
TO: GENERAL COMMITTEE

SUBJECT: PURCHASE OF SOAPBOX ART PIECE

WARD: ALL

PREPARED BY AND KEY CONTACT: A. DYKE, CULTURE OFFICER, DEVELOPMENT, EXT. 4593

SUBMITTED BY: S. SCHLICHTER, DIRECTOR OF ECONOMIC AND CREATIVE DEVELOPMENT

GENERAL MANAGER APPROVAL: A. MILLER, GENERAL MANAGER OF INFRASTRUCTURE AND GROWTH MANAGEMENT

CHIEF ADMINISTRATIVE OFFICER APPROVAL: M. PROWSE, CHIEF ADMINISTRATIVE OFFICER

RECOMMENDED MOTION

1. That the Mayor and City Clerk be authorized to execute an agreement with artist team Chris Hanson and Hendrika Sonnenberg for the purchase of *Soapbox* that has been leased by the City since the Fall of 2017 and installed in the City Hall courtyard.
2. That staff in the Economic and Creative Development and Corporate Facilities Departments be authorized to decide upon placement of permanent interpretive signage about the art piece in the vicinity of the sculpture.
3. That the draft agreement attached as Appendix "A" to Staff Report EDC002-20, be executed with any other terms and conditions deemed necessary by the Director of Economic and Creative Development and in a form acceptable to the Director of Legal Services.

PURPOSE & BACKGROUND

Report Overview

4. The purpose of this Staff Report is to gain Council's authorization for the execution of an agreement for the purchase of the *Soapbox* piece from the artists, for permanent location at the City Hall courtyard.
5. In 2017, in acknowledgement of the 150th anniversary of Confederation, the Barrie Public Art Committee (BPAC) organized a temporary public art exhibition, featuring five art installations by artists from across Canada. In motion 17-G-017 Council approved the installation of temporary public art displays, including *Soapbox*, to make the downtown a destination through interesting public art installations that appeal to residents and visitors, and encourage them to visit public spaces. BPAC chose to profile living contemporary artists with the intention of expanding their audience for public art.
6. Using the existing Public Art reserve budget (\$27,000 in 2017) to leverage Celebrate Ontario funding (\$15,000) as well as generous sponsorship from Pratt Homes (presenting sponsor at \$13,000), the Downtown Barrie Business Association (\$2,000) and Tyger Shark (in-kind value of \$3,100), BPAC secured leases of various lengths on five pieces of public art for the exhibition,

which ran from June to September of 2017. The exhibition included events, guided walking tours and self-guided experiences.

7. Following the exhibition, BPAC saw an opportunity to maintain one piece of art to serve as a legacy piece for the project. *Soapbox* by Chris Hanson and Hendrika Sonnenberg was chosen for its durability, ease of maintenance, and because it represents the fundamental Canadian right to freedom of speech. BPAC have been leasing the piece from the artists for \$5,000 per year since the fall of 2017 while a suitable installation site was being sought. Funds come from the existing Public Art Reserve. The appraisal for *Soapbox* can be found in Appendix "B".
8. Hanson and Sonnenberg are an artist duo whose work draws upon the practical use of everyday objects and brings a sense of whimsy to the ordinary. Both graduates of Nova Scotia College of Art and Design, they reside in Minden, and exhibit internationally. Their works of public art can be found on the Halifax Pier and in Socrates Sculpture Park in Long Island City, New York.
9. The courtyard out front of City Hall was selected because it fits with the theme of the art piece, there are no other outdoor art installations at the site and it offers more protections from the elements and other variables. The location also allows residents and visitors to City Hall's Circle at the Centre to use Soapbox as a seat for tying up ice skates or for watching happenings in the space. A recommendation by the Facilities Department resulted in the current installation site on the east side of the main entrance to City Hall from the courtyard. The piece was successfully installed in the fall of 2019 following repaving of the courtyard.
10. BPAC, the artist team and staff in the Corporate Facilities and Economic and Creative Development Departments are pleased with the installation location and scale of the piece to its surroundings. BPAC would now like to enter into an agreement to lease to own the piece.
11. In order to protect the piece, high-visibility markers have been installed into the existing concrete footing on site. The markers are removable with caps to prevent debris from clogging the marker insets so that individuals may still access the piece in the winter, but snow removal equipment will not hit it when the snow is taller than the piece is.

ANALYSIS

12. Council authorized an allocation of \$25,000 to the Public Art Committee in 2015 for the purpose of creating opportunities for the permanent placement of Art in the Public Sphere. The public art reserve receives an annual increase of 10% on the previous year's budget amount for ten years. The funds are held in public art reserve account 1057-560000 and are intended for public art projects. (Amendment to motion 12-G-52).
13. The artwork is high quality, functional and durable, and unlike any other pieces of public art found in Barrie.
14. The piece serves to create sense of place at City Hall, encouraging residents and visitors to participate in civic activities, enjoy events and leisure opportunities and take pride in public spaces.

