

CITY OF NANAIMO

BYLAW NO. 7158

A BYLAW TO AUTHORIZE THE LEASE AGREEMENT FOR A PORTION OF THE
CENTENNIAL MUSEUM BUILDING AT PIPER PARK TO THE
NANAIMO AND DISTRICT MUSEUM SOCIETY

WHEREAS the Council wishes to enter into a lease agreement (the "Agreement") for a portion of the Centennial Museum Building at Piper Park to the Nanaimo & District Museum Society for a term of ten years, renewable for a further term of ten years;

THEREFORE BE IT RESOLVED that the Council of the City of Nanaimo in open meeting assembled, hereby ENACTS AS FOLLOWS:

1. This Bylaw may be cited as the "CENTENNIAL MUSEUM BUILDING (PIPER PARK) NANAIMO AND DISTRICT MUSEUM SOCIETY LEASE AGREEMENT BYLAW 2012 NO. 7158".
2. The Council of the City of Nanaimo hereby authorizes the Mayor and the Corporate Officer to enter into the Agreement, on behalf of the City of Nanaimo, in substantially the form attached hereto as Schedule 'A', which sets out the terms and conditions of the Agreement to lease a portion of the Centennial Museum Building to the Vancouver Island Museum Society on land commonly known as Piper Park located at 100 Cameron Road, Nanaimo, British Columbia and legally described as Lot B, Section 1, Nanaimo District, Plan 8979.
3. Upon execution of the Agreement by the Mayor and Manager of Legislative Services, this Agreement shall be validly entered into as authorized by this Bylaw.

PASSED FIRST READING 2012-OCT-15
PASSED SECOND READING 2012-OCT-15
PASSED THIRD READING 2012-OCT-15
RECEIVED APPROVAL OF THE ELECTORS
BY ALTERNATIVE APPROVAL PROCESS 2012-NOV-28
ADOPTED 2012-DEC-03

J. R. RUTTAN
MAYOR

T. SAMRA
CORPORATE OFFICER

SCHEDULE A

LEASE

THIS LEASE dated for reference the 1st day of January, 2013.

UNDER THE *LAND TRANSFER FORM ACT, PART 2*

BETWEEN:

CITY OF NANAIMO
455 Wallace Street
Nanaimo, B.C. V9R 5J6

(the "**Landlord**")

OF THE FIRST PART

AND:

NANAIMO & DISTRICT MUSEUM SOCIETY
(#S0006859)
100 Museum Way
Nanaimo, B.C. V9R 5J8

(the "**Tenant**")

OF THE SECOND PART

WHEREAS the Landlord is the owner in fee simple of land commonly known as Piper Park situate at 100 Cameron Road, Nanaimo, British Columbia, legally described as Lot B, Section 1, Nanaimo District, Plan 8979 (the "**Land**");

AND WHEREAS the Landlord is the owner of a building commonly known as the Centennial Museum (the "**Building**") located on the Land;

AND WHEREAS the Tenant operates a museum for the education and enjoyment of the public and requires space for its operations;

AND WHEREAS the Tenant has requested and the Landlord has agreed to grant a lease of those portions of the Building shown on Schedule "A" attached to this Lease, being the first floor of the Building (the "**Premises**") but not including that portion identified as "Electrical Room", on the terms and conditions set out in this lease (the "**Lease**");

AND WHEREAS the Landlord has obtained the approval of the electors to lease land within a public park pursuant to the provisions of the *Community Charter*,

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the rents, covenants and agreements of the Tenant and the Landlord in this Lease, the Tenant and the Landlord agree as follows:

1.0 Premises

1.1 The Landlord hereby leases to the Tenant the Premises.

1.2 The Landlord hereby grants the Tenant, its agents, employees, licensees and invitees the non-exclusive right by way of licence at all times during the Term to use any established driveways and walkways on the Land for the purpose of gaining ingress to and egress from the Premises.

1.3 The Landlord hereby grants the Tenant, its agents and employees the non-exclusive right by way of licence at all times during the Term as reasonably necessary to enter into that portion of the first floor of the Building identified as "Electrical Room" on Schedule "A" attached to this Lease.

