

**THE CORPORATION OF THE CITY OF PETERBOROUGH**

**BY-LAW NUMBER 06-121**

**BEING A BY-LAW TO AUTHORIZE THE EXECUTION OF AN  
AGREEMENT BETWEEN THE CORPORATION OF THE CITY OF  
PETERBOROUGH AND JUMPER PRODUCTIONS LTD**

**NOW THEREFORE, THE CORPORATION OF THE CITY OF  
PETERBOROUGH, by the Council thereof hereby enacts as follows:**

1. That the Mayor and Clerk be hereby authorized to execute an agreement with Jumper Productions Ltd., hereby attached as Schedule "A", and to affix the Seal of the Corporation thereto.

By-law read a first and second and third time this 8<sup>th</sup> day of August, 2006

(Sgd.) Sylvia Sutherland, Mayor

(Sgd.) Nancy Wright-Laking, City Clerk

**THIS AGREEMENT** made in quadruplicate this      day of      , 2006.  
(date to be filled in by City)

**B E T W E E N:**

**THE CORPORATION OF THE CITY OF PETERBOROUGH**  
(the "City")

And

**JUMPER PRODUCTIONS LTD.**

("Jumper")

Being a Corporation duly incorporated under the Canada Business Corporations Act  
Corporation No.: 4331168B

**FILMING, PRUNING AND DRESSING AGREEMENT**  
(the "Agreement")

**WHEREAS** Jumper is a Canadian film production company, incorporated on or about 3 November 2005, which desires to film portions of a movie within the City of Peterborough between Monday 21, August 2006 and Thursday, 29 August 2006 inclusive;

**AND WHEREAS** Jumper has advised the City that to accommodate Filming, on City property along Edgewater Boulevard and Kenneth Avenue certain Trees and Shrubs need Pruning;

**AND WHEREAS** Jumper has obtained and provided to the City a copy of the Uxbridge Tree Service report (Schedule 'A') concerning Pruning the Tress and Shrubs;

**AND WHEREAS** the City is prepared to grant Jumper's request to conduct Filming, Pruning and Dressing within the City of Peterborough upon the terms and conditions outlined below;

**AND WHEREAS** Jumper agrees to be liable for the obligations it is assuming under this Agreement;

**NOW THE PARTIES COVENANT AND AGREE AS FOLLOWS:**

**1.0 DEFINITIONS**

In this Agreement, the following shall mean:

**City's Manager of Public Works** – means the City's Manager of Public, or designate;

**City's Manager of Recreation** – means the City's Manager of Recreation, or designate;

**Dress or Dressing**– means the temporary placement of non-toxic, non-staining, inert material (collectively, the "Material") used to produce a visual effect required for Filming and includes the removal of the Material in accordance with the terms and conditions of this Agreement;

**Filming** – means the establishment of production and/or production support facilities and/or any ancillary or related activities performed to facilitate the act of shooting film;

**ISA** – means the International Society of Arborculture;

**ISA Certified Arborist** – means Gavin Watson, a person who currently holds valid accreditation and membership in the International Society of Arborculture;

**Jumper** – means Jumper Productions Ltd., its employees, agents, representatives, successors, assigns, licensees, employees, agents, independent contractors and suppliers

and all other persons, entities, businesses or organizations for whom, in law, Jumper is responsible;

**Pruning** – means the removal, by the ISA Certified Arborist in accordance with ISA approved pruning practices, of certain branches and leaves from the Trees and Shrubs;

**Trees and Shrubs** – means those trees and shrubs identified in Schedule ‘A’ and also includes any vines or flowers that are trimmed or cut back at the Main Branch of the Peterborough Public Library;

## 2.0 JUMPER’S SERVICES AND OBLIGATIONS

2.1 Jumper agrees and accepts that it is required to do the following, prior to the commencement of Filming, Pruning, or Dressing within the City:

