



Governance and Priorities Committee Report

For the February 12, 2015 Meeting

To: Governance and Priorities Committee **Date:** February 4, 2015
From: Dwayne Kalynchuk, Director of Engineering and Public Works
Subject: Bastion Square Market Licence Renewal

Executive Summary

The Bastion Square Revitalization Association (BSRA) has requested renewal of its operating agreement for the Bastion Square Public Market for the next three years. The Bastion Square Public Market has been operated by the BSRA since 1993. The market operates on Wednesdays through Sundays from April to October in Bastion Square, expanding onto Langley Street on Sundays in the summer months. The market has been supported by the City since its inception. City costs are recovered from the \$3,000 annual fee charged to the BSRA.

The BSRA has not requested any substantive changes to the terms of the agreement. The format of the market is expected to remain the same over the term of the agreement.

The market has continued to successfully animate this area of the downtown in its capacity as an open air market. Staff recommend continuing this use of public space.

Recommendation

That Council authorize the Mayor and Corporate Administrator to sign a three year agreement between the City and the Bastion Square Revitalization Association for the operation of the Bastion Square Public Market.

Respectfully submitted,

A blue ink signature of Dwayne Kalynchuk.

Dwayne Kalynchuk, P.Eng.
Director of Engineering & Public Works

A blue ink signature of Michael Hill.

Michael Hill
Community Development
Coordinator / Downtown

Report accepted and recommended by the City Manager:

A blue ink signature of Jason Johnson.

Jason Johnson

Date: Feb. 4/15

Purpose

The purpose of this report is to request Council authorize the Mayor and Corporate Administrator to sign a three year agreement between the City and the Bastion Square Revitalization Association for the operation of the Bastion Square Public Market.

Background

The Bastion Square Revitalization Association (BSRA) has requested renewal of its operating agreement for the Bastion Square Public Market for 2015 - 2017 (see letter attached).

The Bastion Square Public Market has been operated by the BSRA in Bastion Square since 1993. It was initiated to increase the vitality of the Square, and to raise funds for improvements to the area. Funds are generated through vendor fees. Several projects have been completed with these funds, including local artist Illarion Gallant's Commerce Canoe in 2008, and historical interpretation signage and banner projects in 2009.

The market operates Wednesday through Sunday from April 1 to October 15, with approximately 25 vendors located in Bastion Square from Government Street through to Wharf Street. In 2012, the Government Street market was incorporated into the Bastion Square market, bringing an additional 60 vendors to Langley Street on summer Sundays under the same market manager.

Issues & Analysis

The BSRA has not requested any substantive changes to the terms of its agreement (draft agreement attached). The format of the market is expected to remain the same. Although conflicts with other uses of this public space have been minimal to date, the status of the former Maritime Museum site is uncertain, and renovations or alternative uses of the building could affect the footprint of the market in the future – this could result in some modification of the market layout over the term of the agreement.

The market has been supported by the City since its inception and has generally operated smoothly over the last three years. Two on-street parking spaces for vendor off-loading in the mornings and a locker occupying a single parkade stall for material storage are rented from the City during the market season. City costs are recovered from the \$3,000 annual fee charged to the BSRA. BSRA Board members meet with the Downtown Coordinator annually to review issues, changes to policy, and other market-related operational concerns.

Conclusions

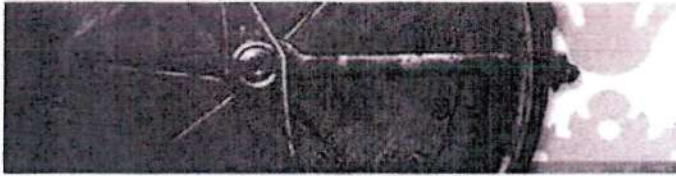
The market has continued to successfully animate this area of the downtown in its capacity as an open air market. The BSRA has administered the market adequately and has continued to raise funds for future improvements to the Square.

The City Solicitor has reviewed the proposed agreement. Staff recommend continuing this use of public space.

