

Waterloo Historical Society By-Law 1:

A by-law relating generally to the transaction of the affairs of the Waterloo Historical Society.

Established: June 14, 1977

Effective: September 4, 2012

Be it enacted as a by-law of the Waterloo Historical Society as follows:

1. **HEAD OFFICE**

The Head Office of the Society shall be in the Regional Municipality of Waterloo, in the Province of Ontario, and at such place therein as the Board of Directors may from time to time determine.

2. **SEAL**

The seal, an impression whereof is stamped in the margin hereof, shall be the Corporate seal of the Corporation.

3. **BOARD OF DIRECTORS: Officers – Ex officio - Directors**

The affairs of the Society shall be managed by a Board of Directors, herein after called the Board. The Board shall be comprised of officers who are *ex officio* members -- the President, Immediate Past President, First Vice-President, Second Vice-President, Secretary, Treasurer – and directors (including an archivist [see Section 6 below]). Each member of the Board must be a member in good standing of the Society. The number of directors on the Board shall be determined upon the recommendation of the Board.

3.1 **ELECTIONS**

Directors shall be nominated by the Board or by one of the members of the Society. Directors and officers shall be elected to serve for a term of two (2) years, save that with respect to such members to be first elected or appointed and in order to effect approximately equal annual rotation of office. The Board will determine, and select, in such manner as it shall determine and prescribe, a number thereof who shall serve for a period of one (1) year, and a number thereof who shall serve for a period of two (2) years.

3.2 **VACANCIES**

Vacancies on the Board, however caused, may so long as a quorum of directors remain in office, be filled by the members of the Board from among the qualified members of the Society, if they shall see fit to do so, otherwise such vacancy shall be filled at the next annual meeting of the members or a special meeting called for that purpose. If the number of directors is increased between the terms, a vacancy,

Waterloo Historical Society
c/o Grace Schmidt Room of Local History
Kitchener Public Library
85 Queen Street North
Kitchener ON N2H 2H1

or vacancies to the number of the authorized increase, shall thereby be deemed to have occurred, which may be filled in the manner above provided.

3.3 QUORUM

A majority of the members of the Board shall form a quorum for the transaction of business.

3.4 BOARD MEETINGS

Except as otherwise required by law, the Board may hold its meetings at such place or places as it may from time to time determine. A Board meeting may also be held, without notice, immediately following the annual meeting of the Society. The Board may consider or transact any business either special or general at any meeting of the Board, with the exception of approving items involving major projects or revisions to the constitution which shall be dealt with at the annual meeting.

3.5 NOTICE

No formal notice of any such meeting shall be necessary if all members of the Board are present, or if those absent have signified their consent to the meeting being held in their absence. Board meetings may be formally called by the President, First Vice-President, Secretary or Treasurer on direction of the President or Vice-President, or by the Secretary on direction in writing of any three members of the Board. Notice of such meeting shall be delivered by telephone or distributed by electronic or other means of communication to each member of the Board not less than two (2) days before the meeting is to take place or shall be mailed to each member of the Board not less than seven (7) days before the meeting is to take place. The statutory declaration of the Secretary or President that notice has been given pursuant to this by-law shall be sufficient and conclusive evidence of the giving of such notice. The Board may appoint a day or days in any month or months for regular meetings at an hour to be named and of such no notice need be sent.

3.6 ERRORS IN NOTICE

No error or omission in giving such notice for a meeting of the Board shall invalidate such meeting or invalidate or make void any proceedings taken or had at such meeting and any Board member may at any time waive notice of any such meeting and may ratify and approve of any or all proceedings taken or had thereat. No error or omission in giving notice of any meeting shall invalidate its proceedings and decisions provided that a quorum is present.

3.7 VOTING

Questions arising at any meeting of the Board shall be decided by the majority of votes. All votes at any such meeting shall be taken by ballot if so demanded by any Board member present, but if no demand be made the vote shall be taken in the usual way by assent or dissent. The President, in case of equality of votes, shall have a second or casting vote. A declaration by the President that a

resolution has been carried and an entry to that effect in the minutes shall be admissible in evidence as prima facie proof of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution.

