2002

The Canadian Council for Public-Private Partnerships

2002 National Award Winners

Central North Correctional Centre (Penetanguishene, Ontario)

Five Corners Project (Chilliwack, BC)

John Labatt Centre (London, Ontario)

THE CANADIAN COUNCIL FOR PUBLIC-PRIVATE PARTNERSHIPS
LE CONSEIL CANADIEN DES SOCIÉTÉS PUBLIQUES-PRIVÉES

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June 2003

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Introduction

The Canadian Council for Public-Private Partnerships established a national awards program in 1998 to recognize the achievements of those who are leading the way in innovative partnerships across Canada, and to raise the profile of public-private partnerships in this country. The legacy of the awards program is the documentation of award-winning projects in this publication each year so that others may learn from their example.

The Council defines a public-private partnership as “a cooperative venture between the public and private sectors, built on the expertise of each partner, that best meets clearly defined public needs through the appropriate allocation of resources, risks and rewards.” Three categories of public-private partnerships have been established in which to consider projects: finance, service delivery and infrastructure. Awards can be given in any of these categories.

This is the fifth year of the awards. A national panel of experts in the field selected the winners from the 11 nominations. The winners were announced at the Council’s annual conference in November in Toronto.

The Canadian Council for Public-Private Partnerships partners with a number of public and private organizations to host this program. Sponsors for the 2002 National Awards Program include:

- Deloitte & Touche LLP
- TERANET Inc.
- PricewaterhouseCoopers Securities Inc.
- Power Budd LLP
- Ontario SuperBuild Corporation

The case studies are distributed to The Council’s more than 210 member organizations from the business community and all levels of government across Canada. In addition, The Canadian Council for Public-Private Partnerships posts summaries of each winning project on their respective websites. Non-members may purchase copies of the full report from The Council, which is a non-profit organization.

Award winners

In 2002, the selection panel chose five award winners: three Gold Awards (one each for project financing, service delivery and infrastructure), one Silver Award (for service delivery), and one Award of Merit (for infrastructure).

- The Gold Award for Project Financing was awarded to the City of London (Ontario) and the London Civic Centre Limited Partnership (a consortium of Global Spectrum LLP, EllisDon Construction Ltd. and Stadium Consultants International) for the John Labatt Centre, a multipurpose sports and entertainment centre.

- The Gold Award for Service Delivery was awarded to the Ontario Ministry of Public Safety and Security and Management Training Corporation Canada for the private operation of a large correctional institution in Ontario.

- The Gold Award for Infrastructure was awarded to the City of Chilliwack (B.C.) and Van Maren Construction Group for the Five Corners Project.

- The Silver Award for Service Delivery was awarded to the Town of Canmore (Alberta) and EPCOR Water Services Inc. for the Town of Canmore Utility Management Partnership.

- The Award of Merit for Infrastructure was awarded to the Town of Orangeville (Ontario) and the Orangeville-Brampton Railway Access Group for the Orangeville-Brampton Railway Project.

The case studies profile the gold award-winning projects. These case studies were written with the help and cooperation of the public and private partners involved. As well as providing us with detailed information, the partners have reviewed a draft of their case study for accuracy. We thank them for sharing their time and expertise with us.

Observations

The case studies provide interesting insights into public-private partnerships in Canada. In previous years, The Council highlighted the capacity of these partnerships to:

- get major projects built faster, sooner and at lower cost to the taxpayer than traditional methods;

- succeed at delivering both large, complex projects and small-scale initiatives;

- create high-quality infrastructure;

- maintain or enhance service delivery;

- gain the support of financial markets and institutions; and

- create opportunities for exporting Canadian expertise.

The 2002 award-winning cases are all medium-sized yet different in scope. Each contributes further understanding of how organizations in the public and private sectors can form a successful partnership that will achieve results beneficial to all.

Successful financing without municipal guarantees

The financial arrangements of many public-private partnerships require that, at the last resort, the municipality guarantees the debt raised by the private sector. Project financing for the John Labatt Centre, a multipurpose sports and entertainment centre in London, Ontario, demonstrates that this need not be so.

In this project, the City of London contributed a relatively high percentage of the fixed costs of construction, compared to similar projects, but did not guarantee the debt of its private partner, London Civic Centre Limited Partnership. Repayment of the City's contribution, however, was guaranteed by the private partner. The City's financial exposure was thus fixed, known from the beginning, and less than for comparable projects in other municipalities.

At the same time, the City did not require or expect a high financial return above and beyond repayment of its contribution, viewing the project as an investment in the community. The proportion of cash flow available for division between the partners each year is initially weighted towards the private sector which, over the term, will receive an estimated 12% internal rate of return.

Early results are good. The building is attracting high-class events and tourists into the centre of London, and the project is profitable.

Transparent process eases sensitive service delivery

Some projects, such as transferring the operation of a correctional institution to the private sector, are more politically sensitive than others, and the management of such a public-private partnership requires great care.

The Ontario Ministry of Public Safety and Security has addressed these concerns by designing a highly transparent process for the private operation of one of Ontario's large correctional institutions, Central North Correctional Centre. It has also established a governance and accountability framework with rigorous performance and operations standards.

The process of transparency started with consultations in the community before the Request for Proposal was issued, carried on through the selection process (for example, making key documents available to the public and hiring a transaction auditor), and continues during the day-to-day operation of the facility. Six local residents form a Board of Monitors that has full access to the facility any time and acts in an advisory capacity to the Minister, bringing a community perspective to the delivery of correctional services.

Furthermore, the Ministry has constructed an identical facility that will be run by the public sector under the same terms and conditions. Identical buildings, equipment and performance standards will enable the Ministry to compare the efficacy of public and private operation.

The project establishes a benchmark for how to develop a transparent process that will ease concerns around sensitive projects.

Combining multiple projects for effective revitalization

Combining multiple projects into a single public-private partnership can enable different levels of government to achieve their objectives more effectively and economically than if each project was undertaken separately.

In the Five Corners Project, the City of Chilliwack, B.C. Ministry of the Attorney General and the provincial crown agency B.C. Buildings Corporation, decided to amalgamate three projects in downtown Chilliwack into a public-private partnership. Van Maren Construction Group was selected to construct a new provincial courthouse, develop and operate a commercial property, and build a millennium clock tower and civic plaza on the Five Corners site. The relationships among and between the public partners and the developer were clearly articulated in a Partnering Agreement with subsidiary Courthouse Agreement, Developer Building Agreement and Design/Build Agreement. Using one company to design, develop and construct all three projects has resulted in an integrated design as well as efficient staging of the construction process.

The resulting development has been highly successful at revitalizing downtown Chilliwack and generating civic pride in the area. As well, the provincial government has realized significant savings in the cost of building a new courthouse. The Five Corners Project demonstrates that a public-private partnership can be an effective method for integrating multiple partners and multiple projects.

Acknowledgments

The National Awards Program hosted by The Canadian Council for Public-Private Partnerships is the only such activity in Canada to honour excellence and innovation using the approach called public-private partnerships.

The program consists of three separate activities. First is the Call for Nominations and the Selection Process. Second is the honouring of the winners at the Annual Awards Dinner. And finally, there is the legacy of the program – the documentation of the honoured projects in Case Studies which are published and shared with hundreds of readers throughout Canada.

Each step along the way involves the dedicated work of our members and valued consultants. CCPPP would like to extend a most sincere thank you to Carla Walmsley, who manages the entire program. Coordinating a program of this type draws on a wide array of skills and Carla capably fulfills all of them.

Anne Anderson of Athena Research Services has acted as researcher and author of the Awards Case Studies in recent years. Working both with the private and public sector partners, Anne captures with accuracy the details and benefits of each winning project in terms that are readily understandable to all. Her skills as a researcher and her talent as a writer culminate in a most rewarding publication.

As in past years, CCPPP establishes an Advisory Panel made of Directors of CCPPP to review the submissions. Further, a smaller group of the Panel act as readers of the case studies. We greatly appreciate the work this group does on behalf of The Council and recognize that it is their contribution that ensures the process achieves the highest level of integrity.

We wish to thank:

- Cynthia Robertson, Chair, National Awards Program, Halifax, Nova Scotia
- Pierre Le François, President, SPC Society for Partnership and Cooperation, Montreal, Québec
- The Honourable Allan Maher, former Minister of Finance, Fredericton, New Brunswick
- William Pearson, President & CEO, Canadian Highways Infrastructure Corporation, Toronto, Ontario
- Tony Tennessy, Vancouver, British Columbia
- Robert Beaumont, Partner, Osler, Hoskin & Harcourt LLP, Toronto, Ontario

Our valued Sponsors make this program possible. Without their generous support, there would be no such program and no single way of recognizing the innovation emerging in the PPP field. Our most sincere appreciation is extended to Ontario SuperBuild Corporation, Deloitte & Touche LLP, Power Budd LLP, PricewaterhouseCoopers Securities Inc. and TERANET Inc. These organizations have offered not only their financial support to this program but have demonstrated PPP leadership through their own activities.

JOHN LABATT CENTRE
Multipurpose Sports and Entertainment Centre in London, Ontario

2002 Gold Award for Project Financing

Quick Facts

Project type

Design-Build-Finance-Operate-Maintain

Asset

John Labatt Centre, a multipurpose sports and entertainment centre (formerly the London Sports & Entertainment Centre)

Partners

City of London

London Civic Centre Limited Partnership (LCCLP), a consortium of Global Spectrum LLP, EllisDon Construction Ltd. and Stadium Consultants International.

