
Manager**”)

Whereas the Client continues to investigate the feasibility of developing a
recreation facility and,

Whereas the Development Manager has offered to provide development
management services for the project and programs as set out in the schedules
attached and this Agreement with the Client as its designated Development
Manager, and to carry out these services in accordance with established quality,
time and budget objectives,

Witness that the Client and the Development Manager covenant and agree as
follows:

ARTICLE I This Agreement and the Schedules referred to herein constitute the
entire Agreement between the Client and the Development
Manager, and supersedes any prior agreement and no changes in
or modifications to this Agreement shall be made except by
agreement in writing between the parties.

ARTICLE II The document attached hereto entitled “Conditions of Agreement”
and marked Schedule “A”, forms a part of this Agreement between
the Client and the Development Manager.

ARTICLE III The Development Manager will, in a careful manner, provide the
professional services in respect of the project set forth in the
document attached hereto entitled “Services Provided by the

Development Manager” and marked Schedule “B”, during the period commencing on or about the 1st day of October 2008 and concluding on the 30th day of September 2010, subject to mutually agreed extensions, which consent shall not be unreasonably withheld, hereinafter referred to as the “Term of the Agreement”.

ARTICLE IV The Client will do and perform those things set forth in the document attached hereto entitled “Obligations of the Client”, and marked Schedule “C”.

ARTICLE V The Client will pay to the Development Manager, as consideration for the work performed and the services provided by the Development Manager, a sum of money calculated in accordance with the provision contained in the document entitled “Remuneration to Developer Manager” and marked Schedule “D”, at the times and in the manner therein set out.

ARTICLE VI This Agreement shall inure to the benefit of and be binding upon the parties hereto and except as otherwise provided herein, upon the executors, administrators, successors and assigns.

ARTICLE VII In this Agreement and in the schedules hereto, unless there is something in the subject matter or context inconsistent therewith, the following terms and expressions shall have the following meanings:

“Agreement” means this Development Management Agreement;

“Allowed Proceedings” means proceedings commenced in good faith on a timely basis and within the applicable limitation period where such proceedings are thereafter prosecuted diligently and continuously;

“Approvals” means all approvals, authorizations, consents, licenses, permits, qualifications or orders of any government authority required by laws in connection with the performance of the Work and the performance by the Client of its obligations hereunder, or any waivers or exemptions from the requirements for any such approvals, authorizations, consents, licenses, permits, qualifications or orders, provided that any such waivers or exemptions are in full force and effect;

“Architectural Design Contract” means the agreement between the Contractor and the Contractor’s Architect;

“Business Day” means a day on which the banks are open for business in Ontario excluding Saturday and Sunday;

“Certificate of Substantial Completion” means:

- (a) the certificate of the Contractor's Architect confirming that substantial performance under the Construction Contract has been achieved; and
- (b) the certificate of the Contractor's Architect confirming that, except for the summary deficiencies listed on the Deficiency List attached to and forming part of the certificate, the Facility complies with the design work, commissioning has been completed and the Facility is ready to be occupied and operated in compliance with all applicable Laws;

“Construction Contract” means the current form CCA Design Build Contract, in form and substance satisfactory to the Client incorporating by reference or otherwise the provisions of the Memorandum of Understanding.

“Construction Work” means the design, construction, supply and installation of all elements of the Facility;

“Contractor” means the selected design build contractor and its permitted assigns or successors;

“Contractor's Architect” means the design build contractor's architect and its permitted successors or assigns;

“Date of Substantial Completion” means the date as set out in Article 9 of the Development Agreement;

“Deficiency List” means a complete and detailed list, prepared and certified by the Contractor's Architect in consultation with the Client of all work required to be effected in order to complete the Facility in accordance with the Design Work which work shall be of such a nature that the completion thereof shall not in any material way impair the normal daily operation of the Facility;

“Design Work” means those requirements of the Client regarding the design of the Facility as set out in the Development Agreement;

“Development Manager” means Nustadia Recreation Inc. and its permitted assigns or successors;

“Dispute Notification” means the dispute notification referred to in Schedule A of this Agreement;

“Facility” means a recreation complex with a twin pad arena and indoor playing capability and with other components to be determined by the Client;