3.8 **POWERS**

The Board of Directors of the Society may administer the affairs of the Society in all things and make or cause to be made for the Society, in its name, any kind of contract which the Society may lawfully enter into and, save as hereinafter provided, generally, may exercise all such other powers and do all such other acts and things as the Society is by its charter or otherwise authorized to exercise and do. Without in any way derogating from the foregoing, the Board is expressly empowered, from time to time, to buy, sell or accept donations of archival materials, to purchase, lease or otherwise acquire, alienate, sell, exchange or otherwise dispose of any property of the Society, lands, buildings and other property movable or immovable, real or personal, or any right or interest therein owned by the Society, for such consideration and upon such terms and conditions as they may deem advisable.

3.9 **COMMITTEES**

The Board shall appoint any Committee as may be deemed necessary from time to time, and shall appoint a member of the Board to be Chair thereof. The Chair of each Committee shall appoint members to the Committee, as appropriate, from the membership of the Society at large and such Committee members shall be duly authorized by resolution of the Board. Without limiting the generality of any of the foregoing, there shall be the following standing Committees: Publication, Membership, Communications, Plaques and Web Site. The Chair of each Committee may from time to time outline the duties of the Committee provided same are approved by resolution of the Board.

3.10 **REMUNERATION**

Members of the Board shall receive no remuneration for acting as such.

3.11 **GOOD FAITH**

In exercising their powers and performing their duties, every Board member shall act in good faith in the best interest of the Society, and shall comply with the Letters Patent and By-law 1.

3.12 **LIABILITY PROTECTION**

No officer, director, member or employee acting on specific direction of the Board shall be liable for the acts, receipts, neglects or defaults of any other officer, director, member or employee for any loss to the Society through the insufficiency or deficiency of any security in which any funds of the Society may be invested, or from any loss or damage arising from bankruptcy, insolvency or specific act of any person with whom any funds, securities or effects of the Society shall be deposited, or for any loss occasioned by error of judgment or oversight by that officer, director, member or employee, or for any loss, damage

or misfortune whatever which shall ensure in executing an office unless such loss, damage or misfortune should happen through revealed dishonesty or willful neglect.

The Board may purchase and maintain insurance for the benefit of the officers, directors, former directors and officers, and other persons who act and have acted honestly and in good faith on behalf of the Society.

3.13 CONFLICT OF INTEREST

Each Board member who in any way has a direct or indirect interest in a current contract or a proposed contract with the Society, shall declare such interest at a meeting of the Board, and shall not vote on any matter relating to such contract.

4. OFFICERS OF THE SOCIETY

There shall be a President, Immediate Past President, First Vice-President and Second Vice-President, a Secretary, and a Treasurer and such other officers as the Board of Directors may determine by by-law from time to time. All officers of the Society shall be elected by the Board from among its number at the first meeting of the Board after the election of new Board members at the Society's annual meeting or a special meeting called for that purpose. In default of such election the then incumbents, being members of the Board, shall hold office for a further term of two (2) years or until their successors are elected. Should any officer be unable to complete a term the Board should name a successor. If one of the positions is vacant, the Board shall find a candidate to fill the vacancy.

4.1 DUTIES OF THE PRESIDENT

The President shall, when present, preside at all meetings of the members of the Society and the Board of Directors. The President shall also be charged with the general management and supervision of the affairs and operations of the Society. The President shall sign all by-law. During the absence or inability of the President, the duties and powers may be exercised by the First Vice-President, and if the First Vice-President, or such other Director as the Board may from time to time appoint for the purpose, exercises any such duty or power, the absence or inability of the President shall be presumed with reference thereto.

4.2 DUTIES OF SECRETARY

The Secretary shall, when present, record all facts and minutes of all proceedings in the books kept for that purpose. The Secretary shall give all notices required to be given to members and directors and shall be the custodian of the seal of the Corporation and of all books, records, papers, correspondence, contracts and other documents belonging to the Society which the Secretary shall deliver up only when authorized by a resolution of the Board to do so and to such person or persons as may be named in the resolution. The Secretary shall sign all by-laws and the Secretary, or delegate, shall sign all membership certificates. The Secretary shall also perform such other duties as may from time to time be determined by the Board.

4.3 **DUTIES OF TREASURER**

The Treasurer shall keep full and accurate accounts of all receipts and disbursements of the Society in proper books of account. The Treasurer shall also disburse the funds of the Society under the direction of the Board, taking proper vouchers therefore and shall render to the Board at the regular meetings thereof or whenever required an account of all transactions and of the financial position of the Society. The Treasurer shall also perform such other duties as may from time to time be determined by the Board.

