

LICENSE AGREEMENT

THIS LICENSE is dated for reference the 7th day of November, 2014.

BETWEEN:

**HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE
OF BRITISH COLUMBIA**, as represented by the Minister of
Technology, Innovation and Citizens' Services
W311, 4000 Seymour Place
Victoria, BC V8W 9V1

(the "Licensor")

OF THE FIRST PART

AND:

THE CORPORATION OF THE CITY OF VICTORIA
1 Centennial Square
Victoria, BC V8W 1P6

(the "Licensee")

OF THE SECOND PART

In consideration of the mutual covenants and agreements contained herein the parties hereto agree as follows:

ARTICLE 1 – DEFINITIONS

1.01 In this License and the Schedules to it,

"**Commencement Date**" means May 13, 2013;

"**Lands**" means the lands described in Schedule "A";

"**Licensed Area**" means that part of the Lands shown on the photographs attached as part of Schedule "B";

"**License Fee**" means the sum of \$1.00 plus applicable GST;

"**Term**" means the period of time commencing on the Commencement Date and terminating on the Termination Date; and

"**Termination Date**" means five years after the Commencement Date, or earlier date pursuant to section 4.04.

ARTICLE II – GRANT OF LICENSE

- 2.01 Subject to the terms of this License, the Licensors hereby grants to the Licensee for the Term a license of the Licensed Area for the sole purposes of installing and maintaining thereon two sculptures by the artist Crystal Przybille referred to as "Holding Binoculars" and "Tying a Rope to a Mooring Ring" as part of the 150th Anniversary Public Art Project (the "Works").
- 2.02 The Licensors hereby further grants to the Licensee the non-exclusive right during the Term to pass and repass over those parts of the Lands which do not form the Licensed Area as may be reasonably necessary to access the Licensed Area for the purpose of the License.
- 2.03 In consideration of the grant of this License by the Licensors to the Licensee the Licensee shall pay the Licensors the License Fee, the receipt of which is hereby acknowledged.

ARTICLE III – TERM

- 3.01 The Licensee will have and hold the Licensed Area for the Term, unless cancelled or otherwise terminated in accordance with the terms of this License.

ARTICLE IV – COVENANTS, AGREEMENTS AND ACKNOWLEDGEMENTS OF THE LICENSEE

- 4.01 The Licensee agrees to observe and perform all the terms, covenants and conditions of this License and not to do or permit to be done anything contrary to the term, covenant or condition of this License, and to comply at all times with all applicable laws.
- 4.02 The Licensee agrees to pay for all costs related to installation and maintenance of the Works, including but not limited to the cost of art production, site preparation, installation, and maintenance of the Works. The Licensee will carry out all of its activities for the installation and maintenance of the Works in a good and workmanlike manner, and will maintain the Works in a good condition at all times.
- 4.03 The Licensee will not construct or install any improvements on the Licensed Area other than the Works.
- 4.04 The Licensee acknowledges and agrees that the Licensors has the absolute right in its sole discretion to terminate this License, as of a date specified by written notice from the Licensors to the Licensee, in the event of any of the following occurrences:
 - (a) any breach by the Licensee of any term, condition, covenant or agreement contained herein which continues after the Licensors has given ten (10) days written notice of such breach to the Licensee and the Licensee has failed to cure such breach;
 - (b) if this License is taken in execution or attachment by any person or the Licensee commits an act of bankruptcy, becomes insolvent, is petitioned into bankruptcy or voluntarily enters into an arrangement with creditors;

- (c) the Licensee makes an assignment for the benefit of creditors which was consented to or did not require consent;
- (d) a receiver or receiver-manager is appointed in respect of any property of the Licensee or is appointed to control the conduct of the business on or from the Licensed Area;
- (e) title to the Licensed Area is transferred or conveyed to a third party and the third party has instructed the Licensor, in writing, to terminate this License;
- (f) the Licensee removes the Works from the Licensed Area; or
- (g) the use of the Lands has changed such that the Licensor requires the relocation or removal of the Works.

4.05 ~~The Licensee agrees to pay all accounts and expenses as they become due for labour performed on and materials supplied to the Licensed Area.~~

4.06 The Licensee must not sublicense, assign or transfer this License, or permit any person to use or occupy the Licensed Area, without the Licensor's prior written consent, which consent it may withhold in its sole discretion. The grant of a sublicense, assignment or transfer of this License does not release the Licensee from its obligation to observe and perform all the provisions of this License on its part to be observed and performed unless the Licensor specifically releases the Licensee from such obligation in its consent to the sublicense, assignment or transfer of this License.