“Facility Lands” means the determined site location for the facility as determined by the Client;

“FF&E” means all furniture, fixtures and equipment in, upon or forming part of the Facility and which are necessary for its operation;

“FF&E Allowance” means the allowance for all those furniture, fixtures and equipment, in, upon or forming part of the Facility and which are necessary for its operation plus GST;

“Fixed Price” means all soft and hard costs to develop, design, plan, engineer, procure, construct, equip and commission the Facility, including legal, accounting, bonding, and work in progress which amount is set to be set by the Client plus G.S.T. which is inclusive of the FF&E Allowance plus G.S.T.;

“Force Majeure Event” means acts of God, acts of a public enemy, wars (whether declared or not), blockades, insurrections, riots epidemics, landslides, hurricanes, earthquakes, storms, lightning, floods, washouts, civil disturbances, strikes, explosions, fire, and any law or regulation or amendment thereto, order or decree of any competent civil or military government or agency hereafter adopted or enacted, or any future interpretation thereof, acts or omission of any Person unrelated to a party to this Agreement, its agents or contractors, and other events or causes of like or different nature which are unavoidable or beyond the reasonable control of either party hereto or that otherwise prevent the performance by a party of its obligations hereunder, as the case may be.

“GAAP” means generally accepted accounting principles that are in effect in Canada, as they may be amended from time to time;

“Government Authority” means any federal, provincial or municipal government and any agency, authority, body, board, commission or entity thereof;

“Government Authorization” means any approval, authorization, consent, waiver, variance, exemption, exception, license, filing, registration, permit or other requirement of any federal, provincial or municipal government and any agency, authority, board, commission, or entity which shall be necessary in connection with the Design Work, the Construction Work or the operations, maintenance and management of the Work;

“Hazardous Substance” means any chemical, biological substance, pollutant, contaminant, toxic substance, hazardous material or substance, radioactive material, oil or petroleum product or waste, as such term or any similar terms are

used under any Laws or any other substance which when released to the natural environment is likely to cause in some foreseeable future time material harm or degradation to the natural environment or property or is of material risk to human health;

“Laws” means the common law and any statute, regulation, ordinance, standard, code, order, permit, license, rule, by-law, guideline or policy of any government authority, as the same may be amended; substituted, replaced or enacted from time to time;

“Material” means all supplies, inventory, work in progress, commodities, articles and things required to be procured for incorporation in the work;

“Other Agreements” means collectively the, Development Agreement, Design Build Construction Contract, Operating Agreement, and all Other Agreements which may be concluded in regards to the development, design, construction and operation of the Facility;

“Person” means a natural person, corporation, partnership, association, business trust, trust, joint venture, company, firm or individual or any federal, provincial or municipal government; or any agency, trustee, executor, administrator or legal representative thereof;

“Subcontractor” means any person, other than the Client or the contractor, having a contract to perform a part of the Work;

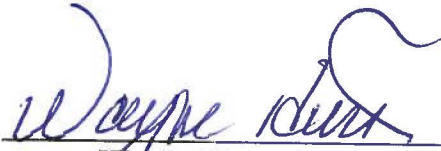
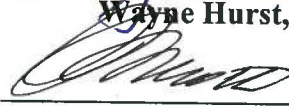
“Termination” has the meaning as set out in Schedule A of this Agreement.

“Work” means all the development, designing, planning, engineering, procuring, constructing, equipping and commissioning of the Facility on land upon which the Facility shall be constructed and operated in accordance with the terms of the Operating Agreement.

The expressions **“this Agreement”** or the **“Development Management Agreement”** means this Development Management Agreement, inclusive of all recitals, schedules and all instruments in writing that by their terms expressly amend, waive or vary the provisions of this Agreement.

SIGNED In witness whereof the parties hereto have affixed their signatures as of the day and year before written by the hands of the respective officers duly authorized in that behalf.

Townof Amherstburg


Per: Wayne Hurst, Mayor

Per: Pamela Malott, Clerk

For the Development Manager:

Nustadia Recreation Inc.