4.4 **DUTIES OF OTHER OFFICERS**

The duties of all other officers of the Society shall be such as the terms of their engagement call for or the Board requires of them and without limiting the generality of the foregoing more specifically as follows:

The **First Vice-President** shall assist the President and shall also exercise the duties and powers of the President during the absence or inability of the President. The First Vice-President shall also perform such other duties as may from time to time be determined by the Board.

The **Second Vice-President** shall perform such other duties as may from time to time be determined by the Board.

5. **DUTIES OF DIRECTORS**

The directors shall perform such duties as may from time to time be determined by the Board.

6. **ARCHIVIST**

The Society's archivist shall be a member in good standing of the Society and a member of the Board of Directors. Should the Society's Archivist not be an employee of the Library, and in return for the custody and care of the Waterloo Historical Society collection, the Society will provide the Library with an *ex officio* position on the Society's Board. The appointee shall be nominated by the Kitchener Public Library who shall be the appointing authority. See Appendix A

7. **DUTIES OF COUNCILLORS**

The Board shall from time to time appoint Councillors or Regional representatives for each of the municipalities of the Regional Municipality of Waterloo. It shall be the duty of the Councillors to promote the interest of the Society in the geographical area they represent. Councillors shall answer inquiries or refer same to the Board. Councillors shall be diligent in collecting historical facts, papers and archival materials for the Society. Councillors shall make every effort to attend councillor meetings which may be called by the President from time to time to become informed of the aims and plans of the Society and to convey this information to their constituency. Councillors shall also assist at the general meetings of the Society.

8. **REMOVAL OF OFFICERS OR DIRECTORS**

An officer or Director may be removed from office before the expiration of the term by a vote of at least two-thirds of the votes cast by the members at a special meeting called for that purpose.

9. **EXECUTION OF DOCUMENTS**

Deeds, transfers, licences, contracts and engagements on behalf of the Society shall be signed by either the President or First Vice-President, and by the Secretary, and the Secretary shall affix the seal of the Corporation to such instruments as require the same.

Contracts in the ordinary course of the Society's operations may be entered into on behalf of the Society by the President or First Vice-President, and Secretary or by any other person authorized by the Board.

The President, First Vice-President, Secretary, Treasurer or any one of them, or any person or persons from time to time designated by the Board of Directors may transfer any and all shares, bonds or other securities from time to time standing in the name of the Society in its individual or any other capacity or as trustee or otherwise and may accept in the name and on behalf of the Society transfers of shares, bonds or other securities from time to time transferred to the Society, and may affix the Corporate seal to any such transfers or acceptances of transfers, and may make, execute and deliver under the Corporate seal any and all instruments in writing necessary or proper for such purposes, including the appointment of an attorney or attorneys to make or accept transfers of shares, bonds or other securities on the books of any company or corporation.

Notwithstanding any provisions to the contrary contained in the by-law of the Society, the Board may at any time by resolution direct the manner in which, and the person or persons by whom, any particular instrument, contract or obligations of the Society may or shall be executed.

10. **BOOKS AND RECORDS**

The Board shall see that all necessary books and records of the Society required by the by-law of the Society or by any applicable statute or law are regularly and properly kept.

11. **MEMBERSHIP**

Any person, corporation or institution interested in the objects of the Society and willing to subscribe to its by-law may become a member.

11.1 **CLASSES**

The Society shall be composed of classes of members as determined from time to time by the Board.

11.2 **PRIVILEGES**

Each member in good standing shall be entitled to one vote on each question which may arise at any annual, general or special meeting of the Society. At no time is the member permitted to have voting power at the Board of Directors'

meetings. Members may meet with the Board of Directors subject to the conditions aforesaid at the pleasure of the Board. Each member in good standing is also entitled to one copy of the annual volume, published for the year of membership. Each member shall be informed of admission as a member by the Secretary or delegate.

11.3 DUES

The Secretary or delegate shall notify members of the Society of the dues or fees at any time payable by them and, if the dues or fees at any time payable by them are not paid on or before the annual meeting, the members in default shall thereupon automatically cease to be members of the Society. Any such member may on payment of all unpaid dues or fees be reinstated by payment of said fees.

11.4 MEMBERSHIP YEAR

The membership year shall be from October 1 through September 30.

