



City of
Peterborough

To: Members of the General Committee

From: Richard Freymond, Commissioner, Finance & Corporate Support Services

Meeting Date: June 3, 2024

Report: Canadian Canoe Museum Funding Agreement and Designation as a Municipal Capital Facility, Report FCSFS24-013

Subject

A Report to establish a funding agreement with the Canadian Canoe Museum operating on Ashburnham Drive and to pass a by-law designating the facility as a Municipal Capital Facility.

Recommendations

That Council approve the recommendations outlined in Report FCSFS24-013, dated June 3, 2024 of the Commissioner, Finance and Corporate Support Services as follows:

- a) That the Mayor and Clerk be authorized to execute a funding agreement with The Canadian Canoe Museum in the form comprising Appendix A to report FCSFS24-013; and
- b) That a by-law be passed in the form comprising Appendix B to report FCSFS24-013 to authorize an agreement with The Canadian Canoe Museum for the provision by it of a municipal capital facility, namely a canoe museum, to exempt the lands owned by The Canadian Canoe Museum, located at 2077 Ashburnham Drive and part of 2011 Ashburnham Drive, in the City of Peterborough and designated as Parts 1, 2 and 3 on 45R-17193 from taxation for municipal and school purposes.

Executive Summary

- Through a series of previous staff Reports, Council has provided direction to staff respecting the Canadian Canoe Museum move to Ashburnham Drive.
- This Report completes one of the last directions; to establish a funding agreement and to designate the facility as a Municipal Capital Facility to provide relief from property taxation.

Background

Council has given various directions to staff respecting The Canadian Canoe Museum (CCM) including on the following dates and in response to the following reports:

- May 21, 2021 in response to Report CLSFS21-021
- June 30, 2022 in response to closed Reports IPSCOM22-004 and CLSOCS22-002;
- July 25, 2022 in response to Report IPSTR22-014;
- January 30, 2023 in response to closed Report CLSOCS23-001;
- March 13, 2023 in response to closed Report CLSOCS23-002; and
- May 23, 2023 in response to closed Report CLSOCS23-006

On May 21, 2021, Council approved the recommendations outlined in Report CLSFS21-021 dated May 10, 2021 of the Commissioner of Corporate and Legislative Services, revised as follows:

- a) That the Canadian Canoe Museum presentation to the May 10, 2021 General Committee meeting, be received for information;
- b) That the following financial support and municipal incentives towards the new facility build at the Johnson Property be confirmed:
 - i \$4.0 million as a Municipal Capital Grant over a series of Capital Budgets in increments of \$0.5 Million;
 - ii Designation of the new facility as a Municipal Capital Facility; and
- c) That, subject to completion of the sale by the City to The Canadian Canoe Museum of the Johnson Property described as 2077 Ashburnham Drive (2.25 acres) and a 3.12 acre portion of 2011 Ashburnham Drive, a By-law be passed designating the said Johnson Property as a Municipal Capital Facility pursuant to

Section 110 (6) of the Municipal Act, 2001 for the purpose of exempting The Canadian Canoe Museum from Taxation for Municipal and School purposes.

Committee at its meeting of May 10, 2021 made the following amendment:

- d) That an annual Service Grant to be provided by the City to the Canadian Canoe Museum be set at the amount of \$108,362, without further increases for eight years.

Council's directions included the circumstances in which Council would authorize an agreement (MCF Agreement) with CCM for the provision by CCM of a municipal capital facility, namely a canoe museum, to exempt the lands owned by CCM located at 2077 Ashburnham Drive and part of 2011 Ashburnham Drive from taxation for municipal and school purposes and to strike a funding agreement with CCM. The new Canadian Canoe Museum has opened to the public on May 13, 2024 and the City and CCM have struck a conditional agreement of purchase and sale for the City's acquisition of the former canoe museum site at 910/928 Monaghan Road and 575 Romaine Street (Former CCM Site). The attached forms of By-law, MCF Agreement and funding agreement are on terms and in forms that comply with Council's directions.

The attached form of funding agreement (Appendix A) gives effect to Council's directions noted above.

