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JUL 27 2017

MANAGEMENT AND OPERATING AGREEMENT

THIS AGREEMENT made the 28th day of July 2017.

BETWEEN:

TOWN OF LADYSMITH
410 Esplanade
Ladysmith, British Columbia
V9G 1A2

(the "Municipality")

OF THE FIRST PART

AND:

LADYSMITH & DISTRICT HISTORICAL SOCIETY
PO BOX 813
LADYSMITH BC
V9G 1A6

(the "Society")

OF THE SECOND PART

W H E R E A S :

- A. The Town of Ladysmith (herein called the "Town") and the Ladysmith & District Historical Society (herein called the "Society") agree that the Society will operate the Ladysmith Museum at 721 First Avenue (herein called the "Museum") and the Ladysmith Archives 1115B 1st Avenue (herein called the "Archives");
- B. The Municipality is the owner of the premises located at 721 First Avenue (the Museum Building) and of the premises located at Strata Unit 1, 1115 First Avenue, Ladysmith, B.C. (the "Archives Office");
- C. This Management and Operating Agreement (herein called the "Agreement") is intended to provide the terms of reference for the occupancy, operation and management of the Museum and Archives and the obligations of the Society and Town in that regard;
- D. This Agreement is intended to provide sufficient flexibility so as to satisfy the Society's mandate and the Town's ownership of the Land and the Museum and Archives;

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the foregoing and the mutual covenant and Agreements set out in this Agreement, the parties covenant and agree each with the other as follows:

1.0 LICENSE TO OCCUPY

- 1.1 The Town hereby grants to the Society the right to occupy the Museum upon the Museum Property subject to all of the terms and conditions as set out in this Agreement.
- 1.2 The Town hereby grants to the Society the right to occupy the Archives upon the Archives Property subject to all of the terms and conditions as set out in this Agreement.

2.0 TERM

- 2.1 The Society shall have the right to occupy the Museum Property and Archives Property for a term of five (5) consecutive years commencing July 1, 2017 and ending June 30, 2022, unless earlier terminated in accordance with the terms and conditions of this Agreement at which date the right to occupy shall cease.
- 2.2 This agreement supersedes any and all other operating agreement, lease and licence of occupation between the Town of Ladysmith and the Ladysmith and District Historical Society.
- 2.3 Renewal Options
Provided that the Society is not in default under this Agreement, the Society may, by delivering notice in writing to the Town ninety (90) days before the 5th anniversary of the Commencement Date, renew this Agreement for a further term of five (5) years on the same terms and conditions as are herein contained save and except for the renewal option and the Town's financial contribution. If Agreement has not been reached by the expiry date of this Agreement, then the Society will continue to remain in occupation of the Museum and Archives, on a month to month basis, on the terms and conditions set out in this Agreement.

3.0 THE SOCIETY AS MANAGER AND OPERATOR

- 3.1 The Town hereby grants to the Society the right to manage and operate all aspects of the Museum and Archives for the Term in accordance with and subject to the terms and conditions set forth in this Agreement.
- 3.2 The Society shall collect, preserve, insure and interpret the collections of the Museum and Archives on behalf of the Town of Ladysmith and its citizens. The Town will designate a representative, hereinafter called the Town of Ladysmith, to deal on its behalf with the affairs of the Museum.
- 3.3 The Society will render its services to the Town with that degree of care, skill and diligence normally provided by the operators of similar archive and museum facilities elsewhere in British Columbia and consistent with and to the standards required by the Town.