1.4 The Tenant shall provide the Vancouver Island Military Museum, tenant of the second and third floors of the Building, with access to and use of the workshop space within the Premises from time to time as requested by the Vancouver Island Military Museum so long as such use does not unreasonably interfere with the Tenant's use of the workshop space.

2.0 Term

2.1 The term of this Lease shall be ten (10) years commencing on the 1st day of January, 2013, and ending on the 31st day of December, 2022 (the "**Term**").

2.2 Provided the Tenant is not in default of its obligations under this Lease, the Tenant may upon not less than ninety (90) days' written notice to the Landlord renew this Lease for one (1) further term of ten (10) years on the same terms and conditions as set out herein except with respect to renewal and rent. Unless otherwise agreed in writing by the parties, rent for the renewal term shall be the rent under section 4.1 adjusted by an amount equal to any increase in the Consumer Price Index for British Columbia (All Items) as maintained by Statistics Canada or any successor agency, as measured over the Term.

2.3 Either party may upon not less than six (6) months' written notice to the other party terminate this Lease.

3.0 Use

3.1 The Tenant shall use the Premises for the purpose of a public museum, including

ancillary workshop and storage, and for no other purpose without the prior written consent of the Landlord.

- 3.2 The Tenant must operate the public museum referred to in section 3.1 on a non-profit basis, and must not use the Premises for business or commercial purposes of any kind.

4.0 Rent

- 4.1 The Tenant shall pay to the Landlord a rent for each year of the Term of ONE DOLLAR (\$1.00), inclusive of HST or GST, whichever is applicable, due and payable in arrears on the 31st day of January in each year of the Term.

- 4.2 The Tenant shall pay to the Landlord a sum equal to thirty percent (30%) of the Landlord's total utility costs for the Building in each year of the term, due and payable in quarterly installments upon invoice by the Landlord. For the purposes of this section, the Landlord's utility costs for the Building are those charges paid directly by the Landlord, if any, for utilities used in the Building, including without limitation charges for any electricity, water, building security, recycling and garbage collection used in the Building.

- 4.3 The Tenant shall pay all rents and additional rents reserved under this Lease.

5.0 Taxes

- 5.1 The Tenant shall pay all taxes, rates, duties and assessments whatsoever, whether municipal, provincial, federal, or otherwise, including HST or GST, charged upon the Premises, or upon the Tenant or the Landlord as a result of the Tenant's occupation of or use of the Premises, unless exempted by local government bylaw.

6.0 Utilities

- 6.1 The Tenant shall pay as they become due all charges for utilities used on the Premises, including without limitation charges for all telephone, electricity, Internet, water, building security, recycling and garbage collection used on the Premises.

7.0 Construction

- 7.1 The Tenant shall not construct, place or alter any buildings or structures on the Premises unless, prior to any construction or alteration, having first obtained the written consent of the Landlord, and any permits and inspections required by law.

- 7.2 Any construction, placement or alteration of buildings or structures on the Premises shall be carried out at the cost of the Tenant.

8.0 Repair and Maintenance

- 8.1 The Tenant shall give immediate notice to the Landlord of any defect in any water, gas and electrical fixtures, glass, pipes, faucets, locks, fastenings and hinges in, on or attached to the Premises.
- 8.2 The Landlord may enter and view the state of repair of the Premises and the Tenant will repair within thirty (30) days of receiving written notice any defect in water, gas and electrical fixtures, glass, pipes, faucets, locks, fastenings and hinges in, on or attached to the Premises for which the Tenant is responsible under section 8.3.
- 8.3 The Landlord shall be responsible for maintenance and repair of the roof, heating, ventilation and air conditioning apparatus, and exterior of the Premises. The Landlord shall also be responsible for the repair of any water, gas and electrical fixtures, glass, pipes, faucets, locks, fastenings and hinges in, on or attached to the Premises. Despite the foregoing, the Landlord shall not be responsible for any maintenance or repair whatsoever with respect to the Premises where such maintenance or repair is occasioned by the negligent or willful act of the Tenant or those for whom the Tenant is in law responsible, in which case such maintenance or repair must be carried out by the Tenant at its own expense.
- 8.4 Sections 8.2 and 8.3 shall not apply to reasonable wear and tear, or damage by any peril the risk of which has been insured against pursuant to section 12.2. Neither the Tenant nor the Landlord shall be obligated to repair reasonable wear and tear or damage by any peril the risk of which has been insured against pursuant to section 12.2.
- 8.5 The Tenant shall at all times maintain the Premises to an excellent standard of maintenance.

