

SERVICE AGREEMENT

THIS AGREEMENT MADE EFFECTIVE THE 4 DAY OF December, 2019

BETWEEN:

THE CITY OF EDMONTON
A Municipal Organization
(the "City")

COPY

- and -

EDMONTON HERITAGE COUNCIL SOCIETY
a not for profit corporation registered
under the *Societies Act*, R.S.A. 2000, c. S-14
(the "Heritage Council")

A. The Edmonton Heritage Council was founded in 2010 on the recommendation of *The Art of Living: A Plan for Securing the Future of Arts and Heritage in the City of Edmonton (2008-2018)* to provide leadership in the unification and advocacy of heritage in Edmonton. The Heritage Council continues to advance the mandate of the successive cultural plan, *Connections & Exchanges: A 10-Year Plan to Transform Arts and Heritage in Edmonton (2019-2029)* in the continual development of Edmonton's heritage landscape.

B. The Heritage Council is committed to raising the public's recognition and awareness of heritage in Edmonton. This entails overseeing the establishment of educational programs and events of varying reach among local and national audiences, as well as directing community investment grant funds provided to the Heritage Council by the City of Edmonton. Also, the Heritage Council is responsible for providing advice, consultation and recommendations to City Council, its Administration and all other stakeholders of heritage related policies, practices and programs.

C. The City has approved annual funding from 2020 - 2023 to support the operations of the Heritage Council.

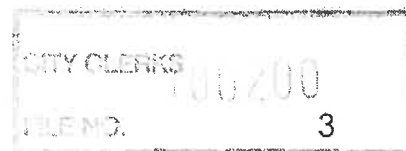
NOW THEREFORE IN CONSIDERATION of the funding provided by the City to the Heritage Council and in return for the services provided to the City by the Heritage Council, and the mutual covenants contained herein, all in accordance with the terms and conditions as set herein, the City and the Heritage Council agree as follows:

1.0 DEFINITIONS

1.1 In this Agreement unless there is something in the subject matter or context inconsistent therewith:

1.1.1 "Agreement" means this Agreement;

1.1.2 "City" means The City of Edmonton, a municipal corporation, and its successors and assigns;



- 1.1.3 "City Funding" means the annual amount to be paid to the Heritage Council as determined by City Council during the budget process each year of the Term;
- 1.1.4 "Financial Statements" means those financial statements, prepared according to GAAP for the Heritage Council;
- 1.1.5 "GAAP" means the Canadian Generally Accepted Accounting Principles as issued by the Canadian Institute of Chartered Accountants, or other such future standards of financial accounting and reporting as shall be required or commonly acceptable by the Canadian Institute of Chartered Accounts or such other future regulatory body charged with setting financial accounting and reporting standards.
- 1.1.6 "General Manager" means the Deputy City Manager of the Citizen Services Department or their designate;
- 1.1.7 "Heritage Council" means the Edmonton Heritage Council Society, and its successors and assigns;
- 1.1.8 "Project" means the coordination of all activities including program development and implementation as more specifically detailed in Section 5, leading to the successful operation of the Heritage Council.

2.0 TERM

- 2.1 This Agreement shall be effective January 1, 2020 and shall expire on December 31, 2023 or earlier in the event of termination pursuant to this Agreement.
- 2.2 At the sole option of the City, the Term may be extended for four (4) additional one (1) year periods, upon the City providing sixty days written notice to the Heritage Council prior to the end of the expiry of the Term or extension period, as applicable.

3.0 USE OF CITY FUNDING AND REPORTING

- 3.1 The City Funding will be used by the Heritage Council for the purpose of financing the Project in accordance with the terms and conditions of this Agreement. The City Funding shall be used in accordance with the annual operating budget provided by the Heritage Council to the City for each year of the Term.
- 3.2 An annual report outlining the outputs and outcomes of the Heritage Council's activities will be delivered to the City no later than October 31 of each year of the Term.
- 3.3 Audited financial statements detailing the use of City Funding will be delivered to the City no later than October 31 of each year of the Term.
- 3.3.1 Audited financial statements required in this Agreement shall be completed and signed by a Certified Professional Accountant who is independent of the Heritage Council.
- 3.4 The Heritage Council acknowledges that it is liable for the full amount of the City Funding and it will be bound to the terms of this Agreement notwithstanding the Heritage

Council's payment of the City Funding to a third party and the subsequent use of any of the City Funding by the third party.

4.0 PAYMENT OF THE CITY FUNDING

4.1 During the Term, the City shall pay to the Heritage Council annual operational funding in an amount approved by City Council during budget deliberations (the "City Funding").

