

This Memorandum of Understanding (MOU) made between

**THE CORPORATION OF THE TOWN OF COBOURG**

Hereinafter call the "Town"

OF THE FIRST PART

-and-

**THE ART GALLERY OF NORTHUMBERLAND**

Hereinafter called the "AGN"

OF THE SECOND PART

**WHEREAS** the Town is the registered owner of the land and building located at 55 King Street West, Cobourg, Ontario, known as Victoria Hall;

**WHEREAS** the AGN has grown from the inspiration of a group of volunteer Members of the Cobourg Public Library in 1960 who recognized the need for a Public Art Gallery and is today governed by the AGN Board of Directors ("Board"), the Members of which are elected by the membership with one Member being appointed by the Municipal Council of the Town of Cobourg, such Council representative to be a full voting member of the Board;

**WHEREAS** the AGN occupies space within Victoria Hall under the terms and conditions of a lease agreement covering the period from January 1, 2013 through December 31, 2022 as authorized by municipal By-law 069-2012 dated October 1, 2012 for the purpose of providing a public art gallery to the residents of and visitors to the Town of Cobourg, the County of Northumberland and surrounding area;

**WHEREAS** the Board is governed under the authority of and regulated by the laws governing Canadian Non-Profit organizations and must operate in accordance with the accepted practices of the Canadian Museum Foundation, Ontario Not-For-Profit Network, Ontario Arts Council, Canada Council, Canada Heritage and Ontario Galleries;

The AGN is a registered charity incorporated in the mid-1970s must follow the requirements and obligations as enforced by the Canada Revenue Agency;

**WHEREAS** the AGN has proven to be a valuable partner to the Town since its inception in 1960 and the parties are interested in continuing this relationship in the future for the well-being of people who live, work, learn and play in the Town and surrounding area and encouraging a healthy lifestyle across all age groups, with the pursuit of a vibrant, healthy Ontario community being a strong desire of both parties;

**AND WHEREAS** both parties are committed to providing Persons with Disabilities with equal opportunities and standards of goods and services and are also fully compliant with the Accessibility for Ontarians with Disabilities Act (2005), as applicable.

**NOW THEREFORE** in consideration of the provisions above, the parties each intending to be bound by this MOU, agree as follows:

**1. TERM**

This MOU is for an initial period of four years commencing on January 1, 2021 and ending December 31, 2024 and is timed to coincide with the mid-point of the term of the municipal Council. A review of the terms and conditions of this MOU shall be completed every four years commencing no later than six months prior to the expiry date. In addition, this agreement will be reviewed on an annual basis prior to the Town of Cobourg budget approval to ensure that both parties are in compliance with the terms and conditions as contained herein.

**2. AGREEMENT FOR THE PROVISION OF AGN SPACE**

The terms of this agreement are related to the AGN space located within the Victoria Hall at 55 King Street West, Cobourg Ontario as detailed in a separate lease agreement which expires on December 31, 2022.

Both parties agree to use their best efforts to negotiate a renewal of this lease agreement prior to June 30, 2022.

In addition to the AGN space located in the west wing on the third floor, there is a storage room located in the west wing on the second floor and a storage area located in the west basement area.

**3. RENT**

The AGN will pay to the Town an annual rental fee of \$1 per annum due and payable in full on January 1<sup>st</sup> of each year in accordance with the terms of the lease agreement.

**4. INSURANCE and INCIDENT REPORTING**

The AGN shall maintain its own insurance policy naming the Town as an Additional Insured. Coverages shall include general liability, property, errors and omissions, environmental liability and cyber. The AGN shall provide the Town with an insurance certificate on an annual basis as proof of coverage.

The AGN is responsible for the insurance and protection of all works of art and any other property items within their possession and neither the Town nor its Insurer accept any responsibility for any losses through theft, fire, water, vandalism or any other causes.

Throughout the term of this agreement the AGN is responsible for ensuring that they obtain insurance certificates from any outside group or organization who wishes to use the space known as the AGN for an event or activity which is directed or controlled by that group. The insurance certificate must include commercial general liability insurance of no less than \$2 Million Dollars and must name both the Corporation of the Town of Cobourg and the Art Gallery of Northumberland as additional insureds.

The AGN shall be responsible for promptly reporting all third-party incidents that occur at the AGN space to the Town of Cobourg Director of Corporate Services or their designate within two business days of becoming aware of the incident occurring.

**5. GENERAL**

The AGN covenants with the Town:

- 1) To use the facilities only for the purpose of the AGN and other uses consistent with the objectives of the AGN;
- 2) The AGN will be solely responsible for the legal governance (supervision, financial costs, standards of practice and liability) of its staff;
- 3) That all employees, agents, volunteers associated with the AGN understand and comply with all established Town of Cobourg applicable policies, rules and codes of conduct, as amended by the Town from time to time, and understand the Town's commitment to providing an environment free of discrimination, harassment and violence, which promotes and fosters an engaged, healthy, positive and inclusive community committed to and valuing equity, diversity and where all individuals are treated with respect, dignity and are able to contribute fully and have equal opportunities;
- 4) To comply with all federal, provincial and municipal laws, rules, regulations and by-laws and to hold the Town harmless from the consequences of its failure to do so;
- 5) To not permit alcohol to be served or sold within the premises, other than for Special Occasion Permit (SOP) events which shall be administered on an as requested basis, subject to the Town's Municipal Alcohol Policy.