Per: _____

Per: _____

Schedule "A" - CONDITIONS OF AGREEMENT

1.0 GENERAL CONDITIONS

1.1 Relationship

"In providing services under this Agreement, the Development Manager is an independent contractor not an agent of the Client. The Client shall have Authority to supervise and to control the performance of the services provided by the Development Manager, as set out in the provisions of Schedule B. Client

1.2 Right of Audit

The Development Manager shall at all times during the Term of Agreement and for period of 2 years thereafter, keep and maintain records of the services performed pursuant to this Agreement together with proper records of quotations, contracts, correspondence, invoices, vouchers and timesheets relating thereto and to the other reimbursable expenditures detailed in Schedule D and shall make them available for inspection and audit by the Client at all reasonable times for the purpose of making copies thereof and to take extracts there from.

1.3 Notices

All notices, directives, advice and official communications under this Agreement will be deemed to have been given if delivered by one of the following means:

- personal delivery
 - by fax
 - by e-mail
 - by registered post
- at the specific addresses of the parties as set forth in Clause 2.1 of Schedule A, Conditions of Agreement.

1.4 Indemnity

The parties hereto shall indemnify and hold harmless each other in respect to any liability incurred in the performance of the work or injury of any kind or out of, or occurring in connection with the performance of the services covered by this Agreement provided that;

- (a) no party shall be liable to pay indemnity unless there has been negligence on the part of that party;
- (b) where there has been negligence on the part of both parties, the liability of a party to pay indemnity shall be limited to the degree of negligence attributable to that party;
- (c) this clause does not operate with respect to criminal or intentional acts of directors of the parties. This clause would not be used to release from liability the party guilty of such criminal or intentional acts.

This Agreement to indemnify and the protection and benefit derived there from shall extend to any partner, executive officer, director, stockholder or employee or either party.

1.5 Effect of Approval

No acceptance or approval by the Client, whether expressed or implied, shall be deemed to relieve the Development Manager of responsibility for the material produced by the Development Manager, or for any things required to be done by the Development Manager under this Agreement.

1.6 Mediation and Arbitration

- 1.6.1 If requested in writing by either the Client or the Development Manager, the Client or the Development Manager shall attempt to resolve any dispute between them arising out of or in connection with this Agreement by entering into structured non-binding negotiations with the assistance of a mediator on a without prejudice basis. The mediator shall be appointed by agreement of the parties. Failing such agreement, the mediator shall be appointed by reference to a Justice of the Superior Court of Justice for Ontario.
- 1.6.2 If a dispute cannot be settled within a period of thirty (30) calendar days by the mediator appointed under Article 1.6.1, or such longer period as may be agreed to by the parties, the dispute may, with the prior written concurrence of both the Client and the Development Manager, be referred to and finally resolved by way of binding arbitration by a single arbitrator. The arbitrator shall be appointed by agreement of the parties. Failing such agreement, the arbitrator shall be appointed by reference to a Justice of the Superior Court of Justice for Ontario.
- 1.6.3 No one shall act as a mediator/arbitrator who is in any way financially interested in the conduct of the project or in the business affairs of either the Client or the Development Manager.
- 1.6.4 The laws of the Province of Ontario shall govern this Agreement and any mediation / arbitration or litigation in respect thereof.
- 1.6.5 The award of an arbitrator under Article 1.6.2 shall be final and binding upon the parties, and shall be enforceable by them in any Court of competent jurisdiction except such awards may be subject to the rights of review granted by the Arbitrations Act 1991 (Ontario).

1.7 Property of Documents

All surveys, reports, drawings, calculations, designs, plans, and other data, information and material collected, compiled, drawn produced by the Development Manager, including computer printouts,

pursuant to this Agreement are the property of the Client and the copyright therein vests with the Client. The Development Manager may retain copies of the above described material for his records.

1.8 Force Majeure

The Development Manager shall promptly notify the Client, in writing, of any Force Majeure Event and which he could not reasonably foresee which makes it impossible for the Development Manager to carry out in whole or in part his obligations under this Agreement. Upon the occurrence of such a situation, the services shall be suspended for a period of time equal to that caused by the Force Majeure Event plus a reasonable period not exceeding one (1) month to remobilize for the continuation of the services. If the Client deems that as a result of a Force Majeure that the agreement should be terminated then the Client may by notice in writing , terminate this Agreement.