4.2 The City shall pay the City Funding to the Heritage Council on or about February 1 of each year of the Term.

5.0 HERITAGE COUNCIL SERVICES

5.1 The Heritage Council will be generally responsible for providing leadership to City Council and to City Administration in developing and maintaining the health and vitality of Edmonton's heritage sector including:

5.1.1 Advice and Support for the City of Edmonton

- Raising Awareness and Support of Edmonton's heritage - The Heritage Council will promote and advocate for Edmonton's heritage community with other orders of government, foundations, the general public and private businesses.
- Advice - The Heritage Council will provide advice and subject matter expertise to City Council and its Administration regarding the general state and financial health of the heritage sector in Edmonton. This will include issues-based advocacy on behalf of the sector, insights into the effect of budgetary changes and primary consultancy for heritage-related advisement.
- Consultation - At the request of City Council or City Administration, the Heritage Council will provide consultation to City Council and its agencies on both tangible and intangible heritage awareness, issues, policies and opportunities that impact the health and vitality of the heritage sector.
- Support for City Heritage Preservation and Promotion - The Heritage Council will support the City's archival, intangible heritage, artifact and built heritage programs through promotion, collaborative initiatives and program support as identified and agreed upon with City Administration and its agencies.
- Support for City Policy Development - The Heritage Council will, in conjunction with the City, advise and assist the City in the development and effective implementation of City Policies and other matters that include a heritage component.
- Support Heritage Policy (ref: Connections and Exchanges Action) - The Heritage Council will work with City Administration to develop a heritage policy that holistically guides the City's heritage activities, including interpretation, naming, oral traditions, commemoration, participation, built heritage, boards and committees, facilities and collections.

- Assistance and Support - The Heritage Council will assist the heritage community by facilitating collaboration with other orders of government, foundations, the general public and private businesses.
- Recognition and Understanding - The Heritage Council will increase awareness in the city and beyond (provincial, national, international audiences) of the quality and innovative approach of heritage work in Edmonton and will create greater awareness among residents of Edmonton of the value of heritage to the city and its citizens and communities.

5.1.2 Programs and Initiatives

- Museum/Heritage Sector Sustainability and Development - The Heritage Council will assist the City by advancing museum and heritage organization sustainability and its related objectives and programs, including the Edmonton City as a Museum Project (ECAMP), a collaborative heritage network, and bringing museums and other memory organizations into effective and cooperative programming and administrative relationships.
- Investment (Heritage Community Investment Grants Program) - The Heritage Council will make annual funding recommendations and administer funding provided by the City to the Heritage Council for Edmonton's heritage sector. The Heritage Council will advise City Council, at Council's request, on emergency funding requests received by City Council. This includes increasing the investment base for heritage programs in Edmonton with all orders of government, private and community foundations and the business community.
- Related Public Programming - The Heritage Council will initiate and/or support public programming (e.g. symposia, speakers' series, events) to increase community profile, participation and interest in Edmonton's heritage
- Project Collaboration and Management - At the request of or through collaboration with the City Manager or designate, the Heritage Council will lead, assist, collaborate, or undertake work on City of Edmonton heritage projects. The City may provide additional funding or resources to fulfill additional work out-of-scope to this Agreement as required.

5.1.3 Administration and Governance

- Liaising with Other Orders of Government and Agencies - The Heritage Council will help initiate and coordinate consultation and collaborative efforts with other orders of government and agencies to deepen understandings about and create alignment between stakeholders' desired goals.
- Recognizing Multiculturalism and Reconciliation - The Heritage Council will incorporate a multicultural perspective in their work through diversity, inclusion and reconciliation efforts.
- Heritage Alignment in City Planning - The Heritage Council will work with City Administration to expand the incorporation of heritage into City strategies and

planning initiatives and endeavour to align their work to these strategies and planning initiatives.

6.0 CITY ROLES

6.1 The City will work to further the commitment and informed participation of citizens, educators, private businesses and other orders of government in heritage matters by establishing an increased profile, awareness and understanding of Heritage Council activities.

6.2 The City will facilitate and support the building of relationships and integration between the Heritage Council and City departments on an ongoing basis as required by the Heritage Council and deemed appropriate by the City. This will include:

6.2.1 An annual staff-to-staff meeting;

6.2.2 Internal communication to City Administration of Heritage Council initiatives;

6.2.3 Facilitating access to heritage related datasets; and

6.2.4 City expertise and support.

6.3 The City will participate as an ex-officio member of the Heritage Council Board of Directors and will attend Board member meetings as requested by the Heritage Council.

6.4 At the request of the Heritage Council, the City will advise the Heritage Council on municipal processes.

6.5 The City will collaborate and consult with the Heritage Council on policies, plans and programs that present opportunities to incorporate a heritage perspective. These include but are not limited to:

6.5.1 The River Crossing Heritage Interpretive Plan;

6.5.2 Subdivision developments; and

6.5.3 River Valley development.

6.6 The City will provide complimentary use of Edmonton City Hall on an annual basis for the Heritage Council's Annual General Meeting for the duration of the Term of the Agreement.

