

REPORT NO. 33 of the
**SOCIAL DEVELOPMENT,
HEALTH & CULTURE STANDING COMMITTEE**
of its meeting held September 14, 2011

Present: **Councillor Al Maghnieh, Chair**
Councillor Alan Halberstadt
Councillor Percy Hatfield
Councillor Ron Jones

Regrets: **Councillor Ed Sleiman** (city business)

That the following recommendation of the Social Development, Health and Culture Standing Committee **BE APPROVED** as follows:

Moved by Councillor Hatfield, seconded by Councillor Jones,

THAT the agreement between the City of Windsor and the Rotary Club of Windsor (1918) for the Rotary Club of Windsor (1918) to stage the Art in the Park Festival **BE RENEWED** for the years 2010 to 2014 inclusive subject to the following conditions:

- a. Forty percent (40%) of the net revenue of the festival, including revenue from all food and beverage concession sales, all gate admission receipts, and all artisan admission fees, will accrue to the Willistead Manor Capital Restoration Reserve Fund and will be paid to the Willistead Manor Capital Restoration Reserve Fund no later than November 1st of each year of the festival along with an audited financial statement for each year, with the remaining sixty percent (60%) of the net revenue being retained by the Rotary Club of Windsor (1918) for use for that organization's charitable purposes.
- b. Any restricted grant monies secured by the Rotary Club of Windsor (1918), which require exclusion of the municipality, will remain the property of the Rotary Club of Windsor (1918) for use for that organization's charitable purposes.
- c. The Rotary Club of Windsor (1918) **BE PERMITTED** during Art in the Park to levy an admission charge at its discretion on individuals entering Willistead Park during the Art in the Park event.
- d. The detailed requirements and special conditions pertaining to Art in the Park will be reviewed with the Executive Director Recreation and Culture on an annual basis and reported to the CAO as a separate agreement; and
- e. The costs incurred by city departments in support of the event will be paid to each department upon presentation of a detailed invoice with the City expenses being deducted from the gross revenues derived from the event.

AND THAT the Agreement **BE ASSIGNED** to the Rotary Club of Windsor Foundation Fund, subject to all the terms and conditions contained herein, or as may be amended from time to time, and as long as the Rotary Club of Windsor (1918) is not relieved from its

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obligations under the Agreement as renewed and amended pursuant to this recommendation.

Carried.

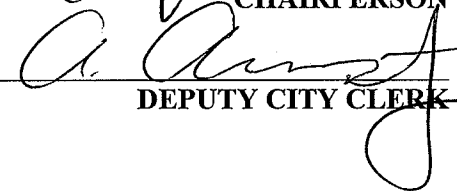
Clerk's Note: The report of the Executive Director of Recreation and Culture entitled "Joint Use Renewal Agreement between the City of Windsor and Rotary Club of Windsor 1918 for Art in the Park" dated July 25, 2011 is attached for information.

LiveLink #15438

File SR/11168



CHAIRPERSON



DEPUTY CITY CLERK

NOTIFICATION				
Name	Address	Email Address	Telephone	FAX
Shari Cunningham Rotary Club of Windsor (1918)	7911 Forest Glade Drive Windsor, ON N8T 3R7	info@rotary1918.com	519-564-2519	



THE CORPORATION OF THE CITY OF WINDSOR
Social Development, Health and Culture Standing Committee-
Administrative Report



MISSION STATEMENT:

"The City of Windsor, with the involvement of its citizens, will deliver effective and responsive municipal services, and will mobilize innovative community partnerships"

LiveLink REPORT #: 15438 SR/11168	Report Date: July 25, 2011
Author's Name: Jan Wilson	Date to Standing Committee: September 14, 2011
Author's Phone: 519 253-2300 ext. 6721	Classification #:
Author's E-mail: jwilson@city.windsor.on.ca	

To: Social Development, Health and Culture Standing Committee

Subject: Joint Use Renewal Agreement between the City of Windsor and Rotary Club of Windsor 1918 for Art in the Park