Other participants

WeirFoulds LLP, legal advisor for the City

Deloitte & Touche (formerly Arthur Andersen), business advisor for the City

IBI Group, business and financial advisor for the City

Hanscombe Limited, cost consultant for the City

Harrison Pensa LLP, legal advisor for LCCLP

Royal Trust Corporation of Canada, trustee of the City of London Arena Trust

Financial arrangements

Fixed construction cost of $41.2 million:
- $31.7 million from the City
- $2.5 million equity from LCCLP
- $7.0 million debt from LCCLP

An additional $5.0 million grant from Canada-Ontario Infrastructure Program used for enhancements.

Available cash flow from operations shared according to a prescribed formula, which varies over the term.

Other features

Building and land, owned by the City, are placed in the City of London Arena Trust and leased to LCCLP.

Term

50 years

Background and rationale

The City of London in southwestern Ontario (population 336,000) wanted to revitalize its downtown area, and a Council resolution to this effect was the impetus for this public-private partnership. Its purposes were, in order of priority:

- to encourage economic development by attracting more private sector investment and creating activity centres that would draw tourists into downtown London;
- to build a multipurpose entertainment centre that would serve as a catalyst and attract top performers; and
- to build a sports complex that would provide another home for the London Knights Junior A hockey team.

Description of the project

The John Labatt Centre (initially known as the London Sports & Entertainment Centre) is a multipurpose sports and entertainment centre. It is designed to be a high quality, destination facility that will attract first-class entertainment and sporting events, and is comparable to larger facilities such as the Air Canada Centre in Toronto, the Copps Coliseum in Hamilton and the Corel Centre in Ottawa.

As well as having a NHL-regulation-sized arena, the facility was designed with the needs of entertainers in mind. To accommodate performers, the space can be transformed into a large concert hall or an intimate theatre setting with the use of screening curtains, flygrids, retractable seats and a moveable stage. Features include an acoustic deck, state-of-the-art catwalk system, two stars' dressing rooms and three loading docks. It has 9,000 fixed seats for sporting events and up to 11,000 seats for concerts as well as 38 private (luxury) boxes.

The centre was built on a 2.1 hectare site downtown known as the Talbot Block and includes a reassembled façade of the historic Talbot Inn on the northeast corner. A restaurant is integrated into the Talbot Inn and open to the public from the street.

Selection process

- September 1999 – The City issued a Request for Expressions of Interest (RFEI) to identify potential private sector partners to design, build, finance, operate and maintain a new sports and entertainment centre in downtown London. It received seven responses and selected three to proceed to the Request for Proposals (RFP) stage.
- November 1999 – The City commenced the RFP process to find a private sector partner.

- In reviewing the proposals it received, the City found that some of the design and financial aspects did not meet its needs. In general, the approach submitted by each of the proponents was a modified hockey arena and did not give sufficient emphasis to the production needs of performing artists. One of the City's criteria was that the building would attract high-class entertainment events.

- The City undertook further research to determine what features would be attractive to performers. It looked at 20-30 different facilities, talked with the front-line people who operated the buildings as well as touring show managers and crews. Using this information, the City issued revised design and financial requirements including more specific details on, for example, the loading dock, storage areas and stars' dressing rooms.

- April 2000 – The City received revised proposals and presented these to Council.

- A detailed functional review of each proposal was completed with the assistance of consultants:
  - IBI Group (consultants whose expertise includes the design, planning and development of urban land and facilities) reviewed the business case and architectural design issues;
  - Arthur Andersen (now Deloitte & Touche) reviewed financial elements such as cash flow projections; and
  - Hanscombe Limited reviewed life-cycle costs with respect to capital reserves.

- Late 2000 – An agreement for a public-private partnership between the City and London Civic Centre Limited Partnership (LCCLP) was finalized. The LCCLP is a consortium comprising:
  - Global Spectrum (also the manager)—a full service management firm for arenas, stadiums, convention centres, ice rinks, expo centres, auditoriums and theaters, and a division of Comcast-Spectacor.
  - EllisDon Construction Ltd.—one of North America's largest construction companies.
  - Stadium Consultants International—a multi-disciplinary consulting firm specializing in financial and physical planning, development, implementation and project management of sports, recreation, leisure and entertainment facilities.

- March 2001 – Construction started.

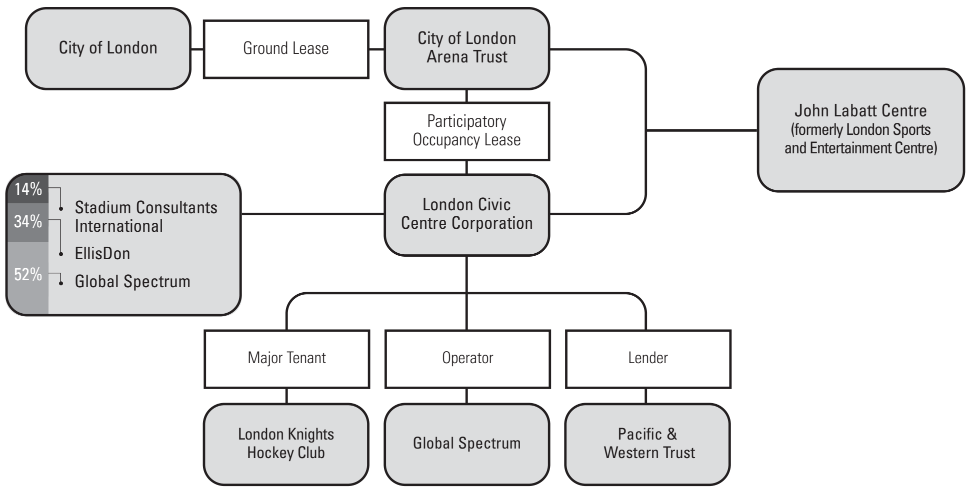
- October 2002 – John Labatt Centre opened.

The agreement

Overall structure

The City of London created a special purpose vehicle, the City of London Arena Trust (London Arena Trust), to reduce the financial exposure of LCCLP to corporate and capital taxes in case of operating loss. There are two main agreements that govern the public-private partnership:

Structure



- Ground Lease between the City and the London Arena Trust: The land is leased by the City to the London Arena Trust for a nominal base rent for 50 years. During the term of the Ground Lease, the London Arena Trust owns the building in trust for the City.

- Participatory Occupancy Lease between the London Arena Trust and LCCLP: The land and building are leased by the London Arena Trust to LCCLP for 50 years.

At the end of the term, the land and buildings are surrendered to the City free and clear of all liens and encumbrances and in a condition that meets specified standards. At this time, title to the building is immediately vested in the City.

Roles and responsibilities

The City was the project sponsor. It provided the land and made a financial contribution in the form of a subordinate loan (see "Financial arrangements"). Unlike many arrangements, the City did not guarantee its private partner's debt.

LCCLP was responsible for designing, partially financing, building, operating and maintaining the multipurpose sports and entertainment centre. It guaranteed the costs of construction and will cover any losses from operations. In addition, to meet one of the City's conditions, LCCLP negotiated a 20-year lease with the London Knights Junior A hockey team.

Global Spectrum, one of the LCCLP partners, will be the manager of the centre. Its role is to ensure that facility revenues are maximized and that the programs and operations exceed use and financial expectations. Expectations include:

- generating enough operating cash flow to support debt payments, fund a capital reserve fund and provide the stakeholders with a return on their investments;
- attracting a minimum of 36 non-Ontario Hockey League events (11 other sporting events, 17 concerts and family shows, 2 trade and consumer shows, and 6 other/community events);
- maximizing community use of the centre; and
- maximizing the economic impact of the centre.

Terms and conditions

Ground Lease and Participatory Occupancy Lease

The terms and conditions of the Ground Lease and Participatory Occupancy Lease are similar in many respects, governing how the land and building will be used and managed. The major difference is that, in the Ground Lease, the landlord is the City of London and the tenant is the London Arena Trust; in the Participatory Occupancy Lease, the landlord is the London Arena Trust and the tenant is LCCLP.

Some key elements of the leases are as follows:

Community use

Local nonprofit groups such as schools or charities may use the centre rent-free for five days each year.

Standards

The centre must be operated and maintained to a standard that is comparable to other specified centres (Applicable Standard), and to standards set out in the Management Agreement and Maintenance Performance Plan

Maintenance Performance Plan.

The Maintenance Performance Plan has two components:

- regular maintenance, repair and replacement requirements and standards throughout the term; and
- capital repairs anticipated each year including their timing and estimated cost.

Marketing Plan

The Marketing Plan addresses all aspects of revenue sources, including strategies for suite sales, club seat sales, naming rights, sponsorship and advertising, concerts and events, ice programs, merchandising and retail, and food and beverage.

Termination
Early termination by the City: The City has the right to terminate after year five. If performance has been acceptable, it will pay LCCLP an amount equal to the present value of its share of estimated future cash flows, as set out in the Participatory Occupancy Lease. If performance has not been acceptable, the City will pay the greater of (i) 70% of the present value of future cash flows, and (ii) the LCCLP contribution.

At the expiry of the term, the building will become the absolute property of the City. During the term, LCCLP has been obliged to repair and maintain the centre to the Applicable Standard.

Oversight
The City has the right to:

- approve annual operating plans/budgets;
- approve annual maintenance performance plans;
- physically inspect the project; and
- audit costs on maintenance.

See Appendix for a list of articles.