12. MEETINGS OF MEMBERS

The annual or any general meeting of the members shall normally be held anywhere in the Regional Municipality of Waterloo as the Board may determine and on such day or days as the said Board shall appoint. A general meeting may be held outside of the Region if approved in advance by the Board. At every annual meeting in addition to any other business that may be transacted, the report of the Board of Directors, the financial statements and the report of the independent reviewer shall be presented. Any vacancies on the Board shall be filled. The independent reviewer of the financial statements shall be appointed for the ensuing year and the remuneration of the independent reviewer shall be fixed. The members may consider and transact any business either special or general without any notice thereof at any meeting of the members. The Board or the President or First Vice-President shall have power to call at any time a general meeting of the members of the Society. Notice shall be given of such meeting as to the time and place at least fifteen (15) days prior to such meeting. At such meetings any business may be transacted which the Society at annual or general meetings may transact.

12.1 SPECIAL MEETINGS OF MEMBERS

A special meeting must be called notwithstanding article 11 of this by-law within fifteen (15) days by the President of the Society on receiving a petition signed by at least ten (10) members in good standing of the Society. Notice shall be given of such meeting as to the time and place at least seven (7) days prior to such meeting.

12.2 QUORUM OF MEMBERS

A quorum for the transaction of business at any annual, special or general meeting of members shall be at least twenty (20) members present in person.

12.3 ERROR OR OMISSION IN NOTICE

No error or omission in giving notice for any meeting, or an adjourned meeting, shall invalidate or make void its proceedings and decisions provided that a quorum is present.

12.4 VOTING OF MEMBERS

Subject to the provisions, if any, contained in the Letters Patent of the Society, each member of the Society present shall at all meetings of members be entitled to one vote. No member shall be entitled to vote at meetings of the Society unless the member has paid all dues or fees, if any. At all meetings of members every question shall be decided by a majority of the votes cast by the members present in person unless otherwise required by the by-law of the Society, or by law. Every question shall be decided in the first instance by a show of hands unless a poll be demanded by any member. Upon a show of hands, every member having voting rights shall have one vote, and unless a poll be demanded a declaration by the President that a resolution has been carried or not carried and an entry to that effect in the minutes of the Society shall be admissible in evidence as prima facie proof of the fact without proof of the number or proportion of the votes accorded in favour of or against such resolution. The demand for a poll may be withdrawn, but if a poll be demanded and not withdrawn the question shall be decided by a majority of votes cast by the members present in person and such poll shall be taken in such manner as the President shall direct and the result of such poll be deemed the decision of the Society in general meeting upon the matter in question. In case of an equality of votes at any general meeting, whether upon a show of hands or at a poll, the President shall be entitled to a second or casting vote. All resolutions to be acted upon by the members at any meeting of the members shall be presented to the Secretary in writing before or at the meeting.

13. ADJOURNMENTS

Any meetings of the Society or of the Board may be adjourned to any time and from time to time and such business may be transacted at such adjourned meeting as might have been transacted at the original meeting from which such adjournment took place. No notice shall be required of any such adjournment. Such adjournment may be made notwithstanding that no quorum is present.

14. NOTICE

Whenever under the provisions of the by-law of the Society, notice is required to be given, such notice may be given either personally, electronically, or by other means of communication. For the purpose of sending any notice the address of any member, Director or officer shall be the last address as recorded on the books of the Society.

15. FINANCIAL YEAR

Unless otherwise ordered by the Board of Directors, the fiscal year of the Society shall terminate on the 30th day of September in each year.

16. SIGNING AUTHORITY

All cheques, bills of exchange or other orders for the payment of money, notes or other evidences of indebtedness issued in the name of the Society requires the signatures of two officers or delegates of the Society in such manner as shall from time to time be determined by resolution of the Board and anyone of such officers or delegates may alone endorse notes and drafts for collection on account of the Society, or the same may be endorsed "for collection" or "for deposit" with the bankers of the Society. Any one of such officers or delegates so appointed may arrange, settle, balance and certify all books and accounts between the Society and the Society's bankers and may receive all paid cheques and vouchers and sign all bank forms or settlement of balances and release or verification slips.

17. **DEPOSIT OF SECURITIES FOR SAFEKEEPING**

The securities of the Society shall be deposited for safekeeping with one or more bankers, trust companies or other financial institutions to be selected by the Board. Any and all securities so deposited may be withdrawn, from time to time, only upon the written order of the Society signed by the Treasurer or such officer or officers, or delegates of the Society, and in such manner, as shall from time to time be determined by resolution of the Board and such authority may be general or confined to specific instances. The institutions which may be so selected as custodians by the Board shall be fully protected in acting in accordance with the Board and shall in no event be liable for the due application of the securities so withdrawn from deposit or the proceeds thereof.