- 3.4 The Society will ensure that all of its employees, licensees, contractors and volunteers are appropriately trained, are familiar with the rules, regulations and bylaws applicable to the operations of the Archives and Museum, and are thoroughly familiar with and able to implement all emergency procedures as required under this Agreement.
- 3.5 Rules and Regulations
The Society shall make such rules and regulations as are required to provide for the proper operation and management of the Museum provided that such rules and regulations shall not be inconsistent with:
- a) the bylaws of the Society;
 - b) the provisions, terms and conditions of this Agreement; and
 - c) all applicable Federal, Provincial and Town laws, by-laws and regulations.
- 3.6 Access and Use
The Society shall use the Museum and Archives to accommodate all types of temporary and permanent records, collections, exhibits, public and school programming, gift shop and venue rental for public and private assembly activities. Access to and use of the Archives and Museum by members of the Society and by the general public shall be in accordance with guidelines developed by the Society for the operation of the Archives and Museum, drawing where appropriate on relevant guidelines contained in Town documents.
- 3.7 Programming and Operation
The Society shall be responsible for all aspects of the operation of the Archives and Museum (save those exclusively to be performed by the Town as described in this Agreement) including all programming and booking of all events in the Facilities.
- 3.8 Washrooms
The Society shall make available to the public adequate washroom facilities at the Museum and Archives during operating hours. The cost of cleaning the washroom facilities and any associated janitorial supplies will be responsibility of the Society.
- 3.9 Payment of Expenses and Operating Costs
The Society shall be responsible for the general administration of the Archives and Museum and, without limiting the generality of the foregoing; this shall include all expenses incurred in the operation and management of the Museum and Archives. For clarity, these costs include, but are not limited to: telephone, internet, heat, electricity and website hosting.
- 3.10 Property Taxes and Town of Ladysmith Utility Charges
The Society shall be responsible for paying all Water, Sewer and Garbage. The Society shall be responsible for paying all hydro and heating costs. The Society shall be responsible for paying all telephone and internet costs. The Society shall be responsible for paying all property taxes to the Town of Ladysmith, and may apply annually for permissive tax exemption of Town of Ladysmith property taxes
- 3.11 Museum and Archives Policy
All policy governing the operations of the Museum and Archives shall be in accordance with the provisions of this Agreement and shall be approved and determined by the Society with the Society being responsible for initiating such policy. The Society shall inform the Town of Ladysmith with respect to policy matters and shall keep the Town Council advised.

4.0 REPAIR AND MAINTENANCE OF THE MUSEUM (see Appendix 1, 2 & 3 for Detail)

- 4.1 (a) The Society is responsible for the purchase, repair and maintenance of all Archives and Museum furnishings, fixtures and equipment (see Appendix 1 for detail).
- (b) The Town is responsible for maintaining and repairing the roofs, gutters, exterior walls, doors and windows, plumbing fixtures, external horticulture, outside sidewalks, foundations and electrical, heating, ventilation and air conditioning units.

4.2 Entrances, Sidewalks, Parking Areas, Snow and Ice Removal

The Town shall be responsible for the maintenance of entrances, sidewalks and parking area, and for removal of snow and ice from same.

4.3 Liens

In the event that any claim of builders lien is registered against the title of the Lands pursuant to the provisions of the Builders Lien Act with respect to any work performed pursuant to Item 7.1 herein, then the Society shall, within 30 days notification thereof, cause any such claim to be discharged from the title of the Lands. Should the Society fail to discharge any such lien within the time aforesaid, the Town shall have the right to make application pursuant to Section 32 of the Builders Lien Act to have sufficient funds paid into Court to cause any such lien to be discharged from the title of the Land and the Society shall be responsible for payment to the Town of any such sum, together with the costs thereof calculated on a solicitor and own client basis.

5.0 MAINTENANCE OF INSURANCE

5.1 Property Insurance

The Town shall insure the Museum building and fixtures and the Archives building and fixtures against the perils and under the terms and conditions that the Town insures other similar types of buildings and fixtures owned by the Town. The Society shall insure the contents and equipment of the Museum and Archives.

5.2 Liability Insurance

The Society shall provide and maintain comprehensive General Liability Insurance, with the Town to be an additional named insured, to cover the functions of both parties in the management and operation of the Museum and Archives and its various facilities in the minimum amount of FIVE MILLION (\$5,000,000) DOLLARS. Such liability insurance shall be in the standard form carried by the Town, and approved through the Municipal Insurance Association of B.C. The policy shall provide for 30 days' notice to the Town before cancellation and should such policy lapse or be cancelled the Town may, at the cost of the Society, place insurance as provided in this section.

5.3 Effects Insurance

The Society shall not, without the prior consent of the Town, permit anything to be brought into the Archives or Museum that would invalidate or increase the premium payable for policies of insurance held by the Town or the Society in relation to the Archives or Museum or that would injure or deface the Archives or Museum. The Society in its contractual arrangements will undertake to assign culpability to contractual

users of the Museum and Archives, and ensure that adequate Effects Insurance is provided.

5.4 Indemnification of Town

The Society will indemnify and save harmless the Town from and against any and all liabilities, obligations, damages, penalties, claims, costs (including reasonable solicitors' fees), fines, suits, demands and causes of action to, by or on behalf of any person, group, firm or corporation arising from the occupation or use of the Museum or Archives by the Society or its invitees, employees, volunteers, agents, members or any other person or persons for whose acts the Society is liable in law, or from any breach of the Society of any covenant, term or provision of this Agreement by the Society or its members, servants or agents or that might arise during the occupancy of the Museum or Archives by the Society under this Agreement; save and except where any such matter is the cause of an act by the Town or anyone for whom the Town is in law responsible.