Other legal agreements
The final closing documents include many agreements. As well as the Ground Lease and Participatory Occupancy Lease, these include:

- Senior Loan Agreements (LCCLP's private placement), including a Quadpartite Agreement between LCCLP, Pacific & Western Trust (now Pacific & Western Bank of Canada), the London Arena Trust and the City.
- Subordinated Loan Agreements (City's financial contribution)
- Trust Agreement between Royal Trust Corporation of Canada and the City of London with respect to the London Arena Trust
- Municipal Capital Facilities Agreement, which incorporates the Community Resource Plan
- Facility Licence Agreement, which is a 20-year lease with the London Knights Junior A hockey team
- Construction Contract
- Development Agreement
- Management Agreement

Financial arrangements

Construction
Construction costs for the completed John Labatt Centre totalled about $46 million, comprising fixed costs of $41.2 million plus a federal-provincial grant of $5 million.

The City contributed $31.7 million to the project as a subordinate loan and LCCLP put in $9.5 million in the form of both debt and equity.

The City required the private partner to contribute equity upfront. Both partners placed a portion of their total contribution into an escrow account prior to construction, as follows:

- LCCLP—$2.5 million; and
- the City—$5.0 million (twice the private contribution).

Capital Costs

Organization	Amount	Form
City of London	$31.7 million	Debentures
LCCLP	$2.5 million	Equity
LCCLP	$7.0 million	Debt (non-recourse to the City)
Fixed construction cost	$41.2 million	
Canada-Ontario Infrastructure Program	$5.0 million	Grant
Total	**$46.2 million**	

For the balance of its financial contribution, LCCLP privately raised an additional $7.0 million from Pacific & Western Trust.

The City did not guarantee the private sector debt. Its financial exposure was fixed at $31.7 million, or 77% of the fixed project cost of $41.2 million.

In March 2002, the federal and provincial governments announced a grant of $5 million to the project through the Canada-Ontario Infrastructure Program ($2.5 million each from Industry Canada and Ontario's SuperBuild respectively). The grant was used for upgrades to the building, such as improved aesthetics and a video board, that would enhance its appeal.

Division of cash flow from operations

Available cash flow represents the revenues from operations including the sale of sponsorships, naming rights, merchandising and so on, less operating expenses and debt repayments.

Available cash flow is shared between the partners according to a formula that is weighted initially towards the private sector in order to help LCCLP build up the business, and after ten years towards the City.

The formula is based on two factors: minimum payments and share of available cash flow.

- LCCLP must make a minimum payment to the City:
  - years 1-2: no minimum payment required
  - years 3-5: minimum of $50,000 per year
  - years 6-50: minimum of $75,000 per year

- Available cash flow is distributed to the partners on the following basis:
  - years 1-2: the City 20%, LCCLP 80%
  - years 3-5: the City receives the greater of 20% or the minimum payment of $50,000
  - years 6-10: the City receives the greater of 45% or the minimum payment of $75,000
  - years 11-50: the City receives the greater of 70% or the minimum payment of $75,000

Capital Reserve Fund
The City stipulated that LCCLP must fund a large enough capital reserve to pay for future capital repairs and replacements. LCCLP makes a minimum annual contribution to the Capital Repair Fund of $125,000, adjusted each year for inflation.

Management fee
Global Spectrum is paid a management fee that is the lesser of 5.5% of gross revenue or an inflation-adjusted base fee. It is also entitled to a bonus fee of 5% of the amount by which gross revenue exceeds a specified amount (i.e. a performance incentive).

Risk allocation

Overall, the City has transferred all the business and financial risk to the private sector.

The City retains:

- the risk of receiving no returns over and above loan repayment if there is no available cash flow (though financial return was not a primary objective); and
- political risk (it was a high profile project that provoked strong opinions).

LCCLP assumed financial and operating risks:

- construction risk
- operating risk, to run the centre to generate positive cash flow:
  - maintenance
  - staffing
  - event management
  - promotion
- financial risks:
  - fixed construction budget
  - commitment to fund any losses from operations and meet minimum payments to the City
  - interest rate risk on borrowed money
  - return on investment

Risk Allocation

Risk	City of London	LCCLP
Construction		■
Operating		■
Financial risk		■
Interest rate		■
Return on investment	■	■
Political	■	

Benefits

Cost savings

Public sector comparator

The City did not calculate a formal public sector comparator. It would have contracted out the construction itself, and it is likely that there would be little difference in construction costs as the bid was tendered competitively. It also did not have the expertise to run a multipurpose entertainment centre, which is more complex than a hockey arena.

The City did compare its financial commitment with those of other jurisdictions that have built similar facilities. In this case, the municipal contribution represented a much lower proportion of the total costs (77% compared to over 90%), with a proportionately higher commitment by the private sector.

Expected financial benefits

Financial benefits to the City of London include:

- Repayment of its $31.7 million subordinate loan, which is covered by the minimum annual payments that LCCLP is required to make to the City.
- A share of the profits. Though it is hard to forecast over 50 years, expected cash flow to the City is approximately $20 million over the term, which yields an internal rate of return of approximately 1%.
- Less financial exposure than other municipalities funding comparable centres.
- Direct savings from not having to issue debentures to finance $9.5 million.

Comparison of Financial Commitments – Selected Jurisdictions

	London	Brampton	Guelph	Sarnia
Municipal contribution:				
Up-front contribution	77%	30%	50%	38%
Municipally guaranteed debt	0%	62%	43%	54%
Total municipal contribution	77%	92%	93%	93%
Private contribution:				
Proponent equity	6%	8%	7%	8%
Privately placed debt	17%	0%	0%	0%
Total private contribution	23%	8%	7%	8%
Total	**100%**	**100%**	**100%**	**100%**

- Potential future savings from not having to underwrite operating losses, including shortfalls which otherwise would have been redirected to debt repayment.

Financial benefits to LCCLP include:

- Repayment of private debt.

- A return on its investment. Cash flow from profit sharing expected to be around $22 million over the term, for an estimated internal rate of return of 12%.

According to Jim King, the Chief Financial Officer of EllisDon, the results in early 2003 are good. The project is profitable and exceeding budget on all counts.

Community benefits

The City views the building as an investment in the community rather than a way to generate revenue. Community benefits include:

- A facility with more innovative features and of higher quality than if the City had pursued the project on its own, for example:
  - high quality fixed seats, 38 luxury suites, and 1,500 club seats
  - a restaurant integrated into the old Talbot Inn and open to the public
  - sponsorship revenues

- Professional management
  - expertise in attracting and promoting high-class events
  - operations removed from politics

- Additional vibrancy and tourism to downtown
  - total visits to the facility of around 300,000 people annually
  - a minimum of 36 "new" spectator events
  - increased tourism to London and southwestern Ontario
  - boost to community morale

- Increased community use
  - London Sports Hall of Fame within the building
  - two community rooms
  - public square opposite Covent Garden Market for staging festivals

- Economic impact of construction
  - equivalent of 923 person-years of employment created during construction; many of the trades and subtrades were local
  - construction generated $81.2 million in total spending
  - indirect economic impact of approximately $42.7 million

- Economic impact of operations
  - additional 188 person-years of employment annually
  - approximately $4.1 million spent annually
  - indirect economic impact of approx $5.3 million annually

Other issues

Communications

The proposed sports and entertainment centre was one of the most important projects the City had ever undertaken and generated strong positions among those involved on both sides of the debate. Both Council and the public were ambivalent in the beginning about the concept itself, its location downtown vs. outside London, and the risks involved. While the majority of Council initially supported the project, they were under considerable pressure from those opposing it to change the location or cancel the project. Public opinion was split roughly half and half. At the end of the process, Council supporters numbered 18:1 while the public was 80-90% in favour.

Council

Victor Côté, the City's Commissioner of Planning and Development, had successfully managed other projects that were well received. He was trusted by Council and became the champion for this project, actively supporting Council throughout the process.

His advice to Council was that it must be realistic in its approach.

- The City's total financial contribution was firmly established at the beginning of the debate, and supported by a strong business plan and conservative financial forecasts.

- The City should view the building as an investment in the community rather than aim for a high rate of return.

- Performance expectations of the private partner should be clearly defined and detailed in a Memorandum of Understanding.

Public

As a high profile project, the public-private partnership attracted a lot of media attention. Representatives of both partners appeared constantly on radio and news media.

Some examples of public involvement include:

- It was known that historical artifacts might be found during construction and archeologists were permitted access to the site. When a coffin with a child from the mid-1800s was found, historians wanted to make an issue of the City not observing its past and to use DNA testing to find local descendants of the child. The burial area on the site was roped off while the issue was being resolved. To facilitate the process, Victor Côté consulted with the Centre for Forensic Sciences, and checked cemeteries legislation and ownership records. He demonstrated that DNA testing could not reveal a connection in this case and the child was re-interred in a local cemetery. Full construction activity then resumed.

- The façade of the historic Talbot Inn was to be integrated into the north and east streetscape of the project. The original plan was to incorporate the entire wall but it was found to be structurally unsound. The façade was taken apart and reconstructed using bricks, stone window lintels, sills and keystone arches salvaged from the original as well as some new bricks. When the public questioned why $1 million was being spent to tear down and rebuild the façade of the Talbot Inn instead of leaving it, the partners physically showed them the disintegrating state of the old bricks. Now most agree that keeping the façade enhances the area.

- Renderings of drawings of the facility were integrated in a virtual reality lab with detailed images of all the buildings in the areas. It became possible to virtually walk through the downtown and see how the building fit in. The City filmed the virtual walk and it was shown at an open house with the business plan. Two thousand people came to the open house and it made some more comfortable with the concept.

