



The Municipal Corporation of the Town of Fort Erie

BY-LAW NO. 124-07

**BEING A BY-LAW TO AUTHORIZE THE ENTRY INTO A VEHICLE LEASE
AGREEMENT WITH THE CANADIAN RED CROSS SOCIETY
(211201-17)**

WHEREAS the Town of Fort Erie's authority to provide a specialized passenger transportation system is provided by the Municipal Act, 2001 Section 11(3), as an exclusive sphere of jurisdiction, and

WHEREAS the Municipal Act, 2001 Section 69(2)b, authorizes a municipality to enter into an agreement granting a person the exclusive or non-exclusive right to establish, operate or maintain all or any part of a passenger transportation system within all of the municipality under such conditions as the municipality provides, and

WHEREAS at the Council-in-Committee meeting of April 16, 2007 Administrative Report IS-14-07 was accepted and approved which authorized the entry into an Agreement with The Canadian Red Cross Society for the provision of the new Fort Erie Accessible Specialized Transit (FAST) service for a two year term, with the option of a two year renewal at the end of the second year, and

WHEREAS the Town of Fort Erie entered into an Agreement dated May 14, 2007 with The Canadian Red Cross Society to provide specialized transit within the Town of Fort Erie under By-Law No. 68-07 "*Being a By-Law to Authorize the Entry Into a Specialized Public Transportation System Service Agreement with the Canadian Red Cross Society and to Repeal By-Law No. 149-05*", and

WHEREAS at the Council-in-Committee meeting of April 16, 2007 Report No. IS-15-07 was approved authorizing that Contract FM-01-07: New 2006 or 2007 Full-Size Extended Van, 8 Cylinder, Automatic, 2 Wheel Drive be awarded to David Chevrolet Corvette Ltd. of Welland, Ontario, in the amount of \$56,559.14 (including applicable taxes), and

WHEREAS at the Council-in-Committee meeting of April 16, 2007 Report No. IS-15-07 advised Council that the equipment to be purchased under Contract FM-01-07 was to be leased under a separate Agreement to The Canadian Red Cross Society for the provision of specialized transit within the Town of Fort Erie, and

WHEREAS Council entered into an Agreement to purchase the equipment under By-Law No. 59-07 "*Being a By-Law to Award the Tender for the Purchase of a New Full-Size Extended Van - Contract No. FM-01-07*" dated April 23, 2007, and

WHEREAS at the Council-in-Committee meeting of April 16, 2007 Report No. IS-15-07 authorized the use of grant funding (provincial gas tax) to purchase the equipment itemized in Contract FM-01-07 under the 2007 Specialized Transit Operating Budget to continue to provide specialized public transportation within the Town of Fort Erie, and

WHEREAS The Town of Fort Erie entered into a Letter of Agreement with the Ministry of Transportation, Province of Ontario under By-law 185-06 *"Being a By-law to Authorize the Entry into and Execution of a Letter of Agreement with her Majesty the Queen in right of the Province of Ontario represented by the Minister of Transportation under the Dedicated Gas Tax Funds for Public Transportation Program"* to govern the use of dedicated gas tax funds by municipalities for public transportation, and further

WHEREAS it is deemed desirable to enter into a vehicle lease agreement with The Canadian Red Cross for the aforesated provision of service;

NOW THEREFORE the Municipal Council of The Corporation of the Town of Fort Erie hereby enacts as follows:

- 1) **THAT** the entry into a Vehicle Lease Agreement with the Canadian Red Cross Society in the form of Schedule "A" annexed hereto to this by-law be and it is hereby approved and authorized, and
- 2) **THAT** the Mayor and Clerk be and they are hereby authorized and directed to execute the Agreement and to affix the Corporate Seal thereto.
- 3) **THAT** pursuant to the provisions of Sections 23.1 to 23.5 of the Municipal Act, 2001, as amended, the Clerk of the Town of Fort Erie is hereby authorized to effect any minor modifications or corrections solely of an administrative, numerical, grammatical, semantical or descriptive nature or kind to this by-law or its schedules as such may be determined to be necessary after the passage of this by-law.

READ A FIRST, SECOND AND THIRD TIME AND FINALLY PASSED THIS 13th DAY OF AUGUST 2007.