P&R-11-095

1. RECOMMENDATION: City Wide: _____ Ward(s): 4

THAT the agreement between the City of Windsor and the Rotary Club of Windsor (1918) for the Rotary Club of Windsor (1918) to stage the Art in the Park Festival **BE RENEWED** for the years 2010 to 2014 inclusive subject to the following conditions:

- a. Forty percent (40%) of the net revenue of the festival, including revenue from all food and beverage concession sales, all gate admission receipts, and all artisan admission fees, will accrue to the Willistead Manor Capital Restoration Reserve Fund and will be paid to the Willistead Manor Capital Restoration Reserve Fund no later than November 1st of each year of the festival along with an audited financial statement for each year, with the remaining sixty percent (60%) of the net revenue being retained by the Rotary Club of Windsor (1918) for use for that organization's charitable purposes.
- b. Any restricted grant monies secured by the Rotary Club of Windsor (1918), which require exclusion of the municipality, will remain the property of the Rotary Club of Windsor (1918) for use for that organization's charitable purposes.
- c. The Rotary Club of Windsor (1918) **BE PERMITTED** during Art in the Park to levy an admission charge at its discretion on individuals entering Willistead Park during the Art in the Park event.
- d. The detailed requirements and special conditions pertaining to Art in the Park will be reviewed with the Executive Director Recreation and Culture on an annual basis and reported to the CAO as a separate agreement; and

- e. The costs incurred by city departments in support of the event will be paid to each department upon presentation of a detailed invoice with the City expenses being deducted from the gross revenues derived from the event.

AND THAT the Agreement **BE ASSIGNED** to the Rotary Club of Windsor Foundation Fund, subject to all the terms and conditions contained herein, or as may be amended from time to time, and as long as the Rotary Club of Windsor (1918) is not relieved from its obligations under the Agreement as renewed and amended pursuant to this recommendation.

EXECUTIVE SUMMARY:

N/A

2. BACKGROUND:

The Rotary Club of Windsor (1918) has staged Art in the Park in Willistead Park for more than 30 years. The City of Windsor enters into an agreement to detail the terms and conditions including revenue sharing arrangements that are renewed every five years. Attached as Appendix A is the previous agreement with the Club that expired at the end of 2009. The terms and conditions of that agreement have continued with the production of the 2010 and 2011 Art in the Park events. The 2010 event contributed just under \$22,000 to the Willistead Restoration Fund, and has generated over \$1 million towards Willistead restoration projects since the event started in 1978.

3. DISCUSSION:

Administration had met with representatives of the Rotary Club of Windsor (1918) who agreed that the split of proceeds from the event would remain the same as the previous agreement, with 40% of the net revenue accruing to the Willistead Manor Capital Restoration Reserve Fund, and 60% of the net revenue accruing to the Rotary Club of Windsor (1918) for the club's charitable purposes. The Delegation of Authority (DOA) By-law allows the renewal of joint use agreements to be approved by the Chief Administrative Officer provided the terms and conditions remain the same. The renewal of the agreement originally proceeded through the DOA process. However, in the writing of the renewal agreement, it was noted that there were some adjustments to the terms and conditions from the previous agreement, and it was decided that the renewal would require City Council approval.

Aside from housekeeping changes such as the term (2010-2014), the length of the event (now three days) and administrative title changes, the Rotary Club of Windsor (1918) have requested an adjustment to two of the existing paragraphs, and the addition of a new paragraph. The details are as follows:

Paragraph 2 of the previous agreement states:

"The Rotary is granted permission by the Corporation to levy an admission charge to the Park of FIVE DOLLARS (\$5.00) (or less if purchased in advance) per person provided that admission shall be FREE per child under such an age the Rotary deems appropriate, subject to the approval of the Executive Director of Recreation and Executive Director of Hospitality and Facility Management of the Corporation, or other such persons as may be designated by the Council of the Corporation from time to time, for the two (2) days of the Festival in 2005."