Labour

Labour used during construction were mostly local trades and subtrades; none were from the public sector. There were no labour issues. The workforce was committed to the project and took great pride in it. There was great spirit on the team which developed a momentum of its own.

In operations, Global Spectrum hired employees from the private sector, with the exception of a senior city official who joined Global Spectrum as Operations Manager of the facility. The arena previously used by the London Knights, the Ice Gardens, was owned by the hockey club so no public sector employees were involved. The arena was subsequently sold to the London Motoplex.

Testimonials

Public sector

"The public-private partnership for the John Labatt Centre has met all of our objectives. The City and EllisDon have delivered a first class building that can accommodate a wide range of events. Global Spectrum and the partnership have sold the naming rights, the suites, club seats and advertising. The acts in the building range from Broadway plays to major rock concerts. For most events the building is sold out. The cash flow from the building is exceeding our business case for the project. From the City's prospective the John Labatt Centre is a real success story."

Victor Côté
Commissioner of Planning and Development
City of London

Private sector

"Global Spectrum and our parent, Comcast-Spectacor, are extremely thrilled to be working with the wonderful people of the City of London … We strongly believe the John Labatt Centre will be the crown jewel of Southwestern Ontario and a terrific place for all of London's residents to gather and enjoy topnotch and world-class entertainment and sports."

Peter Luukko,
Ventures President
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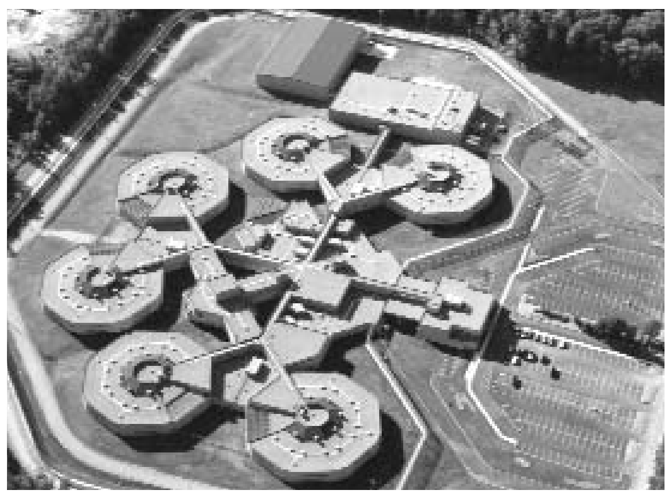
CENTRAL NORTH CORRECTIONAL CENTRE

The Private Operation of a Large Provincial Correctional Institution in Penetanguishene, Ontario

2002 Gold Award for Service Delivery



Quick Facts

Project type
Operate

Asset
Central North Correctional Centre at Penetanguishene, Ontario

Partners
Ontario Ministry of Public Safety and Security (formerly Ministry of Correctional Services)

Management and Training Corporation Canada

Other participants
PricewaterhouseCoopers Inc., transaction advisor to the Ministry

KPMG LLP, process auditor for the Ministry

Fasken Martineau DuMoulin LLP, legal advisor for the Ministry

Financing
Infrastructure (land, building, equipment) provided by the Ministry. Includes construction costs of $92 million.

Transaction value of $171 million over five years.

Other features
The Ministry has constructed two identical correctional institutions. One will be operated by the private sector and one by the Ministry to enable comparison of the efficacy of public and private operations.

Location of the new correctional institution selected through Ontario's "willing host" process.

Term
Five years with a one-year extension and option to renew for a second five year term.

Background and rationale

The Ontario Ministry of Public Safety and Security (formerly the Ministry of Correctional Services) has embarked on a program of infrastructure renewal and service enhancements to improve the efficiency of its correctional institutions and, ultimately, to become more effective in lowering re-offending rates. In the past, Ontario has had one of the highest inmate per diems and staff-to-inmate ratios in Canada. This initiative includes retrofitting, decommissioning or building new correctional institutions, and focusing on rehabilitation and treatment programs.

As part of this process, the Ministry has constructed two identical correctional institutions. The Central North Correctional Centre (CNCC) in Penetanguishene is being operated by the private sector in a public-private partnership, and the Ministry will operate the Central East Correctional Centre (CECC) in Lindsay. Identical buildings, equipment and performance standards will enable the Ministry to compare the efficacy of public versus private operation and to consider innovative and efficient techniques for application throughout the correctional system.

Description of the project

The CNCC correctional institution is built on approximately 35 hectares of land adjacent to the existing Penetanguishene Mental Health Centre.

The facility is unique in Canada, constructed with a maximum-security design and a capacity of 1,184 beds for adult inmates and offenders serving custodial sentences of up to two years. The facility consists of six units, with 192 beds in each of the units for males and a separate 32-bed unit to accommodate females. The facility features advanced security technology and includes areas for rehabilitation and programming as well as a stand-alone building within the secure perimeter for an industrial work program.

Management and Training Corporation Canada (MTCC) was selected among the qualified bidders to operate and maintain CNCC under terms and conditions of the project agreements, becoming the first private operator of an adult correctional institution in Canada. The facility commenced operation on November 10, 2001 and six months later accommodated approximately 1,100 inmates, making it the largest correctional institution in Canada.

Selection process

Selection of community

The Ontario Government established the location of the new facilities by inviting communities to submit letters of interest. Municipalities were required to provide assurances that the proposed location was adequately serviced with the required utilities and that their residents were supportive.

- June 1997 – Fifty two communities were invited to submit a notice of interest to serve as host community for the facility. Nineteen communities responded.

- July 1997 – Four communities were short-listed.

- October 1997 – Penetanguishene was selected as the host community. To support its bid, Penetanguishene provided 50 letters of support from the community and the results of a survey indicating support from 90% of the business community.

Selection of private partner

The Ministry had four goals for the selection process:

- to select a private sector partner;

- to develop a contractual structure based on clearly defined expected performance outcomes;

- to realize significant savings on operating costs while maintaining its high standards of operation; and

- to maintain transparency and fairness in the transaction.

The Ministry retained two independent advisors to facilitate the selection process for a private sector operator:

- PricewaterhouseCoopers (PwC) was the transaction advisor and, together with the Ministry, developed the overall strategy for the selection process.

- KPMG LLP acted as process auditors to ensure that the process was fair, open and transparent.

The competitive selection process was as follows:

- A Request for Qualifications (RFQ) was issued through MERX[1] in August 2000, asking bidders interested in operating CNCC to submit information that included:
  - operating performance history;
  - the experience of senior corporate management and correctional institution managers;
  - programs offered at all institutions;
  - incidents of default, early terminations and contract renegotiations;
  - financial capability; and
  - remediation methods.

- Seven bidders provided submissions that were subsequently evaluated on completeness, and on technical and financial information. This process resulted in the selection of five Qualified Bidders.

- A Request for Proposals (RFP) was issued to the Qualified Bidders in December 2000, including:
  - the scope and operating responsibilities of the private operator and the Ministry;
  - administrative requirements (e.g. safety and security, technology, inmate requests, incident reporting and record management);
  - facility upkeep and maintenance requirements;
  - human resources management including training and educational standards for correctional staff;
  - performance measurement; and
  - service charges (operating per diem).

[1]MERX is Canada's official electronic tendering service for the public sector, http://www.merx.com.

- Qualified Bidders were provided with a draft copy of the contract—the Services Agreement—and given a single opportunity to comment on it during the competitive process. The Ministry finalized the Services Agreement before receiving the bids and Qualified Bidders were required to accept the terms of the final agreement as a condition of their bid.

- Qualified Bidders were required to submit:
  - a per diem cost proposal;
  - a staffing plan; and
  - a programming plan.

- Four teams (with no decision-making authority) evaluated the proposals for completeness, staffing, services and pricing, making recommendations to the Evaluation Committee for decisions. The Evaluation Committee subsequently rendered a recommendation to the Minister.

- The contract was awarded to Management and Training Corporation, subsequently Management and Training Corporation Canada (MTCC), in May 2001. Management and Training Corporation has a long history of training and education; over 30 years ago it began educating disadvantaged youth, and is now the third largest provider of education in adult prisons in the world.

- In June 2001 KPMG reported that the "process was fair, open, transparent and beyond reproach."

The Agreement

Overall structure

The Ministry owns the land, building, equipment and assets at CNCC. Although it is not the operator, the Ministry retains ultimate responsibility for the operation of CNCC through the governance and accountability relationship outlined in the Services Agreement.

MTCC is contractually committed to work to reduce recidivism. It is responsible for the daily operation of the institution, must maintain the facility in good condition, and meet all safety and security standards as specified in the project agreements. MTCC is also responsible for providing training, rehabilitation, and industrial work programs that provide opportunities for inmates to engage in meaningful activity for eight hours each day. Rehabilitative programs include:

- core programs, such as anger management, anti-criminal thinking, substance abuse, life skills, basic literacy and numeracy, general education development, job skills/trade training, sexual deviance intervention, and spousal abuse intervention; and

- other programs such as programs for special needs, female offenders, aboriginal inmates and other ethno-cultural groups, personal development, religious and spiritual care, and programs for volunteers and community links.

The term of the Services Agreement is five years with provisions for a one-year extension and an option to renew for a further five years. The one-year extension is a transitional period that will allow the first contract to continue under the same original terms and conditions while the second five-year contract is being negotiated, or while a new transactional document (RFP) is being issued and a new operator selected.

