

THIS MEMORANDUM OF AGREEMENT is made in duplicate on this day of
 , 2021 between:

THE CORPORATION OF THE CITY OF OWEN SOUND
Hereinafter called the "City"

and

TERESA BOLEY
Hereinafter called the "Donor"

WHEREAS The Boley family wishes to donate an arbour in tribute to Mr. Barry Boley honoring his memory as a dad, husband, family member, teaching colleague, educator, and coach;

AND WHEREAS the City has approved the donation of an arbour for Harrison Park (CS-210217-003);

AND WHEREAS the arbour is to be constructed in Harrison Park on land owned by the City and located in the geographic Township of Georgian Bluffs;

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of other good and valuable consideration and the sum of Ten Dollars (\$10) of lawful money of Canada, now paid by each of the parties hereto to each of the other parties hereto (the receipt whereof is hereby acknowledged), the parties hereto covenant, promise, and agree with each other as follows:

1. The parties agree and acknowledge that the Schedules attached to this agreement form part of this agreement.
2. The parties agree and acknowledge that the location of the arbour shall be as shown on Schedule "A" attached and that the location has been selected for its suitability for the intended purpose.
3. The Donor shall be responsible for the following steps and approvals:
 - a. Work collaboratively with City staff to undertake the steps outlined in report CS-21-013 and approved by Resolution CS-210217-003;
 - b. Initial development of the arbour design and preparation of drawings;

- c. Explore partnership options with Owen Sound District Secondary School and the Bluewater District School Board;
 - d. Provide drawings sufficient to make an application to the Township of Georgian Bluffs for a building permit application and obtain a permit prior to commencing construction;
 - e. Provide all design drawings, site plans and sketches required for the City's application to the Grey Sauble Conservation Authority (GSCA);
 - f. Provide all design drawings, site plans and sketches required for the City's application to the Niagara Escarpment Commission (NEC);
 - g. Undertake alterations and drawing amendments following input from the City's Community Services Committee, the Township of Georgian Bluffs, indigenous partners, NEC or GSCA;
 - h. Pay all application fees or development fees as may be required by the GSCA, NEC, or the Township of Georgian Bluffs;
 - i. Purchasing and payment of all materials and supplies, including but not limited to, preparation of required plans and drawings, the concrete pad, and harbour building materials;
 - j. Construction and assembly of the concrete pad and harbour pursuant to agreed upon design and drawings; and
 - k. Provide to the City a volunteer waiver in the form attached as Schedule "B" for each volunteer, family member, assignee, invitee, employee, or contractor who will assist the Donor on the City's property with any task related to the design, construction or erection of the harbour including direct labour and/or any ancillary tasks as set out in Section 8 below.
4. The Donor shall not pledge the credit of the City in any manner.
5. The City shall be responsible for the following steps:
- a. Review design drawings, provide input and review any amendments that follow;
 - b. Seek approval from GSCA;

- c. Seek approval from the NEC;
 - d. Excavation of the area shown in Schedule "A" hereto;
 - e. Minor site restoration following installation; and
 - f. Assist in coordinating delivery of materials and supplies to the site.
6. The City shall not be responsible for any loss or damage to any items belonging to the Donor, its volunteers, family members, assignees, invitees, employees, or contractors engaged by it that are kept or used on the subject lands, including but not limited to, tools and building materials.
 7. The Donor acknowledges and agrees that the City shall have the right of final approval of the harbour design, including the concrete pad, harbour, and any plaque or wording in recognition of Mr. Barry Boley.
 8. The Donor understands and acknowledges that all volunteers, family members, assignees, invitees, employees, or contractors which attend at the harbour site must sign a waiver in the form attached as "Schedule "B" and a copy of each such waiver shall be provided to the City before attending at the harbour site for any purpose related to the harbour. Any volunteers, family members, assignees, invitees, employees, or contractors which do not sign a waiver in the form set out in Schedule "B" will not be permitted to assist the Donor at the harbour site.
 9. The Donor shall indemnify the City from and against any and all claims, demands, causes of action, suits, or judgments (including legal fees on a solicitor/client basis and all other costs of defense thereof) made by any person including the Donor's volunteers arising out of activities under this contract or in connection with the construction and erection of the harbour by the Donor, its agents, servants, employees, or invitees whether or not such claims, demands, causes of action, suits or judgments are caused by the Donor's negligence except to the extent they are caused by the negligence of the City. This indemnity agreement shall extend to protect the City from construction liens by contractors, mechanics, material men, and suppliers (which are expressly prohibited), which shall be deemed to include all purchases of expendables, consumables, and other merchandise.

In the event of any claims made or suits filed, the City shall give the

Donor timely written notice thereof, and the Donor shall have the right to defend or settle the same to the extent of its interest hereunder. The Donor shall promptly accept all responsibility to defend or settle such matters, and in the event it is necessary for the City to incur any expenses whatsoever to enforce this provision, all such expenses shall in their entirety be recoverable from the Donor.

10. The City shall at all times have the right to correct any unsafe conditions on the construction or erection site or to complete any work left unfinished for an unreasonable amount of time (which shall be determined in the City's sole discretion). The Donor shall further indemnify the City from any costs incurred for work conducted to correct unsafe conditions or complete the unfinished project.
11. Once erection of the arbour is complete, the Donor agrees that it shall remove any and all debris, tools, and garbage and leave the arbour site in a clean and useable condition.
12. Following completion of the arbour, the City and Donor will attend to review the site together. Following the joint review and completion of any alterations requested by the City at that time, the City will assume ownership and responsibility for the arbour including maintenance of the structure and the landscaped area.
13. If at any time in the future the arbour needs to be moved or removed, the City will have the the authority and responsibility to do so. If the arbour is to be removed, it will be offered to the Boley Family for them to remove and relocate at their discretion.
14. This agreement shall be governed by and construed pursuant to the laws of the Province of Ontario.
15. This agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
16. Signatures sent by electronic means (facsimile, scanned and sent via e-mail, or signed by electronic signature service where legally permitted) shall be deemed original signatures.