- i. No later than **4:00 PM on 169 August 2006**, provide the City with cash, a certified cheque, bank draft, or money order, or payment in another form satisfactory to the City’s Director of Legal Services, in the amount of THIRTY-FIVE THIRTY-FIVE THOUSAND (\$~~3535~~,000.00) CANADIAN DOLLARS (the “Deposit”);
- ii. No later than **4:00 PM on 169 August 2006**, hold a meeting attended by the ISA Certified Arborist, Jumper’s Location Manager and the City’s Manager of Public Works at a time agreeable to the City’s Manager of Public Works to discuss and agree upon the extent of the Pruning;
- iii. No later than **4:00 PM on 169 August 2006**, confirm in writing with the City Clerk’s Office the filming locations and Temporary Road Closures required for Filming as currently identified in Schedule ‘B’;
- iv. No later than **4:00 PM on 169 August 2006**, confirm in writing with the City Clerk’s Office the dates, locations at which, and times during which it shall:
  - a. Prepare and Dress each location for Filming;
  - b. Conduct Filming at each location; and
  - c. Return each location to the condition it was in immediately prior to Jumper’s preparation and/or Dressing of each location and/or Filming;
- v. No later than **4:00 PM on 169 August 2006**, meet its obligations under Articles 2.13, 2.19(i) and 6.0; and
- vi. No later than **4:00 PM on 169 August 2006**, Jumper shall satisfy the City’s Manager of Public Works that it has performed, or arranged for the performance of, any required Underground Locates, such locates to occur on or before **193 August 2006**.

2.1.1 Jumper agrees and accepts that in the event it fails to meet any of the deadlines or obligations contained in Article 2.1(i) to (vi) inclusive and in Articles 2.19 and 2.27(i), that the City may terminate this Agreement at **4:01 PM on 169 August 2006** without penalty or liability and that such termination shall prevent Jumper from Filming, Pruning and/or Dressing on or at any City-owned or City-managed land.

2.1.2 Jumper agrees and accepts that its obligations under Article 2.1 are a condition precedent to the City performing any of its obligations under the Agreement and a condition precedent to its lawful commencement of Filming, Pruning and/or Dressing on or in any City-owned or City-managed building or land.

- 2.2 Jumper agrees and accepts that it shall be liable for the health and acceptable condition of the Trees and Shrubs for a period of **365 days** following the completion of Pruning or until **6 September 2007** (the "Time Period"), whichever date is earlier. In the event any of the Trees or Shrubs do not survive the Time Period in a condition acceptable to the City's Manager of Public Works, Jumper agrees that the City shall be entitled to use the Deposit to remove and/or replace any Trees or Shrubs which the City's Manager of Public Works has determined, in his sole discretion, are in an unacceptable condition.
- 2.3 The Parties agree to work reasonably and diligently with each other to determine the extent of the Pruning. Jumper agrees that any decision made by the City's Manager of Public Works made pursuant to Articles 2.2, 2.13 and/or 2.14 shall be final and binding, and that such decision shall not absolve or limit Jumper's liability under this Agreement.
- 2.4 Jumper agrees and accepts that the Deposit is a reasonable sum of money to be held by the City and that the Deposit was provided by Jumper without coercion and with its agreement that, in the event Jumper fails to perform any of its services or obligations under this Agreement, or pay any fee, charge or expense levied by the City, or in the event Jumper fails to rectify any failure to perform its obligations in accordance with Article 2.7 below, the City shall, without further notice to Jumper, use the Deposit:
- i. To fulfill Jumper's services and obligations under this Agreement; and/or
  - ii. Pay any fee, charge or expense levied by the City under this Agreement; and/or
  - iii. Remove and/or replace any Tree or Shrub in accordance with Article 2.2.
- Furthermore, Jumper agrees that such use of the Deposit shall not absolve or limit Jumper's liability under this Agreement nor prevent the City from pursuing any other legal remedy available to it.
- 2.5 Jumper shall retain and use the services of Gavin Watson and the Uxbridge Tree Service to conduct the Pruning under this Agreement.
- 2.6 Jumper shall perform the Pruning and/or Dressing at its sole risk and expense. as directed by the City's Manager of Public Works.
- 2.7 Jumper shall respond to and rectify any problems or concerns brought to its attention by the City within twenty-four (24) hours, failing such satisfactory response, Jumper agrees and accepts that the City may rectify the problem or concern at Jumper's sole expense.
- 2.8 Jumper agrees and accepts that it shall, as directed by the City's Manager of Public Works save and except for the Trees and Shrubs, rehabilitate any City-owned or City-managed property used or occupied by Jumper to the condition such property was in immediately prior to Jumper's Filming, Pruning and/or Dressing of or at such City-owned or City-managed property. In the event of a dispute concerning the condition of such property, the opinion and direction of the City's Manager of Public Works, shall be final and binding upon Jumper.
- 2.9 Jumper shall provide the names and contact information for each Location Manager and film director who shall be available during the Filming, Pruning and/or Dressing, as the case may be, and who shall respond forthwith to City inquiries.
- 2.10 Jumper shall obey and conduct itself and those for whom in law it is responsible for in accordance with all applicable municipal, provincial and federal laws ("Applicable Law"). Concerning Applicable Law, Jumper warrants and represents that it has made the appropriate inquiries concerning Applicable Law and is