The proposed form of by-law also authorizes execution of the MCF Agreement (Appendix C).

Strategic Plan

Strategic Pillar: Community & Well-being

Strategic Initiative: Enhance the natural, recreational, sports, the arts, and cultural aspects of our community.

The Canoe Museum has constructed and is operating a new museum facility that is open to the public celebrating the world's largest collection of canoes, kayaks and paddled watercraft.

Engagement and Consultation

The Report has been prepared in consultation with the Commissioner of Legislative Services and external legal counsel for the CCM.

Budget and Financial Implications

The City has previously committed to providing \$4.0 Million in capital funding over a series of Capital Budgets (2021-2028) in increments of \$0.5 Million and annual Operating funding in the amount of \$108,362 over the same period.

For 2024, the prorated property tax relief provided through the MCF agreement will be approximately \$ 58,931 (\$43,468 Municipal, \$15,463 Education). The amount of tax relief for future years will increase pending receipt of final assessments for the subject property from MPAC.

Conclusion

This Report fulfils the previous direction of Council respecting the CCM.

Attachment

Appendix A: Funding Agreement
Appendix B: Proposed by-law
Appendix C: MCF Agreement

Submitted by,

Richard Freymond
Commissioner, Finance and Corporate Support Services

Contact Name:

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Commissioner, Finance and Corporate Support Services
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This Funding Agreement made as of the ___ day of _____, 2024.

Between:

The Corporation of the City of Peterborough (City)

and

The Canadian Canoe Museum (Canoe Museum)

Recitals

1. The Canoe Museum is a non-profit organization that has constructed and is operating a new museum facility that is open to the public comprising approximately 65,000 square feet (Project) on the land and premises described as Parts 1, 2 and 3 on Plan 45R-17193 (Property).
2. On May 25, 2021, Council of the City approved the following financial support for the Project:
 - a) a \$4 million capital grant payable in annual increments of \$0.5 million (Capital Grant);
 - b) subject to the Canoe Museum's acquisition of the Property, designation of the new canoe museum on the Property as a municipal capital facility to the extent of exempting it from taxation for municipal and school purposes (MCF Designation and Agreement); and
 - c) an annual Service Grant in the amount of \$108,362, without further increases, for eight years (Service Grant).
3. On September 23, 2021 the City transferred the Property to the Canoe Museum.
4. The parties wish by this Agreement to settle the terms upon which the City will provide to the Canoe Museum the Capital Grant and the Service Grant.

NOW THEREFORE in consideration of the mutual covenants hereinafter set out and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree to the following terms, conditions and covenants:

The Project

1. The Canoe Museum has completed and is now operating the Project.
2. Except for the provision of the Capital Grant and the Service Grant pursuant to this Agreement and except for the provision of the MCF Designation and related agreement, the Canoe Museum acknowledges and agrees that the City will have no

other financial obligations or responsibilities in connection with the Project.

3. The Canoe Museum will forthwith disclose to the City any fact or event that the Canoe Museum is aware of from time to time which may detrimentally affect the ability of the Canoe Museum to meet its obligations to the City.

Capital Grant and Service Grant

4. The City has paid and will pay to the Canoe Museum the Capital Grant in the following instalments:

a) Paid on December 2, 2021	\$500,000.00
b) Paid on June 19, 2023	\$1,000,000.00
c) Payable by June 30, 2024	\$500,000.00
d) Payable by January 31, 2025	\$500,000.00
e) Payable by January 31, 2026	\$500,000.00
f) Payable by January 31, 2027	\$500,000.00
g) Payable by January 31, 2028	\$500,000.00

5. The City has paid and will pay to the Canoe Museum the Operating Grant in the following instalments:

a) Paid on March 19, 2021	\$ 108,362.00
b) Paid on March 11, 2022	\$ 108,362.00
c) Paid on June 9, 2023	\$ 108,362.00
d) Payable by June 30, 2024	\$108,362.00
e) Payable by June 30, 2025	\$108,362.00
f) Payable by June 30, 2026	\$108,362.00
g) Payable by June 30, 2027	\$108,362.00
h) Payable by June 30, 2028	\$108,362.00

