

CONTRACT AGREEMENT

THIS CONTRACT AGREEMENT made the 19th day of September 2019.

BETWEEN:

CITY OF WEST KELOWNA
2760 Cameron Road
West Kelowna, British Columbia, V1Z 2T6

(hereinafter called the "City")

OF THE FIRST PART

AND:

WESTBANK MUSEUM AND ARTS AND CRAFTS SOCIETY
2376 Dobbin Road
West Kelowna, British Columbia, V4T 2H9

A Society duly incorporated pursuant to the laws of the Province of British Columbia

(hereinafter called the "Association")

OF THE SECOND PART

WHEREAS:

- A. The City is the registered owner of that certain parcel of land and building known as the District of West Kelowna Museum Centre at or near 2376 Dobbin Road, West Kelowna, British Columbia and legally described as:

Lot – 1
Plan RAP 81960

(hereinafter called the "Museum Centre").

- B. The Association is legally restricted to use in greater part as a Museum for the purpose of this contract.
- C. The City has agreed to lease the Museum centre to the Association for a term of five years for the use by and purposes of the Association.

NOW THEREFORE IN CONSIDERATION of the mutual covenants, terms and conditions set forth in this Lease the parties agree as follows:

1. LEASE OF MUSEUM CENTRE

- 1.1. The City does hereby lease the Museum Centre to the Association on the terms and conditions hereinafter set forth.

2. TERM / OPERATION HOURS

- 2.1. The term of this Lease shall be for a term of five years commencing on the 1st day of January, 2020 and terminating on the 31st day of December, 2024 unless otherwise terminated by mutual agreement or until such time as another suitable facility becomes available or determined as provided herein.
- 2.2. The museum will be open five days a week with an average of six hours per day.

3. RENT

- 3.1. The Association will pay the City \$1.00 per annum for the use of the facilities. The Association will provide a five year budget for Council's approval. Based on this budget Council will provide funding. In 2020 the allocation will be \$75,000. The budget will be reviewed on an annual basis and adjusted through discussions between the Association and the City.

4. CITY'S COVENANTS

4.1. Association's Use

The City agrees to permit the Association, its members and invitees to exercise the full right of access to and from the Museum Centre for the purposes of the Association. The Association agrees to control and properly manage all use of the Museum Centre.

4.2. Utilities

The City agrees to pay all utility rates and charges in respect of all water, gas, sewer, electric and power. Telephone will be the responsibility of the Association.

4.3. Maintenance and Repair

The City agrees to maintain and repair in a timely manner the Museum Centre during the term of this Lease. The City further agrees to maintain the exterior grounds and undertake snow removal using a separate contract and associated terms.

The list of items the District will be responsible for maintaining will be listed in Schedule A.

4.4. Building Replacement Insurance

The City agrees to obtain and maintain throughout the term of this Lease a policy of building insurance for the Museum Centre to the full insurable replacement value of the building against risk of loss or damage caused by or resulting from fire, lightning, tempest, earthquake or additional peril against which the City normally insures.

4.5. Quiet Enjoyment

The Association shall have quiet enjoyment of the Museum Centre during the term of this Lease.

5. ASSOCIATION'S COVENANTS

5.1. Access by City

The Association agrees that during the term of this Lease any officials, officers, employees or authorized agents of the City may have access to and conduct inspections of the Museum Centre.

5.2. Maintenance Assistance

The Association will provide a contractor and be responsible for all costs associated with cleaning including all custodial supplies, and agrees to keep the Museum Centre in a neat, tidy and safe condition throughout the term of this Lease.

5.3. No Assignment or Subletting

The Association agrees not to assign or sublet this Lease without the consent of the City, which consent shall not be unreasonably withheld, provided that the Museum Centre must be used exclusively for museum related purposes.

5.4. Museum Centre Restriction

The Association acknowledges that pursuant to the terms of this agreement the lands and building may only be used for museum related purposes.

5.5. No Nuisance

The association agrees not to do or allow to be done anything at the Museum Centre which may constitute a nuisance or which may increase the hazard of fire or liability of any kind or constitute a violation of any policy of insurance with respect to the Museum Centre.

5.6. Constitution and Bylaws

The Association agrees that membership in the Association shall be in accordance with the Constitution and Bylaws of the Association.