4.07 On expiration of the Term, including on termination pursuant to section 4.04, the Licensee will:

- (a) forthwith peaceably quit and deliver possession of the Licensed Area to the Licensor in a safe, clean and sanitary condition;
- (b) forthwith remove from the Licensed Area all Works, and restore the surface of the Licensed Area restored as nearly as possible to the condition that it was in as of the Commencement Date, ~~but in any event to accepted heritage conservation standards,~~ all at the sole cost and expense of the Licensee; and

and all right, interest and estate of the Licensee in the Licensed Area will cease and vest in the Licensor at that time and, to the extent necessary, this covenant will survive the expiration of the Term or the earlier termination thereof.

ARTICLE V – INSURANCE / INDEMNIFICATION

5.01 At all times during the Term, the Licensee will effect and keep in force ~~Commercial~~ General Liability insurance providing coverage for death, bodily injury, property loss and damage, and all other losses, arising out of or in connection with the Licensee's use and occupation of the Licensed Area in an amount of not less than \$5,000,000.00 per occurrence. The Licensor shall be named as an additional insured party, and the insurance policy shall contain a cross liability clause.

- 5.02 The policy of insurance referred to in clause 5.01 **may only be terminated in accordance with the Reciprocal Insurance Exchange Agreement, if applicable.**~~will contain a provision or bear an endorsement that the insurer will not cancel such policy without first giving the Licenser at least thirty (30) days' notice in writing if its intention to cancel the policy.~~
- 5.03 Notwithstanding clause 5.01, the Licensee will effect and keep in force any other form or forms of insurance that the Licenser may reasonably require and in such amounts and for such perils against which a prudent licensee acting reasonably would protect itself in similar circumstances.
- 5.04 The Licensee shall on the Commencement Date and each anniversary thereof, and otherwise promptly upon the Licenser's request during the Term, provide the Licenser with certificates of insurance confirming the placement and maintenance of the required insurance.
- 5.05 The Licensee hereby agrees to release, indemnify and save harmless the Licenser and its servants, employees, and agents from and against all claims, damages actions, causes of action, losses, damages, fines, penalties, costs and liabilities, including fees of solicitors and other professional advisors, arising out of or in connection with
- (a) the Licensee's breach, violation or non-performance of the provisions of this Agreement; and
 - (b) any personal injury, bodily injury (including death) or property damage occurring or happening on or off the Lands by virtue of the Licensee's entry upon, use or occupation of the Lands;
- except to the extent arising from any negligent act or omission of the Licenser or its servants, employees or agents.

ARTICLE VI – COVENANTS, AGREEMENTS AND ACKNOWLEDGEMENTS OF THE LICENSOR

- 6.01 The Licenser shall maintain the area of the Lands immediately surrounding the Licensed Area in a clean and sanitary condition.

ARTICLE VII – NOTICE

- 7.01 Any notice, direction or other instrument required or permitted to be given under this License shall be in writing and may be given by delivering same by hand or courier, or mailing same by registered mail, or sending same by telex, telecommunication device or other similar form of communication to the following address:

If to the Licenser: PO Box 9412, Stn Prov Gov
W311-4000 Seymour Place
Victoria, B.C. V8W 9V1
Attn: Lease Administration

If to the Licensee: 1 Centennial Square
Victoria, B.C. V8W 1P6

Any notice, direction or instrument aforesaid shall:

- a) if delivered by hand or courier, be deemed to have been given or made at the time of delivery;
- b) if mailed by registered mail in Canada and properly addressed be deemed to have been given or made on the third day following the day on which it was so mailed; provided that should there be, at the time of mailing or between the time of mailing and the actual receipt of the notice, a mail strike, slowdown or other labour dispute which might affect the delivery of such notice by the mails, then such notice shall be only effective if actually delivered; and
- c) if sent by telex, telecommunication device or other similar form of communication, be deemed to have been given or made on the day following the day on which it was sent.

Any party may give written notice of change of address in the same manner, in which event such notice shall thereafter be given to it as above provided at such changed address.

ARTICLE VIII

Intentionally deleted.