Services Agreement

The Services Agreement is the specific contract between the Ministry and the operator, MTCC. Some key elements of the Services Agreement include:

Standards
MTCC must perform services in compliance with the Standards of Operation outlined in the Performance Framework (see below) as well as other requirements.

Operation and maintenance
MTCC is responsible for maintaining the facility "in good, decorative order, in a neat and tidy condition and fit for habitation …" and, at its own expense, keeping the building systems serviceable as detailed in the Services Agreement. The Ministry is responsible for all other maintenance, repair and replacement required in connection with the physical plant, systems and equipment. The Ministry is required to approve the facility's operating manuals and may conduct a condition survey of the facility at any time.

Correctional industries program
MTCC is responsible for arranging an approved correctional industries program to be undertaken, and to outfit the building at CNCC that is to be used for the program.

Staffing
MTCC shall recruit qualified staff in sufficient numbers to ensure no interruption of service.

Payment for services
The Ministry will pay a service charge to MTCC based on the inmate population and per diem rate less any deductions for deficient performance or liquidated damages as specified in the Performance Framework.

See Appendix for a list of articles.

Performance Framework

Standards and outcomes
As part of the overall program of renewal and enhancement, the Ministry incorporated new and rigorous standards of operation and performance outcome measures in a Performance Framework. The Performance Framework will apply across the province to all operators of correctional facilities in Ontario, from both public and private sectors.

While the Performance Framework specifies the required performance outcomes, each operator is provided opportunities for implementing innovative and efficient means to achieve the required outcomes. The proposed method to meet the outcomes is subject to approval of the Ministry and the operator is then held accountable to operating in that manner.

Performance outcome measures must be reported by each correctional institution and the results are monitored, reviewed and published by the Ministry on a regular basis.

The measures in the Performance Framework are based on seven key factors:

- safety and maintenance of physical plant;
- efficient, effective and accountable management;
- inmate health and well-being;
- incidences of disturbance;
- incidences of escape from custody;
- incidences of unnatural/unlawful death and suicide; and
- re-offending rate.

Each of these factors is associated with performance outcomes, long-term goals and key performance indicators:

- Performance outcomes provide a framework for results by defining performance expectations.
- Long-term goals are the desired long-term achievements and/or strategic direction of the outcomes so that performance can be tracked over time.
- Key performance indicators are operating standards that link the outcome and goal, and demonstrate how operations are focused on, and support, the outcomes.

The Ministry has established some of the baseline outcomes using historical Ministry performance data and a five-year rolling average.

In addition to specified standards of operation, Schedules specify prescriptive requirements for operators to apply in their respective facilities throughout the system. For example, each operator must follow the same admissions procedure and use Ministry forms and systems.

As noted previously the operating manual for each operator must be approved by the Ministry and then the operator is held accountable to perform in that manner.

Expected performance levels

All operators including MTCC are expected to achieve high levels of performance. To enforce this expectation, the Ministry has established a system of deficiency points for under-performance on a range of key performance indicators. The number of deficiency points for each indicator reflects the weight of the Ministry's objectives and priorities. For example:

- a valid inmate health care complaint – 75 deficiency points
- an injury or accident due to lack of maintenance, safety or security – 100 points
- first inmate escape – 100 points; second escape – 200 points; third escape – 400 points

Financial arrangements

Capital investment
The cost of constructing CNCC was approximately $92 million and was funded directly by the Ministry.

The furniture, fixtures and equipment provided for both CNCC and CECC is a combination of assets from decommissioned facilities and new supplies.

Service fees
The payment structure of the fees paid to MTCC is as follows:

- Base operating per diem charge, which is based on an 80% occupancy level (947 inmates) and includes the fixed costs as well as minimum staffing that would be required for 80% occupancy.

- Incremental per diem charge, which reflects the marginal cost of incarcerating inmates above the 80% occupancy level.

At full occupancy, the formula results in a blended rate of approximately $80 per day. The transaction value of the public-private partnership is estimated to be $171 million over the five years of the Services Agreement.

MTCC may incur a reduction in the total service fees paid based on performance deficiency points and/or liquidated damages.

- Deficiency points: If MTCC does not meet expected performance levels and the number of deficiency points in a quarter exceeds the system-wide threshold established by the Ministry, a financial consequence of up to two and a half per cent may result.

- Liquidated damages: In the event of a completed escape, an improper release, or an inmate being unlawfully at large, liquidated damages will be applied.

Risk allocation

The allocation of risks and responsibilities is outlined in the RFP and the Services Agreement. In general:

- The Ministry retains the risk associated with ownership of the land, building and equipment.

- The Ministry assumes the risk associated with construction and maintenance of the facility as well as ongoing political risk.

- MTCC assumes all operating, programming and performance risks.

- Volume risk is shared.
    - Ministry assumes financial risk that occupancy will be less than 80%.
    - MTCC assumes risks associated with the costs of occupancy beyond 80%.

Risk Allocation

Type of Risk	Risk Allocation: Ministry	MTCC
Construction risk	Primary	
Ownership risk	Primary	
Maintenance risk	Primary	Secondary
Operating risk:		
• security (routine)		Primary
• security (emergency)	Secondary	Primary
• food service		Primary
• admission/discharge		Primary
• medical		Primary
• community escort (except court)		Primary
• transport to court	Primary	
• industry program		Primary
• rehabilitative programming		Primary
Performance outcomes risk		Primary
Political accountability	Primary	
Price risk		Primary
Inflation risk		Primary
Volume risk	Primary (to 80% occupancy)	Primary (beyond 80% occupancy)

Contract compliance

The Ministry has statutory responsibility for correctional services within Ontario. To ensure that it retains ultimate accountability, the Ministry developed a prescriptive contract and appointed an on-site Contract Compliance Manager who reports to the Ministry's Executive Lead for Alternative Service Delivery. In addition, the Ministry has established a Board of Monitors to act as an advisor to the Minister of Public Safety and Security, the Ministry and MTCC. The Board of Monitors is described in greater detail later in this document.

The Contract Compliance Manager, as the representative of the Ministry, has all the powers and functions of a Superintendent under the *Ministry of Correctional Services Act* and, to the fullest extent permitted by laws and regulations, all of the powers of the Ministry in respect of any matter arising under the Services Agreement with the private operator. The Contract Compliance Manager is supported by a team of two on-site compliance monitors and a unit coordinator. The unit is operationally linked closely with the Ministry's Adult Institutional Services Division as part of the Central Region.

The Contract Compliance Manager's primary role is to monitor and communicate with MTCC about CNCC's operations and compliance with the standards and contractual obligations under the Services Agreement. In addition, the Contract Compliance Manager retains final authority for certain operating decisions, including decisions pertaining to loss of earned remission in the event of offender misconduct.

Benefits

Cost savings

The Ministry analyzed the cost to run CNCC itself as part of the evaluation process, and used that analysis to support its decision. A comparison of public versus private operation is one of the objectives of this public-private partnership and the Ministry will have an accurate comparison against the operation of CECC in Lindsay.

System-wide, the average operating cost across Ontario is approximately $140 per day per inmate while the contracted per diem charge with the public-private partnership is approximately $80. The resulting savings are estimated at $25 million per year, with full occupancy.

The Ministry also expects the benefit of other savings resulting from improvements in performance and efficiencies across the system.

Innovation and efficiency
The introduction of competition, both from the private sector and among publicly operated correctional institutions, is intended to promote innovation and overall system improvement. Although the standards are prescribed in the Performance Framework, the operators can develop their own best methods for achieving the required outcomes. For example, MTCC has flexibility in how and from whom it procures supplies, and in its management practices. In addition, MTCC is committed not only to meet and exceed the Ministry's standards but also to become accredited with the American Correctional Association.

The Ministry learns about innovative approaches through the approval of MTCC's policies and procedures and through the on-site contract compliance monitors. The Ministry intends to consider the experience gained in this pilot project throughout its other correctional institutions.

Community benefits

Community benefits from CNCC include:

- Economic activity increased during the construction of CNCC.
- Over 300 jobs with competitive salaries have been created to operate CNCC, resulting in an increase in local spending.
- Sixty five percent of the employees have been recruited locally.
- MTCC has spent $800,000 on the acquisition of local goods and services.
- The local economy has diversified.
- A large employer is involved in the community, sponsoring local activity and initiatives.

Continuity of staffing

During the ramp-up phase of this project when there was a scheduled transfer of inmates from decommissioned facilities to CNCC, the Ontario Government was involved in an eight week strike with its largest union, the Ontario Public Service Employees Union (OPSEU). The strike affected staff at all Ministry-operated correctional institutions.

Staff at CNCC are employed by MTCC, not the Ministry. Having a facility with a large operational capacity and whose staff were not on strike meant that, during the labour disruption, over half of the 1,400 inmates that had to be moved between different institutions were transferred to CNCC. This increased flexibility played a significant role in helping the Ministry manage its correctional services during the strike.

Though employees at CNCC have subsequently become represented by OPSEU, MTCC is a different employer and there are no Ontario public service bargaining unit members at the site. Having an institution whose staff operate under a different collective agreement, combined with MTCC's obligation to continue operation through a labour disruption, are significant benefits to the Ministry.

Recidivism

Reducing recidivism is one of the overall goals in the correctional system and included in the performance outcomes measures. Recidivism, however, is difficult to define and measure and although MTCC is committed to reducing recidivism, no targets have yet been established. The Ministry has recently provided a definition and performance benchmarks to assess and measure recidivism. It is looking at baseline information and benchmarking that against other jurisdictions.