6. The City's obligation to pay each instalment on account of the Capital Grant and the Operating Grant is conditional on the City's continuing satisfaction respecting each of the following matters:

- a) There are no liens related to the Canoe Museum's interest in the Property including pursuant to the Construction Act, save any liens which the Canoe Museum is actively contesting, provided that the Canoe Museum shall discharge or vacate such lien within thirty (30) days of receiving notice thereof;
- b) There are no outstanding work orders and /or orders or requests to comply related to the Project from the City or other regulatory authority in respect of the Project;
- c) The Canoe Museum continuously operates the Project; and
- d) The Canoe Museum and the Project are in material compliance with all applicable law.

Representations and Warranties

7. The Canoe Museum represents and warrants to the City the following:

- a) The Canoe Museum is a duly incorporated, organized and validly existing body corporate under the laws of the Province of Ontario and has full capacity, power and authority to own all its property and to carry on its business as now conducted and as contemplated under this Agreement including but not limited to development, operation and management of the Project, and is duly qualified and in good standing in each jurisdiction in which the character of the property owned or leased or the nature of the business carried on by it makes such qualification necessary or desirable.
- b) The Canoe Museum has full corporate power, legal right and authority to enter into this Agreement and to do all acts and things as are required or contemplated hereunder to be done, observed or performed by it.
- c) There is not now, pending against the Canoe Museum, any litigation, action, suit or other proceeding of a material nature by or before any court, tribunal or other governmental agency or authority or any other such pending or threatened action, suit or other proceeding against the Canoe Museum or against or affecting any of the properties or assets of the Canoe Museum (whether such property or assets are owned legally or beneficially) such that if the same were adversely determined, it could be reasonably expected to materially and adversely affect the business operations, properties or assets, or the condition, financial or otherwise, of the Canoe Museum.
- d) Except as previously disclosed in writing to the City, the Canoe Museum is not a party to any agreement or instrument or subject to any restriction or any judgment, order, writ, injunction, decree, rule or regulation which materially and adversely affects the business, operations, prospects, properties or assets, or condition, financial or otherwise, of the Canoe Museum.
- e) None of the information, financial or otherwise, provided by the Canoe Museum

to the City to induce the City to provide the Capital Grant and the Service Grant and to enter into this Agreement contains any untrue statement of a material fact or omits to state a material fact necessary in order to make any statement contained therein not misleading in light of the circumstances in which it was made.

Insurance and Indemnity

8. The Canoe Museum will indemnify and save harmless the City and its officers, employees, servants, agents, successors, and assigns from and against any and all claims whatsoever including all damages, liabilities, expenses, costs, including legal or other fees incurred in respect of any such claim, or any cause or proceeding brought thereon in any way related to this Agreement unless such claims are as a result of the gross negligence or misconduct of the City or its officers, employees, servants, agents, successors, and assigns.
9. The Canoe Museum will at all times during the period of construction on the Project and at all times take out and maintain such insurance as may be reasonably required by a prudent owner of comparable premises from time to time.

Events of Default and Remedies

10. Each of the following events is an “Event of Default” for the purposes of this Agreement:
 - a) Any representation or warranty made by the Canoe Museum in this Agreement proves to have been untrue or misleading in any material respect as of the date on which it was made;
 - b) the Canoe Museum:
 - i) becomes insolvent or unable to pay its debts as they become due;
 - ii) files a petition in bankruptcy or voluntary petition seeking reorganization or effect a plan or other arrangement with creditors;
 - iii) makes an assignment for the benefit of creditors under the Bankruptcy Act (Canada) or any other insolvent debtors' legislation;
 - iv) applies for or consents to the appointment of any receiver or trustee for it or of all or any substantial part of its property and assets;
 - v) ceases to operate the Project; or
 - vi) voluntarily liquidates or winds-up or suffers itself to be liquidated or wound-up.
11. If the Canoe Museum has not remedied an Event of Default within thirty (30) days of receipt of written notice from the City of such Event of Default or such longer period

as may be reasonably required if the Event of Default is not capable of being cured in thirty (30) days (provided that Canoe Museum is diligently pursuing such cure and subject section 12), the City may refuse to make any further advances under this Agreement until such time as the Event of Default is cured to the satisfaction of the City, acting reasonably.