Paragraph 22 of the previous agreement states:

"Instead of the admission charges which the Rotary may levy under paragraph 2 hereof, for the 2006 through 2009 Festivals, the Rotary may levy such admission charges as it and the Corporation shall, by separate indenture, mutually agree upon, no later than twenty-one (21) days prior to the respective openings. If however, the parties hereto are unable to agree upon such admission charges, then the applicable admission charges relative to the immediately preceding annual Festival shall apply."

The Club has requested that Paragraphs 2 and 22 be deleted in their entirety and replaced with the following:

"The Rotary may, at its discretion, levy an admission charge on individuals entering the Park during the Festival."

In previous years, the Corporation has been made aware of the annual admission charge, but has never disagreed or requested a change to the annual fee. There have been some adjustments to the admission fee over the years, however the Club has attempted to keep the admission fees affordable to encourage attendance at the family event while addressing increasing costs to produce the festival. The Club has suggested that these paragraphs as currently written are not necessary as the Corporation has agreed to the fees each year. In principle, Administration has no objection to this change, however Council is cautioned that the Corporation would have no say to the setting of fees in future years should this change be accepted. If Council wishes to maintain a role for the Corporation in the setting of the fees, an alternate clause could be inserted as follows:

"The Rotary may, at its discretion, levy an admission charge on individuals entering the Park during the Festival, as it and the Corporation shall mutually agree upon."

The Club has requested the addition of a new paragraph within the agreement as follows:

"Any restricted grant monies secured by the Rotary, which requires exclusion of the municipality, will remain the property of the Rotary for use for that organization's charitable purposes."

In order to continue to enhance the Art in the Park festival, and to keep the event affordable, the Rotary Club of Windsor (1918) has sought alternate sources of revenue such as sponsorship and grant opportunities. In recent years, the provincial and federal governments have introduced grant funding to support festivals, events, and other cultural activities. There are differing eligibility requirements for various grants, some of which exclude municipalities from participating. With the unique partnership between the City and the Rotary Club of Windsor (1918) for this event, the Club expressed concern regarding their eligibility for those grants that exclude municipalities from benefitting from the funding. As the revenue sharing is based on the net proceeds, there may be occasions when this revenue source would need to be excluded from the calculation. Administration has no objection to the addition of this clause, provided that it applies to only those funding sources that specifically restrict the municipalities from participating. Council may wish to strengthen the new clause with alternative wording as follows:

"Any restricted grant monies secured by the Rotary, which requires exclusion of the municipality, where the original grant requirements specifically indicate that municipalities are not eligible to receive the funding will remain the property of the Rotary for use for that organization's charitable purposes."

As the final matter, Rotary has requested that the agreement be assigned from the Club to their Foundation. The Foundation is composed of members of the Club, and the directors of the Foundation are all members of the Club. The Foundation is independently incorporated, but both are charitable organizations for income tax purposes. All monies raised by the Club from special events such as Art in the Park and Children's Fest, are deposited with the Foundation for disbursement in accordance with various agreements. The request to include the Foundation on the agreement was on the advice of Price Waterhouse Coopers, which audits both the Club and the Foundation, as an issue of disclosure.

There does not appear to be any detriment to the City in permitting the assignment and formatting the agreement as a renewal and assignment ensures that all parties are on the same page. Furthermore, there is a likely benefit to the City in that it is more likely that the Foundation would have money (rather than the Club) should there ever be cause to proceed against them for some sort of breach or default.

4. FINANCIAL MATTERS:

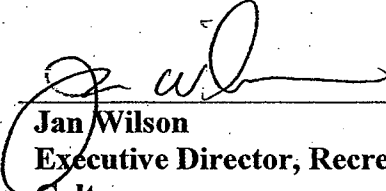
The City benefits from its partnership with the Rotary Club of Windsor (1918) through the proceeds derived from the annual event. The proceeds are based on net revenues, with expenses incurred by the corporation covered through the gross revenues. Requests for services and equipment from the city are charged at the current rate, and the Club is invoiced at the completion of the event. The Club is required to submit audited financial statements and the city's portion of the net revenue by November 1st of each year.