MAYOR



CLERK

I, the Clerk, Carolyn J. Kett, of The Corporation of the Town of Fort Erie hereby certify the foregoing to be a true certified copy of By-law No. 124-07 of the said Town. Given under my hand and the seal of the said Corporation this day of _____, 20 .

Schedule 'A' to By-Law No. 124-07

VEHICLE LEASE AGREEMENT

THIS VEHICLE AGREEMENT dated the _____ day of _____, 2007

BETWEEN:

The Corporation of the Town of Fort Erie,
(hereinafter called "The Town of Fort Erie")

-and -

The Canadian Red Cross Society (Red Cross Niagara)
(hereinafter called "Operating Company")

WHEREAS The Town of Fort Erie intends to operate a municipal specialized transit service known as Fort Erie Accessible Specialized Transit ("FAST");

AND WHEREAS The Town of Fort Erie and the Operating Company have entered into a separate agreement, referred to herein as the Transit Service Agreement, that sets out the terms and conditions of the service to be provided by the Operating Company for the FAST;

AND WHEREAS The Town of Fort Erie owns the vehicle also referred to as automobile from time to time in this agreement, and equipment required to provide the service;

AND WHEREAS the Operating Company is desirous of leasing from The Town of Fort Erie the vehicle (s) and Equipment described in the list attached hereto as Appendix "1" (hereinafter collectively called the "Equipment");

AND WHEREAS the Operating Company has the labour, infrastructure and expertise, which are capable of being used to provide the FAST service;

NOW THEREFORE in consideration of the mutual covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which is acknowledge, the Parties hereto acknowledge the Parties to the Agreement agree as follows:

DEFINITIONS

1. In this Agreement, unless the context otherwise requires, the following terms shall have the following meanings:
 - (1) “Agreement” means this Agreement including any recitals and schedules to this Agreement, all as amended, supplemented or restated from time to time by mutual agreement between the Parties;
 - (2) “Transit Service Agreement” includes any amended or successor Transit Service Agreement.

HEADINGS

2. The division of this Agreement into sections and the insertion of headings are for convenience of reference only and are not to affect the construction or interpretation of this Agreement.

NUMBER AND GENDER

3. Unless otherwise specified, words importing the singular include the plural and vice versa and words importing gender include all genders.

GOVERNING LAW

4. This Agreement is governed by and shall be construed and interpreted in accordance with the laws of the Province of Ontario.

SEVERABILITY

5. If any provision of this Agreement is or becomes illegal, invalid or unenforceable, in any jurisdiction, the illegality, invalidity or enforceability of that provision shall not effect:
 - (a) the legality, validity or enforceability of the remaining provisions of this Agreement; or
 - (b) the legality, validity or enforceability of that provision in any other jurisdiction.

TIME OF THE ESSENCE

6. For every provision of this Agreement time is of the essence.

ENTIRE AGREEMENT

7. There are no covenants, representation, warranties, agreements or other conditions expressed or implied, collateral or otherwise, forming part of or in any way affecting or relating to this Agreement, save as expressly set out or incorporated by reference herein, and this Agreement constitutes the entire Agreement between the parties with respect to subject matter and supersedes all prior agreements, negotiations, discussions, representations and understandings whether written or oral.

8. If at any time during the term of this Agreement or any extension thereof the parties shall deem it necessary or expedient to make any alteration or addition to this Agreement they may do so by means of a written agreement between them which shall be supplemental and form part of this Agreement.

AGREEMENT

9. The Town of Fort Erie hereby agrees to lease to the Operating Company and the Operating Company hereby agrees to lease from The Town of Fort Erie the Equipment, as listed in Appendix "1" to this agreement, together with all accessories, affixed thereto, now or in the future.

RENT

10. The Operating Company agrees to pay to The Town of Fort Erie the sum of One Dollar (\$1.00) forthwith and such payment shall be the rental charges payable by the Operating Company to The Town of Fort Erie in respect of the Equipment.

TERM

11. This Agreement shall commence on the date provided for in the Transit Service Agreement and unless sooner terminated pursuant to the early termination provisions of this Agreement shall continue with an option for a renewal term of another two years with terms of the new Transit Service Agreement to be negotiated by both Parties. Upon expiry of the initial Term, this Agreement shall automatically renew for a further Term subject to the same terms and conditions provided for in the Transit Service Agreement unless either Party shall have delivered written notice to the other Party no less than ninety (90) days prior to the expiry of the initial Term wherein it elects not to extend or renew this Agreement.