conducting itself at its own risk and expense according to its understanding of Applicable Law. Jumper acknowledges that, save and except that the City is permitting the Pruning and Dressing to occur, it has received no opinion, warranty or representation, whether express or implied from the City, concerning the legality of its conduct, actions and/or behaviour.

**2.11** Jumper shall bear the risk of any losses associated with the early termination of this Agreement by any Party. Such risks include but are not limited to, any claims made against it by any third party or any losses it may suffer as a result of breaching any agreement with any third party.

**2.12** Jumper has the sole responsibility to hire and provide appropriate Worker's compensation and insurance to, and meet other employment standard benefits for, its employees and agents and it is agreed that the City bears and accepts no liability concerning the actions of Jumper or Gavin Watson or the Uxbridge Tree Service.

### **Dressing**

**2.13** Jumper shall be permitted to Dress each City-approved location or City-owned property in accordance with its reasonable requirements, subject to any direction given by the City's Manager of Public Works or the City's Director of Utility Services (or his designate). Within forty-eight hours of the completion of Filming at each location, Jumper shall remove all the Material to the satisfaction of City's Manager of Public Works or the City's Director of Utility Services (or his designate), save and except for any Material which has entered the City's catch basins which Jumper shall remove forthwith upon the direction of Mr. Pat Devlin or the City's Director of Utility Services. Jumper also agrees and accepts that it shall, on or before 4:00 PM on 16 August 2006, by facsimile at the numbers herein provided, send to Mr. Pat Devlin (Facsimile: 705.743.0991) and to the City's Legal Services Department (Facsimile: 705.742.3947), a copy of the Material Safety Data sheet concerning any and all Material used by Jumper.

**2.14** In the event Jumper fails to remove all Dressing in accordance with Article 2.13, or after being notified by the City to do so in accordance with Article 2.7, Jumper agrees and accepts that the City may remove the Dressing at Jumper's sole expense.

**2.15** Jumper shall be responsible for the performance of underground cable, pipe or other buried infrastructure locates (including but not limited to gas lines, sewer pipes, buried fibre-optic cables, electrical wires, water mains) (collectively "Underground Locates") before performing any activity that requires excavation, the installation of stakes or which results in the disturbance of anything below the surface of the earth (whether naturally occurring or man-made) which is normally walked upon. Jumper shall also be liable and responsible for any and all damages and losses flowing from its failure to perform, or its failure to cause the performance of such Underground Locates. Jumper accepts that any rupture or damage to any cable, pipe or other buried infrastructure shall constitute evidence of its negligence and that it shall not contest such evidence in any subsequent court action or proceeding.

**2.16** Jumper shall, at its sole expense, provide an executed copy of this Agreement to:

- i. Each Location Manager and film director who shall be present for the duration of the Filming and/or Dressing at each location; and to
- ii. Gavin Watson, prior to **Wednesday, 16<sup>th</sup> August 2006**.

### **Roger's Cove, Morrow Park – Park Permit, Hydro, Water Fees**

**2.17** Jumper agrees that its Filming and Dressing shall not interfere with the public beach supervision program offered daily by the City at Roger's Cove or any other City location. Jumper also agrees that it shall not obstruct or occupy the east lot parking facility at Roger's Cove. For greater clarity, Jumper shall only be permitted to use the west lot parking facility.