1.9 Suspension

The Client may, at any time, by notice in writing, suspend the services of the Development Manager or any part thereof. The Client shall not be liable for any costs incurred by the Development Manager during the suspension of services, or in the event that the Agreement is terminated by an suspension exceeding 60 days. Upon suspension of this Agreement for a period exceeding 60 days this Agreement shall be deemed to be terminated unless otherwise mutually agreed Work performed by the Development Manager with the approval of the Client, during the period of suspension, shall be payable by the Client upon receipt of an invoice for such work from the Development Manager.

1.10 Termination

1.10.1 By Notice of the Client

The Client may, by written notice to the Development Manager, at any time give prior notice of its intention to

abandon the services, in whole or in part, or terminate this Agreement.

The effective date of termination of this Agreement shall not be less than sixty (60) days after receipt of such notice, or such other period as may be agreed between the parties.

Upon receipt of such notice the Development Manager shall take immediate steps to bring the services to a close and to reduce expenditures to a minimum.

Disputes arising between the parties with respect to the remuneration due to the Development Manager may be referred to mediation and arbitration in accordance with the provisions in this Agreement.

1.10.2 Default by The Client

The Development Manager may, by written notice to the Client, terminate this Agreement if:

- he has not received payment of that part of any invoice which is not contested within forty-five (45) days of submission thereof, or
- the services have been suspended for a period of 60 days as provided for in Clause 1.9.

1.10.3 Entitlement of the Development Manager Upon Termination

Upon termination of this Agreement pursuant to the provisions of this Agreement, the Development Manager's claim for remuneration shall be determined as at the date of termination. The claim shall be assessed based upon the provisions of this Agreement and the value to the Client of the work performed by the Development Manager, as determined by reference to the Cash Flow for Payment of Fees set out in and agreed to in Schedule "E". The parties shall negotiate in good faith the Development Manager's claim. In the

event the parties cannot agree, the parties shall proceed to mediate, and to arbitration if necessary. Upon payment by the Client of the amount, determined through agreement of the parties or arbitration, due to the Development Manager for remuneration, the Development Manager shall cease to have and shall certify that there are not have any further claims against the Client. To assist in the determination of the value of the Development Manager's work, the parties shall refer to the provisions of Schedule "E" in this agreement. In the event that the Client disputes the said percentage, the Client shall give notice of the dispute within 15 days, and the matter shall proceed to negotiation, and if necessary, mediation and arbitration.

1.10.4 Default by the Development Manager

The Client shall notify the Development Manager in writing, if he considers that the Development Manager is not discharging his obligations under this Agreement, stating the reasons therefore. In the event that the Development Manager does not respond to such notice within twenty (20) days the Client may deem the Agreement terminated.

The right of the Development Manager shall be determined in accordance with the provisions of clause 1.10.3 above, and payment shall be subject to the right of set-off by the Client for any claims by it against the Development Manager in relation to the default or other breaches of this Agreement.

1.10.5 Survival of Rights and Liabilities Parties

Termination of this Agreement, for whatever reason, shall not prejudice or affect the accrued rights of claims and liabilities of either party to this Agreement.

1.11 Assignment

This Agreement may not be assigned in whole or in part without the mutual consent of the Client and Development Manager. When requested by either party such consent shall not be unreasonably withheld.

1.12 Subcontracts

The Development Manager shall have the right to subcontract the performance of the services by the Development Manager to this Agreement or modify or terminate thereof with the prior written agreement of the Client, such agreement not to be unreasonably withheld.

1.13 Changes

Should circumstances arise which call for modification of this Agreement such may be made by mutual consent, given in writing. Proposals for this purpose from one party shall be given due consideration by the other party.

1.14 Endorsements

Endorsements setting out terms and conditions applicable to specific additional work and programs shall by mutual written agreement of the parties be added to and form part of this Agreement. A sample Endorsement is attached as Schedule "F".

1.15 Headings

The headings of this Agreement shall not be deemed to be part thereof nor be taken into consideration in the interpretation or construction thereof.