Application outside Ontario

Among the unique aspects of this public-private partnership are the selection process that resulted in the selection of a private operator with the necessary qualifications, and the application of contractually defined standards of operation and performance outcomes.

This innovative pairing of structure and process has generated interest from other jurisdictions in Canada and other countries including the United States, Japan and South Africa.

Other issues

Communications

The introduction of a private operator and the construction of a large, expansive facility in the correctional system proved to be controversial issues and were met with significant resistance from some parts of the community. The Ministry developed a communications strategy and established a Public Liaison Committee and a Board of Monitors to address the concerns of the community.

Public Liaison Committee
During the construction of CNCC, a Public Liaison Committee was established under the *Environmental Assessment Act*, and this forum was available for the Ministry and the Town of Penetanguishene to address community concerns. Senior Ministry staff attended monthly public meetings in Penetanguishene to answer ongoing concerns related to the RFQ, the RFP and the Services Agreement, and to provide updates.

- The Minister gave written responses to concerns identified by the Town of Penetanguishene; the responses were available for some time on the Ministry's web site and included in the RFQ.
- The Ministry held consultation sessions outside the competitive process.

Board of Monitors
Once construction finished and CNCC began operating, the Public Liaison Committee ceased to exist. The Ministry established a local Board of Monitors in accordance with the *Corrections Accountability Act* (and will do the same with CECC). The Board of Monitors consists of six local residents who were selected and appointed by the Minister from among the volunteer applicants within the community.

Board members have full access to the facility to inspect, tour, and meet with staff and inmates whenever they choose. They act in an advisory capacity to the Minister, bringing a community perspective to the delivery of correctional services at CNCC. They offer advice on:

- the operation of the facility and its impact on the community;
- the state of the institution;
- the administration of the institution; and
- the treatment of inmates.

The Board meets on a regular basis and reports its observations to both MTCC and the Ministry. The Board's efficacy will be reviewed after April 2004, and a decision made on whether to expand it to other correctional institutions across Ontario.

Community Advisory Committee
To enhance good relations with the local community, MTCC has established a volunteer Community Advisory Committee to act as liaison between the Town of Penetanguishene and MTCC. The Committee includes representatives from MTCC and the community.

Both the Board of Monitors and the Community Advisory Committee provide an opportunity for the community to interact with and become knowledgeable about the correctional institution and its operational relationship to the town.

Labour

The Ministry committed to provide reasonable assistance to staff who were declared surplus as a result of the decommissioning of other facilities. The RFP required that the private operator offer employment to Ministry staff whose positions were directly affected by the closing of facilities (approximately 45 staff in total). The job offers had to include a salary of at least 85% of the employee's salary, and adhere to the terms of the applicable collective agreements.

The unions involved were OPSEU and AMAPCEO (Association of Management, Administrative and Professional Crown Employees).

Approximately 15 Ontario public service employees opted to transfer to the private operator. MTCC exceeded its obligations to offer those staff 85% of their current public service salary. In fact, 90% of the job offers exceeded the employee's current public service salary.

To hire the required staff, MTCC held an open competition and provided site-specific training for the successful candidates. There are approximately 280 staff at CNCC, 70% of whom are correctional officers. Many of the current staff previously held employment with Correctional Services in Ontario. The correctional officers at CNCC have organized and voted to have OPSEU represent them as employees of MTCC.

Testimonials

Public sector

"Our focus needs to be on how our jails are run and not simply who runs them. We've set tough results-based standards for the operation of all Ontario's correctional facilities that improve public safety and achieve better results. Our goal for Penetanguishene was to find the best operator to meet those standards."

Rob Sampson
[Then] Minister of Correctional Services

Private sector

"The expectations are very high for MTC[C] in Ontario. We plan to meet those expectations with a commitment to a safe and secure operation which meets the requirements of the [then] Ministry of Correctional Services, as well as with an emphasis on providing the opportunities for offenders to turn their lives around upon release."

Scott Marquardt
President and CEO
MTC

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FIVE CORNERS PROJECT

Law Courts, Commercial Building and Clock Tower in Chilliwack, B.C.

2002 Gold Award for Infrastructure

Quick Facts

Project type

Design-Build (courthouse, clock tower and civic plaza)

Design-Build-Finance-Own-Operate-Maintain (commercial building)

Asset

Five Corners Project comprising:

- New courthouse
- Commercial/retail building
- Clock tower and civic plaza

Partners

City of Chilliwack, British Columbia
British Columbia Ministry of the Attorney General
British Columbia Buildings Corporation

Van Maren Construction Group

Other participants

Lidstone, Young, Anderson, legal advisor for the City of Chilliwack

Baker Newby, legal advisor for Van Maren Construction Group

Killick Metz Bowen Rose Architects Planners Inc.

Weiler Smith Bowers, structural engineers

Arnold Nemetz and Associates Ltd., electrical engineers

Keen Engineering, mechanical engineers

Financial arrangements

Total of $11.8 million contributed by:

- Ministry of the Attorney General ($7.5 million)
- City of Chilliwack ($2.1 million)
- Van Maren Construction Group ($2.2 million)

Other features

Three projects combined into a single public-private partnership.

Background and rationale

The impetus for the Chilliwack Five Corners Project was threefold. First, the City of Chilliwack in British Columbia (population 68,000) wanted to revitalize its downtown area. In the mid-1970s a large mall had opened outside the city and, as a result, many downtown businesses had either relocated or gone out of business.

Secondly, the B.C. Provincial Government announced plans to close the Chilliwack Law Courts, which were inefficient and hard to maintain, and consolidate their services with the courthouse in Abbotsford. The City, led by Council, protested the closure. The Provincial Government reconsidered and formed a partnership with the City to look at options for keeping the courthouse in Chilliwack.

Thirdly, the City wanted to build a landmark clock tower to celebrate the millennium.

The public sector partners decided to amalgamate the three projects (revitalization, courthouse and clock tower) into a public-private partnership. The City wanted to use the construction of the new Law Courts to facilitate the construction of an adjacent commercial building and the clock tower. It chose a vacant lot that it owned at Five Corners as a focus of the revitalization initiation, and was looking for a landmark development that would preserve the heritage characteristics of the downtown, promote mixed use development and create a vibrant urban core.

Description of the project

New Law Courts

The new Law Courts facility is located at the intersection of three streets (hence Five Corners) in downtown Chilliwack. It is a 32,000 square foot, two-storey building that includes five court rooms, judges' chambers, court registry, Sheriff's services, holding cells, and other court-specific areas. The building features exterior columns, a two-storey foyer and skylit public concourse and is designed to create a non-threatening environment. On-site parking for 100 vehicles is incorporated into the site plan.

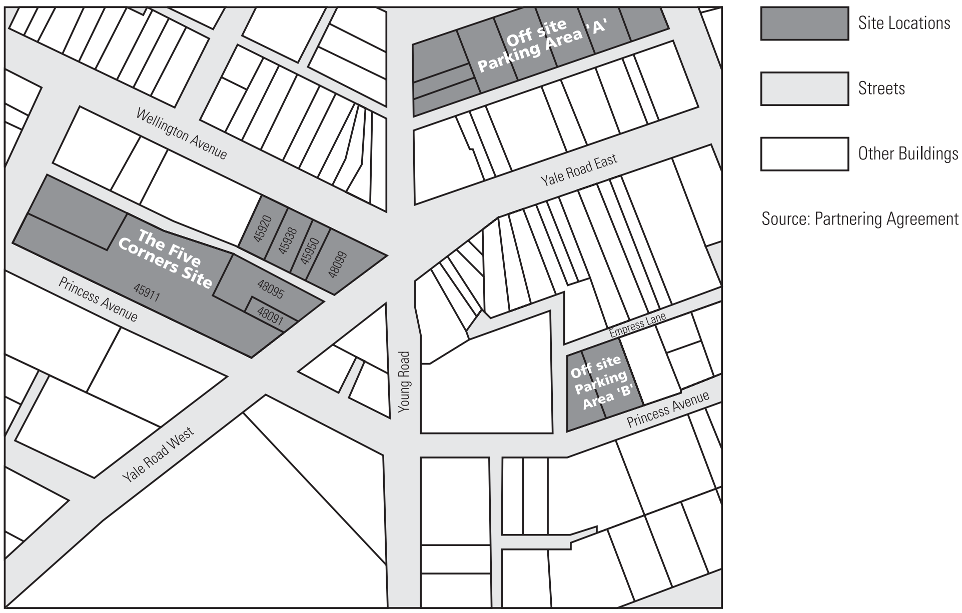
Commercial building

The commercial building adjacent to the courthouse has 18,000 square feet on three storeys. It houses the Provincial Government's Family Justice, Community Corrections and Crown Counsel as well as the Chilliwack Economic Partners Corporation. It includes a small café on the ground level with an entrance from the plaza.

Clock tower and civic plaza

The clock tower and surrounding civic plaza are located on the "prow" of the Five Corners intersection, at the apex of the Law Courts and commercial building. They provide a distinctive landmark and gathering place in downtown Chilliwack.

Site Plan



Source: Partnering Agreement

Process leading to the agreement

Public sector partnership

- 1993-94 – The Provincial Government announced that it planned to close the Chilliwack Law Courts.

- 1996 – The City lobbied to retain the Law Courts and offered to subsidize operating costs for two years, at a cost of $375,000 per year.

- 1997 – A Regional Justice Committee was formed, comprising judges, lawyers, RCMP and business members in the community, to determine if a business case could be made for keeping a courthouse in Chilliwack. One year later the committee decided to move forward with the planning for a new courthouse.