12. If and to the extent that the Canoe Museum is prevented, delayed or restricted in the fulfilment of any obligation hereunder as a result of any cause beyond its control and not caused by its default or act of commission or omission and not avoidable by the exercise of reasonable care, including without limitation strikes, lockouts or other labour disputes, the enactment, amendment or repeal of any laws, and shortages or unavailability of labour or materials, pandemics or other health emergencies, weather conditions, fire or other casualty (an "Unavoidable Delay"), but excluding lack of funds or financial inability, then the Canoe Museum will be deemed not to be in default of the performance of such covenant or obligation so long as the cause of such Unavoidable Delay continues and any period for the performance of such obligation will be extended accordingly.

General

13. If requested by the City, the Canoe Museum will submit to the City an audited financial statement respecting its expenditures of the Capital Grant and Service Grant received by it pursuant to this Agreement, within ninety (90) days or such additional time as may be determined by the City acting reasonably.
14. The Canoe Museum will ensure that in any and all communication activities, publications, advertising and press releases will include an appropriate acknowledgement, in terms satisfactory to the City, of the City's contributions to the Project.
15. This Agreement may be disclosed in response to a request pursuant to the **Municipal Freedom of Information and Protection of Privacy Act**.
16. This Agreement may be amended by the mutual consent of the Parties. Any such amendment must occur through a written amendment agreement approved by the parties.
17. This Agreement is binding upon the Canoe Museum and its successors and assigns and supersedes all previous agreements between the parties. The Canoe Museum may not assign or in any way transfer this Agreement or any of its rights, privileges, duties or obligations under this Agreement except in relation to a corporation with similar objects continuing pursuant to the **Canada Not-for-profit Corporations Act**, S.C. 2009, c. 23 and with the prior written consent of the City which consent will not be unreasonably withheld or delayed.
18. The parties hereto declare that nothing in this Agreement may be construed as creating a legally binding partnership or agency relationship between them. The Canoe Museum is not in any way authorized to make a promise, agreement or

contract on behalf of the City.

19. All dollar amounts referred to in this Agreement are in lawful money of Canada.
20. This Agreement constitutes the entire agreement between the parties and, except as herein stated, and in the instruments and documents to be executed and delivered pursuant hereto contains all of the representations and warranties of the respective parties.
21. This Agreement will be interpreted in accordance with the laws of the Province of Ontario and treated in all respects as an Ontario contract.
22. Any notice required or permitted to be given hereunder must be in writing and will be effectively given if delivered personally, sent by prepaid courier or mail, or sent by e-mail, in the case of notice to the Canoe Museum as follows:

Attention, Executive Director
The Canadian Canoe Museum
2077 Ashburnham Drive
Peterborough, ON K9L 1P8
info@canoemuseum.ca

and in the case of notice to the City, as follows:

Attention, John Kennedy, Clerk
The Corporation of the City of Peterborough
500 George Street North
Peterborough, Ontario K9H 3R9
clerks@peterborough.ca

and in all cases so delivered personally or by courier or so sent by means of electronic communication, so confirmed. Any notice so given is deemed conclusively to have been given and received when so personally delivered or sent by other electronic communication or on the second day following the sending thereof by private courier or mail. Any party hereto or others mentioned above may change any particulars of its address for notice by notice to the other in the manner aforesaid.

The parties have hereto set their hands and seals as of the date above written.