2.0 SPECIAL CONDITIONS

2.1 Notice

All notices required by this Agreement to be given by either party shall be deemed to be properly given and received if made in writing by the other party by personal delivery, telex, telegram or registered post, addressed as follows:

Client's address:
Town of Amherstburg
271 Sandwich St South
Amherstburg, Ontario
N9V 2A5

Client's duly authorized representative:
(hereinafter called Client's Representative)

Pamela Malott, CAO, Town of Amherstburg or
Ron Dzombak, Recreation Manager, Town of
Amherstburg

Development Manager's Address:
Nustadia Recreation Inc.
710 Mountain Brow Blvd
Hamilton, Ontario
L7N2G1

**Development Manager's duly authorized
representative:**
(hereinafter called Developer's Representative)

Ben Sproule, NRI President

2.2 Financial Liability of the Development Manager

The Development Manager shall be liable to the Client, whether in contract or in tort, in respect to loss or damage which is directly attributable to the breaches, negligent acts or omissions of the Development Manager, its servants, agents, employees or representatives. In no case shall the Development Manager be liable for the consequential damages, including delays to the projects, loss of earnings, markets and/or profits incurred by the Client, howsoever caused. The Development Manager shall maintain in force and provide proof as required by the Client of Comprehensive General Liability Insurance, including contractual liability for indemnification covering injury to or death of persons and damage to property for any loss, liability or damage, in an amount not less than \$2,000,000.00 per occurrence and annually in the aggregate, covering third party liability claims, including the claims of the employees of the Client or its agents, arising from the performance of this Agreement.

The liability of the Client to the Development Manager shall be limited to the obligation to pay remuneration as required by the Agreement.

2.3 Confidentiality

The Development Manager agrees to keep confidential and not to disclose to any person or entity, other than the Development Manager's employees, sub-consultants and the general contractor and subcontractors, if appropriate, any data or information not previously known to and generated by the Development Manager or furnished to the Development Manager and marked with a "CONFIDENTIAL" stamp by the Client.

These provisions shall not apply to information in whatever form that is in the public domain, nor shall it restrict the Development Manager from giving notices required by Law, or complying with an order to provide information or data when such order is issued by a court, administrative agency, or other legitimate authority, or if disclosure is reasonably necessary for the Development Manager pertaining to this project or this Agreement .

Schedule "B" - SERVICES PROVIDED BY DEVELOPMENT MANAGER

1.0 Development Manager's Representative

The Development Manager shall designate in writing a person to act as the Development Manager's representative with respect to the work to be performed under this Agreement. Such person shall have authority with respect to communications to the Client to interpret, define and transmit information, recommendations and all project documentations and to receive the Client's requirements, policies and decisions.

2.0 Standard of Professional Services

The Development Manager shall exercise all reasonable skill, care and diligence in the performance of the services under this Agreement and shall carry out all his responsibilities in accordance with recognized professional standards and, subject to the dictates of such standards in accordance with directions and

decisions made by the Client and as issued from time to time during the course of the project execution.

3.0 Development Manager as Advisor to Client

The Development Manager shall in all matters act as a faithful advisor to the Client. He shall keep the Client informed on all matters relating to the design, procurement and construction and any other aspects forming part of the scope of the project. Insofar as any of his duties are discretionary, he will act as fairly as between the Client and third parties.

4.0 Provisions of Additional Expert Advice and Skills

Where specialist technical advice or assistance is required, beyond that committed under the scope of services, the Development Manager may arrange for the provision of such services with the pre-approval of the Client.

5.0 Certificates of Payment

The Development Manager shall coordinate the certification as appropriate, of all payment claims made by suppliers, contractors, subcontractors or any other parties under contract with the Client as part of the project. The Development Manager shall disburse the project funds in payment for these claims or cause the payments to be made by the Client or others as the terms of this Agreement require.

6.0 Adjustment to Services Provided by Development Manager

As a result of alterations to contracts or to meet other requirements of the Client, the services provided by the Development Manager may be altered. The alterations can include provision of additional services or enhancement or reduction in the services defined in this

Agreement. In any case any alterations of services may be cause for amendments to the provisions in Schedule D, Remuneration to the Development Manger.

7.0 Mobilization

The Development Manager in timely manner shall mobilize his own project management team, and coordinate the mobilization of others in accordance with this Agreement.