5.5 Strikes

The Society in its contractual arrangements with users will absolve itself of liability arising out of strikes or lockouts and thereby release the Town from any responsibility or liability whatsoever that might arise out of the Town failing to provide the Museum or Archives or any services to the Museum or Archives under the terms of this Agreement arising out of any strike or lockout between the Town and its employees or as a result of any other labour dispute, provided reasonable notice of any situation that might give rise to a labour action has been provided to the Society such that the Society has had the opportunity to modify its operations to minimize its risk.

6.0 ACCOUNTING, FINANCES AND REPORTING

6.1 Financial Records

Proper and separate books of account and financial records of the Archives and Museum operations, as required by the Society Act, shall be kept by the Society at its expense during the occupancy and management by the Society of the Archives and Museum. The Town of Ladysmith or any person authorized by the Town shall have free access to the Society's financial records at all reasonable times and notice.

6.2 Budget

The Society's Board of Directors shall approve its annual Operating and Capital Budgets. The budgets shall be submitted to the Town of Ladysmith by June 30th each year.

6.3 Annual Financial Statement

The Society will prepare and deliver to the Town on an annual calendar year basis an externally verified statement of expense and income with respect to all revenues from and expenses for the use and operation of the Museum and Archives as well as a statement of all related assets and liabilities.

6.4 Annual Report

The Society shall submit an annual report at an open Council meeting stating the previous year's operating and capital results and the previous year's operation statistics and highlights for the Archives and the Museum.

6.5 Town's Financial Contribution

The Town will contribute to the Society an annual Archives and Museum management fee totalling \$23,500, to be paid annually on July 1st. The Society shall participate in the Town's budget preparation process by submitting its annual budget to the Town's Parks, Recreation and Culture Department by June 30th each year for consideration in the following year Financial Plan discussions. At that time, the Society may submit a request for consideration to increase the amount of the annual fee for a higher service level need in the following budget year.

6.6 Revenue

All revenue obtained from operations shall become the property of the Society. The Society covenants and agrees that all revenue shall be used exclusively for the Archives and Museum operations.

6.7 Surplus

Should there be a surplus in any year as a result of operating revenues and the Town contribution exceeding operating costs, the Society shall be entitled to retain the surplus for operations and reserves. The Society will not incur a deficit in excess of available accumulated surpluses.

6.8 Board Meetings

The Society shall provide minutes of all Society Board meetings, prepared promptly following those Board meetings and sent to the Town.

6.9 Constitution and Bylaws

The Society shall not amend its Constitution or Bylaws without at least 30 days' prior written notice to the Municipality.

7.0 EVENTS OF DEFAULT AND REMEDIES

7.1 Termination

This Agreement may be terminated by the Society or the Town upon giving to the other party six months' notice of its intention to terminate, such notice to be given in writing on the last day of any month.

7.2 Termination for Breach

Upon breach by the Society of any term or condition of this Agreement, the Town may give to the Society 30 days' notice to commence action to correct such breach to the satisfaction of the Town, and if such breach is not corrected within an agreed reasonable period, the Town may without further notice declare this Agreement terminated and may enter into possession of the Museum and/or Archives and retain all moneys received by the Society under this Agreement and may recover all fees, costs and damages due to the Town under this Agreement by suit or otherwise.

7.3 Termination for Other Reasons

In the event that:

- (a) The Society shall make an assignment for the benefit of creditors; or
- (b) The Society, for an unjustifiable reason fails to hold a general meeting of members for a period of eighteen (18) months or longer; or
- (c) The Society becomes bankrupt or insolvent or takes the benefit of any Act now or hereafter in force for bankrupt or insolvent debtors; or
- (d) Any order shall be made for the winding up of the Society; or

- (e) The Society is struck off the Register by the Registrar for any just reason whatsoever;

the Town may give to the Society 30 days notice to rectify the matter in question after which time, if the problem is not rectified to the satisfaction of the Town, the right to occupy the Museum by the Society shall be terminated.

7.4 Vesting on Termination

In the event that the Town terminates this Agreement in accordance with the terms and conditions contained herein, or in the event this Agreement expires without further renewals, then the Town will assume all outstanding contractual obligations and debts and maintenance of the collection.

7.5 Tenders

The Society agrees that it shall adhere to a competitive system of tendering for purchased goods and services for the Museum or Archives. The Purchasing Policy shall be as approved by the Society. The Society shall have the option of joining with the Town on tenders or to purchase merchandise from Town suppliers.

7.6 Amendments

All amendments proposed to the terms and conditions of this Agreement shall be submitted in writing for consideration.

7.7 Communications

All communications relating to this Agreement between the Society and the Town (apart from the ongoing exchange of operating information), shall be done in writing.