ENVIRONMENTAL AND CLIMATE CHANGE MATTERS

15. There are no environmental or climate change matters directly related to the recommendation.

ALTERNATIVES

16. The following alternatives are available for consideration by General Committee:

Alternative #1

General Committee could recommend that the artwork continue to be leased.

This alternative is not recommended as there is a shortage of public art in Barrie's permanent collection. Placing engaging art in our public sphere on a permanent basis encourages the development of sense of place for Barrie and its residents.

Alternative #2

General Committee could recommend changes to the terms and conditions of the agreement with the artists.

While this alternative is available, it is not recommended. Staff consulted with other municipalities regarding the form of agreement. Staff, the Public Art Committee and the artists have carefully negotiated terms and conditions to be included in the agreement.

FINANCIAL

17. The value of the piece is \$30,000. The artists agreed to lease the piece to the City for \$5,000/year with payments contributing to the purchase, should a suitable permanent location for the piece be realized. Thus far, the City has paid \$15,000 in lease payments with the next payment due in October 2020.
18. The 2020 business plan includes continued growth to the public art reserve, with the proposed 2020 payment fitting well within that budget. Expenditures related to the recommendation are included in account 1057-560000.

LINKAGE TO 2018-2022 COUNCIL STRATEGIC PLAN

19. The recommendation(s) included in this staff report support the following goals identified in the 2018-2022 Strategic Plan:
- Building Strong Neighbourhoods
20. The sculpture represents embracing the creative community's visual expression through artwork.

APPENDIX "A"

LEASE TO OWN ARTWORK AGREEMENT

Dated this ___ day of _____, 2020

Between:

THE CORPORATION OF THE CITY OF BARRIE ("Barrie")

and

CHRIS HANSON AND HENDRIKA SONNENBERG (the "Artists")

BACKGROUND:

1. The Artists are professional artists.
2. The Barrie Public Art Committee, a committee of the City of Barrie, wishes to retain an original work of art, *Soapbox*, ("the Artwork") currently on loan from the Artists.
3. The Artwork was selected as part of a temporary exhibition of public art hosted in Barrie in 2017.
4. The Artists has agreed to provide the Artwork for \$30,000 to be paid in annual increments of \$5,000.

In consideration of the mutual covenants and agreements herein contained and subject to the terms and conditions herein set out, the parties agree with each other as follows:

1. PRICE

The purchase price to be paid to the Artists by Barrie for the Artwork as completed, inclusive of all taxes, is provided in Appendix 'A' to this agreement, which includes a payment schedule.

2. INSTALLATION

The Artwork was installed by Barrie in the courtyard in front of Barrie City Hall in 2019.

3. ARTIST'S COVENANTS

The Artists shall provide Barrie with information regarding appropriate care, maintenance and conservation of the Artwork.

4. CITY COVENANTS

- 4.1. Barrie agrees to pay the Artists the funds due and in the instalments provided by this Agreement.
- 4.2. The artwork will, upon final payment to the artists per the schedule in Appendix A, be property of the City.
- 4.3. Barrie shall be responsible for reasonable maintenance of the Artwork for a reasonable period of time. In the event of any damage to the Artwork Barrie shall endeavour to notify the Artists, and to allow the Artists, if reasonably available, to make repairs thereto at a fee to be negotiated on a reasonable basis.
- 4.4. The City will not alter the Artwork without the consent of the Artist, which consent will not be unreasonably withheld.

- 4.5. The City has the right to relocate and display the Artwork in the City's sole discretion without payment to the Artist of an exhibition fee. Relocating the work would not constitute a breach of any other term of the Agreement by the City nor constitute a violation of the Artist's moral rights.
- 4.6. The City will, at its own expense, install a plaque at the Site stating the name of the Artist, the name of the Artwork, date of the Artwork and the ownership of the Artwork being that of the collection of the City of Barrie.

5. INTELLECTUAL PROPERTY

- 5.1. The Artists warrant that the Artwork is original to the Artists and does not violate any copyright, patent, trademark or any other intellectual property of any other person. The Artists shall indemnify Barrie against any loss suffered as a result of breach of this warranty.
- 5.2. Copyright of the Artwork shall remain with the Artists.
- 5.3. The Artists hereby assign their exhibition rights as provided in Section 3(1) (g) of the Copyright Act, 1988 ("Exhibition Rights") to Barrie.
- 5.4. The Artists agree that the use of the Artwork as is envisaged in this Agreement in no way interferes with or violates any moral rights of the Artists related to the Artwork.
- 5.5. The Artists grant to Barrie a perpetual and irrevocable licence without fee to produce photographs and two dimensional reproductions of the Artwork for promotion or publicity of Barrie.
- 5.6. Barrie shall also have the right and licence to commercial exploitation of the Artwork and images thereof for a royalty fee payable upon terms to be negotiated with the Artist in good faith and with the Artists' approval of the quality of the reproduction.

