

**THE CORPORATION OF THE CITY OF PETERBOROUGH**

**BY-LAW NUMBER 04-153**

**BEING A BY-LAW TO AUTHORIZE THE EXECUTION OF AN AGREEMENT BETWEEN THE CORPORATION OF THE CITY OF PETERBOROUGH AND STEVE JACKSON (Proposal P-07-04 for the Operation of the Peterborough Flea Market)**

THE CORPORATION OF THE CITY OF PETERBOROUGH BY THE COUNCIL THEREOF HEREBY ENACTS AS FOLLOWS:

1. That the Mayor and Clerk be and they are hereby authorized to execute an agreement between the Corporation of the City of Peterborough and Steve Jackson in the form attached hereby as Schedule "A", and to affix the Seal of the Corporation thereto.

By-law read a first and second time this 16<sup>th</sup> day of August, 2004

By-law read a third time and finally passed this 16<sup>th</sup> day of August, 2004

(Sgd.) Sylvia Sutherland, Mayor

(Sgd.) Nancy Wright-Laking, City Clerk

A G R E E M E N T made this 26<sup>th</sup> day of August, 2004.

B E T W E E N :

**THE CORPORATION OF THE CITY OF PETERBOROUGH**

500 George Street North  
Peterborough, Ontario K9H 3R9

hereinafter called the "City"

OF THE FIRST PART

- and -

**STEVE JACKSON**

22 Alma Street  
Omeme, Ontario K0L 2W0

hereinafter called the "Operator"

OF THE SECOND PART

WHEREAS the City is the owner of a building situated in R. A. Morrow Memorial Park, which building is known as the "R. A. Morrow Building" (hereinafter referred to as the "Morrow Building");

AND WHEREAS the City desires the Contractor to operate a Flea Market in the Morrow Building, pursuant to Request for Proposal Document No. P-07-04, in accordance with the Contractor's Bid which is attached hereto as Schedule "A" and forms part of this Agreement (hereinafter referred to as the "Work");

AND WHEREAS the Peterborough Agricultural Society (hereinafter referred to as the "Society") enjoys certain rights to the use of the park and the Morrow Building in accordance with the provisions of the *City of Peterborough Act, 1984*;

AND WHEREAS the City has agreed to grant to the Operator the right to use the Morrow Building in accordance with the terms and conditions hereinafter contained;

NOW THEREFORE THE PARTIES HERETO AGREE AS FOLLOWS:

**1.00 USE OF BUILDING**

1.01 The City hereby grants to the Operator the right to use the Morrow Building during the hours and upon the terms and conditions hereinafter set forth.

1.02 In addition to the use of the Morrow Building, and at no extra cost, the Operator may permit a maximum of ten (10) vendors to operate outside the front of the Morrow Building on any Sunday from 9:00 a.m. to 5:00 p.m., during the

operation of the Flea Market, provided that the space used by such vendors does not interfere with any fire access to the Morrow Building.

1.03 The Operator shall be entitled to use fifty per cent (50%) of the existing storage space within the north east corner of the main showroom of the Morrow Building (being approximately seventeen (17) feet by fifteen (15) feet in size.) The Operator acknowledges that the existing wire cage around the storage space is the property of the City. The Operator shall be entitled to place a temporary cover over the wire cage.

1.04 The Operator shall also be entitled to use the interior office in the central north west corner of the Morrow Building subject to the prevailing rights of the Society pursuant to paragraph 3.02 of this agreement.

1.05 The Operator acknowledges that this agreement does not provide the Operator with the exclusive use of any parking lots located adjacent to the Morrow Building.

1.06 The City grants permission to the Operator, at the risk and expense of the Operator, to place a maximum of two (2) storage containers approved by the City and comprising nine feet high by nine feet wide by twenty-two feet long (or forty-five feet long if only one container) on the concrete pad and part of the gravel road surface at the south east corner of the Morrow Building, under the supervision of, and to the satisfaction of, the City. The Operator shall be responsible for moving the storage containers should either the City or the Society exercise their prevailing rights pursuant to paragraphs 3.00 or 8.00 of this agreement.