Recommendation

That Council authorize the Mayor and Corporate Administrator to sign a three year agreement between the City and the Bastion Square Revitalization Association for the operation of the Bastion Square Public Market.

Attachments: Letter of Intent from Bastion Square Revitalization Association
Licence Agreement Bastion Square Public Market



BASTION
S Q U A R E

BASTION SQUARE REVITALIZATION ASSOCIATION

07 November 2014

Robert Woodland
Corporate Administrator
City of Victoria
#1 Centennial Square
Victoria, BC
V8W 1P6

Dear Robert,

Re: Letter of Intent, Bastion Square Public Market License Agreement

As you are aware, the Bastion Square Revitalization Association oversees the operation the outdoor public market in Bastion Square under the authority of license agreement with the City of Victoria. The market provides a unique venue for artisans and crafts-people to offer their wares to local and visiting public within the downtown core of Victoria. Along with commerce activity the market generates a positive experience for vendors, patrons and onlookers. The BSRA supports these efforts and works to enhance the quality and livelihood of the Square.

The current agreement with the City expired on October 1, 2014. The BSRA would like to renew the agreement and continue to operate the market in Bastion Square. Can you please advise us how you would recommend that we proceed with a renewal process? We would be happy to provide any required information and to present the request to Mayor and Council if appropriate.

We look forward to hearing from you and finalizing a new agreement in the near future.

Sincerely,

Darryl Jonas
President, BSRA

Nancy Stewart
Treasurer, BSRA

**LICENCE AGREEMENT
BASTION SQUARE PUBLIC MARKET**

This Agreement is made effective as of January 1, 2015.

BETWEEN:

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

(the "City")

AND:

BASTION SQUARE REVITALIZATION ASSOCIATION SOCIETY (#538415)
Box 8106 Stn Central
Victoria, British Columbia V8W 3R8

(the "BSRA")

WHEREAS:

- A. The BSRA wishes to operate an outdoor public market in the Square Wednesdays through Sundays from April 1 to October 15 each year from 2015 to and including 2017 as more particularly set out in this Agreement;
- B. The City believes that the operating of the outdoor public market will benefit the community culturally, artistically and commercially;
- C. The City understands that net proceeds from the operation of the Market will be held by the City in a Fund and will be used for legacy improvements to the Square as specified in the Bastion Square Public Market Fund Agreement between the City and BSRA dated May 1, 2012; and
- D. The BSRA will be responsible for selecting Vendors and ensuring that they are treated fairly.

NOW THIS AGREEMENT WITNESSES that in consideration of the promises exchanged herein and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties agree as follows:

1.0 DEFINITIONS

1.1 In this Agreement,

- (a) **"Board"** means the board of directors of the BSRA;
- (b) **"Langley Street"** means that part of Langley Street shown cross-hatched in the attached Schedule A;

- (c) **“Square”** means the public area known as Bastion Square, lying between Wharf and Government Streets as shown in attached Schedule A, EXCEPT for sidewalk cafes, planters or other occupied areas, and for the purposes of this Agreement shall include Langley Street;
- (d) **“Market Manager”** means the person designated by the BSRA to administrate the operation of the Market;
- (e) **“Market”** means the “Bastion Square Public Market” outdoor public arts and crafts displays, local food products and services authorized under Section 2;
- (f) **“Vendors”** means individuals who are authorized by the BSRA to use or occupy a space, table, or booth outdoors on the Square for the purpose of selling goods or services or providing entertainment as part of the Market;
- (g) **“City”** means the Corporation of the City of Victoria and/or its staff who are authorized to represent the City in the transactions referred to in the sections below; and
- (h) **“Fund”** means the fund created pursuant to the Bastion Square Public Market Fund Agreement between the City and BSRA dated May 1, 2012.