9.0 Assign or Sublet

- 9.1 The Tenant shall not assign nor sublet, licence, sub-licence or grant any other right or interest in the Premises without prior written consent of the Landlord which consent is in the sole discretion of the Landlord.
- 9.2 The Landlord's consent to assignment or subletting shall not release or relieve the Tenant from its obligations to perform all the terms, covenants and conditions that this Lease requires the Tenant to perform, and the Tenant shall pay the Landlord's reasonable costs incurred in connection with the Tenant's request for consent.

10.0 Nuisance

- 10.1 The Tenant shall not carry on or do or allow to be carried on or done on the

Premises anything that:

- (a) may be or become a nuisance to the Landlord or the public;
- (b) increases the hazard of fire or liability of any kind;
- (c) increases the premium rate of insurance against loss by fire or liability upon the Premises;
- (d) invalidates any policy of insurance for the Premises; or
- (e) directly or indirectly causes damage to the Premises.

11.0 Regulations

11.1 The Tenant shall comply promptly at its own expense with all statutes, regulations, bylaws and other legal requirements (collectively, "Laws") of all federal, provincial or local authorities, including an association of fire insurance underwriters or agents, and all notices issued under them that are served upon the Landlord or the Tenant.

12.0 Insurance

12.1 The Tenant shall take out and maintain during the Term a policy of commercial general liability insurance against claims for bodily injury, death or property damage arising out of the use and occupancy of the Premises by the Tenant in the amount of not less than Three Million Dollars (\$3,000,000.00) per single occurrence or such greater amount as the Landlord may from time to time require, naming the Landlord as an additional insured party thereto, and shall provide the Landlord with a certified copy of such policy or policies.

12.2 The Landlord shall be responsible to maintain during the Term a policy of insurance insuring the Premises to the full insurable replacement value thereof against risk of loss or damage caused by or resulting from fire, flood, lightning, explosion, tempest, earthquake, tsunami or any additional peril against which a prudent Landlord normally insures.

12.3 The Tenant shall take out and maintain during the Term a policy of contents insurance insuring the goods, chattels and fixtures of the Tenant to the full insurable replacement value thereof against risk of loss or damage from fire, flood, lightning, explosion, tempest, earthquake, tsunami or any additional peril against which a prudent tenant normally insures.

12.4 All policies of insurance required by this Lease to be obtained by the Tenant shall contain a cross-liability and severability of interest endorsement, a waiver of subrogation clause in favour of the Landlord and shall also contain a clause requiring the insurer not to cancel or change the insurance without first giving the

Landlord 30 days prior written notice.

- 12.5 If the Tenant does not provide or maintain in force the insurance required by this Lease, the Landlord may take out the necessary insurance and pay the premium for periods of one year at a time, and the Tenant shall pay to the Landlord as additional rent the amount of the premium immediately on demand.
- 12.6 If both the Landlord and the Tenant have claims to be indemnified under any insurance required by this Lease, the indemnity shall be applied first to the settlement of the claim of the Landlord and the balance, if any, to the settlement of the claim of the Tenant.

13.0 Indemnification

- 13.1 The Tenant shall indemnify the Landlord from and against all lawsuits, damages, losses, costs or expenses which the Landlord may incur by reason of the use or occupation of the Premises by the Tenant or the carrying on upon the Premises of any activity in relation to the Tenant's use or occupation of the Premises and in respect of any loss, damage or injury sustained by the Tenant, or by any person while on the Premises for the purpose of doing business with the Tenant or otherwise dealing with the Tenant, or by reason of non-compliance by the Tenant with Laws or by reason of any defect in the Premises, including all costs and legal costs, taxed on a solicitor and client basis, and disbursements and this indemnity shall survive the expiry or sooner determination of this Lease.
- 13.2 For the purposes of section 13.1, "Tenant" includes any assignee, sub-tenant, licensee or sub-licensee of the Tenant.

