



City of
Peterborough

To: **Members of the Committee of the Whole**

From: **Brian W. Horton, Chief Administrative Officer**

Meeting Date: **April 27, 2015**

Subject: **Report CAO15-013
Agricultural Society / City Interim Agreement re the Morrow Park
Transfer Agreement**

Purpose

A report to recommend approval of an Interim Agreement between the City and the Peterborough Agricultural Society regarding the Morrow Park Transfer Agreement.

Recommendations

That Council approve the recommendations outlined in Report CAO15-013 dated April 27, 2015 of the Chief Administrative Officer, as follows:

- a) That the Interim Agreement between the City of Peterborough and the Peterborough Agricultural Society, appended to report CAO15-013 as Appendix A, re the Morrow Park Transfer Agreement be approved and that the Mayor and Clerk be authorized to execute the Interim Agreement.
- b) That the total \$105,000 grant payable to the Agricultural Society in 2015, as set out in the Interim Agreement, be charged to the 2015 General Contingency.

Budget and Financial Implications

The 2015 General Contingency provision will have a \$491,147 uncommitted balance after the \$105,000 transfer. If certain conditions, as set out in the Interim Agreement, are met by the Agricultural Society, the City will provide \$50,000 to the Agricultural Society to support the 2016 Exhibition.

Background

Arbitration process initiated during 2014 re Morrow Park Transfer Agreement

The City is the owner of Morrow Park (“the Property”) under the terms of an agreement dated August 15, 1983 (“the Transfer Agreement”).

Under that Transfer Agreement, the Agricultural Society (“the Society”) and the City have various rights and obligations with respect to the Property.

The City and the Society have for many years disagreed on the interpretation or application of certain parts of the Transfer Agreement. During 2014, an arbitration proceeding was initiated to finally resolve their differences.

Society requested a meeting to discuss how to avoid arbitration

In late November of 2014, some Society members requested a meeting with the Mayor and Chief Administrative Officer to discuss the issues and how arbitration could be avoided.

The meeting was held December 9, 2014. At that meeting, it was decided that the City and the Society should endeavor to put the past behind and hold the arbitration process in abeyance, to allow the Society to undertake a strategic planning process to determine how best to advance the Society’s objectives under its statutory mandate, and to work towards developing a New Agreement to replace the Transfer Agreement.

The CAO agreed to develop a document that captured the intent of the December 9, 2014 discussions.

Interim Agreement Reached

Since the December 9, 2014 meeting, ongoing written and verbal communications have occurred between the parties. It was determined early in the discussions that for the sake of expediency, it would be best to develop an Interim Agreement whereby the City commits to providing transitional funding to the Society to support its 2015 and 2016 Exhibitions, clear up

the Society's payables and to allow the Society to undertake a strategic planning process during 2015. In exchange, the Society commits to work toward developing a new, final agreement by May 31, 2016 to replace the existing Transfer Agreement (failing which the parties will proceed with the arbitration process) and the Society provides further commitments that will be binding on the parties whether or not a New Agreement is ultimately signed by them and whether or not the arbitration proceeds.

The resulting recommended Interim Agreement is attached to this report as Appendix A.

The Society provided written confirmation on April 20, 2015 that it will sign the Interim Agreement.

Under the Interim Agreement, the City will provide the Society with \$21,666 upon signing to clear up the Society's payables outstanding from 2014, and \$58,334 (payable in two instalments) to support the 2015 Exhibition. In addition, the Agreement stipulates the City will provide a special \$25,000 grant to the Society to assist it in developing a Strategic Plan with the assistance of City staff. That Plan must be completed no later than February 28, 2016. If a number of further conditions are met, the City will provide a further \$50,000 grant to the Society to support the 2016 Exhibition.

In exchange for the monetary contributions, the Interim Agreement includes the following provisions that are binding on the parties, regardless of whether a New Agreement is negotiated and signed by the parties:

- There will be no motorized events at the Property starting in 2017.
- Part II of the Transfer Agreement and Schedule "C" to the Transfer Agreement (the Site Plan) and all references to Schedule "C" in the Transfer Agreement will have no further force and effect.
- The City will be free to use and develop 60% of that portion of the Property located west of Roger Neilson Way for parks and recreation purposes for the benefit of the general community. (The City has committed to keep the remaining 40% of that portion of the Property as open space, subject to what might be negotiated and included in the New Agreement.)