8.0 Services Provided by Development Manager

The Development Manager shall provide specific services under this Agreement to the Client (which will include:

Capital Plan Phase

- Development Manager will explore the option of twinning the current single pad arena and make recommendations back to the Client on the viability of this option
- If the Client determines that twinning of the current single pad arena is not a viable option, Development Manager will provide recommendations to the Client on a preferred site location for facility. Site selection recommendations will Identify and quantify urban planning issues,
 - infrastructure
 - design compatibility
 - adjacent opportunities
 - spin off benefits
- In order to define the facility for capital costing and development of a preliminary cash flow estimate and business plan, Development Manager and the Client staff will jointly develop a preliminary concept building program and the initial building performance and specifications, including preliminary refrigeration performance specifications for the proposed facility,

- Development Manager will update the existing detailed preliminary business plan and proforma, including an estimated of total revenues and expenses for the first ten years of operation, and a corresponding order of magnitude +/- 15% full development cost estimate
- Development Manager will prepare a project implementation methodology and schedule, including a formula for Capital Funding options

Bidding Process Phase

- In consultation with the Client Development Manager will prepare a complete set of final performance specifications for the building and site work within the facility Lands that will include:
 - Architectural building program, rooms schedule, finishes etc
 - Civil and Structural performance specifications
 - Mechanical and Electrical performance specifications
 - Refrigeration performance specifications
 - Landscaping specifications
 - Site infrastructure and Services within the Facility Lands...all of which are specifically specialized for the proposed recreation complex design build competition, and to be used in conjunction with a set of bidding specifications and instructions
- In consultation with the Client, Development Manager will prepare a design build performance specification of the facility and adjacent site works in order for design build contractors to offer guaranteed maximum proposals complete with design presentations.
- Development Manager recommends that the Client consider proposals from three or four pre-qualified and invited bidders. Development Manager will pre-qualify tenders based on arena/recreation complex construction experience and design expertise.
- Based on the submissions received (in a pre-specified format), we will assist the Client in arriving at a comprehensive financing program.
- Upon closing of the bidding process, Development Manager will assist the Client in the bid evaluations, provide recommendations with respect to the design

options, and provide technical review of the bids by all disciplines.

- The Development Manager is not a Design Builder and has no ownership, connection or interest in any such company.

Due Diligence Phase

- Development Manager will assist the Client in regards to the formal documentation of the various agreements and contracts, and any issues that arise from those discussions. These will cover a wide range of development elements from the design build contract, debt, capital contributions, and equity financing, advertising, sponsorships, naming rights, land transfer and use, commercial leasing, user group tenant leases, and even certain aspects of the operations.
- Before executing the design build contract, Development Manager will assist the Client to finalize the total financing program by identifying and defining other costs such as furniture, fixtures, and equipment, soft costs, and financing costs.
- Development Manager will attend presentations on behalf of the community fund raising team, and provide guidance and graphic material to support the effort.
- Development Manager will assist the Client in negotiating the final design build contract / agreements with the selected design builder, and any necessary agreements / contracts with potential tenants, primary users and other stakeholders as necessary for the final approval to proceed to the development phase.

Development Phase

In the final phase, Development Manager will perform and act as the owners representative through the course of the design build development

- Development Manager will perform a multi-disciplinary review of the detailed design drawings at three stages (25%, 50% and 75%), and well as quality and performance construction reviews at 50%, 75% and 100% for general compliance with the performance specifications and design.

- Development Manager will attend site meetings on an average of every two weeks (approximately) over the course of construction, and prepare monthly reports and construction progress schedule.
- The Development Manager will review and advise on monthly progress draw applications, field changes and any change orders.
- Development Manager will assist the Client with pre-opening operating activities, commissioning, and start-up
- The Development Manager will work with the Client staff to prepare a comprehensive plan for the arena operations and management. This document will identify services that the Client deems to be outsourced and will include information regarding the building design, service contracts etc.
- Development Manager will also provide procurement services on behalf of the Client for furniture, fixtures and equipment for the facility outside of the design build contract as mutually agreed.
- Development Manager team will provide detailed assistance and recommendations for the "LEED" certification process (should the Client consider this option) for the new facility up until the start of operations, and will monitor the correction of the deficiencies until the Date of Total Completions has been reached.
- The Development Manager does not perform the duties of the Design Builder's site construction manager.