14.0 Builders Liens

- 14.1 The Tenant shall indemnify the Landlord from and against all claims for liens for wages or materials or for damage to persons or property caused during the making of or in connection with any excavation, construction, repairs, alterations, installations and additions which the Tenant may make or cause to be made on, in or to the Premises, and the Tenant shall promptly take all legal action necessary to cause any lien to be discharged. The Landlord shall be at liberty to file a notice of interest against title to the Land pursuant to the *Builders Lien Act*.

15.0 Possession

- 15.1 The Tenant shall upon the expiration or earlier termination of this Lease peaceably surrender and give up possession of the Premises without notice from the Landlord, any right to notice to quit or vacate being hereby expressly waived by the Tenant, despite any law or custom to the contrary.

16.0 Condition of Premises

16.1 The Tenant acknowledges that it has with due diligence investigated and satisfied itself with respect to the condition of the Premises and their suitability for the uses permitted by this Lease, including without limitation with respect to their size, dimensions, state, condition, environmental condition or impact, presence or absence of any substances or conditions (whether hazardous or not), soil and water condition, usefulness, topography, legal access, services and zoning.

17.0 Environmental Matters

17.1 Definitions

For the purposes of this section 17.0:

- (a) "Contaminants" means any pollutants, contaminants, deleterious substances, underground or above-ground tanks, lead, asbestos, asbestos-containing materials, hazardous, corrosive, or toxic substances, hazardous waste, waste, polychlorinated biphenyls ("PCBs"), PCB-containing equipment or materials, pesticides, defoliants, fungi, including mould and spores arising from fungi, or any other solid, liquid, gas, vapour, odour, heat, sound, vibration, radiation, or combination of any of them, which is now or hereafter prohibited, controlled, or regulated under Environmental Laws; and
- (b) "Environmental Laws" means any statutes, laws, regulations, orders, bylaws, standards, guidelines, protocols, criteria, permits, code of practice, and other lawful requirements of any government authority having jurisdiction over the Premises now or hereafter in force relating in any way to the environment, environmental assessment, health, occupational health and safety, protection of any form of plant or animal life or transportation of dangerous goods, including the principles of common law and equity.

17.2 Tenant's Covenants and Indemnity

The Tenant covenants and agrees as follows:

- (a) not to use or permit to be used all or any part of the Premises for the sale, storage, manufacture, handling, disposal, use, or any other dealing with any Contaminants, without the prior written consent of the Landlord, which may be unreasonably withheld;
- (b) to strictly comply, and cause any person for whom it is in law responsible to comply, with all Environmental Laws regarding the use and occupancy of the Premises;

- (c) to promptly provide to the Landlord a copy of any environmental site investigation, assessment, audit, report or test results relating to the Premises conducted by or for the Tenant at any time;
- (d) to waive the requirement, if any, for the Landlord to provide a site profile for the Premises under the *Environmental Management Act* or any regulations under that Act;
- (e) to maintain all environmental site investigations, assessments, audits, reports, and test results relating to the Premises in strict confidence except as required by law, or to the Tenant's professional advisers and lenders on a need-to-know basis, or with the prior written consent of the Landlord, which consent may not be unreasonably withheld;
- (f) to promptly notify the Landlord in writing of any release of a Contaminant or any other occurrence or condition at the Premises or any adjacent property that could contaminate the Premises or subject the Landlord or the Tenant to any fines, penalties, orders, investigations, or proceedings under Environmental Laws;
- (g) on the expiry or earlier termination of this Lease, or at any time if requested by the Landlord or required by any government authority under Environmental Laws, to remove from the Premises all Contaminants, and to remediate by removal any contamination of the Premises or any adjacent property resulting from Contaminants, in either case, brought onto, used at, or released from the Premises by the Tenant or any person for whom it is in law responsible. The Tenant will perform these obligations promptly at its own cost and in accordance with Environmental Laws. The Tenant will provide to the Landlord full information with respect to any remedial work performed under this sub-clause and will comply with the Landlord's requirements with respect to such work. The Tenant will use a qualified environmental consultant approved by the Landlord to perform the remediation and will obtain the written agreement of the consultant to the Landlord relying on its report. The Tenant will, at its own cost, obtain such approvals and certificates from the BC Ministry of Environment and other applicable government authorities in respect of the remediation as are required under Environmental Laws or by the Landlord, including without limitation, a certificate of compliance evidencing completion of the remediation satisfactory to the Ministry and the Landlord. All such Contaminants will remain the property of the Tenant, notwithstanding any rule of law or other provision of this Lease to the contrary and notwithstanding the degree of their affixation to the Premises; and
- (h) to indemnify the Landlord and its shareholders, directors, officers, employees, agents, successors, and assigns from any and all liabilities, actions, damages, claims, remediation cost recovery claims, losses, costs,