The Canadian Canoe Museum

Kevin Malone Board Chair
I have the authority to bind the Canoe Museum

The Corporation of the City of Peterborough

Jeff Leal, Mayor

John Kennedy, Clerk
We have the authority to bind the City



The Corporation of the City of Peterborough

By-Law Number 24-XXX

Being a By-law to authorize an agreement with The Canadian Canoe Museum for the provision by it of a municipal capital facility, namely a canoe museum, and to exempt the lands owned by The Canadian Canoe Museum, located at 2077 Ashburnham Drive and part of 2011 Ashburnham Drive, in the City of Peterborough and designated as Parts 1, 2 and 3 on 45R-17193 from taxation for municipal and school purposes.

Whereas subsection 110(1) of the **Municipal Act 2001**, S.O. 2001, c.25 provides that the Council of a Municipality may enter into agreements for the provision of municipal capital facilities;

And Whereas subsection 110(6) of the **Municipal Act 2001**, S.O. 2001, c.25, provides that lands upon which municipal capital facilities are or will be located may be exempted from taxation for municipal and school purposes;

And Whereas on May 25, 2021, Council of the City of Peterborough resolved as follows: "That, subject to completion of the sale by the City to The Canadian Canoe Museum of the Johnson Property described as 2077 Ashburnham Drive (2.25 acres) and a 3.12 acre portion of 2011 Ashburnham Drive, a By-law be passed designating the said Johnson Property as a Municipal Capital Facility pursuant to Section 110 (6) of the **Municipal Act, 2001** for the purpose of exempting The Canadian Canoe Museum from Taxation for Municipal and School purposes";

And Whereas on September 23, 2021, by transfer/deed registered as Instrument No. PE363700, The Canadian Canoe Museum became the owner of the said Johnson Property;

And Whereas Council of The Corporation of the City of Peterborough deems it expedient to authorize an agreement with The Canadian Canoe Museum for the provision by it of a municipal capital facility, namely a canoe museum, and to exempt the said Johnson Property from taxation for municipal and school purposes;

Now Therefore, The Corporation of the City of Peterborough by the Council thereof hereby enacts as follows:

1. The Mayor and the City Clerk are authorized to execute a municipal capital facility agreement between The Corporation of the City of Peterborough and The Canadian Canoe Museum for the provision by The Canadian Canoe Museum of a municipal capital facility, namely a canoe museum, on the lands at 2077 Ashburnham Drive and part of 2011 Ashburnham Drive, in the City of Peterborough and designated as Parts 1, 2 and 3 on 45R-17193 (Lands) on terms acceptable to the City's Treasurer and in a form acceptable to the City Solicitor.
2. The Lands are hereby exempt from taxation for municipal and school purposes, pursuant to Section 110(6) of the **Municipal Act 2001**, S.O. 2001, c.25, effective when this By-law is passed and until the date that this By-law is repealed.
3. The use of the Lands as a municipal capital facility, namely a canoe museum, are for the purposes of the City of Peterborough and are for public use.

By-law passed this ____ day of _____, 2024.

Jeff Leal, Mayor

John Kennedy, City Clerk

Municipal Capital Facility and Option Agreement made this ____ day of _____, 2024

BETWEEN:

The Corporation of the City of Peterborough
(City)

AND

The Canadian Canoe Museum
(CCM)

Recitals

- A. On May 25, 2021, Council of the City resolved to pass a by-law to designate 2077 Ashburnham Drive and part of 2011 Ashburnham Drive, as described in Schedule A to this Agreement (Property), as a municipal capital facility pursuant to section 110 of the Municipal Act, 2001, subject to the completion of a sale by the City to The Canadian Canoe Museum (CCM) of the Property.
- B. On September 23, 2021, the City transferred to CCM the Property.
- C. On April 13, 2023, pursuant to section 1 of Schedule B to an agreement of purchase and sale between CCM as seller and the City as buyer, CCM and the City agreed that the designation of the Property as a municipal capital facility would be effective when the Property may be lawfully occupied as a canoe museum on terms which are satisfactory to the City.
- D. Pursuant to By-law 24-[number], Council of the City has designated the Property as a municipal capital facility, namely a canoe museum owned and operated by CCM, and has authorized this Agreement pursuant to section 110 of the Municipal Act, 2001.