1.07 The Operator shall have the use of the Public Address system in the Morrow Building.

## **2.00 TERM**

2.01 The term of this agreement shall be three (3) years, commencing on September 11, 2004, and being fully complete on August 26, 2007, subject to the provisions of this agreement respecting early termination, or the rights of the Society.

## **3.00 HOURS OF OPERATION**

3.01 The Operator shall use the Morrow Building in accordance with the following schedule:

May 1<sup>st</sup> to October 31<sup>st</sup>, from 4:00 p.m. Friday to 11:00 p.m. Sunday (two (2) days); and

November 1<sup>st</sup> to April 30<sup>th</sup>, from the time on Saturday that the Morrow Building has been vacated by the Farmers' Market to 11:00 p.m. Sunday (one (1) day).

Notwithstanding this, in the event that the City requires the Morrow Building on any Friday (May 1<sup>st</sup> to October 31<sup>st</sup>), or Saturday (November 1<sup>st</sup> to April 30<sup>th</sup>), it may provide written notice to the Operator, by 4:30 p.m. on the preceding Monday, and the Operator shall not use the Morrow Building prior to 4:00 a.m. on the following Saturday or Sunday, as the case may be.

3.02 The Operator acknowledges the prevailing rights of the Society, as recited in Section 7 of this agreement, and agrees that scheduling of the Operator's use of the Morrow Building shall be undertaken by the City and the Operator in light of the rights of the Society. The City reserves the right to provide the Operator with twenty-one (21) days written notice of any date that the Morrow Building is required by the Society, and the Operator shall not have the use of any part of the Morrow Building on such date.

3.03 The Operator may, upon at least thirty (30) days written notice to the City, cancel any Sunday use that falls on the last Sunday in December and on the first Sunday in January, during the term of this agreement.

#### **4.00 COMPENSATION**

4.01 The Operator agrees to pay compensation per day pursuant to the schedule set out in paragraph 3.01 of this agreement, plus the Goods and Services and any other applicable tax which may hereafter be levied by either the Federal or Provincial Governments, to the City, in the following amounts:

September 11, 2004 to August 31, 2005	-	\$355.00 per day
September 1, 2005 to August 31, 2006	-	\$365.00 per day
September 1, 2006 to August 26, 2007		\$375.00 per day

4.02 Compensation shall be paid monthly, within seven (7) days of receipt of an invoice therefor. Any compensation which is not so paid shall thereafter bear interest at the rate of fifteen per cent (15%) per annum until paid.

4.03 The Operator agrees to deposit with the City, prior to the commencement of this agreement, the sum of Seven Hundred and Fifty Dollars (\$750.00), which shall be held by the City as a security deposit, and shall bear interest at the City's investment rate from time to time until returned to the Operator. In the event that the lease is terminated, either before or after its maturity, the security deposit may be used by the City to pay any unpaid compensation, or to fulfil any outstanding obligations of the Operator pursuant to this agreement.

## **5.00 COVENANTS OF THE OPERATOR**

### **5.01 Maintenance and Cleanup**

The Operator covenants to maintain the Morrow Building in a state of cleanliness, and to repair any damage caused thereto by his own wilful or negligent conduct or that of persons who are permitted in the Morrow Building by him. The Operator is responsible for all clean-up and disposal of garbage generated by the use of the Morrow Building by the Operator's patrons, or vendors, their agents, employees, or volunteers. In addition, the Operator may spray the Morrow Building with odour removing spray as required.

### **5.02 Cleanliness of Building**

Should the City determine that, as a result of the Operator's use, the cleanliness of the Morrow Building is not suitable for other event organizations using it, the City reserves the right to clean the Morrow Building at the expense of the Operator. The Operator shall pay such costs to the City within thirty (30) days of invoice. Should the Operator determine that, as a result of use by others, the cleanliness of the Morrow Building is not suitable for his use, he may notify the City, and the City shall forthwith clean the Morrow Building at the City's expense.

### **5.03 Assignment**

The Operator covenants not to assign or sublet the Work.

5.04 **Use of the Morrow Building**

The Operator covenants and agrees to use the Morrow Building only for the purposes of a Flea Market. The Operator shall have the sole authority to select vendors and establish rules and regulations pertaining to the operation of the Flea Market.