- 2.18 Jumper shall also install appropriate signage, to the satisfaction of the City's Recreation Manager, directing the public to the east lot parking facility at Roger's Cove.
- 2.19 Jumper shall no later than **4:00 PM on 16<sup>th</sup> August 2006**, pay the park use permit Fee as set out below:
- i. The park use permit fee (the "Park Fee") is: **ONE HUNDRED AND EIGHTEEN DOLLARS** (\$118.95) plus + G.S.T. and any other applicable taxes per day/per park.
    - a. The Park Fee for Roger's Cove includes the exclusive use of the washroom facility located within Roger's Cove until 11:59 AM and after 7:01 PM each day during the Filming. Between the hours of Noon until 7:00 PM each day during the Filming, Jumper shall permit public access to the washroom facility. The City shall provide Jumper with a key to the washroom facility, so that it can restrict access to the washroom facility between the hours of 7:01 PM and 11:59 AM each day during the Filming.
    - b. Jumper shall provide a level of security for the washroom facility that it considers appropriate and prudent between the hours of 7:01 PM and 11:59 AM each day during the Filming. The City shall in no way be responsible for any damage, personal injury, losses or vandalism that may occur at, or within, the washroom facility during the Filming. Furthermore, the City shall not be responsible for any damage to or loss of Jumper's equipment, property or the property of any third party Jumper permits to use the washroom facility at any time during the Filming. Jumper agrees and accepts that the City is not providing any security for the washroom facility. The City is explicitly informing Jumper that other third parties may have a key to the washroom facility and the City is not providing any warranty that merely locking the door(s) will keep the washroom facility secure. Jumper is assuming all risks and obligations associated with its use of the washroom facility and it shall indemnify and hold harmless the City for any and all damages, personal injury, losses or vandalism that may occur at, or within, the washroom facility during the Filming. Jumper acknowledges that it has inspected the washroom facility, found it to be satisfactory, and is prepared to accept its use on an "as is" basis.
  - ii. The fee for the overnight parking of vehicles engaged in the Filming at any City park, including Roger's Cove and/or Morrow Park is:
    - c. **THIRTY DOLLARS** (\$30.00) per day/per vehicle at Roger's Cove or at any other City park where water and/or hydro hook-ups are not available; or
    - d. **THIRTY-FIVE DOLLARS** (\$35.00) at Morrow Park per vehicle/per day hydro with water and/or hydro hook-up or **THIRTY DOLLARS** (\$30.00) per day at Morrow Park per vehicle/per day without hydro and/or water hook-up;
- 2.20 Concerning Filming in Roger's Cove or any other City Park, Jumper shall take and follow any reasonable direction given by the City's Recreation Manager.
- 2.21 Jumper agrees and accepts that any reasonable direction given by the City's Recreation Manager shall be final and binding upon Jumper.
- 2.22 The City shall make the Recreation Manager available upon reasonable notice during the City's regular business hours of 8:30 AM to 4:30 PM Monday to Friday between 8 August and 22 August 2006.

### **Louis Street Parking Lot and On-Street Parking**

2.23 Jumper agrees and accepts that it shall be responsible for the costs of parking its vehicles at the Louis Street Parking Lot at the rate of SEVEN DOLLARS (\$7.00) DOLLARS per day/per vehicle.

2.24 Jumper also agrees and accepts that it shall be responsible for the daily rate of using any parking meter bagged by the City for Jumper's exclusive use.

2.25 Jumper agrees and accepts that the costs of parking described in Article 2.23 and 2.24 shall be deducted by the City from the Deposit. The City shall invoice Jumper prior to deducting any payment from the Deposit concerning parking.

2.26 Jumper also agrees and accepts that, notwithstanding Articles 2.23 and 2.24, the City has retained the right to ticket and tow way any illegally parked vehicles in accordance with applicable law.

### **Use of Main Branch – Peterborough Public Library**

2.27 Jumper agrees and accepts that the costs of closing the Main Branch of the Peterborough Public Library (the "Main Branch) for Jumper's period of limited exclusive use (as defined in **Article 3.8** below) shall be:

- i. **FIFTEEN THOUSAND (\$15,000.00) DOLLARS** (the "Main Branch Rental Fee") for three consecutive days, or consecutive part-days, of Filming, during which the Library is closed to the public. Furthermore the Main Branch Rental Fee shall be paid as follows:
  - a. **Seven-thousand five hundred (\$7,500.00) dollars** to be paid upon execution of this Agreement; and
  - b. **Seven-thousand five hundred (\$7,500.00) dollars** to be paid on or before **4:00 PM on 25 August 2006**;
- ii. The City shall be entitled to deduct the staff wages for one (1) staff person from the Deposit who is required to be on-site while Jumper's electrical crew commences and completes their work;
- iii. The City shall be entitled to deduct the over-time staff wages for Becky Rogers and/or Doug Davis or their respective designate, in the event either or both persons are present at the Main Branch during any Filming, Pruning and/or Dressing that occurs outside of the hours of 9:00 AM and 5:00 PM for Ms. Rogers and outside the hours of 8:00 AM and 5:00 PM for Mr. Davis;
- iv. In the event Jumper determines that the presence of Main Branch staff, during the period of Jumper's limited exclusive use, is detrimental to Filming, it may direct that main Branch staff, save and except, Becky Rogers and Doug Davis or their respective designates, vacate the Main Branch and Jumper shall then permit the City to deduct the regular wages for such Main Branch staff who have vacated the Main Branch from the Deposit; and
- v. That, save and except for the Pruning of the vines and cutting back the flowerbeds at the Main Branch, Jumper shall restore the Main Branch to the condition it was in immediately prior to Jumper's commencement of Filming, Pruning and/or Dressing. Without limiting the generality of the foregoing, returning the Main Branch to the condition it was in immediately prior to Jumper's commencement of Filming, Pruning and/or Dressing means:
  - a. **Returning any Main Branch furniture, shelving, fixtures or equipment to its original location as directed by Main Branch staff;**

- b. Reassembling any furniture, shelving or fixtures dismantled by Jumper as directed by Main Branch Staff;
- c. Removing all Material used as Dressing from the interior and exterior of the Main Branch; and
- d. Satisfying the City, acting reasonably, that the roof of the Main Branch has not been damaged or compromised as a result of Filming or Dressing.

2.28 The Parties agree to work co-operatively and diligently to provide Jumper with three (3) days of limited exclusive use of the Main Branch. Jumper agrees, in accordance with Article 2.27(i), to pay any additional Main Branch Rental Fee for any full or partial day of Filming beyond the aforementioned three (3) days of Filming during which Jumper requires the limited exclusive use of the Main Branch.

### **Payment of Paid-Duty Police Officers**

2.29 Jumper agrees and acknowledges that the City shall be entitled to use the Deposit to pay the Paid-Duty Police Officers for their services in establishing and maintaining the Temporary Road Closures identified in Schedule 'B'.

## **3.0 The City's Responsibilities:**

### **Pruning**

- 3.1 The City shall make the Manager of Public Works available upon reasonable notice during the City's regular business hours of 8:30 AM to 4:30 PM Monday to Friday between 8 August and 22 August 2006.
- 3.2 The City shall provide Jumper with reasonable access to the Main Branch and to its property along Edgewater Boulevard and Kenneth Avenue in order to facilitate the Pruning.
- 3.3 In the event the City uses any portion of the Deposit in accordance with this Agreement, the City shall provide Jumper with an accounting, in a form acceptable to the City's Finance Department, concerning the use of the Deposit or any portion thereof.
- 3.4 Notwithstanding Article 3.3 above, the City shall be entitled to retain **FIVE THOUSAND (\$5,000.00)** of the ~~entire~~ Deposit ~~or any portion of the Deposit~~ and all interest earned on the Deposit, and any remainder thereof, until the later of 365 days following the completion of Filming in the City or **6 September 2007**.
- 3.5 On or about **6 September 2007**, or on the 365<sup>th</sup> day following the completion of Filming in the City, the City's Manager of Public Works shall inspect, or cause to be inspected, the Trees and Shrubs (the "Inspection"). If, in his opinion, the Trees and Shrubs are in a satisfactory state of health, then the City shall, within thirty (30) days following the Inspection, return the Deposit (without interest), minus any sums expended by or retained by the City pursuant to this Agreement, to Jumper at the address identified in Article 8.1 below.

### **Roger's Cove and/or Morrow Park**

- 3.6 The City shall perform any and all hydro and water hook-ups to Jumper's vehicles at Roger's Cove and/or Morrow Park and/or any other City park. The City shall prepare an invoice concerning the number of Jumper's vehicles which were parked overnight at Roger's Cove and/or Morrow Park and/or any other City park and/or hook-ed up to hydro and/or water and shall deduct the Fees referred to in Article 2.19(ii) from the Deposit.