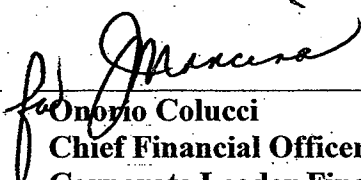
5. CONSULTATIONS:

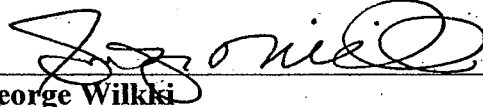
Administration has consulted with representatives of Rotary Club of Windsor (1918) for the renewal of the agreement. Representatives from Administration include the Recreation and Culture, Finance and Legal Departments.

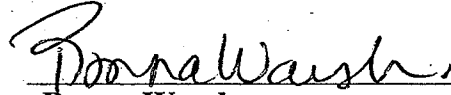
6. CONCLUSION:

The partnership with the Rotary Club (1918) has been a positive one for the City, the Club, and the community. Funds raised from this very popular event has allowed the City to continue the restoration of the Willistead Manor as a premiere heritage facility, and has allowed the Club to contribute to numerous worthwhile charitable clauses over the years which has direct impact on the community.


Jan Wilson
Executive Director, Recreation and Culture


Onorio Colucci
Chief Financial Officer/City Treasurer and Corporate Leader Finance and Technology


George Wilkki
City Solicitor and Corporate Leader Economic Development and Public Safety


Ronna Warsh
Community Development and Health Commissioner and Corporate Leader Social Development, Health, Recreation and Culture

JW:hg

APPENDICES:
Appendix A – Current Agreement between the City of Windsor and Rotary Club of Windsor (1918)

DEPARTMENTS/OTHERS CONSULTED:
Name: Cheryl Glassford
Phone #: 519 255-6100 ext. 1774

Name: Valerie Clifford
Phone #: 519 253-2300 ext. 6937

NOTIFICATION :

Name	Address	Email Address	Telephone	FAX
Shari Cunningham Rotary Club of Windsor (1918)	7911 Forest Glade Dr Windsor, ON N8T 3R7	info@rotary1918.com	519-564-2519	



Appendix A

THIS AGREEMENT made in triplicate this 26th day of February, 2005.

BETWEEN:

THE CORPORATION OF THE CITY OF WINDSOR,
Hereinafter "the CORPORATION"

- and -

THE ROTARY CLUB OF WINDSOR (1818),
Hereinafter "the ROTARY"

WHEREAS the Rotary has applied to the Corporation for permission to use and occupy portions of a public park in the City of Windsor, known as Willistead Park (the "Park") on a single weekend per year in the years 2005 to 2009, inclusive, for the purpose of staging "ART IN THE PARK" Festivals (the "Festivals") on an annual basis;

AND WHEREAS the Chief Administrative Officer has granted the use of the Park to the Rotary, pursuant to Section I, Schedule "A" of the Joint Use Agreements of the Delegation of Authority By-law Number 389-2004, and CAO33, passed on February 26, 2005, upon the terms and conditions hereinafter set out.

NOW THEREFORE this Agreement witnesseth that:

1. The Corporation hereby grants permission to the Rotary to use and occupy such portion or portions of the Park as may be approved by the Executive Director of Recreation and Executive Director of Hospitality and Facility Management of the Corporation, or other such persons as may be designated by Council of the Corporation from time to time, on such weekend as may be approved by the said Executive Directors in each of the years 2005 to 2009, both inclusive, for the purpose of staging the respective annual Festivals.
2. The Rotary is granted permission by the Corporation to levy an admission charge to the Park of FIVE DOLLARS (\$5.00) (or less if purchased in advance) per person provided that admission shall be FREE per child under such an age the Rotary deems

appropriate, subject to the approval of the Executive Director of Recreation and Executive Director of Hospitality and Facility Management of the Corporation, or other such persons as may be designated by Council of the Corporation from time to time, for the two (2) days of the Festival in 2005.