5.05 **Licences**

The Operator covenants to obtain all appropriate licence(s), or permits to operate the said Flea Market legally.

5.06 **Marketing**

The Operator covenants to promote the Flea Market, in co-operation with vendors, through a wide range of advertising and promotional initiatives.

5.07 **Sale of Goods**

The Operator acknowledges and agrees that the City is not responsible for any defect in regard to goods or services provided incidental to the operation of the Flea Market.

5.08 **Indemnification**

The Operator shall indemnify and save the City harmless from and against all claims, actions, losses, expenses, costs or damages of every nature and kind whatsoever, whether direct or indirect, which the City, its agents, servants or officers, may suffer as a result of the errors, omissions or the negligence of the Operator, its agents, servants or officers, as a consequence of the Morrow Building by the Operator, its agents, servants or officers.

5.09 **Insurance**

(a) The Operator shall, at the Operator's expense, obtain such public liability and property damage insurance as will protect the Operator and the City against any claim for damages or personal injuries, including death, which may arise from, or be connected with, the operation of the Flea Market, which insurance shall have a minimum limit of Two Million Dollars (\$2,000,000.00) of coverage, and shall contain a cross-liability endorsement which is satisfactory to the City. The Operator shall provide

the City with a copy of the said insurance policy, or certificate of insurance indicating the nature of the policy and coverage.

- (b) The City shall be under no liability whatsoever to any person, firm or corporation for any damages or injury, including death, to any person or persons caused by, or resulting from the use of the Morrow Building by the Operator or any servant, agent or invitee of the Operator.
- (c) The City shall, at its expense, insure the Morrow Building in respect of fire, exclusive of contents owned or leased by the Operator or any employee, agent or invitee of the Operator. The Operator covenants to pay any increase in premiums payable for the City's insurance on the Morrow Building if such increase is a direct result of the use of the building by the Operator during the term of this agreement.

#### **5.10 Comply With All Laws**

The Operator covenants to comply with all health, fire, safety codes and City by-laws, and any and all applicable Provincial or Federal Regulations, and to ensure that the vendors of the Flea Market also comply with such applicable law.

#### **5.11 Restriction On Goods For Sale**

The Operator shall not sell agricultural products, which would be in competition with the operation of the Peterborough & District Farmers' Market Association, unless such sale is approved in writing by the Peterborough & District Farmers' Market Association.

### **6.00 COVENANTS OF THE CITY**

- 6.01 The City agrees that the Operator may erect, at its expense, a permanent advertising sign for the purpose of promoting the Operator's use of the Morrow Building. The sign shall be approved by the Peterborough Memorial Centre Manager with respect to style, size, location and wording, prior to its erection. No other sign, awning or canopy may be attached or affixed on the Morrow Building without the prior written approval of the City.
- 6.02 The City shall pay the cost of all utility charges with respect to the Morrow Building, including, without limiting the generality thereof, heat, electricity and water.

## **7.00 USE OF THE BUILDING BY THE SOCIETY**

7.01 The Operator acknowledges that the Society is entitled to use the Morrow Building in accordance with the *City of Peterborough Act, 1984*, and the Operator shall not be entitled to use the Morrow Building on such dates. Nothing in this agreement shall prevent the Operator from arranging alternative premises, if the same are available, with the Peterborough Memorial Centre Manager, but the City makes no representation with respect to the availability of such alternative premises.

## **8.00 USE OF THE BUILDING BY THE CITY**

8.01 The Operator acknowledges that the City may use the Morrow Building on any Saturday and/or Sunday for certain events as scheduled, to a maximum of four (4) such events per calendar year. The City reserves the right to provide the Operator with twenty-one (21) days written notice of any such date that the Morrow Building is required by the City and the Operator shall not have the use of any part of the Morrow Building on such dates.

8.02 In the event that the City requires the use of the Morrow Building on any day from Monday to Friday, the City may provide written notice to the Operator by 4:30 p.m., ten (10) days prior to the Monday of the week, and the Operator shall remove his goods, and those of its Vendors, from the Morrow Building. The City shall not provide such notice unless a bona fide use is being made of the building, and in the absence of such notice, the Operator need not remove his goods.