18. **BORROWING**

The directors may from time to time:

1. borrow money on the credit of the Society;
2. issue, sell or pledge securities of the Society; or
3. charge, mortgage, hypothecate or pledge all or any of the real or personal property of the Society, including book debts, powers, franchises and undertakings, to secure any securities or any money borrowed, or other debt, or any other obligation or liability of the Society.

From time to time the Board may authorize any director, officer or any other person to make arrangements with reference to the monies borrowed or to be borrowed as aforesaid and as to the terms and conditions of the loan thereof, and as to the securities to be given therefor, with power to vary or modify such arrangements, terms and conditions and to give such additional securities for any monies borrowed or remaining due by the Society as the Board may authorize, and generally to manage, transact and settle the borrowing of money by the Society.

19. **AMENDMENTS**

Alterations or amendments to the by-law of the Society may be effected at any meeting of the general membership of the Society provided the Board shall have approved such revision previously, and notified the members of the Society in writing in advance of the meeting.

20. **AFFILIATION**

The Society shall be affiliated with the Ontario Historical Society.

21. **PARTNERSHIP AGREEMENT**

The Agreement between the Society and the Kitchener Public Library Board recognizes the working relationship extant since 1912 and the requisite clear delineation of roles and responsibilities of each party related to the Society's archival records kept at the Kitchener Public Library. See Appendix A.

22. **PUBLICATIONS**

The Board shall be responsible for any and all publications which the Society wishes to promote.

23. **PARLIAMENTARY AUTHORITY**

The rules contained in the current edition of *Robert's Rules of Order Newly Revised* shall govern the Society in all cases to which they are applicable and in which they are not inconsistent with this by-law and any special rules of order the Society may adopt.

24. **DISSOLUTION**

In the event of the dissolution of the Society, and after payment of its debts and liabilities, any remaining property shall be disposed of as stated in the Letters Patten.

Passed by the Board of Directors and sealed with the Corporate seal this 14th day of June, 1977.

Miriam H. Sokvitne

President

Dale D. Woolner

Secretary-Treasurer

Amendments

Amended with the enactment of By-law No. 2, Subsection 1, passed by the Board of Directors and sealed with the Corporate seal the 4th day of October, 1977. Signed by Miriam H. Sokvitne (President) and Dale D. Woolner (Secretary).

Amended with the enactment of By-law No. 3, Subsection 1, passed by the Board of Directors and sealed with the Corporate seal the 14th day of June, 1978. Signed by Miriam H. Sokvitne (President) and Richard W. Woeller (Secretary).

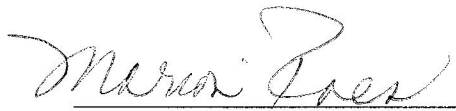
Amended with the enactment of By-law No. 3, Subsection 2, passed by the Board of Directors and sealed with the Corporate seal the 14th day of June, 1978. Signed by Miriam H. Sokvitne (President) and Richard W. Woeller (Secretary).

Revocation of By-laws No. 2 and No. 3, with their content and changes incorporated into (revised) By-law No. 1, passed by the Board of Directors September 6, 2005 and approved by the general membership November 8, 2005 and sealed with the Corporate seal this November 8, 2005. Signed by rych mills (President) and Iris Mitten (Secretary).

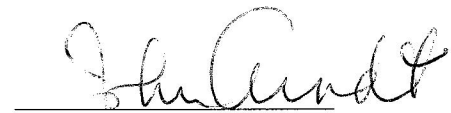
Amended page formatting to add page numbers and address. Approved at the Board/Council meeting, February 7, 2012. Signed February 7, 2012 and sealed with the Corporate seal February, 10, 2012. Signed by Marion Roes (President) and John Arndt (Secretary).

Amended Section 3. Board of Directors to add *ex officio* designation and reference to the Society's Archivist; added new Section 6. Archivist; added new Appendix A Partnership Agreement; revised Section numbering as necessary; and updated terminology (e.g., Committee names). Approved by the Board of Directors in two readings, June 5, 2012 and September 4, 2012. Signed and sealed with the Corporate seal this September 4, 2012.

Signed by:



President



Secretary

APPENDIX A:

AGREEMENT

This agreement (the "Agreement"), made in duplicate, effective as of the 25th day of September, 2012.