7.0 TERMINATION

7.1 This Agreement shall expire on December 31, 2023 or earlier in the event of termination pursuant to this Agreement.

7.2 The Heritage Council has the right to terminate this Agreement upon giving thirty (30) days' notice in writing to the City.

7.3 The City may terminate this Agreement under any of the following circumstances, by giving sixty (60) days' notice in writing to the Heritage Council:

7.3.1 in the event that no funding is approved by City Council during the budget process for any year of the Term;

7.3.2 in the event the Heritage Council ceases to exist or function as a non-profit organization, is amalgamated or merged with another society or becomes bankrupt;

7.4 In the event the Heritage Council defaults in the performance of any of its obligations under this Agreement, written notice from the City will instruct the Heritage Council to correct the default within ten (10) business days from receipt of the notice.

7.4.1 If the correction of the default cannot be completed within the ten (10) business days specified, the Heritage Council shall be considered to be in compliance with the City's instructions if it:

- a) provides the City with a Schedule acceptable to the City for the correction within the ten (10) business days specified; and
- b) completes the correction in accordance with such Schedule.

7.4.2 If the Heritage Council fails to correct the default as herein required, the City may, without prejudice to any other right or remedy that it may have, terminate this Agreement immediately.

7.5 Should this Agreement be terminated pursuant to this Article 7, the Heritage Council agrees to repay to the City that portion of the City Funding which has not been expended at the time of termination. The City Funding or any portion thereof not used for the purpose for which it was made, will be a debt due to the City and may be recovered by the City from the Heritage Council by an action in debt.

8.0 DISPUTE RESOLUTION

8.1 Should any dispute arise between the parties as to the interpretation, application, operation or alleged violation of this Agreement, the General Manager, or designate, and the Executive Director of the Heritage Council agree to use their best efforts to resolve any conflicts and disputes amicably and through negotiation or mediation as appropriate.

9.0 RIGHT TO AUDIT

9.1 The City may audit all financial and related records associated with the terms of this Agreement.

9.2 The Heritage Council shall at all times during the term of this Agreement, and for a period of six (6) years after the end of the Agreement, keep and maintain records of the use of the City Funding pursuant to this Agreement. This shall include proper records of quotations, contracts, correspondence, invoices, vouchers, timesheets, and other documents that support actions taken by the Heritage Council. All such records shall be

maintained in accordance with generally accepted accounting principles. The Heritage Council shall at its own expense make such records available for inspection and audit (including copies and extracts of records as required) by the City at all reasonable times and without prior notice.

9.3 The obligations of this section shall be explicitly included in any subcontracts or agreements formed between the Heritage Council and any subcontractors or suppliers of goods or services to the extent that those subcontracts or agreements relate to fulfillment of the Heritage Council's obligations to the City.

9.4 Costs of any audits conducted under the authority of this section and not addressed elsewhere will be borne by the City unless the audit identifies significant findings that would benefit the City. The Heritage Council shall reimburse the City for the total costs of an audit that identifies significant findings that would benefit the City.

9.5 This Article 9.0 shall not be construed to limit, revoke, or abridge any other rights, powers, or obligations relating to audit which the City may have by Federal, Provincial or Municipal law, whether those rights, powers, or obligations are express or implied.

10.0 INDEMNITY AND INSURANCE

10.1 The Heritage Council shall indemnify and save harmless the City, its officers, employees, agents and servants, from any and all liabilities, damages, costs, suits or actions arising out of or in connection with:

- 10.1.1 any breach or non-performance of any covenants or conditions in this Agreement to be fulfilled, observed or performed by the Heritage Council; and
- 10.1.2 any damage to property, real or personal, occasioned by the use and occupation of any area occupied by or used for the purposes relating to or in connection with the Project.

excepting liabilities, costs, damages, claims, suits, expenses or actions arising from the negligent act or omission of the City, its officers, employees or agents.

10.2 Throughout the Term of this Agreement, the Heritage Council shall maintain, at its expense, in full force and effect the following insurance coverage:

10.2.1 Comprehensive General Liability insurance in an amount not less than Two Million (\$2,000,000) Dollars per occurrence for personal injury and/or property damage. This policy shall be endorsed to include:

- (i) Blanket Contractual Liability (including this Agreement);
- (ii) Non-Owned Automobiles;
- (iii) Independent Contractors;
- (iv) Products and Completed Operations;
- (v) Broad Form Property Damage;
- (vi) Employees and Volunteers as Additional Insureds;
- (vii) Property Damage Occurrence;
- (viii) Cross Liability;
- (ix) Contingent Employers' Liability;

- (x) Employers' Liability (if applicable);
- (xi) Tenant's Legal Liability; and
- (xii) City as an Additional Insured.