7.8 Notices

Any notice herein provided or permitted to be given by the Society to the Town shall be sufficiently given if delivered to the Town at:

Town Hall
410 Esplanade
Ladysmith, BC V9G 1A2

Attention: Corporate Officer

Any notice herein provided or permitted to be given by the Town to the Society shall be sufficiently given if delivered to the Society addressed to:

Ladysmith & District Historical Society
PO Box 813
Ladysmith, B.C. V9G 1A6

Attention: President of Ladysmith & District Historical Society

Either party may at any time give notice in writing to the other of any change of address of the party giving such notice and from and after the giving of such notice the address therein specified shall be deemed to be the address for such party for the giving of notice there under. The word "notice" in this paragraph shall be deemed to include any request, statement or other writing in this Agreement provided or permitted to be given by the Town to the Society or by the Society to the Town. Such notices may be given by

personal delivery, mail or by fax and if given by mail shall be deemed to have been received five days after the date of mailing.

7.9 Conflict of Interest

Society Board Members and Staff shall be subject to the Society's "Conflict of Interest" policies.

7.10 Appeals

In the event that Agreement between the Town of Ladysmith and the Society cannot be reached on matters involving the Town's and/or Society's interests, the Society or the Town of Ladysmith may appeal the matter to the Town Council. A decision of the Council shall be final and be binding on all matters which require Town consent or approval.

7.11 Agents

It is understood and agreed that the Society and all agents, servants and employees of the Society are not and shall not be deemed to be agents, servants or employees of the Town.

7.12 Assignment

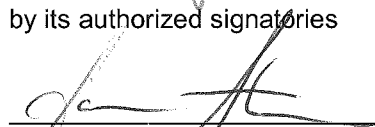
This Agreement shall enure to the benefit of and be binding upon the parties hereto. This Agreement is personal to the Society and cannot be assigned to any other person or party.

7.13 Interpretation

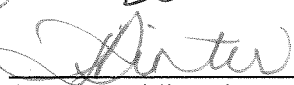
Wherever the singular and masculine are used throughout this Agreement the same shall be constructed as meaning the plural or feminine or the body corporate or politic as the context requires.

IN WITNESS WHEREOF the parties hereto have set their hands and seals as on the 26th day of July 2017.

by its authorized signatories



Mayor (A. Stone)



Corporate Officer (J. Winter)

by its authorized signatories



President of the Board

LADYSMITH & DISTRICT HISTORICAL
SOCIETY

in the presence of:

Witness (please print)

Town of Ladysmith Director of Financial Services

Occupation

[Signature]

Witness Signature

APPENDIX 1

Equipment/Fixtures Owned and Maintained by Museum

To be completed by Society

APPENDIX 2

Repair and Maintenance Detail Museum and Archives Buildings

The Society takes responsibility for notifying the Town of any system failure, anticipated failure or damage in a timely fashion. The Town shall have a representative meet with the Society on a regular basis to ensure that communication and planning coordination is current.

All planning and execution of these repairs / replacement jobs shall be done by the Society, or in coordination with the Society, to ensure that operational impact is kept to a minimum.

1. Electrical

The Town is responsible for:

- Maintenance of all existing electrical systems.

The Society is responsible for:

- Installation of additional circuits as required.

2. Mechanical

The Town is responsible for:

- Maintenance contract for Mechanical system.
- Inspection, maintenance (routine and annual) and repair of all working parts.

3. Plumbing / Water

The Town is responsible for:

- Maintenance and repair of all water connections leading to and from the buildings.
- Maintenance, repair and inspection of pipes involved in building systems located within leased space.

The Society is responsible for:

- Ongoing maintenance of hot and cold water systems, for all plumbing fixtures and water connections.

4. Structural

The Town is responsible for:

- Maintaining and repairing exterior walls, roof and building foundations.

5. Fire Suppression / Fire Alarm / Sprinkler

The Town is responsible for:

- All components of fire alarms and suppression systems within buildings.
- Ongoing maintenance and care.
- Annual testing and inspection.

6. Interior Surfaces

The Society is responsible for:

- Maintenance and repair of all interior surfaces as required, including all interior doors and hardware.

7. Exterior

The Town is responsible for:

- All exterior wall finishes, plaster, paint.
- All window repairs due to breakage and system failure.
- Window maintenance and trim.
- Landscaping and sidewalk maintenance.
- Painting of all exterior.

The Society is responsible for:

- Window cleaning of museum windows inside and out.
- Garbage and recycling contract for removal.

8. Alarm and Security

The Town is responsible for:

- Repair and maintenance of alarm and security systems.

The Society is responsible for:

- Security costs within space.

9. Janitorial/Housekeeping

The Town is responsible for:

- Exterior wall and sidewalk cleaning including graffiti removal.

The Society is responsible for:

- All interior and exterior janitorial cleaning.