THE CORPORATION OF THE CITY OF PETERBOROUGH

BY-LAW NUMBER 09-104

BEING A BY-LAW TO AUTHORIZE THE EXECUTION OF AN AGREEMENT BETWEEN THE CORPORATION OF THE CITY OF PETERBOROUGH AND PETERBOROUGH HISTORICAL SOCIETY

WHEREAS Section 110(1) of the Municipal Act 2001, S.O. 2001, c.25, provides that a municipality may enter into agreements for the provision of municipal capital facilities;

AND WHEREAS the Hutchinson House Museum owned by Peterborough Historical Society, and municipally known as 270 Brock Street, in the City of Peterborough, in the County of Peterborough, is deemed to be a municipal capital facility to be used as a Museum;

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

That the Mayor and the Clerk be and they are hereby authorized to execute an agreement between The Corporation of the City of Peterborough and Peterborough Historical Society for the provision of a municipal capital facility at 270 Brock Street, in the City of Peterborough, and to affix the Seal of the Corporation thereto, in the form attached hereto as Schedule A.

By-law read a first, second and third time this 10th day of August, 2009

(Sgd.) D. Paul Ayotte, Mayor

(Sgd.) Kevin Arjoon, Deputy Clerk
SCHEDULE A

AGREEMENT made this 9th day of July, 2009

BETWEEN:

THE CORPORATION OF THE CITY OF PETERBOROUGH
hereinafter called the “City”

OF THE FIRST PART

- and -

PETERBOROUGH HISTORICAL SOCIETY
hereinafter called “PHS”

OF THE SECOND PART

WHEREAS, by By-law Number 09- , The Corporation of the City of Peterborough is authorized to enter into this agreement for the provision of a municipal capital facility, namely the Hutchison House, pursuant to Section 110(1) of the Municipal Act 2001;

NOW THEREFORE THE PARTIES HERETO AGREE AS FOLLOWS:

1.00 THE PROPERTY

1.01 The parties acknowledge that the PHS is the owner of the property, municipally known as 270 Brock Street, Peterborough, and more particularly described in Schedule “A” (the “Property”).

1.02 The PHS operates a museum, known as Hutchison House, on the Property.

1.03 The Property shall, at the option of the City, be conveyed to the City by PHS on the default by PHS in the observation of its obligations and covenants pursuant to this agreement.

2.00 TERM OF AGREEMENT

2.01 This agreement shall be in full force and effect from the date of execution, until it is terminated by the City, pursuant to the provisions of this agreement. Upon termination, the Property shall, at the option of the City, be transferred to the City, free of encumbrances.
3.00 TERMINATION OF AGREEMENT

3.01 The City may terminate this agreement upon written notice to PHS, in the event that PHS fails to perform any of its obligations, or is in breach of any of its covenants, pursuant to this agreement, and has failed to perform such obligations or remedy such breach within thirty (30) days from the date of written notification to PHS by the City.

4.00 USE OF THE PROPERTY

4.01 PHS shall use the Property only for the purpose of a museum, including open 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 PHS may make capital improvements to the Property, provided that the plans for any such improvements shall be approved by the City prior to the work being commenced. All such work shall be carried out by PHS at its own risk and expense, unless otherwise agreed in writing between the parties. For the purpose of this agreement, a capital improvement is deemed to be an undertaking or work to a building which requires the issuance of a building permit pursuant to the Building Code Act, and the issuance of a permit thereto shall be deemed to be an approval for the purposes of this agreement.

5.02 PHS warrants that any such improvements shall be undertaken with all reasonable care, skill and diligence, and all work shall be performed in a competent, skilful manner.
5.03 PHS shall not permit any lien under the *Construction Lien Act*, or any like statute, to be filed or registered against the Property, by reason of work, labour, materials, or service provided in regard to the capital improvements. If any such lien is filed or registered, PHS shall procure registration of its discharge within twenty (20) days after it has come to the attention of PHS; provided that if PHS wishes to contest, in good faith, the amount or validity of any lien, and notifies the City, and if PHS deposits with the City or with the Trustee, or has paid into court for the credit of any lien action, the amount of the lien claimed, plus a reasonable amount for costs, PHS 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 the Property shall not thereby become liable for forfeiture or sale.

6.00 INDEMNIFICATION AND INSURANCE

6.01 PHS agrees that it will indemnify and hold harmless the City from any liability, claims or costs, including solicitor’s fee and reasonable disbursements, which may be incurred as a result of any personal injury, death or other damage which may be sustained by PHS, any employee thereof, or any person who may be upon the Property, as a result of the acts or negligence of PHS, its agents and/or employees.

6.02 During the currency of this agreement, PHS shall, at its expense, maintain a policy of insurance for property damage and third party public liability, in the minimum amount of One Million Dollars ($1,000,000.00). Evidence of insurance shall be provided to the City annually.

7.00 COVENANTS OF PHS

7.01 PHS 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 museum on the Property; 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 PHS shall forthwith, after written notice from the City, repair any deficiency in the Property or discontinue any misuse which shall be specified in the aforementioned written notice.

9.00 TAXES

9.01 The parties acknowledge that the City has enacted By-law Number 09-XX, exempting the property from taxation for municipal and school purposes. Notwithstanding this, in the event that PHS uses, or permits the use, any portion of the Property for any activity which gives rise to realty taxes, PHS shall pay such taxes.

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

10.00 NOTICES AND CHANGES OF ADDRESS

10.01 Any notice required to be given pursuant to this agreement shall be either personally delivered or sent by facsimile transmission to the parties at the following addresses:

(a) to the City at: City Hall
500 George Street North
Peterborough, Ontario K9H 3R9
Attention: City Clerk
Facsimile Number: (705) 743-7825

(b) to the PHS at: 270 Brock Street
Peterborough, Ontario K9H 2P9
Attention: Executive Director
Facsimile Number: (705) 742-9290
11.00 ENUREMENT

11.01 It is understood and agreed that this agreement shall enure to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns.

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

THE CORPORATION OF THE CITY OF PETERBOROUGH

__________________________
D. Paul Ayotte, Mayor

__________________________
Nancy Wright-Laking, City Clerk

PETERBOROUGH HISTORICAL SOCIETY

__________________________
Name: 
Office:

__________________________
Name: 
Office:

AB:If
AGR\16729\PHS MUNICIPAL CAPITAL FACILITY AGR.DOC
SCHEDULE “A”

PIN 28105 0128(LT)
Part Lot 10 and Part Lot 11, north of Brock Street and west of George Street,
Town Plan, in the City of Peterborough, in the County of Peterborough