NOW THEREFORE the parties hereto agree as follows:

1.00 The Property

- 1.01 The parties acknowledge that CCM is the owner of the Property.
- 1.02 CCM has diligently completed the construction of a facility on the Property for the purposes of a canoe museum, has opened the canoe museum to the public and will continuously operate the canoe museum on the Property in accordance with applicable law.

2.00 Term of Agreement

- 2.01 This Agreement is in full force and effect from [date of passing of designation by-law] and terminates on the earliest of:
 - (a) the day on which it is terminated pursuant to the provisions of this Agreement;
 - (b) [date that is the 20th anniversary of the passing of the designation by-law]; and
 - (c) the day on which the By-law 24-[number] is repealed.

3.00 Termination of Agreement and City Option

- 3.01 The City may terminate this Agreement upon written notice to CCM in the event that CCM fails to perform any of its obligations or is in breach of any of its covenants pursuant to this Agreement and has failed to rectify such failure or breach within thirty (30) days from the date of written notification to CCM by the City, or such longer period as may reasonably be required to rectify such failure or breach. Upon termination of this Agreement, the City may, within six (6)

months of such termination, give to CCM notice of the City's intention to exercise its right to acquire from CCM the Property (Option) and CCM will, upon receipt of the City's notice of the exercise of the Option (Option Date), transfer to the City the Property free of encumbrances, subject to the following terms but otherwise on terms acceptable to the CCM and the City:

- (a) The purchase price (Purchase Price) for the Property will be mutually agreed to by the parties within ninety (90) days of the Option Date (Appraisal Initiation Date), and failing such agreement, the Purchase Price will be equal to the fair market value of the Property determined as follows:
- i) CCM and the City will each obtain an appraisal (Appraisal) of the Property setting out the fair market value of the Property as of the Option Date and will deliver same to the other party within ninety (90) days of the Appraisal Initiation Date. If either party fails to obtain and deliver an Appraisal within the ninety (90) day period, the amount set out in the Appraisal delivered by the other party will be deemed to be the fair market value of the Property for the purposes of determining the Purchase Price.
 - ii) Provided each Appraisal has been delivered within the above said ninety (90) day period, the date upon which the last of CCM's Appraisal and the City's Appraisal is delivered to the other party will be referred to as the "Appraisal Delivery Date".
 - iii) If the fair market value set out in each of the CCM's Appraisal and the City's Appraisal are equal, such amount will be deemed to be the fair market value of the Property for the purposes of determining the Purchase Price.
 - iv) If the fair market value set out in each of CCM's Appraisal and the City's Appraisal are not equal and the greater amount exceeds the lesser amount by less than or equal to ten percent (10%), the average of the two amounts will be deemed to be the fair market value of the Property for the purposes of determining the Purchase Price.
 - v) If the fair market value set out in each of the CCM's Appraisal and the City's Appraisal are not equal and the greater amount exceeds the lesser amount by more than ten percent (10%), the parties covenant and agree as follows:
 - (1) Each party will make good faith efforts to negotiate an agreement on the fair market value of the Property. If the parties have not agreed upon a fair market value for the Property within fifteen (15) days after the Appraisal Delivery Date (Negotiation End Date), then each of CCM and the City will instruct their respective Appraisers, on the first business day following the Negotiation End Date, to jointly select, within fifteen (15) days, a third Appraiser who deals at arm's length with both the CCM and the City and their respective Appraisers, who will, acting alone and within fifteen (15) days of his or her appointment, select from CCM's Appraisal and the City's Appraisal, the Appraisal which in his or her opinion is closest to the actual fair market value of the Property. The finding of the third Appraiser will be deemed to be the fair market value of the Property for the purposes of determining the Purchase Price.
 - (2) If the City's Appraiser and CCM's Appraiser are unable to agree upon a third Appraiser within fifteen (15) days after the Negotiation End Date, either party may apply to a judge of the Superior Court of Justice who may appoint the third Appraiser who will proceed in the manner set out in the preceding paragraph.
- (b) Each Appraiser must be an Accredited Appraiser of the Canadian Institute (AACI) and must prepare a full narrative Appraisal. Each Appraiser will be provided with a copy of this Agreement.