ACCEPTANCE

12. The Operating Company acknowledges that it has inspected the Equipment

and accepts the Equipment as being in a good state of repair, except to the extent that the Operating Company notifies The Town of Fort Erie in writing within ten (10) days of delivery (manufacturers latent defects included).

USE

13. The Operating Company shall use the Equipment only for those purposes set out in the Transit Service Agreement. The Operating Company shall not use the Equipment for pleasure or any other business not contemplated in the Transit Service Agreement. The Operating Company shall observe and adhere to the Rules and Operating Procedures and any other guidelines as issued by The Town of Fort Erie and which relate to the use of the Equipment.

LOCATION

14. The Operating Company shall not remove, cause or permit the Equipment to be removed from the area serviced by the FAST without the prior written consent of The Town of Fort Erie.

OWNERSHIP

15. Title to and ownership of the Equipment, shall at all times be and remain in the name of The Town of Fort Erie and the Operating Company shall have no right of property therein, except the right to use the Equipment in accordance with the terms of this Agreement.

OPERATING COSTS

16.
 - (1) The Town of Fort Erie shall be responsible for all costs associated with the day to day operation of the Equipment, namely fuel, oil and maintenance costs.
 - (2) The Operating Company shall be responsible for the following costs:
 - (a) insurance premiums required as per this Agreement;
 - (b) all license, registration fees, vehicle inspection fees and the like required by the federal, provincial or municipal governments to operate the Equipment

MAINTENANCE AND REPAIRS

17. The Town of Fort Erie shall maintain and keep the Equipment in a good, safe state of repair and in compliance with all applicable laws.

OPERATORS

18. The operators of the Equipment shall operate the Equipment in accordance with all applicable laws, in a safe manner and at all times in accordance with the current road, weather and driving conditions.

ALTERATION

19. The Operating Company shall not alter or add or allow any other party to alter or add to the Equipment in any way without the prior written approval of The Town of Fort Erie. Any alterations, or additions to the Equipment, which are approved by The Town of Fort Erie, shall become and remain the property of The Town of Fort Erie. The Operating Company shall affix on the Equipment, any labels or insignias supplied by The Town of Fort Erie.

RECORDS

20. The Operating Company shall keep for each item of Equipment and deliver to The Town of Fort Erie as specified or upon request the following records:
 - (1) Any record as required by the Transit Service Agreement to be provided by the Operating Company
 - (2) Vehicle Circle Check
 - (3) Road Call Analysis
 - (5) Vehicle Sign In Sheets
 - (4) Accident/Incident Report

LOSS OR DAMAGE

21. The Operating Company assumes and shall bear the entire risk of loss or damage to the Equipment while the Equipment is in its possession and control.

LIENS CHARGES AND FINES

22. (1) The Operating Company shall, at all times, keep the Equipment free from all levies, liens and encumbrances whatsoever and shall pay all license fees, registration fees and assessments, charges and taxes, in accordance with this Agreement, which may be now or hereafter imposed directly upon the Operating Company. If the Operating Company fails

to pay any such levies, liens, encumbrances, assessments, charges or taxes, The Town of Fort Erie may pay the same and in such event the costs thereof, together with interest calculated monthly at a rate equivalent to the prime rate established by TD Canada Trust on the first day of each month, plus two (2%) percent per annum, shall forthwith be due and payable by the Operating Company to Town of Fort Erie. Non-payment of such costs by the Operating Company to The Town of Fort Erie forthwith upon demand by The Town of Fort Erie shall be deemed to be a default under this Agreement.

- (2) The Operating Company shall reimburse The Town of Fort Erie for the payment of all fines levied against The Town of Fort Erie in its capacity as owner of the Equipment which are incurred while the Equipment is in the possession and control of the Operating Company.

ASSIGNMENT

23. The Operating Company shall not transfer, deliver up possession of, or sublet the Equipment, and the Operating Company's interest in this Agreement shall not be assignable by the Operating Company without prior written consent of The Town of Fort Erie; but nothing herein contained shall prevent The Town of Fort Erie from assigning, pledging, mortgaging, transferring or otherwise disposing, either in whole or in part, of The Town of Fort Erie's right hereunder. If the Operating Company is a corporation, then any sale or transfer of shares in the capital of the Operating Company shall be deemed to be an assignment under this Agreement, and the written consent of The Town of Fort Erie to such a sale or transfer shall be first had and obtained.

