

**THE CORPORATION OF THE TOWN OF AMHERSTBURG**

**BY-LAW 2009-37**

**A By-law to authorize the execution of an agreement with INDABA Marketing Inc. to manage the fundraising campaign for the Multi-Use Recreation Complex.**

**WHEREAS** the Council of the Corporation of the Town of Amherstburg is committed to a fundraising effort for the new Multi-Use Recreation Facility;

**AND WHEREAS** Council has determined INDABA Marketing will provide services required for fundraising development and an agreement is required to effect same;

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

1. THAT the agreement, attached hereto as Schedule 1, between the Corporation of the Town of Amherstburg and INDABA Marketing Inc. for professional fundraising services is hereby approved.
- 2: THAT the Mayor and the Clerk are hereby authorized to execute this agreement on behalf of the Corporation.

**READ** a first and second time, this 11th day of May, 2009.

**READ** a third time and finally passed in Council, this 11th day of May, 2009.

**THE CORPORATION OF THE TOWN OF AMHERSTBURG**

  
Mayor Wayne Hurst

  
CAO/Clerk Pamela Malott

**THIS AGREEMENT** made in duplicate as of the 11th day of May, 2009.

**INDABA Marketing Inc.**, a corporation incorporated under the laws of Ontario

(hereinafter called "**INDABA**")

OF THE FIRST PART

-AND-

The Corporation of the Town of Amherstburg

(hereinafter called the "Town of Amherstburg")

OF THE SECOND PART

**WHEREAS** the Town of Amherstburg has determined to enter into an arrangement whereby it shall appoint INDABA to direct, organize, manage, and otherwise make effective the solicitation of certain funds for the benefit of the project known as the new Multi-Use Recreation Project of the Town of Amherstburg;

**AND WHEREAS** for the purpose of this Agreement the said solicitation shall hereinafter be called "The Campaign";

**AND WHEREAS** INDABA and the Town of Amherstburg wish to set out in this Agreement their respective rights and obligations pursuant to the above-described determination;

**WITNESSETH** that in consideration of the mutual covenants and agreements contained herein, and subject to the terms and conditions hereinafter set out, the parties hereto agree as follows:

1. The Town of Amherstburg hereby appoints INDABA as its agent for the sole purpose of directing, organizing, managing and otherwise making effective The Campaign and INDABA accepts such appointment in accordance with the terms and conditions of this Agreement.
2. The Town of Amherstburg represents and warrants that its collection, use and disclosure of personal information in connection with The Campaign does not involve collection, use or disclosure of personal information in the course of "commercial activities" (any particular transaction, act or conduct or any regular course of conduct that is of a commercial character, including the selling, bartering or leasing of donor, membership or other funding lists).
3. In particular, but not restricting the generality of the foregoing, INDABA agrees to provide to the Town of Amherstburg the services described in Appendix A hereto, which shall form part of this Agreement. The services described in Appendix A shall be referred to throughout this agreement as "The Services".
4. The parties acknowledge that the fund raising objective for The Campaign has been tentatively established at \$2.2 million. It is understood that no matter what may be the final objective of The Campaign, INDABA's agreement to make effective The Campaign does not constitute a guarantee, warranty or assurance that funds of any specific quantum will be raised in The Campaign.
5. From May 11th, 2009 to October 11, 2010, INDABA shall provide an average of 16.9 hours per work week to direct, organize, manage, and otherwise make effective The Campaign. It is understood that the total hour commitment will be 1320. Hours averaged weekly may vary. Should any additional hours be requested by the Town of Amherstburg over and above 1320 hours, these hours and rate for same will be negotiated at that time.

