

April 21, 2015

MEMORANDUM OF UNDERSTANDING

**Future Long-Term Lease of Memorial Park Society Land
between
The Town of Sidney (the "Town")
and
Memorial Park Society ("MPS")**

In this Memorandum of Understanding (MOU), the Town and MPS identify and record the key principles of a proposed future long term lease agreement for the purpose of the Town constructing a new Community Safety Building (CSB) on MPS land.

BACKGROUND AND INTENT

- A. The MPS is the registered owner of Lot 2, Sections 10 and 11, Range 3 East, North Saanich District, Plan VIP74500 (the "MPS Lands"), also known as 2243 Beacon Avenue.
- B. The Town is interested in entering into a long-term lease agreement with MPS to lease a portion of the MPS lands (see Lease Area 1 in Schedule A) for the purpose of constructing a CSB consisting of a fire hall, emergency operations centre, ambulance station and firefighter training facilities.
- C. The Town is interested in working with MPS to ensure its long-term financial sustainability, for the benefit of the entire community served by MPS.
- D. While this is a non-binding MOU only, and does not create any legal obligations between the Town and MPS, it sets out the basic understanding reached between the parties to date. The actual long-term lease agreement may require further negotiation, and contain matters not identified in this MOU, as the Town and MPS mutually pursue, in good faith, the completion of a lease agreement that is mutually beneficial. Until a final lease agreement is executed by the parties, there will be no binding legal obligations between the Town and MPS. The intention is that this MOU will be replaced by a formal lease agreement between the parties, based upon the principles set out in this MOU.

TERMS AND CONDITIONS

- 1. Neither party will directly or indirectly publicize or otherwise disclose the existence or terms of this MOU without the other Party's written consent.
- 2. The intended term of the future lease agreement is a minimum of 75 years.
- 3. The Town would be responsible for funding and constructing all leasehold improvements.
- 4. The Town would own all leasehold improvements and remove all structures at the end of the lease term unless otherwise mutually agreed upon by the parties.
- 5. The Town and MPS will each be responsible for paying their own legal costs associated with the establishment of the long-term lease agreement.
- 6. The Town will ensure there will be vehicle access to Bevan Avenue, as shown on the drawing in Schedule A.

7. The Town will pave the existing gravel parking lot and expand it to replace any MPS parking lost through the construction of the CSB.
8. The execution of a future lease agreement will be subject to final approval and adoption of the proposed "amended" MPS Trust document.
9. The future lease agreement will be subject to the Town being successful in attaining the appropriate financing / borrowing for the CSB.
10. Under the future lease agreement, the Town would reserve the right to sublet a portion of the lands to BC Ambulance Service.
11. As a condition of the future lease, details would be included that permit MPS certain entitlements regarding utilizing the future employee / overflow parking area for possible temporary rental / revenue opportunities, such as, but not limited to, charging for overnight RV parking, the annual Sidney amusement fair, food vendor trucks, etc.
12. MPS and the Town acknowledge that, in entering into the long-term lease, the Town shall comply with all statutory requirements applicable to them in relation to that agreement, which may affect the terms of such agreement, including the obligation to provide prior public notice by the Town of any interest in land and the prohibition on incurring certain long-term liabilities without the prior approval of the electors.
13. MPS acknowledges that the existing buildings (i.e. Artist Studio use, etc.) currently located on the proposed MPS Lease Lands will require demolition should the lease be executed and the Town proceed with the construction of a CSB. All costs to be incurred for the demolition shall be borne by the Town.
14. Each party to this MOU will negotiate in good faith to effectively and expediently carry out the full intent and meaning of this MOU, with a view to attaining the objective of an executed long-term lease.

FINANCIAL ASPECTS

15. The annual lease amount to be paid by the Town to MPS shall be determined with consideration to the total amount of funding provided by the Town, and the sufficiency of total funding in relation to the financial sustainability of MPS operations. The total stream of annual lease payments must also be comparable to the cost to the Town of purchasing a satisfactory parcel of land elsewhere.
 - a. The annual lease amount shall begin at \$55,000 in the first year with annual increments of \$7,000 until the amount reaches \$125,000 in year 11 (see Schedule B).
 - b. Starting in the 12th year, the annual lease amount shall be increased by an inflation factor, defined as the annual change in Victoria CPI, as published by Statistics Canada. For certainty, the lease amount shall not be reduced in any year where the annual change in CPI is negative.
 - c. The amount of Annual Funding provided by the Town to MPS is currently set at 2.5% of the previous year's taxes; this % of tax shall not decrease for the first 25 years of the lease agreement. However, after this period, the amount of Annual Funding will be reviewed, in relation to MPS' financial sustainability at that point in time, with consideration given to the sufficiency of operating and capital replacement funding. For clarity, it is the intention of the Town to continue supporting the financial sustainability of MPS; if the need remains, funding is intended to continue. The

- purpose of a review at the end of 25 years is simply to ensure that the same financial need remains.
- d. It is further acknowledged that, as per clause 9, additional revenue opportunities have the potential to be leveraged by MPS on the future parking lot lands that will not diminish, in any way, the annual lease payment or annual funding provided by the Town.
- e. At the present time, each \$105,000 in additional cost equates to a 1% tax increase for the Town.
- f. As a “disclaimer” to the above noted funding, should MPS, at some point in the future, find itself in a positive financial position where the total amount of annual funding is no longer necessary from the Town, that they give consideration to voluntarily absolving the Town of all or a portion of their funding commitment, as the case may be.

TERM

- 16. This MOU will continue in force and effect until the earlier of:
 - a. July 31, 2015; and
 - b. the date that the lease agreement is executed by the Town and MPS; unless extended by mutual agreement of the parties.
- 17. During the Term of this MOU, the Town shall have the sole right to negotiate for the long term lease of the subject lands, and MPS will not offer the lands to any other party.

NOTICE

- 18. Unless otherwise specified by written notice, the Town’s representative, during the term of this MOU, shall be the Chief Administrative Officer.
- 19. Unless otherwise specified by written notice, the MPS representative shall be the Executive Director.

EFFECTIVE DATE

- 20. The effective date of the Memorandum of Understanding is the latest date of execution below.

IN WITNESS HEREOF the Parties, by their duly authorized representatives, have executed this Memorandum of Understanding as of the date written below:

Executed on _____, 2015.

Executed on _____, 2015.

TOWN OF SIDNEY by its authorized signatories:

MEMORIAL PARK SOCIETY by its authorized signatories:

Mayor:

Name:

Corporate Officer:

Name:

SCHEDULE A

PROPOSED LEASE SITE

SCHEDULE B
LEASE AMOUNTS