### **Parking**

- 3.7 Following its receipt of adequate written notice on or before 16 August 2006, the City shall provide an adequate number of parking spaces at the Louis Street

Parking Lot to meet Jumper's reasonable needs and shall also provide Jumper with an adequate number of "bagged" parking meters for Jumper's exclusive use.

### **The Main Branch**

3.8 The City shall close the Main Branch to the public on 23, 24 and 25 August 2006 and provide the Main Branch for Jumper's limited exclusive use in accordance with the following terms and conditions:

- i. That couriers and other service people who typically make deliveries or make collections from the Main Branch shall have access, under the direction of Jumper, to the Main Branch upon their arrival on 23, 24 and 25 August;
- ii. That Jumper shall ensure that the employees of the 24by7 Tekdesk will continue to have quiet enjoyment of the basement of Main Branch on 23, 24 and 25;
- iii. That the City shall deduct from the Deposit, the wages and benefits for any part-time staff member who would normally have been scheduled to work at the Main Branch on 23, 24 and 25 August 2006 and during any additional day of Filming and who has not been re-scheduled to work at another City facility; and
- iv. That full-time City employees who require access to the Main Branch to provide their services to the City, shall have full access to their respective work stations during normal library hours on 23, 24 and 25 August 2006 and during any additional day of Filming.

3.9 The City shall permit Jumper to have access to the roof of the Main Branch on 22 August 2006 for the purpose of Dressing the Main Branch.

3.10 The City shall make Becky Rogers and/or Doug Davis available during their regular hours of work to give and provide direction to Jumper concerning the Filming, Pruning and/or Dressing.

### **4.0 Payment**

4.1 Jumper shall pay the Deposit in accordance with Article 2.1(i), if the Deposit is paid by certified cheque, bank draft or money order, such cheque, bank draft or money order shall be payable to the "the Corporation of the City of Peterborough" and delivered to:

The Finance Department  
City of Peterborough  
City Hall  
500 George Street North  
Peterborough, ON K9H 3R9

no later than **4:00 PM on Wednesday, 16<sup>th</sup> August 2006.**

### **5.0 Termination of Agreement:**

5.1 The following events constitute events which shall result in the immediate termination of the Agreement without penalty or liability:

- i. Jumper becomes bankrupt or insolvent within the meaning of the *Bankruptcy or Insolvency Act* (Canada) (the "Act") or makes an assignment into bankruptcy or otherwise seeks court protection from, or makes any form of arrangement with, its creditors under the Act or under the *Companies Creditors Arrangement Act*;

- ii. A receiver or manager is appointed by a court of competent jurisdiction to manage the affairs, wind up the business or liquidate the assets of Jumper.
- iii. Any portion of Jumper's equipment is seized, taken or removed from the City pursuant to the operation of the *Personal Property Security Act*, other security instrument, court order or other applicable law.
- iv. If Jumper breaches any term or condition of this Agreement and such breach is not remedied within forty-eight (48) hours of Jumper receiving written notice of the breach. Notwithstanding the preceding, Jumper agrees and accepts that failing to comply with the requirements of Articles 2.1, 2.19 4.1 or Articles 6.1 to 6.2 inclusive, shall constitute a fundamental breach of the Agreement and that the City shall be entitled to terminate the Agreement forthwith without liability or penalty to Jumper or any third party.

## **6.0 Requirement for Insurance**

6.1 Jumper shall, during the Term of this Agreement, procure, obtain and maintain, at its sole expense, insurance policies in which the City is named as an additional insured in the amount of not less than **FIVE MILLION DOLLARS** (\$5,000,000.00) against liability due to damage to the City's property or property of other person or persons and against liability due to injury or death of any person or persons in any one instance. Such policies of insurance shall:

- i. Contain a severability of interest clause and cross liability clause between Jumper and the City;
- ii. Be non-contributing with, and shall apply only as primary and excess to any other insurance available to the City;
- iii. Provide that it shall not be cancelled or amended so as to reduce or restrict coverage except upon sixty (60) days prior notice (by registered mail) to the City Clerk and to Legal Services at Peterborough City Hall.