orders, fines, penalties and expenses whatsoever, (including any and all environmental or statutory liability for remediation, all legal and consultants' fees and expenses and the cost of remediation of the Premises and any adjacent property) arising from or in connection with

- (i) any breach of or non-compliance with the provisions of this section 17.0 by the Tenant; or
- (ii) any release or alleged release of any Contaminants at or from the Premises related to or as a result of the use and occupation of the Premises or any act or omission of the Tenant or any person for whom it is in law responsible.

The obligations of the Tenant under this section 17.0 will survive the expiry or earlier termination of this Lease.

18.0 Quiet Enjoyment

18.1 The Landlord covenants with the Tenant for quiet enjoyment.

19.0 Re-entry

19.1 If the Tenant defaults in the payment of rent, or the payment of any other sum payable under this Lease, or fails to perform any covenant under this Lease and if such default shall continue for thirty (30) days after the giving of written notice by the Landlord to the Tenant, then the Landlord may terminate this Lease and may re-enter the Premises and the rights of the Tenant with respect to the Premises shall lapse and be absolutely forfeited.

20.0 Forfeiture

20.1 The Landlord, by waiving or neglecting to enforce the right to termination and forfeiture of this Lease or the right of re-entry upon breach of any covenant, condition or agreement in it, does not waive the Landlord's rights upon any subsequent breach of the same or any other covenant, condition or agreement in this Lease.

21.0 Distress

21.1 If the Landlord is entitled to levy distress against the goods and chattels of the Tenant, the Landlord may use enough force necessary for that purpose and for gaining admittance to the Premises and the Tenant releases the Landlord from liability for any loss or damage sustained by the Tenant as a result.

22.0 Destruction

22.1 If the Premises or any part of them are at any time during the Term burned down

or damaged by fire, flood, lightning, explosion, tempest, earthquake or tsunami:

- (a) the rent or a proportionate part of it according to the nature and extent of the damage sustained shall be suspended and abated until the Premises have been rebuilt or made fit for the purpose of the Tenant; or
- (b) if the Landlord elects not to undertake restoration, repair or replacement this Lease shall terminate and, for the purpose of this subparagraph (b), if the Landlord does not advise the Tenant concerning the Landlord's intention within thirty (30) days of the damage occurring, the Landlord shall be deemed to have elected not to undertake restoration, repair and replacement.

23.0 Fixtures

23.1 Unless the Tenant, upon notice from the Landlord, removes them, all structures or improvements constructed, placed or installed on the Premises by the Tenant, save and except for moveable business fixtures of the Tenant, shall, at the termination or expiry of this Lease, become the sole property of the Landlord at no cost to the Landlord.

24.0 Holding Over

24.1 If the Tenant holds over following the Term and the Landlord accepts rent, this Lease becomes a tenancy from month to month subject to those conditions in this Lease applicable to a tenancy from month to month.

25.0 Landlord's Payments

25.1 If the Landlord incurs any damage, loss or expense or makes any payment for which the Tenant is liable or responsible under this Lease, then the Landlord may add the cost or amount of the damage, loss, expense or payment to the rent and may recover the cost or amount as additional rent.

26.0 Landlord's Repairs

26.1 If the Tenant fails to repair or maintain the Premises in accordance with this Lease, the Landlord, its agents, employees or contractors may, upon ninety-six (96) hours notice or without notice in the event of an emergency, enter the Premises and make the required repairs or do the required maintenance and recover the cost from the Tenant.

26.2 In making the repairs or doing the maintenance under section 26.1, the Landlord may bring and leave upon the Premises all necessary materials, tools and equipment, and the Landlord will not be liable to the Tenant for any inconvenience, annoyance, loss of business or injury suffered by the Tenant by reason of the Landlord effecting the repairs or maintenance.