- 1998 – A Joint Planning Committee was formed to determine if a public-private partnership could meet their needs. Membership of this committee included the Ministry of the Attorney General, BC Buildings Corporation (BCBC) which is a Crown corporation that owns, leases and maintains properties for the public sector in British Columbia, the City of Chilliwack, and Chilliwack Economic Partners Corporation.

- 1999 – The Joint Planning Committee developed and presented a business plan which showed the financial benefits, the responsibilities and how risks could be minimized to all partners.

- 2000 – The Ministry of the Attorney General approved the business plan. Meanwhile, the City assembled the property, and prepared the necessary documents and agreements.

- The City, the Ministry of the Attorney General and BCBC signed a Memorandum of Understanding that outlined how they would work together to implement the project.

Selection of private partner

- July 2000 – The City issued a Request for Expressions of Interest (RFEI) which defined the project's objectives, parameters, process and evaluation criteria.

- Several applications were reviewed. The Evaluation Team for the RFEI (and subsequent Request for Proposals (RFP)) comprised officials from the City, the Ministry of the Attorney General and BCBC.

- September 2000 – The public sector partners issued an RFP to three proponents. The RFP requested architectural concepts and technical and financial proposals, and outlined that the successful applicant would complete the project using a cooperative partnering approach. There were four components of the RFP, with the weighting given to each shown in parentheses below:
  - design and build a new courthouse (65 points)
  - acquire land, design, build and own a new Class A commercial building (20 points)
  - acquire and redevelop the existing courthouse (10 points)
  - design and build a civic plaza with a clock tower (5 points)

- November 2000 to March 2001 – An agreement was negotiated with the successful private partner, Van Maren Construction Group (Van Maren). Van Maren specializes in the design and construction of a wide variety of projects for government and the private sector as well as other services.

- March 2001 – Construction began.

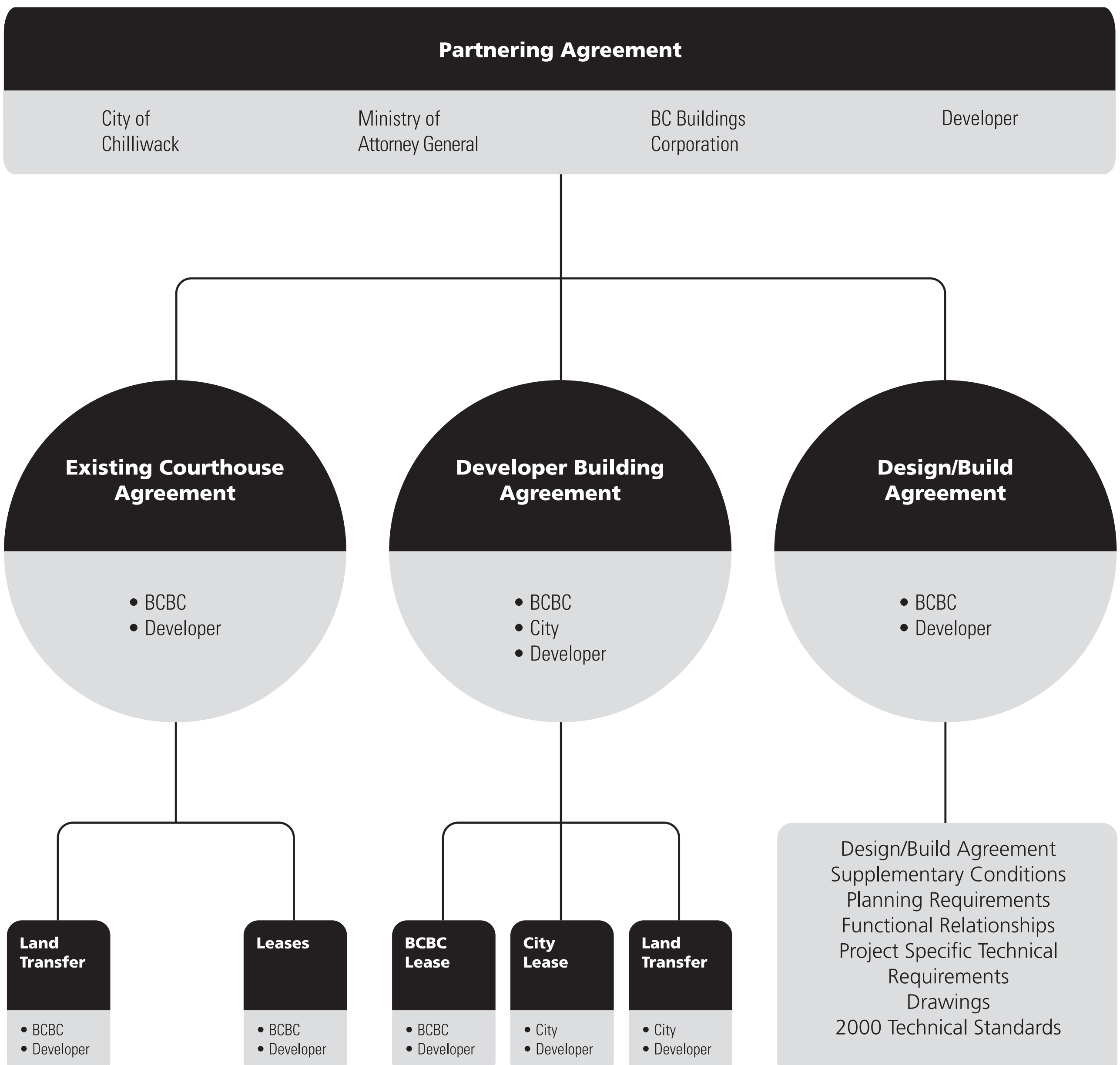
- May 2002 – Law Courts completed.

The Agreement

Overall structure

The overall structure of the public-private partnership was outlined in the Partnering Agreement between the Ministry of the Attorney General, BCBC, the City of Chilliwack and Van Maren. This Partnering Agreement is the primary document setting out the overall relationship of the parties and the nature of the project. Other contracts, such as a Design/Build Agreement for the Law Courts and a Developer Building Agreement for the commercial building, are schedules to the Partnering Agreement.

Structure of Legal Agreements



Source: Partnering Agreement

Partnering Agreement

The main points of the Partnering Agreement were:

- BCBC would manage the design and construction of the new Law Courts.
- BCBC would be the owner and the Ministry of the Attorney General would be the tenant of the new Law Courts.
- The City would assemble the land, expedite approvals and act as project manager.
- Van Maren would:
  - design and build the new courthouse on land purchased by BCBC from the City and subdivided from the Five Corners site (Design/Build Agreement);
  - purchase the existing courthouse from BCBC at fair market value; BCBC will lease the existing courthouse from Van Maren for a minimum of two years;
  - own, develop and operate a commercial building on land not being used for the courthouse or other public space (Developer Building Agreement); the public sector partners may lease space within it at market value; and
  - build the millennium clock tower within the Five Corners site at a location to be agreed by the partners.

See Appendix for a list of articles.

Developer Building Agreement

The Developer Building Agreement between the City, BCBC and Van Maren documented the partners' agreement with respect to the commercial building (known contractually as the Developer Building) and its site. The City would sell to Van Maren the remaining land of the Five Corners site that was not used for the Law Courts and other public space. On this site, Van Maren would design, build, finance, own, operate and maintain the commercial building, on terms and with the security outlined in the Developer Building Agreement.

The Developer Building Agreement included articles with respect to planning and design, the project's construction (such as development charges, building permits, insurance policies, approvals, and quality control), defaults and remedies, covenants of Van Maren, and the right to inspect by the City and BCBC.

Design/Build Agreement

The design and construction of the new Law Courts facility was governed by the Design/Build Agreement between BCBC and Van Maren. The Design/Build Agreement is made up of two parts: a standard design-build stipulated price contract; and supplementary conditions.

The main items addressed in both parts include design services and administration of the contract, how the work shall be executed (such as construction documents, schedule, safety and labour), payment, changes to the work, and dispute resolution.

Financial arrangements

The total cost of the project was $11.8 million, with components as shown in the following table.

New Law Courts	$7.5 million
Commercial building	$2.2 million
Land acquisition, civic plaza and clock tower	$2.1 million
Total	$11.8 million

New Law Courts

The Ministry of the Attorney General contributed $7.5 million from its approved budget for the construction of the new Law Courts:

- $5.5 million for the hard costs (the building, and land that BCBC purchased from the City for $400,000).
- $2 million for soft costs (furniture, furnishings and equipment).

The Provincial Government had established a fixed cost of $5 million for the design and construction of the Law Courts. To meet the price cap, Van Maren proposed a simple, clean and functional building. This design did not meet the City's criteria of a landmark building. After lengthy negotiations, the Provincial Government (with some help from the City) contributed an additional $250,000 that paid for aesthetic enhancements, such as adding exterior columns to the entrance. A further $250,000 was incurred from change orders.

Old courthouse

Although the RFP specified that the old courthouse had to be purchased by Van Maren at market value, ultimately this component of the project was not awarded.

In the negotiations, it was discovered that the old courthouse was seismically deficient and contaminated by asbestos, and the site itself was contaminated with hydrocarbons from an underground storage tank. Under government policy, an environmentally contaminated building cannot be sold until it has been cleaned up. While clean-up discussions were in progress, a Provincial Government housing program that was an integral part of Van Maren's original proposal—to convert the building into nonprofit housing—was cancelled with the change in government.