5.7. Association Management

The Association agrees that the City is not responsible in any way for managing the use of the Museum Centre or the programs of the Association.

The Association will on a yearly basis provide to the City a five year budget for council's approval.

The City will be responsible for expenses, as listed in Schedule A.

5.8. No Alterations

The Association agrees that no additions, alterations, renovations and/or modifications to the Museum Centre shall be effected without the written consent of the City.

5.9. Compliance with Laws

The Association agrees that it shall at its own expense comply with all laws and regulations of any authority having jurisdiction applicable to the Museum Centre including any requirements of fire or other insurance underwriter and insurers. The Association agrees to comply with all notices requiring compliance whether delivered to the City or the Association.

5.10. Insurance

All policies of insurance required to be taken out by the Association shall be with companies satisfactory to the City and shall, unless otherwise approved in writing by the Landlord.

The Association shall, at its sole expense, obtain and maintain during the Term:

- (a) comprehensive 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 operations, use and occupation of the Museum and the Land in an amount of not less than \$5,000,000.00 for each occurrence or such increased amount as the City may require; and
- (b) "all risks" insurance, for replacement cost, on all of the Association's personal property and fixtures that are in the nature of trade fixtures.
- (c) name the City as an additional insured;
- (d) include that the District is protected notwithstanding any act, neglect or misrepresentation by the Association which might otherwise result in the avoidance of a claim and that such policies are not affected or invalidated by any act, omission or negligence of any third party which is not within the knowledge or control of the insureds;

- (e) be issued by an insurance company entitled to carry on the business of insurance under the laws of British Columbia;
- (f) be primary and non-contributing with respect to any policies carried by the City and that any coverage carried by the City is in excess coverage;
- (g) not be cancelled or materially modified without the insurer providing the District with 30 days written notice stating when such cancellation is to be effective or identifying the modification;
- (h) be maintained for a period of 12 months per occurrence;
- (i) not include a deductible greater than \$5,000.00 per occurrence (except for the "all risks" insurance with respect to the Premises, which shall include no deductible);
- (j) include a cross liability clause; and
- (k) be on other terms acceptable to the Landlord, acting reasonably.

5.11. Indemnification

The Association agrees to indemnify and save harmless the City and its respective elected representatives, officer, authorized agents and employees against all liabilities, actions, damages, claims and cost, including costs on a solicitor and own client basis, arising out of or in any way connected with the negligence of the Association.

The City agrees to indemnify and save harmless the Association and its respective elected representative, officers, authorized agents and employees against all liabilities, actions, damages, claims and cost, including costs on a solicitor and own client basis, arising out of or in any way connected with the negligence of the City.

5.12. Builders' Liens

The Association agrees to indemnify and save harmless the City from and against any and all claims for payment for services rendered to the Association or contracts of any kind including any claims of builder's lien, wages, material supply or for any other liabilities of any kind arising out of the use and occupation of the Museum Centre by the Association.

5.13. Builders' Lien Notices

The Association agrees that the City shall be permitted at any time to post notices that the City will not be responsible for any liability under the provision of the *Builders' Lien Act* of other liability as described in article 5.12.

6. RIGHT OF RENEWAL

The parties agree that one year prior to the expiry of the term of the Lease the City and Association will enter into negotiations for a new Lease on such terms and conditions as the parties may mutually agree.

7. ARBITRATION IN THE EVENT OF A DISPUTE

In the event of a dispute between the City and the Association as to the interpretation of any term or condition of this Lease, such dispute shall be resolved if necessary by a single arbitrator appointed pursuant to the provisions of the *Commercial Arbitration Act*.

8. EARLY TERMINATION

The Association may terminate this Lease by giving the City a period of one year's notice in writing, at the expiry of which the Association shall have no further obligation to the City, save and except for any obligation arising prior to the expiry of such notice period.

The City may terminate this Lease by giving the Association a period of one year's written notice in writing, at the expiry of which the City shall have no further obligation to the Association, save and except for any obligation arising prior to the expiry of such notice period.

9. RE-ENTRY ON DEFAULT

The City shall have the right to re-enter the Museum Centre upon default of the Association in the performance of any terms and conditions contained in this Lease and in the event of failure of the Association to remedy such default, the Association shall peacefully surrender possession of the Museum Centre to the City upon re-entry or any termination or determination of this Lease.