6.2 Jumper shall, no later than **4:00 PM on 16<sup>th</sup> August 2006** provide the City Clerk with evidence, satisfactory to the City, of its compliance with Article 6.1 of this Agreement.

6.3 Jumper agrees that the insurance described in this clause does not in any way limit its liability pursuant to the indemnity provisions of the Agreement.

6.4 Jumper agrees that the Deposit does not in any way limit its liability pursuant to the indemnity provisions of the Agreement.

## **7.0 Indemnity and Waiver**

7.1 Jumper agrees to indemnify, hold and save harmless the City from and against all suits, actions, proceedings, claims, damages, losses, liabilities and out-of-pocket expenses (including but not limited to legal fees) of any kind which may be incurred by, or be asserted against the City in connection with, or arising out of, Jumper's activities performed on City-owned or City-managed property pursuant to this Agreement, any other agreement or contract entered into by Jumper with any third party, or other liabilities for which Jumper is, at common law or under Applicable Law, responsible for. Notwithstanding the preceding sentence, Jumper shall not be liable, under this paragraph, for any indemnification to the City to the extent that any such suit, action, proceeding, claim, damage, loss, liability or expense resulted from the City's gross negligence or willful misconduct.

## **8.0 Addresses for Service**

8.1 The addresses for service are as follows:

### **For Jumper:**

Jumper Productions Ltd.  
Suite 300  
30 Booth Avenue  
Toronto, ON M4M 2M2

Fax: 416.466.9229

Tel.: 416.466.7575

Attention: Mr. Keith Large

### **For the City:**

Ms. Nancy Wright-Laking  
City Clerk  
City of Peterborough  
500 George Street North  
Peterborough, Ontario K9H 3R9

Fax: 705.742.4138

8.2 The Parties may change their respective addresses and addresses for delivery by delivering notices if such changes as provided below. Notice sent accordingly shall be deemed delivered and received:

- i. If delivered by hand, upon receipt;
- ii. If delivered by facsimile, 48-hours after the time of transmission, excluding from the calculation weekends and public holidays;
- iii. If delivered by overnight courier four (4) days after the couriating thereof; and
- iv. If delivered by registered mail, six (6) days after the mailing thereof, provided that if there is a postal strike or lockout such notice shall be delivered by hand, courier or facsimile.

## **9.0 Acknowledgement that Agreement is a Public Record**

9.1 The Parties acknowledge that the Agreement is a public record and may be disclosed, in accordance with applicable law, to any person who makes a lawful inquiry.

## **10.0 Day-to-Day Contact and Direction**

10.1 For the purposes of taking direction concerning the Filming, Pruning and/or Dressing, outside of any City Park, or Pruning and/or Dressing within any City-owned or City-managed property, Jumper shall contact the City's Manager of Public Works or, in his absence, the City's Director of Utility Services. The City shall only give direction to Gavin Watson (Uxbridge Tree Service) and/or Keith Large (Jumper's Location Manager) or Mr. Large's designate.

10.2 For the purposes of taking direction concerning the Filming, within any City Park, Jumper shall contact the City's Manager of Recreation or, in her absence, the City's Director of Community Services. The City shall only give direction to Mr. Keith Large (Jumper's Location Manager) or Mr. Large's designate.

- 10.3 For the purposes of taking direction concerning the Filming, Pruning and/or Dressing at the Main Branch, Jumper shall contact Becky Rogers, the Library Manager or, in her absence, Barb Earle or in her absence the City's Director of Community Services. The City shall only give direction to Mr. Keith Large (Jumper's Location Manager) or Mr. Large's designate.

## **11.0 Governing Law**

- 11.1 This Agreement shall be governed and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable in Ontario.

## **12.0 Severability of Clauses**

- 12.1 If any provision of the Agreement is declared invalid or unenforceable by any competent authority such provision shall be deemed severed and shall not affect the validity or enforceability of any remaining provision of the Agreement, unless such invalidity or unenforceability renders the operation of the Agreement impossible.

## **13.0 Independent Contractor**

- 13.1 Jumper shall be solely responsible for providing such work-place insurance for any and all of their respective employees as may be required by Ontario law. The relationship between Jumper and the City is defined by this Agreement. Nothing contained herein is intended or shall be construed in any way to create or establish the relationship of partners or a joint venture between the City and Jumper. None of the officers, agents or employees of Jumper shall be, or be deemed to be, employees of the City for any purpose whatsoever.