BETWEEN:

KITCHENER PUBLIC LIBRARY BOARD
(referred to as the "Library")

AND:

WATERLOO HISTORICAL SOCIETY
(referred to as the "Society")

WHEREAS the Library and the Society have had a working relationship since 1912, are appreciative of each other's contribution to the activities undertaken by the parties, and are committed to maintaining a mutually beneficial relationship;

AND WHEREAS Kitchener Public Library is governed by the Kitchener Public Library Board and is responsible for the administration, safekeeping, custody, preservation of and access to all archival records kept at the Library;

AND WHEREAS the Society, which has since 1912 kept its archival collection at the Library, has as its mission to collect and document the history of the County of Waterloo, now the Region of Waterloo;

AND WHEREAS both parties agree on the need to revise and update their 1961 agreement concerning the care and custody of the Society's Records at the Library, to clearly delineate roles and responsibilities of each Party;

In consideration of their respective agreement set out below, the Parties covenant and agree as follows:

1.0 DEFINITIONS

1.1 When used in this Agreement, the following words or expressions have the following meanings:

.01 "**Person**" if the context allows, includes any persons, firms, partnerships, government bodies or corporations or any combination thereof;

- .02 "**Permanent Loan**" means the long-term relocation of an object or collection from a private individual or institution to an archives in which there is no change of ownership or title with such loan arrangement terminating upon the termination of this Agreement;
- .03 "**Processing**" means the series of activities required to gain intellectual and physical control over archival material. It includes arranging and describing records, culling duplicate or other unwanted material, and housing records in appropriate containers;
- .04 "**Records**" means the Society's archival materials, including, but not limited to, rare and antique books, photographs, slides, negatives, digital images, maps, blueprints, textual records and realia. The definition of Records excludes the financial books and corporate records of the Society and also that part of the book collection of the Society, which duplicates the Library's holdings. Records also excludes the Society's supply of its publications (annual volumes, books) and materials related to them which are stored outside the Library and any other materials which the parties mutually agree do not constitute Records of the Society.
- .05 "**Requirements of Law**" means all applicable agreements, laws, statutes, codes, acts, ordinances, orders, decrees, injunctions, by-laws, rules, regulations, official plans, permits, notices, licenses, authorizations, directions, and agreements with all Authorities that now or at any time hereafter may be applicable to either the Agreement or the Records, or any part of them;
- .06 "**Sites**" means the Library's in-house storage facilities.

2.0 Legal Relationship Between Parties

2.1 Society's Power to Contract

The Society represents and warrants that it has the full right and power to enter into the Agreement and the Society is not party to any other agreement that would prevent or otherwise adversely affect the Library in exercising the right granted to it pursuant to the provisions of this Agreement.

2.2 Duty to Disclose Change of Control

The Society agrees to annually notify the Library as to the names of its officers and directors following the annual general meeting of the Society at which the directors are elected and the subsequent board of directors meeting where the officers are appointed or elected.

2.3 Status of Relationship between Parties

The Society shall have no power or authority to bind the Library or to assume or create any obligation or responsibility, express or implied, on behalf of the Library. The Society shall not hold itself out as an agent, employee or director of the Library. Nothing in this Agreement shall have effect of creating an employment, managerial, partnership or agency relationship between the Library (or any of the Library's directors, officers, employees, agents, partners, affiliates, volunteers or subcontractors) and the Society (or any of the Society's directors, officers, employees, agents, partners, affiliates, volunteers or subcontractors).

3.0 Terms and Conditions

3.1 The Library and the Society agree that the following terms and conditions shall govern the care and custody of the Society's archives at the Library's site:

.01 Permanent Loan

The Library and the Society acknowledge that the archives of the Society have been placed in the care, custody and management of the Library as a Permanent Loan. All materials deposited by the Society with the Library and any future deposits shall remain the sole property of the Society. All Records deposited with the Library must be accessible to the public.

.02 Control of Archives

The Library shall retain intellectual and physical control of the Records of the Society, including but not limited to the determination of all loan terms, approval of loans and transfer arrangements related to any short-term loan of archival materials to community groups, individuals, other heritage institutions, and board members of the Society (herein called "Temporary Loans").

The Library shall also manage the care, custody and access to the Society's archival collection during any renovations, construction, or facilities maintenance of the Library.

The Society acknowledges that Records, once transferred to the custody of the Library, cannot be loaned by the Society, or any of its board members, to Society members, heritage institutions or members of the public without the consultation and approval of the Library. The Library shall retain control and responsibility for all aspects of the management of Temporary Loans.

.03 Right of Refusal

The Library shall have the right at its sole discretion to refuse or to accept the transfer of the Society's Records to the Library's custody if the Records to be so transferred are encumbered with donor restrictions on access, or present undue hardship with respect to demands on staff time, resources, physical storage space, specialized storage needs, and environmental or health hazards including mould or pest infestation.