3. The Rotary covenants and agrees not to use or permit the use of the public address system after 11:45 p.m., Windsor local time, on any day of the respective Festivals.

4. The Rotary covenants and agrees to pay all utility charges, including water and hydro, that are properly attributable to the use of the said facilities by the Rotary.

5. The Rotary further covenants and agrees to use such portion or portions of the Park as are designated to it for the following sole and exclusive purpose, and for no other purpose whatsoever, namely the Rotary staging the Festivals in the years of 2005 through to, and including, 2009.

6. The Rotary further covenants and agrees not to erect, or permit to be erected, or located, any refreshment booths or other concessions in any location or area other than the area or areas designated or approved by the said Executive Directors.

7. The Rotary shall indemnify and save harmless the Corporation, its servants and agents, from and against all loss, costs or damages which it may suffer or be put to and from and against all claims or actions which may be made or brought against the Corporation, its servants and agents, by reason of the staging of any of the Festivals or resulting therefrom except for the negligent acts of the Corporation, or the Corporation's servants or agents, in the staging of the Festivals or resulting therefrom.

8. The Rotary covenants and agrees to provide and maintain public liability and property damages insurance containing endorsements naming the Corporation as an additional named insured, together with a cross liability clause, in the amount of TWO MILLION DOLLARS (\$2,000,000.00) satisfactory in form and content to the Risk Management Coordinator and to file a certified copy of this insurance policy with the City Clerk prior to each year's Festival. The said insurance policy shall cover the period

from at least 12:01 a.m. on the first day of entry into the Park in each year's Festival up to 11:59 p.m. on the corresponding day that the Rotary vacates the Park.

9. The Rotary further covenants and agrees to conduct the staging of the Festivals in a manner satisfactory to the said Executive Directors and to comply with all lawful instructions of the said Executive Directors and all regulations respecting the use and occupation of the Park.

10. The Rotary covenants and agrees to keep such portion or portions of the Park as are designated to its use for the annual Festivals, in a clean and sanitary condition to the satisfaction of the said Executive Directors and to leave the Park in the same condition it was on the respective dates the Rotary went into occupation thereof, provided, however, that if the Rotary does not so leave the Park in a clean and sanitary condition to the satisfaction of the said Executive Directors, then at the expiry of twenty-four (24) hours next following the conclusion of the respective staging of the Festivals, the Corporation may undertake the work necessary to clean such portion or portions of the Park as are used by the Rotary and the cost thereof shall become due and payable upon the production by the Corporation of an itemized account of the labour and material required to so clean the Park, which costs shall be deducted from the gross revenues derived from the respective Festival.

11. The Rotary further covenants and agrees that if it requests the said Executive Directors to perform any additional work in connection with the preparation of the Park or the cleaning up of the Park during the said Festivals, prior to such work being done, the Rotary shall make such request in writing and shall further agree to pay the costs of such work in accordance with written estimates prepared by the said Executive Directors and the cost of such work shall be deducted from the gross revenues derived from the respective Festival.

12. The Rotary further covenants and agrees to comply with all police, fire, safety and sanitary laws, by-laws and regulations imposed by the Corporation, Windsor Police Services Board or by any Provincial or Federal authority, or made by fire insurance underwriters and will observe and obey the regulations and other requirements.

governing the Rotary's staging of the Festivals with respect to the use of such portion or portions of the Park as are designated to its use and hereby saves the Corporation harmless from and indemnifies the Corporation against all damages, charges, actions, costs for any non-compliance or violation of any of the said laws and regulations or requirements or liability for costs for damages or injury to persons or property resulting therefrom.

13. The Rotary further covenants and agrees not to assign this Agreement or suffer any use of such portion or portions without the prior written consent of the Corporation; provided, however, that the subletting of concessions incidental to the operation of the respective annual Festivals shall be permitted without written consent.