- (c) Each party will pay for its own Appraisal and will share equally in the cost of the third Appraiser, as applicable.
- (d) CCM agrees that the City may conduct such inspections, tests and investigations as it deems appropriate, including an environmental assessment, at any time following the Option Date and prior to determination of the Purchase Price, and CCM will permit the City and its agents, employees, engineers and other advisors, at the City's expense, access to the Property to complete such inspections and investigations of the Property. The City will promptly repair at its sole cost and expense any damage to the Property caused by such tests and inspections. CCM will execute authorizations to all relevant governmental authorities having jurisdiction permitting inquiries by the City or the City's advisors authorizing the release of any and all information on file in respect of the Property.
- (e) Upon the City exercising the Option and upon determination of the Purchase Price in accordance with the terms hereof, CCM and the City will be deemed to have entered into an unconditional binding agreement of purchase and sale for the Property, at the Purchase Price payable all in cash at closing, on an "as is, where is" basis with a closing date 60 days following the date on which the Purchase Price has been determined. Such agreement will be deemed to contain the terms set out in the then current Ontario Real Estate Association (OREA) Agreement of Purchase and Sale (Commercial) or an equivalent form thereto that is acceptable to CCM and the City.
- (f) Notwithstanding anything in this Agreement to the contrary:
 - i) if the City is entitled to exercise the Option within the period ending [10th anniversary of passing of designation by-law], the Purchase Price will be the fair market value of the Property determined in accordance with paragraph (a) of this section less the aggregate amount of any municipal taxes that would have been payable by CCM during such 10 year period if the Property had not been exempt from such taxes; and
 - ii) the City's rights under this section 3.00 survive termination of this Agreement by the City pursuant to subparagraph 3.01.

4.00 Use of the Property

- 4.01 CCM must use the Property only for the principal purpose of a canoe museum, including open display and storage of artifacts, and such other ancillary uses as may be permitted pursuant to the Zoning By-law of the City.

5.00 Capital Improvements

- 5.01 CCM may make capital improvements to the Property, provided that the plans for any such improvements are approved by the City prior to the work being commenced. All such work will be carried out by CCM at its own risk and expense, unless otherwise agreed in writing between the parties and must comply with all applicable law. For the purpose of this Agreement, a capital improvement is an undertaking or work to a building which requires the issuance of a building permit pursuant to the Building Code Act, 1992. The issuance of a permit pursuant to the Building Code Act, 1992 is deemed to be an approval for the purposes of this Agreement.
- 5.02 CCM warrants that any such capital improvements will be undertaken with all reasonable care, skill and diligence, and all work will be performed in a competent, skilful manner and in accordance with all applicable law.
- 5.03 CCM must not permit any lien under the Construction Act, or any like statute, to arise or be registered against title to the Property, by reason of work, labour, materials, or service provided in relation to such capital improvements. If any such lien arises or is registered, CCM must procure registration of its discharge within twenty (20) days after it has come to the attention of CCM; provided that if

CCM wishes to contest, in good faith, the amount or validity of any such lien and notifies the City, and has paid into court for the credit of any lien action, the amount of the lien claimed, plus a reasonable amount for costs, CCM may defer payment of such lien claimed for a period of time sufficient to enable it to contest the claim with due diligence, provided always that CCM must not permit the Property to become liable for forfeiture or sale.

6.00 Indemnification and Insurance

- 6.01 CCM will indemnify and save the City harmless from and against any and all actions, claims or demands made or brought against the City, its agents, employees, councillors and volunteers, by any person or persons in any way related to this Agreement and CCM's use of the Property.
- 6.02 In respect of the Property, CCM must obtain and maintain during the continuance of this Agreement Commercial General Liability insurance for personal injury and property damage, in an amount not less than Five Million Dollars (\$5,000,000.00) per occurrence, the amount of which may be adjusted from time to time at the discretion of the City. The policy must, subject to general commercial availability from CCM's insurer, contain a cross-liability/severability of interest clause, and waiver of any subrogation rights under which CCM insurers may have against the City and be written with insurers licensed to transact insurance in the Province of Ontario. The policy must name The Corporation of the City of Peterborough as an Additional Insured and provide for 30 days' notice of cancellation or material change restricting coverage.
- 6.03 The provisions contained in subparagraphs 6.01 and 6.02 are subject to the City's indemnification of CCM and its insurance obligations in connection with the easement in favour of the City for the purposes of the multi-use trail over that part of the Property designated as Part 3 on Reference Plan 45R-17193.