INDEMNIFICATION

24. The Operating Company shall indemnify and save harmless The Town of Fort Erie, its officers, directors, employees and agents against, from any and all claims, actions, suits, proceedings, costs, expenses, damages and liabilities including the costs arising out of (including legal fees), connected with or resulting from the Equipment including without limitation the installation, possession, use, operation or return of the Equipment or otherwise on account of any personal injury or death or damage to property occasioned by the operation of the said Equipment during the term hereby granted.

INSURANCE

25. (1) The Operating Company shall during the term of this Agreement, and any extension thereof, take out and maintain on behalf of The Town of Fort Erie an Ontario Automobile Policy (OAP 1) Owner's policy for the

automobile as listed in Appendix "1" to this Agreement . The coverages afforded by this policy shall include the following:

- (a) Liability coverage to a limit of no less than \$10,000,000 for bodily injury to, or death of others, or for damage to the property of others as a result of using or operating the automobile described in the Appendix "1" to this Agreement ;
 - (b) Accident Benefits Coverage as set out in the Statutory Accident Benefits Schedule of the *Insurance Act* (Ontario);
 - (c) Uninsured automobile coverage as set out in the Uninsured Automobile Schedule under the *Insurance Act* (Ontario);
 - (d) Direct Compensation Property Damage as set out in the Direct Compensation Property Damage Schedule under the *Insurance Act* (Ontario); and
 - (e) All Perils coverage to include collision or upset, specified perils and comprehensive coverage.
- (2) The Ontario Automobile Policy (OAP 1) shall be endorsed to include the following:
- (a) OPCF 6C Public Passenger Vehicles to a limit of \$10,000,000 Road Hazard/Passenger Hazard for bodily injury to passengers and for Passenger Property Damage.
 - (b) OPCF 43A Removing Depreciation Deduction – for those automobiles where replacement cost is shown on Appendix "1" to this Agreement, statutory condition 6(5) of Section 8 of the OAP 1 be replaced by the following:

The insurer's liability shall not exceed what it would cost to repair or replace the automobile or any part thereof with new material of the like, kind and quality without deduction for depreciation should the loss of damage occur before the expiry date of the policy that is in force thirty (30) months from when the automobile was delivered to the Operating Company.
 - (c) The Ontario Automobile Policy (OAP 1) Owner's policy will name The Town of Fort Erie as a Loss Payee and as an additional insured.
- (3) All policies of insurance shall:

- (a) be written with an insurer licensed to do business in Ontario;
 - (b) be non-contributing with, and will apply only as primary and not excess to any other insurance or self-insurance available to The Town of Fort Erie: and
 - (c) contain an undertaking by the insurers to notify The Town of Fort Erie in writing not less than thirty (15) days before any material change, cancellation, lapse, amendment restricting coverage or termination of the policies.
- (4) Before the commencement of any activities hereunder, the Operating Company shall provide to The Town of Fort Erie a Certificate of Insurance authorized by the insurer evidencing the above policies. The Town of Fort Erie reserves the right to request a certified copy of the above-mentioned policies.

TERMINATION

26. Subject to section 27 of this Agreement, this Agreement shall be terminated on the date that the Transit Service Agreement is terminated as provided for in the Transit Service Agreement.

DEFAULT

- 27 Notwithstanding section 26 the Operating Company covenants and agrees with The Town of Fort Erie that The Town of Fort Erie shall have the right to cancel and terminate this Agreement forthwith by reason of any one or more of the following events:
- (1) If the Operating Company fails to observe and perform any of the terms, conditions, covenants and provisos contained in the Transit Service Agreement, which on its part are to be observed and performed.
 - (2) If the Operating Company fails to perform any of the terms, conditions, covenants and provisos contained in this Agreement which on its part are to be observed and performed.
 - (3) If a petition under any bankruptcy law shall be filed by or against the Operating Company or the Operating Company shall make any assignment for the benefit of its creditors or the Operating Company shall suffer or permit the appointment of any trustee or receiver or receiver-manager for the Operating Company' s business or assets or any part thereof or otherwise becomes financially insolvent or if the Operating Company shall make or suffer any assignment, voluntary or

involuntary, of the Operating Company's interest in any of the Equipment included in this Agreement or suffer any lien, attachment or levy of execution to become attached thereto.