IN WITNESS WHEREOF the parties hereto have affixed their signatures on that behalf fully authorized.

The Corporation of the City of
Owen Sound

Per:

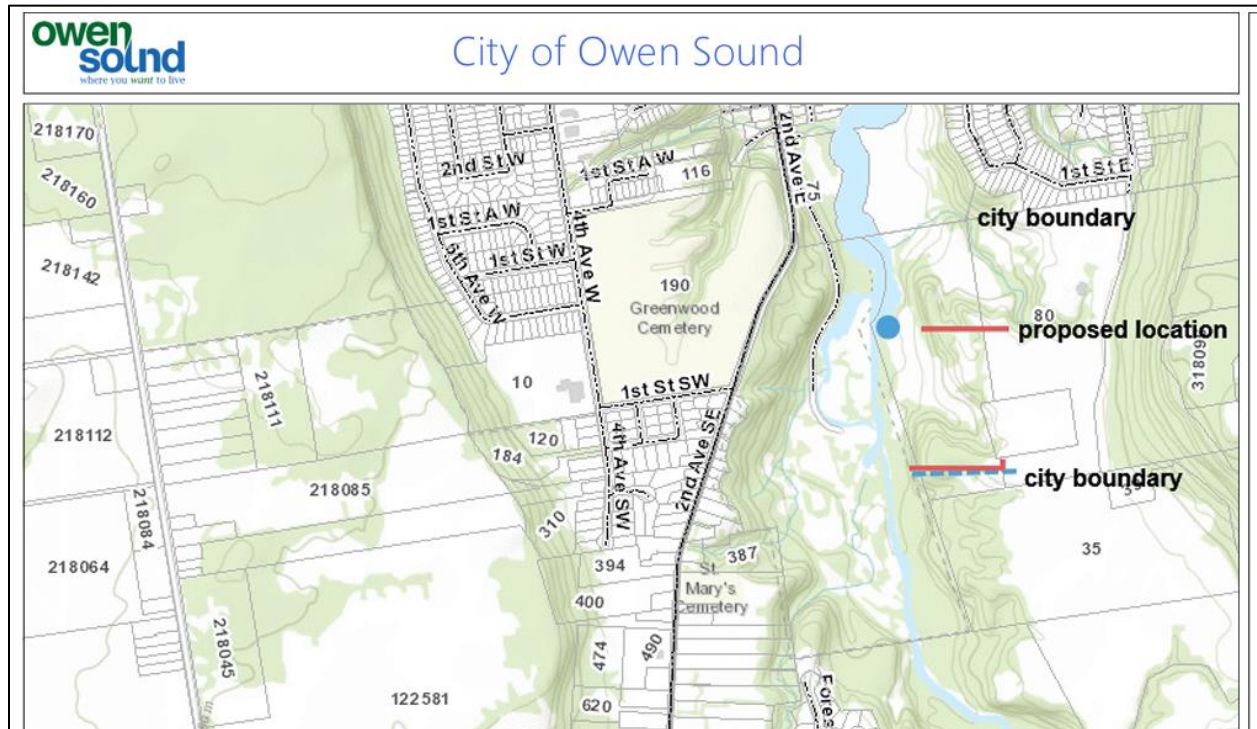
Ian Boddy, Mayor

Briana Bloomfield, City Clerk

Witness

Teresa Boley

SCHEDULE "A"
SUBJECT LANDS



SCHEDULE "B"
VOLUNTEER WAIVER FORM



The Corporation of the City of Owen Sound
Hereinafter referred to as the "Municipality"
WAIVER AND RELEASE

In consideration of _____ volunteering on behalf of the "Municipality"
acting in my capacity as _____ from _____ (insert date of the
event) _____ until _____ (insert date of the event).

ELEMENTS OF RISK:

I acknowledge that my participation as a volunteer involves certain elements of risk including but not limited to cuts, abrasions, sprains, fractures, spinal injury, brain injury or even death. The risk of sustaining injury can result from the nature of the activity itself, natural and manmade, climatic conditions, the actions of third parties and the participant's own physical condition and actions.

The risk of sustaining these types of injuries can result from the nature of the activity and can occur without any fault of the volunteer, or the Municipality, its employees, agents, council members, or the facility where the activity is taking place. By choosing to volunteer in this activity, you are accepting the risk that you may be injured.

The chance of an injury occurring can be reduced by carefully following instructions at all times while engaged in the activity.

In order to participate, I HEREBY AGREE to do so at my own risk and understand that I do not have access to Municipal Health Benefits or WSIB.

If you choose to participate as a volunteer on behalf of the "Municipality you must understand that you bear the responsibility for any injury that might occur.

I HEREBY RELEASE, WAIVE AND FOREVER DISCHARGE the Municipality and its employees, council members, officials and officers from all claims, demands, costs, expenses, actions and causes of action in respect of death, injury, loss or damage to my person or property however caused, arising or to arise by reason of my participation as a volunteer for the Municipality.

I FURTHER AGREE to save harmless the Municipality from and against any and all liability arising from or as a result of, my duties as a volunteer for the Municipality.

In order to participate, I HEREBY AGREE to do so at my own risk and understand that I do not have access to Municipal Health Benefits or WSIB.

BY SIGNING this form, I acknowledge having read, understood and agreed to the above waiver, release, and to hold the Municipality harmless.

Signature of Volunteer _____ Date _____

Signature of Witness _____ Date _____