7.00 Covenants of CCM

- 7.01 CCM covenants as follows:
- (a) to pay all water, gas, electricity, utilities and telephone charges in regard to its use of the Property;
 - (b) to maintain the Property in a state of cleanliness, and to repair any damage caused thereto by its own wilful or negligent conduct or that of its employees or persons it permits to use the Property;
 - (c) to continuously operate a canoe museum on the Property as its principal use; and
 - (d) to keep the parking areas and driveways clean and free from refuse, snow or ice.

8.00 Inspection by the City

- 8.01 The City or its agents may, at any time, inspect the Property.
- 8.02 CCM will forthwith, after written notice from the City, repair any deficiency in the Property or discontinue any misuse which is specified in the aforementioned written notice.

9.00 Taxes

- 9.01 The parties acknowledge that the Property is exempt from taxation for municipal and school purposes effective on [date on which designation by-law is passed]. Notwithstanding this, in the event that CCM uses or permits the use of any portion of the Property for any activity which gives rise to taxation for municipal and school purposes, CCM must forthwith pay such taxes.

9.02 CCM is responsible for the payment of business or other taxes which accrue as a result of the operation of the museum, if any.

10.00 Designation as National Museum

10.01 Notwithstanding anything contained herein to the contrary, CCM will not be deemed to have failed to perform or breached its obligations under this Agreement in the event that CCM becomes designated as a National Museum by an amendment to the Museums Act (Canada) or other federal legislation (Designating Act). Further, in the event of such designation, CCM may terminate this Agreement on written notice to the City, which termination will be effective on such date that the Designating Act comes into force. The termination of this Agreement pursuant to this section will not give rise to any obligation for CCM to transfer the Subject Property to the City pursuant to this Agreement or otherwise.

11.00 General

11.01 All representations, warranties and indemnities given by each signatory and all payment obligations survive indefinitely the termination of this Agreement.

11.02 Any notice pursuant to this Agreement may be given as follows:

To the City:

The Corporation of the City of Peterborough
500 George Street North
Peterborough, ON K9H 3R9
Attention: City Clerk
Email: clerks@peterborough.ca

To The Canadian Canoe Museum:

2077 Ashburnham Drive
Peterborough, ON K9L 1P8
Attention: Executive Director
E-mail: info@canoemuseum.ca

Each party is responsible for keeping the other apprised of the party's current contact information. Any notice sent to an address or email address contained in this Agreement is deemed to be sufficiently sent for any purpose reasonably contemplated by this Agreement.

11.03 CCM consents to disclosure of this Agreement, whether pursuant to the Municipal Freedom of Information and Protection of Privacy Act, R.S.O, 1990, c. M.56 or otherwise.

[end of page]

11.04 It is understood and agreed that this agreement enures to the benefit of and is binding upon the parties hereto and their respective successors and assigns.

The Parties hereto have hereunto set their hands and seals.

The Corporation of the City of Peterborough

Jeff Leal, Mayor

John Kennedy, Clerk
We have authority to bind the City

The Canadian Canoe Museum

Kevin Malone, Chair, Board of Directors

Carolyn Hyslop, Executive Director
We have authority to bind CCM

Schedule A

PART LOT 28 CONCESSION 13 OTONABEE AND PART LOTS 12, 13, 14 AND B PLAN 7A
PETERBOROUGH, PARTS 1, 2 & 3, 45R17193; PETERBOROUGH SUBJECT TO AN
EASEMENT IN GROSS OVER PART 3, 45R17193 AS IN PE363700 BEING ALL OF PIN
28140-0314(LT)