27.0 Insolvency

27.1 If:

- (a) the Term or any of the goods or chattels on the Premises are at any time seized or taken in execution or attachment by any creditor of the Tenant;
- (b) a writ of execution issues against the goods or chattels of the Tenant;
- (c) the Tenant makes any assignment for the benefit of creditors;
- (d) the Tenant becomes insolvent;
- (e) the Tenant is an incorporated company or society and proceedings are begun to wind up the company or society; or
- (f) the Premises or any part of them becomes vacant and unoccupied for a period of thirty (30) days or is used by any other person or persons for any purpose other than permitted in this Lease without the written consent of the Landlord;

the Term shall, at the option of the Landlord, immediately become forfeited and the then current month's rent for the three months next following shall immediately become due and payable as liquidated damages to the Landlord, and the Landlord may re-enter and repossess the Premises despite any other provision of this Lease.

27.2 If the Tenant becomes bankrupt this Lease shall terminate immediately without any further act or notice of the Landlord.

28.0 Removal of Goods

28.1 If the Tenant removes its goods and chattels from the Premises, the Landlord may follow them for thirty (30) days.

29.0 Time

29.1 Time is of the essence of this Lease.

30.0 Notices

30.1 Any notice required to be given under this Lease shall be deemed to be sufficiently given:

- (a) if delivered, at the time of delivery, and
- (b) if mailed from any government post office in the Province of British Columbia by prepaid, registered mail addressed as follows:

If to the Landlord:

455 Wallace Street
Nanaimo, B.C. V9R 5J6

If to the Tenant:

100 Museum Way
Nanaimo, B.C. V9R 5J8

or at the address a party may from time to time designate, then the notice shall be deemed to have been received forty-eight (48) hours after the time and date of mailing. If, at the time of the mailing the notice, 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, lock-out or other labour dispute then the notice may only be given by actual delivery of it.

31.0 Fitness of Premises

31.1 The Landlord has made no representation or warranties as to the condition, fitness or nature of the Premises and by executing this Lease, the Tenant releases the Landlord from any and all claims which the Tenant now has or may in future have in that respect.

32.0 Net lease

32.1 This Lease shall be a complete carefree net lease to the Landlord as applicable to the Premises and the Landlord shall not be responsible during the Term for any cost, charges, expenses or outlays of any nature whatsoever in respect of the Premises or the contents thereof except those mentioned in this Lease.

33.0 Binding Effect

33.1 This Lease shall enure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, successors, administrators and permitted assignees.

34.0 Amendment

34.1 The parties hereto may by agreement amend the terms of this Lease, such amendment to be evidenced in writing and executed by both parties.

35.0 law Applicable

35.1 This Lease shall be construed in accordance with and governed by the laws applicable in the Province of British Columbia.

36.0 Registration

36.1 Despite section 5 of the *Property Law Act*, the Landlord is not obligated to deliver this Lease to the Tenant in registrable form. The Tenant may, at its own expense, present to the Landlord for execution an instrument rendering this Lease registrable and register the same.

37.0 Interpretation

37.1 When the singular or neuter are used in this Lease they include the plural or the feminine or the masculine or the body politic or corporate where the context or the parties require.

37.2 All provisions of this Lease are to be construed as covenants and agreements as though the words importing covenants and agreements were used in each separate paragraph.

37.3 The headings to the clauses in this Lease have been inserted as a matter of convenience and for reference only and in no way define, limit or enlarge the scope or meaning of this Lease or any provision of it.

IN WITNESS WHEREOF the parties have executed this Lease on the _____day of _____ 2012.

CITY OF NANAIMO by its authorized signatories:)
)
)
_____)
Name:)
)
_____)
Name:)

NANAIMO & DISTRICT MUSEUM SOCIETY by its authorized signatories:)
)
_____)
Name:)
)
_____)
Name:)

SCHEDULE "A"

The City of Nanaimo is the owner (Lessor) of land described as:

Lot B, Section 1, Nanaimo District, Plan 8979, Piper Park.
PID No. 005-496-497

Civic Address: 100 Cameron Road, Nanaimo, British Columbia V9R 0C8

First Floor