10.2.2 "All Risk" Property Insurance for the full value of all present and future property owned by or used by the Heritage Council, as well as structures, Tenant's improvements, furniture, fittings, fixtures, stock-in-trade and merchandise situate on the Land for their full replacement value and on such terms and conditions which a prudent owner of comparable property would obtain and maintain from time to time. Such policy shall contain a waiver by the insurer of any right of claim or recovery by way of subrogation or otherwise against the City, its employees, agents and servants.

10.3 All such insurance coverages shall be endorsed to provide the City with thirty (30) days prior written notice of cancellation or material change and shall be in a form acceptable to the City's Director of Risk Management, Corporate Services or his designate (the City's Risk Manager). The Heritage Council will provide proof of renewal of insurance coverage prior to expiry of existing policies.

10.4 Upon request by the City, the Heritage Council shall provide additional insurance if this is deemed necessary by the City's Risk Manager.

10.5 The policy limits stated in Sections 10.1.1 and 10.1.2 above do not define or limit the Heritage Council's liability to indemnify the City in the event of bodily injury or property damage, and neither does the City make any representations as to the adequacy of the limits or scope of coverage in the event of a claim.

10.6 This Article 10.0 shall survive termination or expiration of this Agreement.

11.0 NON-STATUTORY WAIVER

11.1 The City in entering into this Agreement is doing so in its capacity as a municipal corporation exercising its natural person powers and not in its capacity as a regulatory, statutory or approving body pursuant to any law of the Province of Alberta and nothing in this Agreement shall constitute the granting by the City of any approval or permit as may be required pursuant to the Municipal Government Act, RSA 2000 c M-26, and any amendments thereto, and any other legislation in force in the Province of Alberta. The City, as far as it can legally do so, shall only be bound to comply with and carry out the conditions stated in this Agreement, and nothing in this Agreement restricts the City, its municipal council, its officers, servants or agents in the full exercise of any and all powers and duties vested in them in their respective capacities as a municipal government, as a municipal council and as the officers, servants and agents of a municipal government.

12.0 NOTICE

12.1 Any notice given pursuant to the terms of this Agreement shall be sufficiently given:
in case of notice to the City, if such notice is sent by facsimile transmission, prepaid registered mail, personally delivered to the following address:

Citizen Services
17th Floor, Edmonton Tower
10111 104 Avenue
Edmonton, AB T5J 4X1
Attention: Roger Jevne, Branch Manager, Community and Recreation Facilities

and in case of notice to the Edmonton Heritage Council, if such notice is sent by facsimile transmission, prepaid registered mail, or personally delivered to the following address:

Edmonton Heritage Council
Prince of Wales Armouries
2nd Floor, 10440 108 Avenue
Edmonton, Alberta T5H 3Z9
Attention: David Ridley, Executive Director

12.2 Notice given as aforesaid, if posted, other than during an actual or threatened postal disruption, shall conclusively be deemed to have been given on the fifth business day following the date on which the notice is mailed. Any notice personally delivered or sent by telecopier or other form of facsimile transmission shall be deemed to have been given on the date of actual delivery.

12.3 Either party may, at any time, give notice in writing to the other of any changes of address of the party giving such notice and, from and after giving of such notice, the address herein specified shall be deemed to be the address of the party for the giving of notice hereunder.

13.0 SEVERABILITY

13.1 If any of the terms and conditions as contained in this Agreement are at any time during the continuance of this Agreement held by any Court of competent jurisdiction to be invalid or unenforceable in the manner contemplated herein, then such terms and conditions shall be severed from the rest of the said terms and conditions, and such severance shall not affect the enforceability of the remaining terms and conditions in accordance with the intent of these presents.

14.0 GENERAL

14.1 This Agreement may not be assigned by the Heritage Council without the express written consent of the Deputy City Manager of the Citizen Services Department which consent shall not be arbitrarily or unreasonably withheld.


14.2 A waiver of any breach of a provision of this Agreement shall not be binding upon the City unless the waiver is in writing and the waiver shall not affect the City's rights with respect to any other or future breach by the Heritage Council.

14.3 This Agreement is bound by the laws of the Province of Alberta.

14.4 Time is of the essence of this Agreement.

APPROVED:

Approved as to form: 

Approved as to content: 

WITNESS:

Per: _____

Per: _____

Signed for the City:
CITY OF EDMONTON

Per: 

As represented by ROGER JEVNE, Branch Manager, Community and Recreation Facilities,
Citizen Services Department

Date: Nov 27, 2014

THE EDMONTON HERITAGE COUNCIL SOCIETY

Per: 

Wendy Birch, Chair

Per: 

David Ridley, Exec Dir