2.0 GRANT OF LICENCE

- 2.1 The City grants a licence to the BSRA and the Vendors to use the Square for the purposes of operating an outdoor public arts and crafts market only in accordance with this Agreement.
- 2.2 The term of the licence is three years and it expires on December 31, 2017 unless terminated earlier pursuant to Section 12.
- 2.3 The BSRA and the Vendors have no claim to the Square or any interest in it other than as expressly permitted under this Agreement.
- 2.4 For the purposes of operating the Market, the BSRA may allow the Vendors to:
 - (a) erect temporary outdoor display stands, coverings, screens, and other related equipment in the Square;
 - (b) sell juried services, food/food products and arts and crafts which, generally, are produced locally by the vendors;
 - (c) present performing arts entertainment to market patrons; and/or
 - (d) on Sundays only, sell imported arts, crafts and clothing.
- 2.5 The BSRA will provide to the City the name of and contact information for the Market Manager and will provide to the City updated information immediately upon a change in the Market Manager.

3.0 BOARD

- 3.1 The majority of members of the Board will consist of business or property owners/managers associated with properties adjacent to the Square.
- 3.2 Minutes of BSRA Board meetings will be sent to the City within ten days following such meetings.

4.0 VENDORS

- 4.1 The BSRA will establish guidelines for Vendor selection process that is fair and transparent, and will select Vendors to participate in the Market in accordance with those guidelines.
- 4.2 A designated Board member(s) and the Society's Market Manager will meet with Vendors prior to, during and following each market season during the term. Any issues raised by the Vendors will be reported to the Board for consideration and action, if necessary.
- 4.3 The BSRA will ensure that the Market Manager is fair and respectful of Vendors' interests and issues and will maintain written and clearly defined procedures to ensure Vendors' concerns are considered and addressed in a timely manner. The BSRA will, upon receiving a request from the City, provide to the City the BSRA's procedure for handling Vendors' concerns and issues.
- 4.4 The BSRA will ensure that the type and mix of Vendors:
- (a) are consistent with the goals of the Market;
 - (b) generally include Vendors that sell locally produced goods and/or services;
 - (c) on Sundays only, may include Vendors that sell imported arts, crafts and clothing; and
 - (d) emphasize product quality and uniqueness.
- 4.5 BSRA will ensure that Vendors who are reasonably perceived by adjacent business(es) to be competing with them must be excluded from the Market or located a mutually acceptable distance from the adjacent business(es).
- 4.6 The BSRA will obtain and exhibit health, fire and any other applicable authorities' approvals at each of the Market's vending stalls where those approvals are required.

5.0 FINANCE AND ADMINISTRATION

- 5.1 The BSRA will obtain a business licence from the City at the beginning of April of each year the Market operates, and will maintain the said business licence in good standing throughout the Market's season of operation.
- 5.2 The BSRA will pay to the City an annual fee of \$3,000 per year for each year of this Agreement, payable by November 1st each year.

- 5.3 Costs for City services required for the support of the Market will be funded through the annual fee; any exceptions are at the discretion of the City.
- 5.4 The BSRA must submit a revolving three year business plan for the Market updated each year to the satisfaction of the Director of Finance, including the identification of all market goals and the strategies and measurable outcomes for achieving them.
- 5.5 By February 21 of each year, with reference to the previous year, the BSRA will submit to the City:
- (a) a report on the success of the Market in achieving its specific goals and objectives as stated in its business plan;
 - (b) financial statements and budget-to-actual expenses; and
 - (c) net annual proceeds from the Market to be deposited in the Fund.
- 5.6 Members of the Board will meet with City staff in December of each year to review any issues, changes to policy, or other topics for discussion relating to the Market and activities of the BSRA on City property.