Committee Recommendations to be approved at April 27, 2015 Council meeting

Given the Society's need to clear up its 2014 payables and to finalize the 2015 Exhibition plans, the Committee of the Whole Recommendations stemming from this report will be placed on the April 27, 2015 Council agenda for final approval.

Society representatives will be attending the Committee of the Whole and Council meetings.

Submitted by,

Brian W. Horton
Chief Administrative Officer

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Appendix A – Interim Agreement

INTERIM AGREEMENT

Between:

The Corporation of the City of Peterborough

("the City")

and

The Peterborough Agricultural Society

("the Society")

Background

1. The City is the owner of certain lands and buildings known as Morrow Park ("the Property"), in the City of Peterborough, Ontario.
2. Under the terms of an agreement dated August 15, 1983 ("the Transfer Agreement"), the Society and the City have various rights and obligations with respect to the Property.
3. A disagreement has arisen between the City and the Society with respect to the interpretation or application of the Transfer Agreement and their respective rights and obligations under the Agreement.
4. In accordance with the terms of the Transfer Agreement, the City and the Society have initiated an arbitration proceeding to resolve their differences and Stephen Morrison has been appointed as the arbitrator.
5. The City and the Society have also undertaken direct discussions in an effort to resolve their differences without the cost to both parties of proceeding with the arbitration.
6. The City and the Society have now agreed in principle to enter into a new agreement to replace the Transfer Agreement that will govern their respective rights and obligations with respect to the Property in the future ("the New Agreement") and have agreed upon a process to negotiate the specific terms of that New Agreement.
7. As part of that process the City and the Society have agreed upon certain items as a sign of good faith, which items are intended to be and will be binding upon both the City and the Society, whether or not a New Agreement is ultimately signed by them and whether or not the arbitration proceeds.
8. For certainty, the City and the Society have reduced to writing in this Interim Agreement the terms that will be binding upon them both and the process that they will follow for negotiation of the New Agreement.

Non-Financial Support for 2015 Peterborough Exhibition

9. In 2015, the City will provide to the Society the same level of non-financial support for the Peterborough Exhibition as the City provided in 2014.

Financial Support in 2015

10. In 2015, the City will provide financial support to the Society by way of one-time conditional grant(s), to a maximum of \$80,000. When this Interim Agreement has been duly signed by authorized representatives of the City and the Society, the grant(s) will be paid in installments and applied in accordance with the specified conditions, as set out below:
- (a) A grant of \$17,260.32 will be paid by the City to the Society, on condition that the funds must be used to pay the outstanding balance owing for prize money from the 2014 Exhibition, as set out in a Statement of Outstanding Prize Monies provided by the Society. The Society will provide the City with proof that the payments have been made.
 - (b) A grant of \$4,405.52 will be paid by the City to the Society, on condition that the funds must be used to pay the Society's outstanding liabilities relating to the 2014 Peterborough Exhibition listed in a Statement of Accounts Payable provided by the Society. The Society will provide the City with proof that the payments have been made.
 - (c) A grant of \$29,167.08 will be paid by the City to the Society in two equal installments of \$14,583.54 each, as follows:
 - i) The first installment will be paid on or before May 1, 2015, on condition that the Society has delivered to the Director of Community Services a list of all activities planned for the 2015 Peterborough Exhibition, including a breakdown showing which activities will be operated by the Society and which will be operated by third parties, along with the names and contact information for all third party operators; and
 - ii) The second installment will be paid on or before June 15, 2015, on condition that the Society has delivered to the Director of Community Services copies of certificates of insurance confirming that insurance coverage satisfactory to the City is in place for the 2015 Peterborough Exhibition and copies of the policy or policies of insurance.
 - (d) A grant of \$29,167.08 will be paid by the City to the Society when the Society has delivered to the Director of Community Services a copy of the Society's Financial Statements for their fiscal year ending October 31, 2015.