## **14.0 Miscellaneous**

- 14.1 Each Party shall at the other's Party's request and expense execute and do all such further acts and things as may be necessary to carry out the full intent and meaning of the Agreement and the transactions contemplated thereby.
- 14.2 The Agreement may be executed in counterparts and the counterparts together shall constitute an original.
- 14.3 Each Party agrees that it shall at all times act reasonably in the performance of its obligations and the exercise of its rights under the Agreement.
- 14.4 The Parties warrant that the Recitals contained in this Agreement are accurate and true and that they along with the attached Schedules form part of the Agreement and as such are legally binding upon the Parties.
- 14.5 The Agreement and any schedules attached hereto constitute the entire agreement between the Parties with respect to the matters herein and supercede any and all prior oral or written representations and agreements.
- 14.6 This Agreement shall terminate on **6 September 2006** save and except Articles 2.2; 2.4; 2.27(d)(v); 6.1; 6.2; 7.1; 13.1; 14.4; 14.5; 14.8 and 14.12 which shall survive termination.
- 14.7 Jumper shall not assign or transfer any right or obligations to any third party without the prior written approval of the City, which shall not be unreasonably withheld.

14.8 This Agreement shall enure to the benefit of and be binding upon the Parties hereto and their respective heirs, executors, administrators, successors and permitted assigns.

14.9 The failure by the City to insist in one or more instances on performance by Jumper of any term or condition of this Agreement shall not be construed as a waiver of the City's right to require further performance of any such term or condition, and the obligations of Jumper with respect to such performance shall continue in full force and effect.

14.10 Any paragraph headings are for the convenience of the reader only and have no legal consequence or effect and shall not be used to assist in the interpretation of the Agreement.

**Force Majeure**

14.11 If because of illness of actors, director or other essential artists and crew, weather conditions, strike, defective film or equipment or any other occurrence beyond Jumper's control, Jumper is unable to start work on any date designated above and/or work in progress is interrupted, then Jumper shall have the right to re-commence Filming, Pruning and/or Dressing at a later date mutually agreed upon in accordance with the compensation or fee requirements of this Agreement.

**Rights**

14.12 All rights of every kind and nature whatsoever in and to all still and motion pictures and sound recordings made hereunder in connection with Jumper's Filming shall be and remain the sole and exclusive property of Jumper, including, without limitation, the perpetual and irrevocable right and license to use and re-use said photography and/or sound recordings in connection with any motion pictures as Jumper shall elect, in, and in connection with, advertising, publicizing, exhibiting and exploiting such motion pictures in any manner whatsoever and at any time by all means, media, devices, processes and technology now or heretoafter known or devised in perpetuity. Neither the City nor any other party claiming now or hereafter claiming an interest in the Property and/or interest through the City shall have any right of action against Jumper or any other party arising from or based upon any use or exploitation of said photography and/or said sound recordings, whether or not such use is or is claimed to be defamatory, untrue or censurable in nature. Jumper's rights under this sub-Article may be assigned to any third party without notice to the City.

<b>SIGNED AND DELIVERED</b>	)	<b>The Corporation of the</b>
	)	<b>City of Peterborough</b>
	)	
	)	
	)	
	)	_____
	)	<u>Sylvia Sutherland, Mayor</u>
	)	
	)	_____
	)	Date of Signature (dd/mm/yy)
	)	
	)	
	)	
	)	_____
	)	Nancy Wright-Laking, City Clerk
	)	
	)	
	)	_____
	)	Date of Signature (dd/mm/yy)
	)	
	)	<b>Jumper Productions Ltd.</b>
	)	
	)	_____

)  
) **Printed Name:** \_\_\_\_\_  
) I/We have authority to bind Jumper Productions Ltd.  
)  
) \_\_\_\_\_  
) **Date of Signature (dd/mm/yy)**  
)  
)  
) \_\_\_\_\_  
) **Printed Name:** \_\_\_\_\_  
) I/We have authority to bind Jumper Productions Ltd.  
)  
) \_\_\_\_\_  
) **Date of Signature (dd/mm/yy)**

1 August 2006 – 11:45AM