6. It is agreed that the staff and volunteers of the Town of Amherstburg will give INDABA their full cooperation in the planning and execution of The Campaign.
7. It is agreed that the final decision in all questions as to the proper methods and representations to be used in advancing the interests of The Campaign shall be by consensus of INDABA and the Steering Committee for the Multi-Use Recreation Project.
8. In consideration of The Services hereinbefore described, the Town of Amherstburg agrees to pay in accordance with the fee schedule detailed in Appendix B and summarized as 1320 hours of services at \$ 64.96 per hour; \$ 85,750 total payable in 18 equal installments, monthly and in advance beginning May 11th, 2009. Actual hours worked in each monthly period will be detailed and shown separately on each invoice along with cumulative hours to date total. INDABA will provide the detailed invoice to the Town dated the 11th of each month. It is also agreed that interest on accounts overdue in excess of 60 days will be chargeable by INDABA at the rate of 1% (an annual rate of 12%). Subject to termination of this Agreement under paragraph 14, payments shall be made in accordance with this paragraph and Appendix B, notwithstanding that the tentative fundraising objective referred to in paragraph 4 is not attained.
9. The parties acknowledge that the fees described in this Agreement do not include goods and services taxes or similar retail taxes which may be imposed by and payable to the Government of Canada or the Government of Ontario from time to time during the currency of this Agreement. In the event that such taxes may be imposed lawfully in respect of the fees described in this Agreement, the parties agree the Town of Amherstburg will be liable to remit the same to INDABA or the imposing government, as appropriate.
10. Each party agrees to indemnify and hold the other party harmless from all claims, costs, losses, damages, expenses, causes of action and judgments that arise directly or indirectly out of or as a consequence of its own negligent or intentional acts or omissions, or those of its officers, agents or employees in connection with THE CAMPAIGN and The Services
11. It is further understood that in addition to INDABA's fees described in paragraph 8 herein, the Town of Amherstburg may be required, upon the recommendation of INDABA, to disburse certain monies to third parties for printing, stationery, postage, audiovisual materials, equipment rental and promotional expenses, and other similar items incidental to the operation of The Campaign, as well as to INDABA for all reasonable and pre-approved out-of-pocket expenses related to The Services and The Campaign, including, without limitation, special events, meals, and out-of-town travel and accommodation. Any such expenditure incurred must be included in a budget prepared by INDABA and approved in advance by the Town of Amherstburg through the Steering Committee.
12. INDABA shall ensure that all funds associated with The Campaign shall be handled by the Town of Amherstburg and all subscriptions and pledges shall be made payable to The Amherstburg Multi-Use Recreation Complex or other project name as may be assigned by the Council of the Town of Amherstburg.

13. This Agreement is subject to termination by any party giving twenty (20) days' written notice to the other, provided that, notwithstanding such termination, if the Town of Amherstburg is the terminating party INDABA shall be paid for all cumulative hours of service it has provided to the date of termination within seven days of the date of termination. If INDABA is the terminating party, it shall be paid for all hours of services it has provided to the date of termination in no more than four equal, monthly installments.
14. All documents, files, printings and other materials prepared pursuant to this Agreement and in any way related to The Campaign shall remain the exclusive property of the Town of Amherstburg and shall remain in its possession at the expiration of the contract.
15. The parties acknowledge that the INDABA staff associated with this assignment will be privy to confidential information regarding the goals, objectives, organization, staff, supporters and other aspects of operations of the Town of Amherstburg. INDABA agrees that all such information shall remain confidential and shall not be publicly or privately disseminated during the currency of this Agreement or thereafter.
16. INDABA shall comply with all applicable privacy protection laws in relation to its collection, use or disclosure of personal Information in connection with The Campaign.
17. This Agreement creates an agency relationship only. Neither INDABA, INDABA's employees nor any other persons performing services on behalf of INDABA, will be deemed or considered employees of the Town of Amherstburg, for any purpose whatsoever.
18. Except in the course of the strict performance of INDABA's services, INDABA is not otherwise the express, implied or apparent agent of the Town of Amherstburg. INDABA will not in any way represent or give the appearance of possessing any authority on behalf of the Town of Amherstburg beyond that which is expressly and explicitly granted by this Agreement. Except as explicitly granted by this Agreement, INDABA has no express, implied, or apparent authority to: (i) create or assume any obligation on its behalf, or (ii) act or purport to act as an agent of the Town of Amherstburg.
20. Any notice which may be given to the parties concerning this Agreement shall be addressed as follows:

**INDABA Marketing Inc.:**  
Ms. Debi Croucher  
430 Pelissier Avenue  
Windsor, ON N9A 4K9

**Town of Amherstburg:**  
Pamela Malott, Chief Administrative Officer  
271 Sandwich St. S  
Amherstburg, ON N9A 2A5

21. This Agreement is a contract made under and shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable in the Province of Ontario.


22. If, in any jurisdiction, any provision of this Agreement or its application to any party or circumstance is restricted, prohibited or unenforceable, such provision shall, as to such jurisdiction, be ineffective only to the extent of such restriction, prohibition or unenforceability without invalidating the remaining provisions of this Agreement and without affecting the validity or enforceability of such provision in any other jurisdiction or without affecting its application to other parties or circumstances.
23. This Agreement may be executed by the parties in counterparts and may be executed and delivered by facsimile and all such counterparts and facsimiles shall together constitute one and the same agreement.

**IN WITNESS WHEREOF** the parties hereto have executed this Agreement under their respective corporate seals and by the hands of their proper officers thereunto duly authorized.