ARTICLE IX – MISCELLANEOUS

- 9.01 No term condition, covenant or other provision of this License will be considered to have been waived by the Licensor unless the waiver is expressed in writing by the Licensor. The waiver by the Licensor of any breach by the Licensee of any term, condition, covenant or other provision of this License will not be construed as or constitute a waiver of any further or other breach of this same or any other term, condition, covenant or other provision of this License and the consent or approval of the Licensor to any act by the Licensee requiring the consent or approval of the Licensor will not be considered to waive or render unnecessary the consent or approval of the Licensor to any subsequent same or similar act by the Licensee.
- 9.02 No remedy conferred upon or reserved to the Licensor is exclusive of any other remedy in this License or is provided by law, but that remedy will be in addition to any other remedy in this License or any other remedy then existing at law, in equity, or by statute.
- 9.03 The terms and provisions of this License will extend to, be binding upon and enure to the benefit of the parties, their heirs, administrators, executors, successors, and permitted assigns.

9.04 The Licensee agrees with the Licensor that

- (a) the Licensor is under no obligation, express or implied, to provide financial assistance or contribute toward the cost of servicing or developing the Licensed Area or Land, and the Licensee is solely responsible for all costs and expenses associated with its use of the Licensed Area for the purposes set out in this License;
- (b) nothing in this License constitutes the Licensee as an agent, joint venturer or partner of the Licensor or gives it any authority or power to bind the Licensor in any way; and
- (c) any information regarding this License or the Licensee may be disclosed or required to be disclosed under the *Freedom of Information and Protection of Privacy Act*, governmental policy or otherwise.

9.05 Nothing in this License will be construed as an agreement by the Province or the City of Victoria to restrict, limit or otherwise fetter in any manner its ability to introduce, pass, amend, modify, replace, revoke or otherwise exercise any rights or authority regarding legislation, regulations, policies or any other authority.

9.06 This License will take effect on the Commencement Date regardless of the date that it is executed by the parties.

ARTICLE X – INTERPRETATION

10.01 Wherever the singular or masculine form is used in this License it will be construed as the plural or feminine or neuter form, as the case may be, and vice versa where the context or parties so require. In this License, "person" includes a corporation, firm or association.

10.02 The captions and headings contained in this License are for convenience only and do not define or in any way limit the scope or intent of this License.

10.03 This License will be interpreted according to the laws of the Province of British Columbia.

10.04 Where there is a reference to an enactment of the Province of British Columbia or of Canada in this License, that reference will include a reference to every amendment to it, every regulation made under it and any subsequent enactment of like effect and, unless otherwise indicated, all enactments referred to in this License are enactments of the Province of British Columbia.

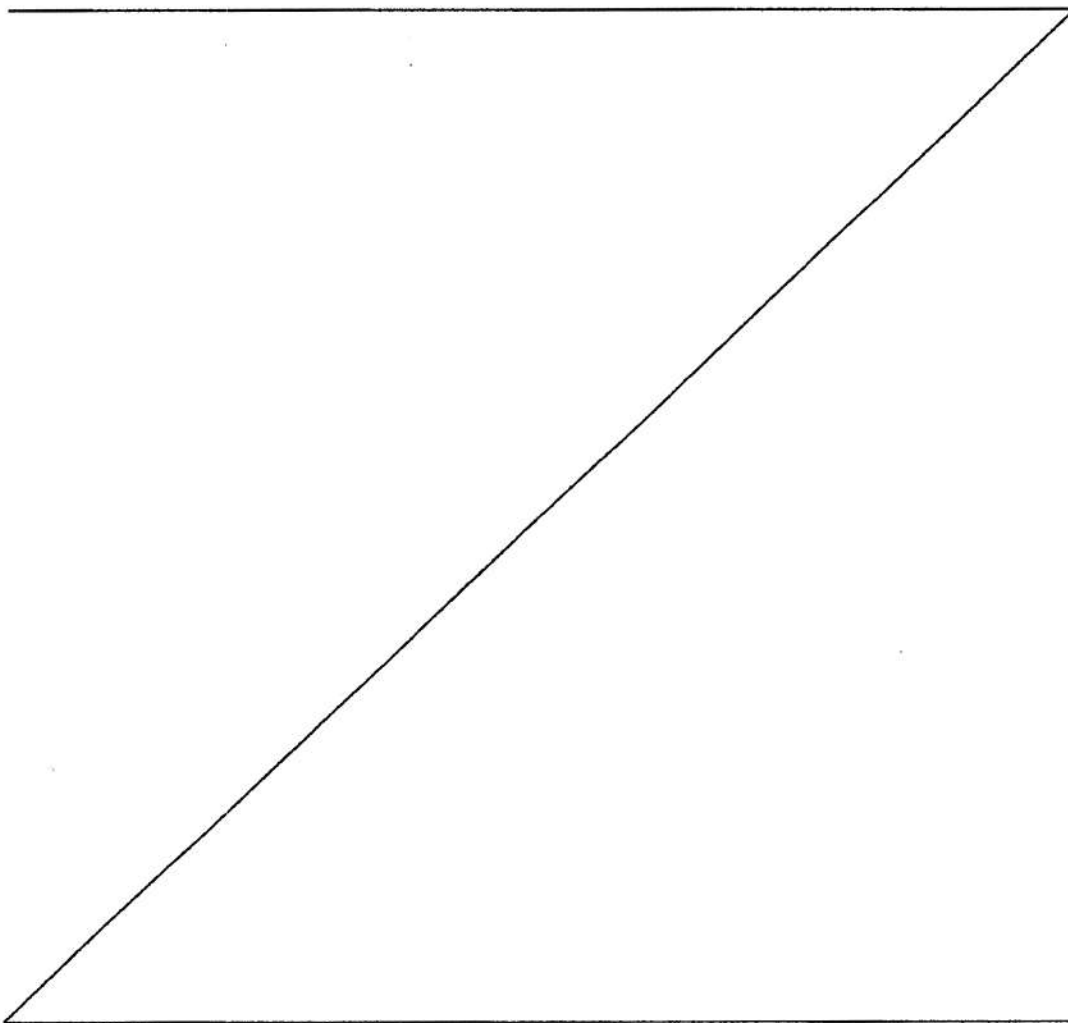
10.05 If any section of this License, or any part of a section, is found to be illegal or unenforceable, that section or part of a section, as the case may be, will be considered separate and severable and the remaining section or part of a section, as the case may be, will not be affected and will be enforceable to the fullest extent permitted by law.