8.03 The City may enter the Morrow Building to effect emergency repairs. It may enter the Morrow Building to effect other requisite repairs on fifteen (15) days written notice to the Operator. The City is at liberty to make additional capital improvements to the Morrow Building. Any improvements, additions, alterations, construction, or affixation of fixtures to the Morrow Building by the Operator shall be first approved by the City. There shall be a pro-rata reduction in compensation payable if use of the Morrow Building is interfered with, for any part of a Saturday or Sunday during the period of repairs or improvements.

8.04 The City covenants and agrees to use its best efforts to schedule any emergency repairs or capital improvements to the Morrow Building in order to minimize any disruption to the Operator's use of the Morrow Building.

#### **9.00 USE OF HEATERS BY OPERATOR**

9.01 The Operator shall not use any heating devices, including portable propane gas heaters, in the Morrow Building, without the prior written consent of the City.

#### **10.00 QUIET ENJOYMENT**

10.01 The City covenants with the Operator for quiet enjoyment, subject to the rights of the Society and use by the City as specified in this agreement.

10.02 The City agrees to sweep the Morrow Building after any major event, prior to the Saturday of any weekend use by the Operator.

#### **11.00 VEHICLES IN BUILDING**

11.01 The Operator agrees that no motor vehicle of any type may be kept in the Morrow Building during hours of operation of the Flea Market. Any damage to the Morrow Building caused by vehicles shall be the responsibility of the Operator.

#### **12.00 REMEDIES ON DEFAULT**

12.01 Upon default by either party in its obligations or covenants hereunder, the other party may exercise all remedies available at law or in equity or other appropriate proceedings including bringing an action, or actions, from time to time, for recovery of amounts due and unpaid by any party and/or for damages which shall include all costs and expenses reasonably incurred in exercise of its remedy, including reasonable legal fees, and/or for specific performance.

#### **13.00 EARLY TERMINATION**

13.01 The City may terminate this agreement upon the occurrence of any of the following events:

- (a) destruction or condemnation of the Morrow Building in whole or in part;
- (b) the Operator being adjudged a bankrupt, or making a general assignment for the benefit of his creditors, or in the event that a Receiver is appointed on account of the insolvency of the Operator; or
- (c) the Operator is in default in the observance or fulfilment of any covenant or obligation of the Operator contained in this agreement, and has not

remedied the default, within fourteen (14) days of written notice of such default being given by the City.

Termination of the agreement by the City pursuant to either subparagraphs (a) or (b) above shall be effective immediately upon written notice being given to the Operator, and, in the case of paragraph (c), upon seven (7) days written notice to the Operator.

13.02 The Operator may terminate this agreement on sixty (60) days written notice to the City.

#### **14.00 NOTICES AND CHANGES OF ADDRESS**

14.01 All notices, requests, demands or other communication to be given by any party to the other under this agreement shall be in writing and must be either personally delivered, mailed by registered or certified mail, return receipt requested, or sent by facsimile transmission, addressed as follows:

To the City at:

500 George Street North  
Peterborough, Ontario K9H 3R9  
Fax: (705) 748-8816  
Attention: City Clerk

To the Operator at:

22 Alma Street P.O. Box 10  
Omeme, Ontario K0L 2W0

or such other address as either party may hereinafter designate by written notice to the other. Notices are deemed delivered or given on the fifth day after mailing if mailed as aforesaid and upon actual receipt if otherwise delivered personally.

**15.00 BINDING AGREEMENT**

15.01 This agreement shall enure to the benefit of and be binding upon the parties hereto and their respective heirs, successors, administrators and assigns.

IN WITNESS WHEREOF the parties hereto have hereunto set their respective hands and seals.

SIGNED, SEALED AND DELIVERED	)	THE CORPORATION OF THE
in the presence of:	)	CITY OF PETERBOROUGH
	)	
	)	_____
	)	Sylvia Sutherland, Mayor
	)	
	)	_____
	)	Nancy Wright-Laking, Clerk
	)	
	)	_____
	)	Steve Jackson