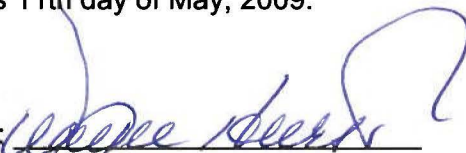
SIGNED, SEALED AND DELIVERED in the presence of:

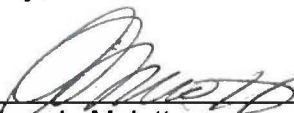
**INDABA Marketing Inc.**

In the Town of Amherstburg this 11th day of May 2009.

Per:   
Debi Croucher, President  
(I have the authority to bind the corporation)

**Town of Amherstburg**  
This 11th day of May, 2009.

Per:   
Wayne Hurst  
Mayor

Per:   
Pamela Malott  
CAO/Clerk



## **APPENDIX A**

### **Description of Services**

1. An initial period of intensive orientation to Stakeholder Groups and the general public.
2. Preparation of a step-by-step, month-by-month Campaign plan.
3. Assistance in selecting a creative design firm or utilizing existing in-house resources to develop the Campaign promotional materials and print collateral.
4. Assistance in the enlistment of leadership and the provision of on-going support to the Campaign leaders and other volunteers
5. Staff and Campaign volunteer training and orientation.
6. Set up of a Campaign office and the development of campaign office procedures.
7. Assistance with the preparation of all campaign communication materials, such as brochures, collateral print materials, etc. as required.
8. Writing a Campaign Case for Support.
9. Design of the donor recognition program.
10. Overseeing the cultivation of prospective donors.
11. Development of a strategic communications positioning document targeting the residents of Amherstburg.
12. Volunteer and staff training and orientation.
13. Ongoing donor research, including intensive prospect identification, review and evaluation.
14. Design of named gift plans and donor recognition programs to maximize campaign support at all levels as well as assistance in the monitoring, progress and preparation.
15. Assistance in the solicitation of key prospects, with customized funding proposals and other support materials as necessary.
16. Preparation of a detailed campaign budget and recommendations regarding appropriate budget control and set-up of pledge collection systems for all campaign divisions.
17. Coordinate a direct mail component, if this strategy is deemed appropriate, and assist with the development, coordination and production of special events.
18. Coordination of ongoing communications between the Steering Committee and Town of Amherstburg representatives, staff, volunteers, benefactors, and other stakeholders and supporters.
19. Ongoing analysis, planning and "course correction" for the Campaign.
20. Regularly monitoring Campaign revenue and expense activity.
21. Event production, implementation and administration as deemed necessary.
22. Marketing, communications and event management consulting, design, development and maximization.

23. Public relations, corporate relations and proactive media relations including media advisories, news releases, interviews, etc.
24. Development of staff deployment in the Campaign, where applicable.
25. Preparation of job descriptions, organizational charts and timelines for all Campaign phases and volunteer positions.
26. Supporting fundraising practices and development including donor research, strategy, proposal development, prospect cultivation and evaluation, solicitation assignments, cultivation and stewardship.

**APPENDIX B**

**Payment Schedule**

	<b>DATE</b>	<b>PAYMENT AMOUNT</b>
1.	<b>May 11, 2009</b>	<b>4763.88</b>
2.	<b>June 11, 2009</b>	<b>4763.88</b>
3.	<b>July 11, 2009</b>	<b>4763.88</b>
4.	<b>August 11, 2009</b>	<b>4763.88</b>
5.	<b>September 11, 2009</b>	<b>4763.88</b>
6.	<b>October 11, 2009</b>	<b>4763.88</b>
7.	<b>November 11, 2009</b>	<b>4763.88</b>
8.	<b>December 11, 2009</b>	<b>4763.88</b>
9.	<b>January 11, 2010</b>	<b>4763.88</b>
10.	<b>February 11, 2010</b>	<b>4763.88</b>
11.	<b>March 11, 2010</b>	<b>4763.88</b>
12.	<b>April 11, 2010</b>	<b>4763.88</b>
13.	<b>May 11, 2010</b>	<b>4763.88</b>
14.	<b>June 11, 2010</b>	<b>4763.88</b>
15.	<b>July 11, 2010</b>	<b>4763.88</b>
16.	<b>August 11, 2010</b>	<b>4763.88</b>
17.	<b>September 11, 2010</b>	<b>4763.88</b>
18.	<b>October 11, 2010</b>	<b>4764.04</b>
	<b>Total Payments</b>	<b>85,750.00</b>