14. It is understood by and between the Parties hereto that the Corporation shall not be liable for any damages to any property of the Rotary, nor shall the Corporation be liable to respond for any loss of property from or on the said portion or portions of the Park however occurring, or for any damage done to any property or other effects of the Rotary or its employees or agents.

15. If in the opinion of the Council of the Corporation it is advisable in the interest of public safety to terminate this Agreement, the said Council may, in its discretion, terminate this Agreement and the permission hereunder granted at any time, in which event the Rotary hereby expressly waives any claim for damage or compensation should the said permission and/or this Agreement be so terminated, and the Corporation's share of the net revenue payable pursuant to paragraph 21 hereof shall be calculated accordingly.

16. The Rotary further covenants and agrees to provide, at its entire expense, portable toilet facilities as may be required by the Medical Officer of Health of the Metro Windsor/Essex County Health Unit.

17. The Rotary further covenants and agrees to provide, at its entire expense, security personnel.

18. The Rotary further covenants and agrees to remunerate to the Parks Department of the Corporation all material costs as they pertain to the utilization of picnic tables, garbage containers, snow fencing, staging, etc., and the cost of such work shall be deducted from the gross revenues derived from the respective Festival.

19. The Rotary covenants and agrees to obtain necessary inspection and approvals from Windsor Utilities prior to arranging electrical hook-ups to the toilet/trailers.

20. The Rotary covenants and agrees to obtain all utility line locates (Bell Canada, Union Gas, Utilities, Water, Hydro and all in-house lines).

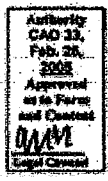
21. The Rotary further covenants and agrees that forty percent (40%) of the net revenue of the annual Festival, including revenues from all concessions and activities, shall accrue to and for the benefit and use of the Corporation [preferable to Willistead as set out in CAO33, approved on February 26, 2005], which forty percent (40%) portion shall be remitted and paid to the Corporation by the Rotary no later than the 1st day of November in each year of the Festival, it being recognized that the remaining sixty percent (60%) of the net revenue shall be retained by the Rotary for use in its charitable purposes. Each annual payment to the Corporation shall be accompanied by an audited financial statement. For the purposes hereof, any amounts chargeable against the Rotary under paragraphs 10, 11 and/or 18, shall be paid to each department upon presentation of a detailed invoice with these costs being deducted from the gross revenues derived from the respective Festival. Provided, however, that nothing herein shall create or be deemed to create any partnership, agency or like relationship.

22. Instead of the admission charges which the Rotary may levy under paragraph 2 hereof, for the 2006 through 2009 Festivals, the Rotary may levy such admission charges as it and the Corporation shall, by separate indenture, mutually agree upon, no later than twenty-one (21) days prior to the respective Festival openings. If, however, the parties hereto are unable to agree upon such admission charges, then the applicable admission charges relative to the immediately preceding annual Festival shall apply.

23. The Rotary agrees that the detailed requirements and special conditions pertaining to the Festivals will be reviewed with the Executive Director of Recreation and the Executive Director of Hospitality of the Corporation, and reported to the Chief Administrative Officer as a separate agreement, on an annual basis, no later than twenty-one (21) days prior to the respective Festival openings. If, however, the parties hereto are unable to agree upon such detailed requirements and special conditions, then the applicable detailed requirements and special conditions relative to the immediately preceding annual Festival shall apply.

IN WITNESS WHEREOF the Parties have herunto affixed their corporate seals duly attested by the hands of their proper signing officers in that behalf respectively.

THE CORPORATION OF THE CITY OF WINDSOR



[Signature]
 John Skorobogatc, Chief Administrative Officer

[Signature]
 Brenda Andreatta, Clerk

THE ROTARY CLUB OF WINDSOR (1918)

For: *[Signature]*
 Name: John H. [unclear]
 Capacity: President
 I have the authority to bind
 the Rotary Club of Windsor (1918)