Commercial building

Van Maren contributed $2.2 million for the commercial building with private funding. Neither the Ministry of the Attorney General nor BCBC provided any capital or loan guarantees towards financing the building.

Van Maren's proposal was subject to being able to lease the building. Van Maren was required to develop Class A office space but, as the location was a low rent area with vacant space, no private sector organization was willing to commit to a lease. Eventually the City and Provincial Government leased back 90% of the space for a 10-year term. This was still good value since the quality of the building was the best in the neighbourhood. The balance of space was leased to a café operator.

Land acquisition, civic plaza and clock tower
The City contributed $2.1 million from its reserves to acquire the land and to construct the civic plaza and clock tower. (The clock tower also received a federal Millennium grant.)

Risk and responsibilities

Ownership and responsibilities
BCBC owns and operates the Law Courts, with the Ministry of the Attorney General as its tenant. Their responsibilities in the public-private partnership were to:

- review and approve all designs for the Law Courts (Ministry of the Attorney General);
- review and accept the design and construction documents; perform quality audits (BCBC);
- review, assess and accept mechanical, electrical, sound, community and security systems (BCBC);
- monitor the progress of the work (BCBC); and
- issue instructions, receive payment requests, make payments, issue completion certificate (BCBC).

The City owns and manages the civic plaza and clock tower. It also had the responsibility to:

- ensure the satisfactory execution of the Developer Building Agreement with respect to the commercial building;
- provide the land and carry out the responsibilities of obtaining all documentation prior to construction, including demolition, geo-technical and contamination test results; and
- help in securing tenants to lease space in the commercial building.

Van Maren owns and operates the commercial building. It also had the responsibility to:

- design and construct the Law Courts;
- finance and develop the commercial building, and market the facilities to tenants; and
- deal with all agencies having jurisdiction over the development and the project.

Risks
With the exception of the site assembly, all risks were assumed by Van Maren until construction was complete, at which time each partner assumed responsibility of risk along with ownership.

Risk Allocation

Risks/Ownership	Public Partners	Van Maren
Site and Land		
Availability of sites; exercising options(if required) for purchase; site consolidation/subdivision; demolition, site clearing and diversion/relocation of utilities	■ (City)	■
Rezoning of lands		■
Environmental contamination of the site	■ (City)	
Site geo-technical conditions	■ (Data)	■ (Interpretation)
Transfer of fully functional Law Courts site to BCBC	■ (City)	
Facilities Design		
Planning and development of the site		■
Partners supplied data	■ (Accuracy)	■ (Sufficiency, Interpretation)
Design of Law Court facilities and the commercial building; design error; changed conditions; patent infringement.		■
Facilities Construction		
Building permits; construction of all facilities; commissioning of facilities; occupancy permit; quality management.		■
Quality monitoring and audit – Law Courts building	■ (BCBC)	
Administrative or Miscellaneous		
Feasibility of the project; Van Maren insolvency; marketing of the commercial building; force majeure.		■
Change to the scope of Law Courts project	■ (BCBC)	
Delays by partners	■	
Site/Construction		
Weather; fire; vandalism; damage to works; damage/injury to third parties; defective works/materials; maintenance during possession of site; quality assurance/quality control; Workers' Compensation Board issues; insurance – wrap up and course of construction insurance; and skills development; and Fair Wage Act compliance (Law Courts building only).		■

Benefits

Cost savings

The Provincial Government's original estimate to replace the Chilliwack Law Courts in the early 1990s was $21 million. The cost of building the new courthouse totalled less than $8 million, so the Provincial Government realized significant savings.

The City would not have undertaken either the commercial building or the clock tower itself so it did not perform a public sector comparator.

The City will, however, receive increased property tax revenues. The property that had been on the site now used for the commercial building had not generated tax revenues as it had been owned by the City. The new building will generate additional property tax revenues of an estimated $60,000 each year.

Property taxes for the new courthouse are waived for the first three years, but estimated annual tax revenues for the City after year three are at least $40,000.

Since one company constructed all three projects, the partners were able to achieve an integrated design as well as efficient staging of the construction process.

Community benefits

The Five Corners Project in downtown Chilliwack has become a source of civic pride and stimulus for the local economy.

- Downtown has been revitalized with the landmark Law Courts and clock tower.
- The courthouse and associated jobs have been retained within the community.
- Operating the Law Courts facility in Chilliwack has maintained or increased spending.
- The new Law Courts are safer and more efficient than the old one with the following additional benefits:
  - additional capacity
  - more resource efficient
  - more energy efficient
  - improved comfort for building occupants.
- The Five Corners Project has acted as a stimulus to other neighbouring property owners who have upgraded their buildings.
- Additional tourists have visited the downtown core

Other issues

Communications

Most of the public supported the idea of keeping the Law Courts downtown, though there was slight resistance at the outset from some local merchants. The City developed a communications strategy for the media using Main Street Communications and set up a website promoting the project[2] . There were no public meetings.

Today, local merchants acknowledge that the project was what started revitalization of downtown Chilliwack.

Labour

Staff who worked at the old courthouse were all moved over to the new Law Courts, and additional staff may be hired due to its increased capacity. The employees are pleased with the improved working conditions that the new Law Courts provide. Similarly, City staff who moved into the leased space in the commercial building are enjoying the upgraded working space.

Testimonials

Public sector

“The Five Corners Project is another excellent example of the strengths of the public-private sector coming together to produce a first-rate project. The City of Chilliwack and the Province of British Columbia had a shared vision as to what they wanted to achieve with respect to the development of a new Law Courts facility in the City of Chilliwack. The partners not only agreed as to the importance of the Law Courts remaining in Chilliwack, but the location in the downtown was vital to spearhead revitalization of the City’s downtown core. The private sector very quickly captured the essence of the vision and produced, at significant cost savings, the Law Courts, a commercial building and a civic plaza with a clock tower integrated into the downtown core and sensitive to the heritage nature of the area. Typical with the City’s experience in partnering with the private sector, the project was completed on schedule and on budget, and certainly meeting, if not surpassing, the expectations of the public sector partners.”

Ted Tisdale
Chief Administrative Officer
City of Chilliwack

[2]http://www.chilliwack.com/main/page.cfm?id=280

Private sector

"The value in the Five Corners Project from a developer's point of view is that the construction, which would normally have been completed as three separate contracts, was accomplished by one consolidated contract. Without this public-private relationship, Van Maren Construction would not have had the opportunity to construct the office/retail building in downtown Chilliwack. This venture also allowed us to utilize the entire site to provide for more efficient construction staging."

Eric Van Maren
Van Maren Construction Group

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Appendix

John Labatt Centre

Articles in Ground Lease and Participatory Occupancy Lease

(articles are in both leases unless otherwise specified)

Definitions and Interpretations
Demise
Construction and Use of Building (Ground Lease)
Use of Building (Occupancy Lease)
Ownership of the Building and Reversion
Rent and Financial Matters
Property Taxes, Services and Utilities
Repair/Management
Indemnity (Occupancy Lease only)
Insurance
Distress
Damage or Destruction
Default
Unavoidable Delays
Observance of Government Regulations
Assigning, Subletting and Mortgaging
Bankruptcy
Landlord's Covenants (Ground Lease)
Landlord's and City's Covenants (Occupancy Lease)
Landlord's Right of Early Termination (Ground Lease)
City's Right of Early Termination (Occupancy Lease)
Termination of Global and the Manager
End of Term and Assignment of Contracts
During the Term
Overholding
Estoppel Certificate
Construction Liens
Improvements and Betterments
Second Ice Pad
Notices
Further Obligations of the Tenant (Ground Lease)
Further Obligations of the Parties (Occupancy Lease)
Role of the City and Trustee (combined in Ground Lease; separate articles in the Occupancy Lease)
Dispute Resolution (Occupancy Lease)
Working Committee (Occupancy Lease)
Miscellaneous

Central North Correctional Centre

Services Agreement: Articles

1 Definitions and Interpretation
2 Appointment of Contractor
3 Services
4 Variations to Services
5 Correctional Industries Program
6 Contractor Persons
7 Operation and Maintenance
8 Insurance
9 Preparation for Operation of the Penetanguishene Facility
10 Requirements for Operation
11 Admission of Inmates
12 Contractor's General Obligations
13 Subcontracting
14 Payment of Contractor Persons
15 Appointment of Contract Compliance Manager, Contractor Representative and Facility Administrator
16 Reports
17 Records
18 Payment for the Services
19 Representations and Warranties
20 Risk and Indemnities by Contractor
21 Assignment
22 Change in Control
23 Termination for Convenience
24 Force Majeure
25 Defaults
26 Termination Arrangements and Intervention
27 Delay or Disruption of the Services
28 Notification of Claims and Limitations of Liability
29 Dispute Resolution
30 Contractor's Relationship with the Ministry
31 Confidentiality
32 Miscellaneous

Five Corners Project

Partnering Agreement: Articles and Schedules

Articles

1. Articles and Definitions
2. The Structural Framework
3. Land Transfer
4. The Developer Representations and Warranties
5. Legal Relationship
6. Design and Construction of the Law Courts Facility and Developer Building
7. Completion and Acceptance of Project
8. City Obligations
9. Partners Rights
10. Default Provisions
11. Insurance
12. Dispute Resolution
13. General Provisions

Schedules

1. Developer's Proposal
2. Project Schedule
3. Developer Building Agreement
4. Design/Build Agreement for the Law Courts Facility
5. Five Corners Site Plan
6. Existing Courthouse Agreement
7. Organization of Legal Agreements

Extra copies of this publication may be purchased by contacting:

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