



Governance and Priorities Committee Report For the May 22, 2014 Meeting

To: Governance and Priorities Committee
From: Dwayne Kalynchuk, Director
Subject: Art Gallery Report

Date: May 6, 2014

Purpose:

The purpose of this report is to obtain Council's approval to grant indemnity to the Youth Empowerment Society for artwork panels proposed for installation on the side of their building adjacent to Commercial Alley.

Summary:

This project involves the installation of four art panels on the side of the building (533 Yates Street) which is adjacent to Commercial Alley. Once installed, the art panels will host contemporary art works curated by the Open Space gallery and administered by the City's Community Recreation Coordinator for Arts and Culture.

The concept of the gallery was initiated as a means of beginning to improve the aesthetics of the alley, increasing arts and cultural attractions within Old Town and engaging under-represented sectors of the arts community. Staff believe this will be an exciting new attraction in the downtown.

The art panels consist of sheets of 3/4" plywood mounted on smaller plywood disks fixed to the wall (see Figure 1 attached). Fastening details have been described in detail through an application for a Minor Heritage Alteration Permit, which has been approved by the Senior Heritage Planner.

The draft agreement between the City and the building owner (see Schedule A) proposes that the City indemnify the owner with regard to any damage to the building associated with the art work. The owners of the building are satisfied with the terms of the agreement and staff consider the risk to the building through the artwork installation to be minimal.

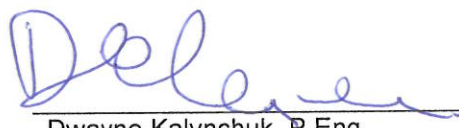
Recommendation:

That Council approves granting indemnity to the Youth Empowerment Society for art panels installed on their building as described in the agreement provided in Schedule A.

Respectfully submitted,




Michael Hill,
Downtown Coordinator



Dwayne Kalynchuk, P.Eng.
Director, Engineering and Public Works

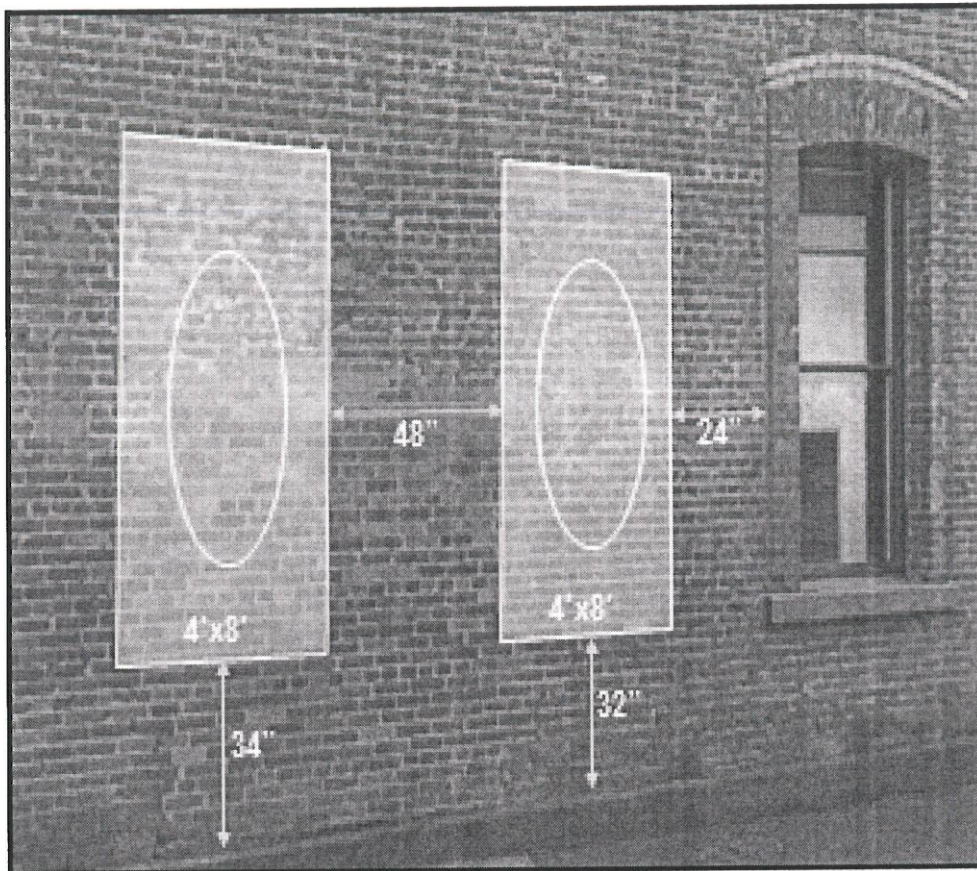
Report accepted and recommended by the City Manager:

Date:



May 12, 2014

Figure 1. Art Panel mounted on Disk



LICENCE

This Agreement dated for reference the ____th day of _____, 2014.