- 4) If the Operating Company uses any Equipment included in this Agreement unreasonably or abusively resulting in damage to such Equipment or an abnormal reduction in the life of the Equipment or any part thereof.
- 5) If the Transit Service Agreement is terminated prior to the expiration of its term for any reason.

WAIVER

- 28.. The waiver by either party of any breach or violation of any provision of this Agreement shall not operate, or be construed, as a waiver of any subsequent or similar breach or violation of it.

NOTICES

29. Any notice, demand or other communication permitted to be given or made hereunder shall be in writing and shall be sufficiently made or given if:
- (1) delivered in person during normal business hours on a business day and left with a responsible employee of the relevant party at the applicable address set forth below;
 - (2) sent by pre-paid first-class mail to the address set forth below; or
 - (3) sent by electronic means of sending messages including telex or facsimile transmission which produces a paper record of the electronic transmission during normal business hours on a business day.

In case of notice to The Town of Fort Erie:

Clerk
Town of Fort Erie
1 Municipal Centre Drive
Fort Erie, Ont., L2A 2S6

In case of notice to the Operating Company:

Manager
Community Health Services & Transportation
Red Cross Niagara
211 Church St.
St. Catharines, Ont., L2R 3E8

Each notice sent in accordance with this subsection shall be deemed to have been received:

- (1) at the time it was delivered in the case of subsection (1) above;
- (2) at the beginning of the third business day after it was mailed excluding each business day during which there existed any general disruption in postal services due to a strike, lock out or other similar cause; or
- (3) one hour after it was sent on the same day that it was sent by electronic transmission or at the start of business on the first business day thereafter if the day on which it was sent was not a business day.

Any party may change its address for notice by giving notice to the other party as provided in this subsection

CONFIDENTIALITY

30. Each of the Parties hereto mutually undertakes with each other that, subject to the requirements of the *Municipal Freedom of Information and Protection of Privacy Act* or unless consent to such use or disclosure is provided, it will not during the continuance of this Agreement or at any time thereafter;

(a) itself use, other than in accordance with and for the purposes of this Agreement;

(b) divulge or communicate to any person;

any confidential information relating to the other Party or any personal information relating to an employee or representative of the other Party which it may have received or obtained in the performance of its obligations or privileges hereunder provided that this restriction shall cease to apply to information which is or may hereafter come into the public domain otherwise than by breach of this Agreement. Each Party shall adopt such measures as are reasonably required to prevent the unauthorized use or disclosure of such confidential information.

FORCE MAJEURE

31. Neither Party shall be responsible to the other for the non-performance of or for delay in performance occasioned by any cause beyond its control, including, acts of civil or military authority, embargoes, acts of God, delay of suppliers or inability to obtain or shortages of materials or supplies but, for greater certainty, the shortage of funds by a party thereto, thereby preventing it from discharging its obligations hereunder shall be deemed to be a cause within its control, during the

period of such delay. The Town of Fort Erie and the Operating Company, acting reasonably and in good faith, shall jointly decide whether any such situation is likely to continue for a period exceeding ninety (90) days and if so then either Party shall have the right to terminate this Agreement.

SUCCESSORS AND ASSIGNS

32. This Agreement shall ensure to the benefit of and be binding upon the parties hereto, and their respective heirs, executors, administrators, successors and permitted assigns.

IN WITNESS WHEREOF the Parties have affixed their respective corporate seals, attested by the hands of their respective officers duly authorized in that behalf.

SIGNED SEALED AND DELIVERED

The Corporation of the Town of Fort Erie
PER:

Per:  _____
Name:

Per: _____
Name:

We have authority to bind the Corporation

The Canadian Red Cross Society (Red Cross Niagara)

Per: _____
Name:

Per: _____
Name:

Appendix '1' to Schedule 'A' to By-Law No. 124-07

Vehicle Lease Agreement

Between
The Corporation of the Town of Fort Erie,
-and -
The Canadian Red Cross Society (Red Cross Niagara)

EQUIPMENT:

2007 White Chevrolet Express 3500 – Extended

VIN# 1GAHG39U471245340