Special Grant for 2015 to Develop Strategic Plan

11. In addition to the grants identified in paragraph 10 above, in 2015 the City will provide to the Society a special grant to a maximum amount of \$25,000.00 (the “Special Grant”), on condition that:
- (a) The Special Grant will be used by the Society for the sole purpose of retaining a consultant or consultants to assist the Society in developing a strategic plan for advancement of its objects, including but not limited to its future operation of the annual Peterborough Exhibition (“the Strategic Plan”). The City will assist the Society in developing a Request for Proposal (“RFP”) and related documents to secure a consultant or consultants;
 - (b) A Steering Committee for the strategic planning project of not less than four and not more than six individuals, comprised of members of the Society’s Board of Directors and at least two City staff appointed by the City, is authorized and charged with the responsibility to:
 - i) oversee development of the RFP,
 - ii) evaluate submissions received as part of the strategic planning process, and
 - iii) provide direction to the consultant(s) as the Strategic Plan is developed;
 - iv) recommend the completed Strategic Plan to the Society’s Board of Directors and to City Council for final approval;
 - (c) The RFP must stipulate that the objective of the planning process is to develop a Strategic Plan that is economically viable and that acknowledges that there will be no motorized events at the Peterborough Exhibition after the 2016 Exhibition;
 - (d) The strategic planning process must include consultations with the City, community members and other stakeholders, with at least two public meetings held in the City of Peterborough. The City will provide facilities for the community and stakeholder meetings required for the development of the Strategic Plan;
 - (e) The Strategic Plan must include an assessment by the Society and the consultant or consultants of the strengths, weaknesses, opportunities and constraints of the various long term goals or objectives of the plans identified and considered in the planning process and the short-term action items required to realize and implement selected goals and objectives; and
 - (f) The strategic planning process must be completed and the Strategic Plan must be delivered to the City’s Director of Community Services on or before February 28, 2016.

Financial Support for 2016 Exhibition

12. The City will provide financial support to the Society by way of one-time conditional grant(s) to a maximum of \$50,000 to be used for the sole purpose of paying the Society's expenses incurred in relation to its operation of the 2016 Peterborough Exhibition, on condition that:
- (a) The Society has delivered to the Director of Community Services a copy of the Society's Financial Statements for their fiscal year ending October 31, 2015;
 - (b) The Society has delivered to the Director of Community Services a copy of the Society's budget for the 2016 Peterborough Exhibition;
 - (c) The Strategic Plan has been completed and delivered to the City's Director of Community Services on or before February 28, 2016; and
 - (d) A New Agreement has been signed by the City and the Society on or before May 31, 2016.

Other Binding Commitments

13. For certainty, in addition to the foregoing terms, the City and the Society agree and acknowledge that the following provisions are binding on them, whether or not a New Agreement is ultimately signed by them and whether or not the arbitration proceeds:
- (a) Commencing in 2017, there will be no motorized events at the Property by the Society or in conjunction with the Society's use of the Property;
 - (b) Part II of the Transfer Agreement and Schedule "C" to the Transfer Agreement (the Site Plan) and all references to Schedule "C" in the Transfer Agreement will have no further force and effect. Subject to clause 13(c) below, the City is entitled to implement a program of rehabilitation and improvement to develop the Property as the City sees fit, in its sole discretion, for parks and recreation purposes for the benefit of the general community. All future use by the Society of the Property will be on an "as is" basis as the Property exists from time to time, subject to the condition that the Society's use will not cause damage to the Property, including improvements to the Property;
 - (c) The City will keep as open space an area of its choosing comprising not less than 40% percent of the area of that portion of the Property located west of Roger Neilson Way.
 - (d) Notwithstanding the foregoing, the City will not demolish any buildings that currently exist on the property prior to May 31, 2016 except the Day Car Centre, located at the north-west corner of the property.

Deadline for Negotiation of New Agreement

14. If a New Agreement has not been signed by the City and the Society on or before May 31, 2016, they will resume the arbitration process, but subject to the binding provisions of this Interim Agreement.

To evidence their agreement, the parties have signed this Interim Agreement on the date set out below:

Date _____

The Corporation of the City of Peterborough

Mayor

City Clerk

Agricultural Society