6. INDEMNITY

6.1 The Artist shall indemnify and hold harmless the City (and its affiliates, elected officials, directors, officers, employees and agents) (collectively, the "Indemnified Parties") from and against all actions, suits, claims, demands, liens, proceedings and judgments which may be brought against or made upon the Indemnified Parties, and against all liabilities, damages, losses, costs, charges and expenses (including legal expenses) which may be incurred, sustained or suffered by the Indemnified Parties, resulting from or arising out of the infringement (actual or alleged) by the Artwork of the intellectual property rights of any person, or the personal injury, acts or omissions of the Artist (its subcontractors, agents or employees) in connection with the Agreement or the performance of the services.

6.2 The City shall indemnify the Artist for, losses, claims, demands, actions or causes of action, damages, costs and/or expenses (including reasonable lawyer fees) incurred by the Artist as a result of (i) the City's negligence in failing to maintain the Artwork in accordance with the Artist's maintenance manual and in accordance with this Agreement, or (ii) any injury to or death of any person or damage to or loss of any property, arising directly out of or incident to the existence, use, condition or maintenance of the Artwork or any activity, work or occurrence thereon, provided that such injury, loss or damage is not due to the negligence of the Artist, the infringement (actual or alleged) by the Artwork of the intellectual property rights of any person, or acts or omissions of the Artist (its subcontractors, agents or employees) in connection with the Agreement or the performance of the services.

7. PRIVACY

The Artists agree and acknowledge that the City is bound by the Municipal Freedom of Information and Protection of Privacy Act, R.S.O. 1990, c. M.56, as amended, and any other Provincial or Federal privacy legislation that may be in effect during the term of the Agreement (collectively "Privacy Legislation"). The Artists agree to be bound by the Privacy Legislation, and agree that it shall not directly or indirectly disclose, distribute or use any Personal Information provided to it by the City,

without obtaining the prior written consent of the City. "Personal Information" means information which relates to an individual and allows that individual to be identified, and includes any information defined from time to time as "personal information" under any Privacy Legislation.

8. GENERAL PROVISIONS

This agreement shall be binding upon and shall benefit the Artists and Artists' heirs, executors, administrators, successors and assigns as the case may be.

Any written notice given pursuant to this agreement is sufficiently given if delivered in person, sent successfully by fax or email, or sent by ordinary prepaid mail addressed as follows:

(a) In the case of the Artists, to:

Tel:

Mail:

Email:

(b) In the case of Barrie, to:

Business and Creative Development Department

(705) 739-4220, ext. 4593

In person: 9th Floor, City Hall – 70 Collier Street, Barrie, ON

By mail: PO Box 400, Barrie, ON L4M 4T5

Or such other address as either party may advise the other in the same manner as provided in this paragraph.

If any notice or payment required by this agreement is sent by ordinary prepaid mail, addressed as above, the time of giving such notice shall be deemed to be the third business day after the date of mailing.

This agreement constitutes the entire agreement between the Artists and Barrie and no other agreement, written or verbal respecting the subject matter of this agreement shall be deemed to exist or bind either party.

This agreement will be governed by and construed pursuant to the laws of the Province of Ontario and the parties agree that that the venue with respect to any dispute will be in Barrie, Ontario.



IN WITNESS WHEREOF the Artists and Barrie hereby acknowledge that they have read, understand and agree to the terms and conditions set out in this agreement.

Signature of Artist: _____

Name of Artist:

Signature of Artist: _____

Name of Artist:

THE CORPORATON OF THE CITY OF BARRIE

Per: _____

Name:

Title:

I have the authority to bind the corporation.

Appendix 'A'
(LEASE TO OWN ARTWORK AGREEMENT)

PAYMENT SCHEDULE

Artist: Chris Hanson and Hendrika Sonnenberg

Place of Installation: Barrie City Hall, 70 Collier Street, Barrie, ON

Price: \$30,000.00 (inclusive of all taxes)

Payment Schedule:

October 2017	\$5,000.00 (paid)
February 2019	\$5,000.00 (paid)
October 2019	\$5,000.00 (paid)
October 2020	\$5,000.00
October 2021	\$5,000.00
October 2022	\$5,000.00

APPENDIX "B"
(LEASE TO OWN ARTWORK AGREEMENT)

Petzel

September 15, 2017

To Whom It May Concern:

Per your request regarding an appraisal for the artwork noted herein for insurance purposes, it should be valued as indicated:

Chris Hanson and Hendrika Sonnenberg Soapbox
2006
Painted cast aluminum
14 x 12 x 16 inches each (3)
\$30,000



This appraisal, which is made solely for insurance purposes, represents our estimate of the probable cost to replace the artwork with a similar artwork, to the extent that this may be possible.

This is not an appraisal of the fair market value of the artwork, as that term is used in the Internal Revenue Code. Pursuant to the rules of the Art Dealers Association of America, Inc., this appraisal is made with the specific understanding, and on the condition that, it is not used by you or any other person as basis for an appraisal for tax purposes. Full appraisals may be obtained through the Art Dealers Association of America, Inc., 575 Madison Avenue, New York, NY 10022. Petzel Gallery is a member of the Art Dealers Association of America, Inc.

Kind regards,





Samantha Tsao Partner

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