**6. FACILITY SERVICES:**

**The Town covenants with the AGN:**

- 1) To manage the ongoing maintenance of the facility known as Victoria Hall including, all the surrounding lawns, bushes, flower beds, sidewalks, parking areas and exterior lighting;
- 2) To be responsible for the provision and maintenance of heating, ventilation, air-conditioning, lighting, water, sewer, elevator and fire alarm systems, sprinkler system, emergency lighting, and fire extinguisher monthly and annual inspections;
- 3) To have the right to enter and conduct periodic inspections of the AGN space during normal business hours with an AGN staff member to view the state of maintenance and repair;
- 4) To have the right to request that any maintenance deemed necessary from the site inspections be carried out in a prompt manner;

- 5) To be consulted with respect to any capital expenditures, significant repairs or alterations being considered within the AGN space and to give approval prior to the commencement of any works;
- 6) To provide the use of a meeting room within Victoria Hall at no rental cost to the AGN for purposes of hosting Board meetings to a maximum of 14 such uses per year to be booked through the Town of Cobourg Clerk's office. Any additional uses will be on a full-cost recovery basis and invoiced monthly to the AGN.

**The AGN covenants with the Town:**

- 1) To accept the leased space in the current condition as of this date;
- 2) To maintain the appearance of the facility and the equipment by maintaining a neat, clean and well-kept space;
- 3) To hire and monitor internal cleaning staff in a manner and by a method as determined by the AGN Board and the cost of this service will be at the expense of the AGN;
- 4) To report, in writing, any broken or damaged or non-functioning infrastructure equipment immediately to the Facility Manager and the Director of Corporate Services;
- 5) To gather all refuse, litter, garbage or loose material in a central location for removal by Town Staff;
- 6) To not alter, demolish, add to, reconstruct, or in any way vary the facility without first having obtained the consent, in writing, of the Town, which consent may be withheld without cause or reason. It is understood that the AGN houses within the space moveable equipment such as furniture, computers, shelves and other movable equipment for the purpose of business operations and may replace, add to, or remove such items at their discretion;
- 7) Acknowledgement that all requests for facility repairs, replacements or improvements are subject to the final approval of the Municipal Council of the Town.

**7. ADMINISTRATION**

The Town will provide, at the determination of the AGN Board, the following administrative services:

- 1) Town staff will be available for consultations from time to time on matters relating to legislative, financial, human resources and information technology services but at no time will they assume responsibility for any of these services;
- 2) Town will provide administrative secretarial support for all AGN Board meetings;
- 3) The town Manager of Recreation and Culture (or designate) will meet regularly with the AGN Executive Director for purposes of planning and co-ordination.

The Board will provide the following assurances to the Town:

- 1) To provide documentation to support the current legal status of the board including a copy of all current by-laws, constitution, approved operational policies, and the most recent Strategic Plan document;
- 2) To review the roles and responsibilities of the Board and the Executive Director on a regular basis;
- 3) To be responsible for hiring an Executive Director and performing an annual performance evaluation of the Executive Director;
- 4) To hold all meetings in accordance with parliamentary procedures as established by the AGN Board. Any member of the AGN wishing to attend a Board meeting will be allowed to do so by invitation of the Board.
- 5) To provide Council with a copy of all Board Minutes with the exception of Closed Session meetings;
- 6) To provide an update report to Council at least twice per year, or as requested by Council. The report to include a year to date financial report consisting of a comparison of actual results compared to budget.

**8. COST RECOVERY**

The Town will provide the AGN with a monthly invoice summarizing all charges for the following goods and services:

- 1) Security services for those hours that the AGN is the only occupant of Victoria Hall charged at the rate approved in the Town User Fee By-Law;

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- 2) Any facility rentals over and above those previously agreed to be at no cost;
- 3) Any other goods or services as agreed to by the parties.

Invoicing will be done on a monthly basis by the end of the following month with payment in full expected within 30 days.

#### **9. BUDGET AND FINANCIAL REPORTING**

The AGN shall submit an annual budget to Council for their deliberation no later than October 31<sup>st</sup> of the preceding year in such format as requested by the Town. It is anticipated that format will consist of the current year request plus three subsequent years and include the following:

- 1) All costs associated with providing AGN services including salaries and benefits, consulting fees, materials and consumable supplies including technology and generally all operating costs and;
- 2) All sources of revenue anticipated from sources other than the Town of Cobourg;

The net of these two sections will form the annual budget request for funding from the Town of Cobourg for each of the next four years. The intention of providing the operating budget on a four year basis, while not binding on either party past the current year, is to provide a clear vision to both parties of what level of financial commitment is to be expected moving forward.

The budget request shall also include at least one prior year of actual results for comparison purposes.

Once the municipal budget has been approved, funds will be advanced in equal amounts on the first day of March, June, September and December.

It is recognized that the AGN has made significant progress in reducing its reliance on bank indebtedness to fund operations and that at the time of executing this agreement has no current bank debt. The AGN agrees that in the future it will not enter into any new debt without the formal approval of the Board and formal notification to the Municipal Council

Any requests for financial reporting of any amounts regarding transactions between the Town and the AGN shall be made in writing to both the Senior Financial Analyst and the Municipal Treasurer for the Town. Any such requests shall receive a response within 7 business days.

**10. ADMINISTRATION OF THIS MOU**

Any concerns or issues of non-compliance with the terms of this agreement should be promptly reported to the lead contacts for administering this agreement as follows:

1) For the Corporation of the Town of Cobourg:                      Name (print): Tracey Vaughan

Position:                      Chief Administrative  
Officer (CAO)

Signature: \_\_\_\_\_

2) For the Art Gallery of Northumberland:

Name (print): Olinda Casimiro

Position:                      Executive Director (ED)

Signature: \_\_\_\_\_

This agreement made this \_\_\_\_\_ day of \_\_\_\_\_, 2021