6.0 OPERATION

- 6.1 On each day that the Market operates, the BSRA will:
- (a) maintain the Square in a clean and sanitary condition, free of litter;
 - (b) leave the Square in the same condition that it was before the structures and equipment for the Market were erected;
 - (c) ensure pedestrian walkways and access for emergency vehicles are open;
 - (d) address any hazards posed by Market display, promotional materials or equipment;
 - (e) ensure that access to private properties is unimpeded and requests by business and property owners or their representatives are reasonably addressed;
 - (f) ensure that all materials and equipment used for the Market are not erected earlier than 7:30am nor removed later than 9:00pm, unless agreed to by the City;
 - (g) manage entertainers in the Square, ensuring there is a variety of content and that sound levels remain at a volume acceptable to surrounding businesses or consistent with requirements of the Noise Bylaw; and
 - (h) install parking meter hoods and sleeves on parking meters located on Langley Street and otherwise ensure the closure of Langley Street on Sundays and the Market's use of parking spaces on Langley Street complies with agreed policy and protocol and as directed by the City.
- 6.2 If the BSRA fails to comply with Section 6.1, the City may, in its sole discretion, take any action it deems required to satisfy those clauses, including removing any structure, object or thing from the Square.

Action by the City under Section 6.2 does not relieve BSRA from the obligation to comply with Section 6.1. The BSRA will pay to the City the costs of any action taken by the City under this Section.

7.0 SCHEDULE

- 7.1 Subject to the City's right to terminate this Agreement under Section 12, the BSRA may operate the Market as follows:
- (a) in the Square (but expressly excluding Langley Street), including set-up and tear-down, ONLY between 7:30am and 9:00pm from Wednesday to Saturday from April 1 to October 1; and
 - (b) in the Square (including, for greater certainty Langley Street), including set-up and tear-down ONLY between 7:30am and 9:00pm on Sundays from April 1 to October 1.
- 7.2 Notwithstanding 7.1 or any other provision in this Agreement to the contrary, the BSRA agrees to operate the Market in compliance with the Outdoor Market Bylaw No. 93-121, including without limitation section 3 of the Outdoor Market Bylaw No. 93-121.
- 7.3 A written request to the City is required for any festival or special event sponsored by the BSRA (a) outside the times of operation specified in 7.1, and/or (b) outside the approved operating area, and/or (c) where there may be impacts to adjacent properties or public space beyond those associated with the normal operation of the Market.
- 7.4 Before January 31st of each year, the City may give notice to the BSRA if the City requires use of a portion of the Square for other activities during the normal days of operation of the Market. The City and the BSRA will identify interim alternate locations for Vendors in the vicinity of the Square on such days. After March 31st, should the City require the use of a portion of the Square, the BSRA will make reasonable efforts to accommodate this request(s) within the limitations of their contractual obligations to the Vendors.
- 7.5 Notwithstanding any provision in this Agreement to the contrary, it is understood and agreed that the Market will include Langley Street on Sundays only and that this Agreement will be interpreted in a manner consistent with the foregoing.

8.0 INFRASTRUCTURE, SUPPORT AND PRESENTATION

- 8.1 In consultation with the City, the BSRA will determine:
- (a) a design and configuration for the Market, which will enhance its character and presence;
 - (b) a seasonal signage plan to ensure effective promotion of the Market;
 - (c) operational support requirements (e.g. power, water) to be funded through the annual market fee; and
 - (d) any other infrastructure improvement options and means for their procurement.
- 8.2 The BSRA will prepare and maintain a Market layout map indicating Vendor locations and any other activities associated with the Market and its operation.