9.0 Overall Objective

To complete a Facility that meets the approval of the Client and to have it substantially completed by a mutually agreed date.

Schedule "C" OBLIGATIONS OF CLIENT

1.0 Client's Representative

The Client shall designate, in writing, a person to be the Client's representative for work to be performed under this Agreement. Such person shall have authority with respect to communications to the Development Manager to transmit instructions, receive information, interpret and define Client's policies and decisions.

2.0 Pertinent Data

The Client shall furnish without charge and within a reasonable period of time, all pertinent data including previous reports and information and survey data available to him, provide all criteria and full information as to his requirements for the project, including design objectives and constraints, space, capacity, and performance requirements, flexibility and expendability, and any budgetary information.

3.0 Decisions and Assistance

Through the Client's representative, the Client will give immediate attention to all enquiries, documents, project procedures and, disputes and endeavour to provide written decisions, instructions, acceptances, and assistance as shall reasonably be required by the Development Manager for the carrying out of his duties under this Agreement.

The Client shall make decisions within an agreed stipulated period of time on all requests involving, sketches, drawings, reports, proposals and recommendations referred to him for decision by the Development Manager.

4.0 Provision of Additional Resources

The Client may, unless otherwise provided for in this Agreement retain additional resources for the project and will direct these resources to work under the direction of the Development Manager for the duration of his engagement on the project.

4.1 Equipment, Materials, Supplies and Facilities

If the anticipated equipment, materials, supplies and/or facilities are not forthcoming the Client and the Development Manager shall agree on how the affected part of the services will be provided and adjusted to the contractual arrangements.

5.0 Payment of Third Party Contracts

The Client shall pay the entire cost of the services, including but not limited to all services pursuant to this Agreement, and all third party costs pursuant to contracts for the procurement of equipment, materials, services and labour, entered into by the Client..

6.0 Notice to Development Manager

The Client shall give prompt written notice to the Development Manager whenever the Client observes or otherwise becomes aware of any conditions, misunderstandings or defect which may adversely affect the Project.

Schedule "D" REMUNERATION TO DEVELOPMENT MANAGER

1.0 Methods of Remuneration

Fees and disbursements set out herein exclude all taxes and shall be paid in Canadian currency. Method of remuneration for the Development Manager shall be as follows:

.1 Work Completed to Date

Development Manager has completed a feasibility study regarding the project, which the Client has accepted and approved in May 2008. The total fee for this study was \$33,500 which has not been paid to the Development Manager. This amount still owing will be

rolled into the total fee for the Capital Planning and Bid Process Phase of the project.

The fee for the first two phases of the work, as identified in Part 8 of the foregoing (Capital Planning Phase and the Bid Process Phase) will be allocated a total amount of \$140,000 of the Fixed Fee, plus GST and expenses. After the completion of the first two phases, in the event that the project does not proceed to the next phase for any reason whatsoever, both parties agree that the amount owed to Development Manager for the first two phases of the work will be limited to \$70,000 plus 10% disbursement expenses plus the \$33,500 for the Phase One – Feasibility Study completed in May 2008 plus GST

.2 Fixed Fee

In the event that the project proceeds beyond the Bidding Process Phase Development, Manager shall provide the services as described herein as detailed in Schedule “E” for a lump sum Fixed Fee based on 3% of the Total Project Cost plus GST and expenses. Total Project Cost is defined as the total cost of the design and construction of the facility including furniture fixtures and equipment set out as a lump sum in the Construction Contract entered into by the Client with the Design Builder Costs not included within the fee calculation are attributed land costs, taxes and Client administrative costs. The Fixed Fee payable shall be reduced by that portion of the remuneration payable pursuant to clause 1.1 which the Client has previously paid to the Development Manager.

.3 Additional Work

The Client agrees to reimburse Development Manager. for any pre-approved work requested outside of the scope as described herein, or for work required in excess of the estimated scope for development management, consulting services or non-reimbursable expenses in accordance with an agreed fixed lump sum amount or at the following rates:

Principals	\$ 135 /hour
Development Management	\$ 135 /hour

Reimbursable Expenses shall include travel, living, communications, printing, plotting, electronic storage, applicable taxes, and other third party charges to the project. A fee of five

percent (5%) of such amount will be charged to cover administration and handling.

