

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**

**BACKGROUND OF THIS MOU**

**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 Town and AGN are parties to a lease describing their landlord and tenant relationship and this MOU is being entered into to describe the working relationship between the Town and the AGN, and their respective roles in that relationship.

**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 and the Town have mutually benefitted from a close working relationship with the AGN making a \$100,000 cash donation to the Town in support of Victoria Hall in 1973, including the ongoing support described in this MOU, and the Town providing the AGN with annual financial assistance of its operations.

**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 AGN was incorporated under the Corporations Act Ontario (the “Act”) on the 19<sup>th</sup> day of July 1974 as a non-profit corporation and continues to be governed by the Act.

**WHEREAS** the AGN became a registered charity on April 1, 1974 and is subject to the rules governing registered charities under the Income Tax Act which are administered 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 for 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 term of five (5) years commencing on January 1, 2022 and ending December 31, 2026. A review of the terms and conditions of this MOU shall be completed every five (5) years commencing no later than six months prior to the expiry date of each five (5) year term.

**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, 2026.

**3. RENT**

The AGN will pay to the Town an annual rental fee which shall be due and payable in full and in advance 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 policies appropriate for the operations it conducts. It will name the Town as an Additional Insured under its liability and property coverage. 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 under the policies in which the Town is an additional assured.

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) The AGN will be solely responsible for the legal governance (supervision, financial costs, standards of practice and liability) of its staff;
- 2) 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;
- 3) 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;

## **6. FACILITY SERVICES**

**The Town covenants with the AGN:**

- 1) To provide the use of a meeting room within Victoria Hall, when possible, to the AGN for the purposes of hosting Board meetings on a full-cost recovery basis invoiced monthly to the AGN.

## **7. ADMINISTRATION**

- 7.1 The Town will provide, at the request of the AGN, 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 Director of Community Services, or delegate, will meet regularly with the AGN Executive Director for purposes of planning and co-ordination on collaborative projects and services. It is hoped that both the AGN and the Town would benefit from increased opportunities for collaborative program delivery and sharing of resources.
  - 4) The Town will permit AGN staff to inventory and document Town owned art objects in Victoria Hall in accordance with best practices.

7.2 The AGN confirms to the Town that:

1) OVERVIEW

Currently, the AGN is governed by an independent Board which is elected by the AGN's members except for one member appointed by Council. In accordance with the Act, its Letters Patent and bylaws, the AGN is managed by the Board which has full authority to so govern except where the Act specifies approval by the members of AGN.

The Board has primary authority and responsibility for the policy oversight of the operations of the AGN and provides direction through policy. The Board is responsible for operational policies that affect the AGN's programming and collecting responsibilities and other functions exclusive to the operation of a public art gallery.

2) PERMANENT COLLECTION

The AGN holds in public trust the AGN's collection (existing and future) and other assets purchased by the AGN from time to time. This is collection is managed in compliance with CRA regulations and Canadian Conservation Institute standards.

3) RESPONSIBILITIES, REPORTING RELATIONSHIP COMMUNICATIONS

The AGN is responsible:

- To provide Council forthwith after each Annual General Meeting, documentation reflecting the current legal status of the board including a copy of all current by-laws, constitution, audited financial statements and the most recent Strategic Plan document.
- To provide Council with a copy of all Board Minutes with the exception of Closed Session meetings;
- To provide an update report to Council semi-annually to include a year-to-date financial report consisting of a comparison of actual results compared to budget.
- To review the roles and responsibilities of the Board and the Executive Director on a regular basis;
- To be responsible for hiring an Executive Director and performing an annual performance evaluation of the Executive Director;
- To hold all meetings in accordance with parliamentary procedures and as much as possible meetings to be open, transparent and follow rules similar to those contained in the Municipal Act, 2001 for holding any closed meetings.

**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;
- 2) 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**

As the AGN is a separate legal entity, the Board of the AGN is responsible for the overall financing of the AGN. With respect to the Town's contribution, the AGN will comply with the Town's budgeting process, as identified in the Town's Work Plan.

The AGN shall submit an annual budget for each year to Council for their information no later than September 30<sup>th</sup> of the preceding year in such format as requested by the Town. It is anticipated that format will consist of the prospective year's request plus two subsequent years and include the following:

- 1) All costs associated with AGN's operation;
- 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 five (5) years. The intention of providing the operating budget on a five (5) year basis, while not binding 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 (1) 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**.

With appropriate Board oversight, management will ensure that the AGN will remain in an accumulated net asset surplus during the term of this MOU.

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 seven (7) business days.

Charitable Tax Status: The AGN has charitable tax status and issues receipts accordingly.

**10. ADMINISTRATION OF THIS MOU**

This MOU has been approved by the AGN's Board and by Town Council. It may only be amended by resolution of the Board and by Town Council. If either, the AGN or the Town wishes to change the MOU it shall give notice to the other party that wishes to initiate a negotiation and, in such case, the parties shall undertake a good faith negotiation.

**11. NOTICE**

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:

For the Town - Tracey Vaughan, Chief Administration Officer (CAO)

For the AGN - Olinda Casimiro Executive Director (ED)

(The next page is the signature page)

**The terms of Memorandum of Understanding have been accepted by both parties as acknowledged by their respective signatures as follows:**

- 1) For the Corporation of the Town of Cobourg:
  - Name: John Henderson
  - Position: Mayor
  - Signature: \_\_\_\_\_
  
- 2) For the Art Gallery of Northumberland:
  - Name: Brent Larmer
  - Position: Municipal Clerk
  - Signature: \_\_\_\_\_
  
- 2) For the Art Gallery of Northumberland:
  - Name: Olinda Casimiro
  - Position: Executive Director (ED)
  - Signature: \_\_\_\_\_

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