9.0 INSURANCE AND LIABILITY

- 9.1 The BSRA will maintain public liability insurance in an amount of at least \$5 million per occurrence in respect of personal injury (including death resulting therefrom) or property damage which may arise from the use of the Square by the BSRA and the Vendors for operating the Market and will include the City as an additional insured in respect of that policy of insurance. The BSRA will provide the City with a corresponding certificate of insurance within 30 days of the execution of this Agreement.
- 9.2 The BSRA will ensure that any Vendor not covered by the public liability insurance referred to in Section 9.1 will maintain their own public liability insurance.
- 9.3 It shall be the sole responsibility of the BSRA to determine what additional insurance coverage, if any, including but not limited to Worker's Compensation Insurance, is necessary and advisable for its own protection and/or to fulfill its obligations under this License. Any such additional insurance shall be maintained and provided at the sole expense of the BSRA.
- 9.4 The BSRA will indemnify and save harmless the City, its officers, employees, elected officials, agents, contractors, and representatives from and against any and all actions, claims, damages, losses, costs, and expenses or liability whatsoever, arising wholly or in part, and whether directly or indirectly, from or because of
- (a) anything done or omitted to be done by the BSRA or a Vendor in relation to the use of the Square by the BSRA and the Vendors for operating the Market; or
 - (b) the breach, violation, or non-performance of this Agreement by the BSRA or a Vendor.

10.0 ASSIGNMENT

- 10.1 The BSRA will ensure that it and the Vendors do not transfer or assign the licence granted under section 2 without first obtaining the City's written consent, which consent may be withheld in the City's sole and absolute discretion.

11.0 NOTICE

- 11.1 For the purposes of this Agreement, notice is sufficiently given by one party to the other if the notice is written, is personally delivered or mailed with prepaid postage and is addressed to:
- (a) BSRA at Box 8106 Stn Central, Victoria, B.C. V8W 3R8; and
 - (b) Corporate Administrator, City of Victoria #1 Centennial Square, Victoria, B.C. V8W 1P6.

12.0 SUSPENSION AND TERMINATION

- 12.1 Where the City requires access to the Square for the purpose of constructing, maintaining or repairing any road, sidewalks, pavement, utility, conduits, sanitary sewer, manholes, water mains or other municipal infrastructure, the City may upon thirty (30) days' written notice to the BSRA, require that the BSRA and the Vendors either suspend the Market or operate the Market at an alternative location as directed by the City and over such period of time as the City indicates is necessary to undertake the public works.
- 12.2 In the event of relocation under section 12.1, the City shall not be responsible for any loss, costs or damages incurred by the BSRA or the Vendors as a result of such suspension or relocation.
- 12.3 In the event of an emergency that renders the provision of notice to BSRA or the Vendors impractical, the City may suspend the Agreement without notice.
- 12.4 The City may terminate this Agreement:
- (a) if the BSRA fails to comply with a provision of this Agreement and any such default is not cured within five (5) days of written notice by the City to do so (provided, however, if such default cannot reasonably be so cured in that time, then such additional time as may be reasonably necessary with the BSRA acting diligently to cure such default forthwith); or
 - (b) any time between September 1st and December 31st in each year of the term for any reason in the City's sole and absolute discretion, provided any such termination will not be effective until then end of Market season operating in the year notice of termination is provided pursuant to this section 12.4(b).
- 12.5 The BSRA may terminate this agreement by giving six (6) weeks written notice to the City, if for unforeseen circumstances it can no longer operate the Market.
- 12.6 The City may require relocation of the Market after the end of September in any calendar year and with respect to the following market season, if that is recommended by the Director of Engineering and Public Works.
- 12.7 In the event of suspension or termination of this Agreement by the City pursuant to section 12.1-12.06, the City shall not be liable for any loss, costs, damages or expenses incurred or suffered by the BSRA or the Vendors as a result of that suspension or termination.

13.0 NO FETTERING OF DISCRETION

- 13.1 Nothing contained or implied within this Agreement shall prejudice or affect the duties, rights and powers of the City in the exercise of its functions under any public or private statutes, bylaws, orders or regulations, all of which may be fully and effectively exercised in relation to the Square, the Market, the BSRA, or the Vendors, as if this Agreement had not been signed by the parties.

To confirm this Agreement, the City and Bastion Square Revitalization Association have executed it below to be effective as of the date and year first above written.

**The Corporation of the City of
Victoria** by its authorized signatories:

Mayor

Director of Corporate Services

**Bastion Square Revitalization
Association Society** by its authorized
signatories:

Authorized Signatory

Authorized Signatory

Schedule A. Operating Area for Bastion Square Public Market