10.06 Each schedule attached to this License is an integral part of this License as if set out at length in the body of this License.

10.07 This License constitutes the entire agreement between the parties and no understanding or agreement, oral or otherwise exists between the parties with respect to the subject matter of

this License except as expressly set out in this License and this License may not be modified except by subsequent agreement in writing.

- 10.08 Each of the parties will, upon the reasonable request of the other, make, do, execute or cause to be made, done or executed all further and other lawful acts, deed, things, devices, documents, instruments and assurances whatever for the better or more perfect and absolute performance of the terms and conditions of this License.
- 10.09 All provisions of this License in favour of the Licensor and all rights and remedies of the Licensor, either at law or in equity, will survive the expiration or sooner termination of this License.
- 10.10 Time is of the essence of this License.
- 10.11 This License may be executed in as many counterparts as may be necessary or by facsimile and each such agreement or facsimile so executed shall be deemed to be an original and such counterparts together shall constitute one and the same instrument.



IN WITNESS WHEREOF the parties have executed this License as of the day, month and year first above written.

LICENSOR:

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA, as represented by the Minister of Technology, Innovation and Citizens' Services or the Minister's authorized representative

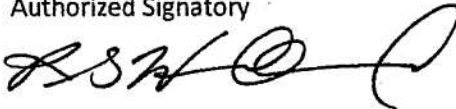
Per: 
Authorized Signatory

LICENSEE:

THE CORPORATION OF THE CITY OF VICTORIA

Per: 
Authorized Signatory

MAYOR DEAN FORTIN
#1 Centennial Square
Victoria BC V8W 1P6



ROBERT G. WOODLAND
Corporate Administrator
City of Victoria
#1 Centennial Square
Victoria BC V8W 1P6

<p>SCHEDULE "A" LEGAL DESCRIPTION</p>

**PID: 002-445-841;
LOT 1, PLAN 26841**

Commonly known as "Enterprise Wharf Lot", 1112 Wharf Street, Victoria, BC

SCHEDULE "B"
LICENSED AREA

For the sculpture referred to as "Holding Binoculars", an area approximately 2 feet wide by 1 foot deep and 1 foot high on the brick wall of the building of the Lands, situate West of Wharf Street, near Bastion Square as indicated in the photograph attached hereto as part of this Schedule "B"; and

For the sculpture referred to as "Tying a Rope to a Mooring Ring", an area approximately 1 feet wide by 3 feet deep and 1 foot high on the bedrock of the Lands, situate southeast of the paved parking lot below Wharf Street, near Bastion Square, as indicated in the photograph attached hereto as part of this Schedule "B";