.04 Storage

The Library, while committed to the permanent storage of the Society's Records, reserves the right to prioritize storage space for Library collections and resources.

In the event that Library storage space for the Society's archival collections reaches capacity, the Society shall arrange for off-site storage and the transfer and retrieval of the Society's Records, at its own expense. The Library shall provide a minimum of six months' prior written notice to the Society that off-site storage is required.

From time to time, there may be a need for the purchase of appropriate materials to facilitate the storage of Records. Without imposing any obligation on the Society to do so, the Society, on a case by case basis, shall carefully assess the cost of providing such materials and when in a financial position to do so, pay the cost of same.

.05 Large Incoming Donations

Prior to the delivery and acceptance of any large incoming donation of archival materials, the Society shall first obtain the written consent and approval of the Library of any such donation.

.06 Right of Access/Inspection

The Society, as represented by the President, Vice-President, Archivist or their respective designates, as approved by the Society's Board, has the right of access and inspection of the Society's Records, under Library staff supervision. Requests to access the Society's Records must be made in advance and are subject to Library staff availability. During the term of this Agreement and any renewals hereof, the Society shall not have the right to remove Society Records without the prior written approval of the Library, such approval not to be unreasonably withheld.

.07 Insurance

The Library shall have full discretion as to whether or not to insure the property of the Society while it is in the Library's care, custody and control during the term of this Agreement. If all or part of such property is insured by the Library, such coverage shall be of such type and at such levels as considered reasonable in the sole discretion of the Library. In the event the Society determines such type and levels of coverage are inadequate, the Society at its own expense, can arrange for such additional coverage as it considers appropriate. The Library shall have no liability arising from any claims made by the Society that the type and level of coverage was not appropriate.

.08 Collective Management

The Library shall provide storage space and processing services for the Society's Records, subject to the availability of Library staff and resources.

.09 Reproduction Rights and Management

In return for the ongoing care and custody of the Society's Records, the Library shall manage all aspects of the reproduction of the Society's Records that are in its care and control, including the establishment and revision of fee schedules, collection of related charges and the administration of copyright. Reproduction charges shall be waived by the Library for the Society's Records when being used in a Society publication or display.

.10 Public Access

The Library agrees to make available to the public the processed Records of the Society, provided such Records are used for research purposes only and such use is under the supervision of Library staff. Such access, by the public shall be permitted during the Library's regular hours of operation with the exception of Sunday.

.11 Public Acknowledgement

In recognition of the Library's role in the care, custody, and access to the Society's Records, the Society agrees to include an acknowledgement of such role by the Library where and whenever any Society's Records are displayed publicly, regardless of medium or format, whenever possible. The Society agrees to place a public acknowledgement of such role by the Library on its website.

The Library shall acknowledge the Society on its website and in its newsletters, marketing, and publicity materials when it uses the Society's Records.

.12 Board Representation

Should the Society's Archivist not be an employee of the Library and in recognition of the Permanent Loan of the archives of the Society to the Library, the Society will provide the Library with an *ex officio* position on the Society's Board. The appointee shall be nominated by the Library who shall be the appointing authority. As a member in good standing of the Society, the Library's *ex officio* member shall have voting rights.

.13 Dissolution of the Society

In the event the Society is dissolved or ceases operation, ownership of the Records of the Society which are in the possession of the Library at the date of the Society's dissolution, windup, or cessation of operation shall automatically be transferred to the Library unless the Library decides it does not wish to acquire such ownership.

4.0 Renewal of Agreement

4.1 Renewal Timeframe

This Agreement shall be reviewed and, on the mutual agreement of the Parties be renewed by both Parties upon each tenth (10th) anniversary of the signing of the Agreement.

If any Party has concerns about the provisions of the Agreement or the manner in which it is applied, such Party shall have the right to require a review of the Agreement in order to address and remedy the issue so identified.

The Party requesting such a review shall give written notice to the other Party setting out the reason for the review whereupon the Parties shall, within six (6) weeks of such notice, determine a mutually agreeable date to hold a meeting to address the issues as set out in the notice.

If such matter is not resolved to the mutual satisfaction of both Parties such issue shall be resolved in the manner as set out in section 6.8 of this Agreement.