BETWEEN:

THE CORPORATION OF THE CITY OF VICTORIA

#1 Centennial Square
Victoria, B.C. V8W 1P6

(the "City")

AND:

THE VICTORIA YOUTH EMPOWERMENT SOCIETY

(Society No. S-0029717)
533 Yates Street
Victoria, B.C. V8W 1K7

(the "Owner")

W H E R E A S :

- A. The Owner is the registered owner of certain lands and improvements thereon located at 533 Yates Street, Victoria, B.C., legally described as:

PID: 000-086-100

PARCEL B (DD 46224I), OF LOT 197, VICTORIA CITY

(the "**Lands**"); and

- B. The City seeks a licence from the Owner for the City to install and maintain:
- a. four plywood mounting bases;
 - b. artwork which will be affixed, rotated and replaced on those bases; and
 - c. lighting
- with fasteners, mounting brackets and all related appurtenances (collectively, the "Works") on the locations of the brick wall of the building on the Lands as shown on Schedule "A" (collectively, the "**Licensed Areas**").

NOW THEREFORE for the sum of two dollars (\$2.00), the receipt of which is hereby acknowledged, the Owner and the City hereby agree as follows:

1.0 GRANT OF LICENCE

- 1.1 The Owner hereby grants to the City, its agents, employees, contractors and subcontractors, a licence of the Licensed Areas (the "**Licence**") for the purposes of installing, maintaining, repairing, replacing and removing the Works.
- 1.2 The Owner hereby further grants to the City the non-exclusive right during the Term to pass and repass over those parts of the Lands which do not form the Licensed Areas as may be reasonably necessary to access the Licensed Areas for the purposes of the Licence.

2.0 OWNERSHIP OF WORKS

- 2.1 The Works installed by the City upon the Licensed Areas will remain chattels and the property of the City, notwithstanding that the same be annexed or affixed to the freehold, and the Works may at any time be removed in whole or in part by the City at its sole discretion.

3.0 TERM

- 3.1 The Term of the license granted under this Agreement shall be three (3) year commencing on the ____ of ____, 2014 and ending on the __ day of ____, 2017, unless earlier terminated under this Agreement.

4.0 CONSTRUCTION AND MAINTENANCE

- 4.1 The City shall construct and install the Works on the Licensed Areas in accordance with good engineering and construction standards.
- 4.2 The City shall, at its cost, maintain the Works in good condition during the Term.
- 4.3 The City agrees to repair any damage or loss it causes to the Licensed Areas as a result of the exercise of its rights under this Agreement.
- 4.4 In carrying out the work under sections 4.1, 4.2 and 4.3, the City shall not be liable to the Owner for any inconvenience, annoyance, loss of business or other injuries suffered by the Owner by reason of the City doing such work

- 4.5 The City shall be responsible for all costs related to the Works, including but not limited to the cost art production, site preparation for installation, installation, maintenance, and removal.

5.0 INDEMNITY

- 5.1 The City shall indemnify and hold harmless the Owner, its agents, contractors, invitees or licensees from and against all claims, rights, remedies, actions, causes of action, losses, damages, expenses, fees or liabilities incurred or suffered by any or all of them arising from the City's breach of this Agreement or as a result of or to the extent contributed by the negligence of the City, its elected officials and appointed officers, employees and agents in the exercise of the City's rights under this Agreement.

6.0 TERMINATION

- 6.1 Either party may terminate this Agreement upon providing three (3) months' notice.

7.0 CLEAN UP

- 7.1 At the end of the Term or upon earlier termination of this Agreement, the City shall remove the Works, repair any damage caused as a result of such removal and use reasonable efforts to restore the Licenced Areas to their original condition.

8.0 NOTICES

- 8.1 It is hereby mutually agreed:

- (a) Each notice sent pursuant to this Agreement ("**Notice**") shall be in writing and shall be sent to the relevant Party at the relevant address, facsimile number or e-mail address set out below.

- (b) The Contact Information for the parties is:

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

Attention: Property Manager

If to the Owner: THE VICTORIA YOUTH EMPOWERMENT SOCIETY

533 Yates Street
Victoria, B.C. V8W 1K7

Attention: _____

- (c) Each Notice sent by electronic mail ("**E-Mail Notice**") must show the e-mail address of the sender, the name or e-mail address of the recipient, and the date and time of transmission, must be fully accessible by the recipient, and unless receipt is acknowledged, must be followed within twenty-four (24) hours by a true copy of such Notice, including all addressing and transmission details, delivered (including by commercial courier) or sent by facsimile transmission.
- (d) Subject to S. 8.1(f) through (h) each Notice shall be deemed to have been given or made at the following times:
 - (i) if delivered to the address (including by commercial courier), on the day the Notice is delivered;
 - (ii) if sent by registered mail, seven (7) days following the date of such mailing by sender;
 - (iii) if sent by facsimile transmission, on the date the Notice is sent by facsimile transmission; or
 - (iv) if sent by electronic mail, on the date the E-Mail Notice is sent by the sender.
- (e) If a Notice is delivered, sent by facsimile transmission or sent by electronic mail after 4:00 p.m., or if the date of deemed receipt of a Notice falls upon a day that is not a Business Day, then the Notice shall be deemed to have been given or made on the next Business Day following.
- (f) Notice given by facsimile transmission in accordance with the terms of this Section 8.1 will only be deemed to be received by the recipient if the sender's facsimile machine generates written confirmation indicating that the facsimile transmission was sent.
- (g) If normal mail service, facsimile or electronic mail is interrupted by strike, slow down, force majeure or other cause beyond the control of the parties, then a Notice sent by the impaired means of communication will not be deemed to be received until actually received, and the party sending the Notice shall utilize any other such services which have not been so interrupted or shall personally deliver such Notice in order to

ensure prompt receipt thereof.

- (h) Each party shall provide Notice to the other party of any change of address, facsimile number, or e-mail address of such party within a reasonable time of such change.

9.0 NO INTERFERENCE

- 9.1 The Owner agrees not to do or permit to be done, without the consent of the City, anything that will interfere with, obstruct or cause damage to the Works on the Licensed Areas.

10.0 ASSIGNMENT

- 10.1 If the Owner assigns or transfers the Lands, the Owner agrees to cause the assignee or transferee to enter an agreement with the City on substantially the same terms and conditions as those contained in this Agreement to ensure the City's rights granted herein are not terminated.

11.0 NO COMPENSATION

- 11.1 The Owner shall not be entitled to compensation for any loss resulting from the rights granted under this Agreement, except as otherwise provided herein.

12.0 REPRESENTATIONS AND WARRANTIES

- 12.1 The Owner represents and warrants that the execution of this Agreement does not constitute a default or breach of any other agreement to which the Owner is a party.
- 12.2 The Owner represents and warrants to the City that it has authority to enter this Agreement and it's herein signatories have the authority to bind the Owner thereto.

13.0 FURTHER ASSURANCES

- 13.1 The parties hereto shall with reasonable diligence do all such things and provide all such reasonable assurances as may be required to consummate the transactions contemplated hereby, and each party hereto shall provide such further documents or instruments required by the other party as may be reasonable necessary desirable to effect the purpose of this Agreement and carry out its provisions.
- 13.2 Without limiting the generality of the foregoing, in order consummate the transactions contemplated herein, the Owner shall provide the City with any written authorization which may be required for the City to apply for permits in connection with the Lands being

registered as a Heritage Property with the City.

- 13.3 The City shall reserve one (1) seat on the committee responsible for selecting artwork to be installed on the Works for a representative of the Owner.

14.0 GENERAL

- 14.1 Waiver of any default by a party shall not be interpreted or deemed to be a waiver of any subsequent default.
- 14.2 When the singular or neuter are used in this Agreement they include the plural or the feminine or the masculine or the body politic where the context or the parties require.
- 14.3 The headings to the clauses in this Agreement have been inserted as a matter of convenience and for reference only and in no way define, limit or enlarge the scope or meaning of this Agreement or any provision of it.
- 14.4 This Agreement shall endure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, successors, administrators and permitted assignees.
- 14.5 This Agreement shall be governed by and construed in accordance with the laws of the Province of British Columbia and the federal laws of Canada applicable therein and each of the parties hereto agrees irrevocably to conform to the non-exclusive jurisdiction of the Courts of such Province.
- 14.6 All provisions of this Agreement are to be construed as covenants and agreements as though the word importing covenants and agreements were used in each separate paragraph.
- 14.7 This Agreement 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.

15.0 NO DEROGATION FROM STATUTORY AUTHORITY

- 15.1 Nothing in this Agreement shall limit, impair, fetter or derogate from the statutory powers of the City all of which powers may be exercised by the City from time to time and at any time to the fullest extent that the City is enabled and no permissive bylaw enacted by the City, or permit, license or approval, granted, made or issued thereunder, or pursuant to statute, by the City shall estop, limit or impair the City from relying upon and enforcing this Agreement.”

IN WITNESS WHEREOF the parties hereto have set their hands and seals as of the day and year first above written.

THE CORPORATION OF THE CITY OF)
VICTORIA by its authorized signatories this)
____ day of _____, 2014:)
)
_____)
Name: Mayor Dean Fortin)
)
)
_____)
Name: Robert G Woodland)
Corporate Administrator)

THE VICTORIA YOUTH)
EMPOWERMENT SOCIETY by its)
authorized signatories)
this ____ day of _____, 2014:)
)
_____)
Name:)
)
_____)
Name:)

Schedule "A"