Travel @ \$0.52/km

Reproductions @ \$0.15 each Black

@ \$1.20 each Colour

Third Party Consultants (pre-approved only) @ 1.05 x Cost

2.0 Time Within Which Payments to be Made and Mechanics of Payment

Amounts due to the Development Manager shall be paid in accordance with this Development Management Agreement.

For work carried out on a Fixed Fee basis, the Development Manager shall submit invoices monthly on the basis of the cash flow projection presented in Schedule E. For any work carried out on a cost plus basis, invoices will be submitted monthly with pre-approved time on the project by the Development Manager's staff calculated on the basis of two times payroll cost for everyone except Principals in accordance with section 1.2 of Schedule D.

3.0 Remuneration for Extra Work

Extra work requests will commence upon receipt of an executed work authorization or change order by the Client to the Development Manager in the form of Schedule "G". The cost of services will be in accordance with Clause 1.2.

4.0 Suspension of Work

Should the Client at any time suspend the work, the Client shall pay the Development Manager his full fee earned and out-of-pocket expenses incurred to the time of suspension in accordance with the Development Agreement

5.0 Items in Dispute

If any item or part of an item of an invoice rendered by the Development Manager is disputed or subject to question by the Client, the payment by the Client or that part of the invoice which is not contested, shall not be withheld on those grounds. The provisions of Section 2 above," Time Within Which Payments to be

Made and Mechanics of Payment “ shall apply to such remainder, and also to the disputed or questioned item to the extent that it shall subsequently be agreed, or determined to have been due to the Development Manager. Interest at the rate specified to be paid on all disputed amounts finally determined payable to the Development Manager.

Schedule “E” FIXED FEE AND CASH FLOW PROJECTION

1.0 Fixed Fee

The Development Manager’s fixed fee is not subject to any holdback and is made up of the following items which will be billed monthly in accordance with the cash flow projection presented under section 2 below.

2.0 Cash Flow Projection

The Development Manager in consultation with the Client will prepare a cash flow for payment of Development Management Services based on a 3% Total Fee plus Taxes upon confirmation that the project is proceeding and when a project schedule is prepared.

Schedule “F” Performance Specifications Outlined

Performance specifications for the proposed recreation complex, suitable for design build tender process shall include but are not limited to the following:

1. Site works
2. Foundations
3. Concrete Floors
4. Pre-cast concrete
5. Building superstructure
6. Exterior walls
7. Roofing
8. Insulation
9. Windows
10. Man-doors and frames
11. Overhead doors
12. Partitions
13. Finish Hardware
14. Interior Finishes
15. Miscellaneous Metals
16. Manufactured specialties

- 17. Dasher Boards
- 18. Seating
- 19. Elevator
- 20. Mechanical
- 21. Refrigeration System
- 22. Electrical
- 23. Exclusions
- 24. Clarifications
- 25. Room Finish Schedule

Schedule "G" ENDORSEMENT NO. _____

The Development Manager shall provide to the Client, in the form of this Schedule, any amendments or changes to the scope of work to be performed by the Development Manager, when such amendments or changes are contemplated by the Development Manager or requested by the Client. This Endorsement shall be completed by the Development Manager and executed by both parties prior to the commencement of the work. Payments for any claim by the Development Manager in relation to amendments or changes to the scope of work to be performed are conditional upon the proper execution of this Endorsement. No amendments or changes to the scope of the work to be performed by the Development Manager shall occur, unless authorized by an executed written Endorsement in this form."

It is agreed that the following services be added to and form part of the said Agreement:

Project Name:

Nustadia Project No.:

Scope of Services:

Amendments:

Fee:

Reimbursable Expenses:

Estimated Impact on Schedule:

Except as otherwise provided in this endorsement, all terms, provisions and conditions of the Agreement shall have full force and effect.

DATED in the ^{TOWN}~~CITY~~ of AMHERSTBURG, this 17th day of NOVEMBER, 2008.

Town of Amherstburg

Per:

Wayne Hurst
WAYNE HURST - MAYOR

Per:

Pamela Malott
PAMELA MALOTT - CAO

Nustadia Recreation Inc.

Per:

W. Monaghan - V.P.

Per: _____