10. RULES AND REGULATIONS

The Association agrees to comply with the rules and regulations that the City may from time to time adopt in connection with the use and occupation of the Museum Centre, in as such that these rules and regulations do not contravene the terms of the aforementioned crown grant and spirit of this agreement.

11. HOLDING OVER

The Association agrees that, should it hold over and retain possession of the Museum Centre at the end of the term or earlier determination of this Lease, and such holding over or possession and tenancy shall be a tenancy from month to month.

12. MISCELLANEOUS COVENANTS

12.1. Severability

Should any provisions of this Lease be found by a court to be unenforceable for any reason such provision shall be considered separate and severable from the remaining terms and conditions of this Lease, all of which shall remain in full force and effect.

12.2. Notice

Any notice required to be given hereunder shall be deemed to be sufficiently given if delivered at the time of delivery and if mailed from any government post office in the Province of British Columbia by prepaid, registered mail addressed as follows:

The City:

City of West Kelowna
2760 Cameron Road
West Kelowna, British Columbia, V1Z 2T6

The Association:

Westbank Museum and Arts and Crafts Society
2376 Dobbin Road
West Kelowna, British Columbia, V4T 2H9

Or at such other address as the parties may advise each other in writing from time to time and such notice shall conclusively be deemed to have been received forty-eight (48) hours after the time and date of mailing PROVIDED ALWAYS, HOWEVER, that if at the time of mailing any notice hereunder, the delivery of mail in the Province of British Columbia has been interrupted in whole or in part by reason of a strike, slow-down, lockout or other labour dispute that any notice required to be given hereunder may only be given by actual delivery thereof.

12.3. Enurement

This Lease shall enure to the benefit of and be binding upon the parties hereto and their respective successors at law and permitted assigns.

13. FINANCE

The Association is responsible to ensure that it stays within its budget, and is responsible for budget overruns.

Surpluses from one year will be used to help fund the subsequent year. That is, the funding approved by Council will be reduced by any surplus from the previous year.

The Association will forward to the City yearly financial statements.

DISSOLUTION OF THE ASSOCIATION

13.1. Dissolution

In the event of the dissolution of the Association all property owned in full by the Association will be automatically transferred to the City upon the date of dissolution. This excluded any property that is on loan to the Museum. Furthermore the Association will commit to not selling any of the Museum assets.

IN WITNESS WHEREOF the parties have executed this Lease Agreement on the 19 day of September, 2019.

CITY OF WEST KELOWNA

by its authorized signatories

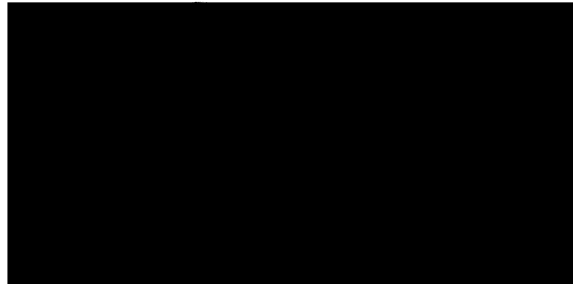
Mayor

Corporate Officer

Date

WESTBANK MUSEUM AND ARTS AND CRAFTS
SOCIETY

by its authorized signatories



September 19, 2019
Date

SCHEDULE A
Maintenance and Repair

The City will be responsible for but not limited to maintain the following:

Ground Repair and Maintenance

- Parking Lot
- Exterior Lighting
- Sidewalks
- Snow Removal
- Turf Maintenance
- Line Painting
- Tree Pruning
- Irrigation
- Fencing
- Garbage Collection / Disposal

Building Repair and Maintenance

- HVAC
- Utilities (water, gas, sewer)
- Security System
- Locks and Keys
- Roofs, Eaves, and Drainage Systems
- Foundations
- Supporting Structures
- Fire Alarm and Sprinklers
- Fire Extinguishers
- Plumbing Fixtures
- Electrical Fixtures
- Light Replacement
- Exterior and Interior Finishes
- General building Repairs
- General Equipment Repairs
- Floor Maintenance and Repairs
- Capital Purchases (excluding I.T. Equipment)