5.0 Termination

5.1 Termination Notice

- .01 Any Party (the "Terminating Party") may terminate this Agreement for any reason at any time (the "Termination Date") provided the Terminating Party delivers at least one (1) year advance written notice (the "Termination Notice") of the Termination Date to the other Party.
- .02 Upon the Termination Date, the Records of the Society shall be returned to the Society by the Library. In the event any Records are subject to a Temporary Loan, full particulars of the Temporary Loan shall be provided to the Society.
- .03 Upon the return of the Records and disclosure to the Society of all Temporary Loan particulars, the Library shall be fully released from this Agreement by the Society and from all claims or causes of action that may arise pursuant to the Agreement and the obligations of the Library hereunder. Such release shall not release the Library from any claims for which a Statement of Claim has been issued as of the Termination Date.
- .04 As of the Termination Date, the Society shall be fully released from all claims or causes of action that may arise pursuant to this Agreement same and except for any claims for which a Statement of Claim has been issued as of that date.
- .05 Should the Library breach a material provision of this Agreement and have received written notice from the Society of such breach, fail to remedy the breach within sixty (60) days from receipt of such notice, the Society shall have the right at any time (the "Termination Date") to terminate this Agreement by delivering written notice (the "Termination Notice") to the Library. Upon receipt of the Termination Notice, the provisions of Sections 5.1.02 and 5.1.03 shall apply.

5.2 Transfer of Records Upon Termination

- .01 In the event that this Agreement is terminated by either Party, the costs of transferring the Society's Records to another location or agency shall be the responsibility of the Society.
- .02 The Library agrees prior to such transfer, to review the donation records to determine ownership of Records and to supply to the Society an inventory of items owned by the Society. Subject to the definition of Records as set out in Section 1.1.04, when ownership is unclear or in dispute, the Library's and Society's representatives shall meet to resolve the dispute. Disagreement over any items will not be cause to delay the transfer of

Records for which there is no disagreement on ownership. Transferred Records shall include the original items and all digital and filmed copies of such items. Any references to the Society or the Society's collection will be removed from the Library's website within one (1) month of the Termination Date. Once the parties hereto have agreed as to what constitutes Records of the Society, the Library shall ensure all items are packed in appropriate storage containers and agrees to make them available to the Society at the Library loading area on an agreed-upon timeline and schedule which shall not place burdensome difficulties on either Party.

6.0 General Provisions

6.1 Entire Agreement

This Agreement, including the schedules attached hereto, sets forth the full and complete understanding between the Parties and may be changed only by the mutual agreement of the Parties as evidenced in writing. The terms and condition of this Agreement replace and supersede all prior agreements, oral or written, and all other communications between the parties relating to matters herein contained.

6.2 Agreement Binding

The Agreement shall enure to the benefit of and be binding upon the Parties and their respective successors, executors, administrators and permitted assigns.

6.3 Non-Assignment

This Agreement is not assignable without the prior written consent of the other Party, which consent cannot be unreasonably withheld. Any attempt to assign any of the rights, duties or obligations of this Agreement without written consent is void.

6.4 Governing Law

The Agreement shall be carried out in accordance with the requirements of law and governed by and construed in accordance with the laws of the Province of Ontario.

6.5 Waiver of Breach

No waiver of any breach of any term or condition of this Agreement by either Party shall be construed to waive any subsequent breach of the same or any other term or condition of this Agreement.

6.6 Enforceability

Each Party affirms that it has full power and authority to enter into and perform the terms of this Agreement, and that the person(s) signing this Agreement on behalf of each Party is (are) properly authorized and empowered to sign it. Each Party further acknowledges that prior to execution of this Agreement, it has read this Agreement, has had the opportunity to be advised by an independent legal advisor and that it is to be bound by this Agreement.

6.7 Notices

Any notice, demand or other communication (in this Section, a "Notice") required or permitted to be given or made hereunder shall be in writing and shall be sufficiently given or made using the contact information specified in Schedule A if:

- (a) Delivered in person during normal business hours on a business day and left with a receptionist or other responsible employee of the relevant Party at the applicable address set forth below;
- (b) By prepaid first class mail; or
- (c) Sent by any electronic means of sending messages, including facsimile transmissions ("Electronic Transmission") during normal business hours on a business day.

Each notice sent in accordance with this Section shall be deemed to have been received:

- (a) On the day it was delivered;
- (b) On the fifth business day after it was mailed (excluding each business day during which there existed any general disruption of postal services due to strike, lockout or other cause); or
- (c) On the same day that it was sent by Electronic Transmission or on the first business day thereafter if the day on which it was sent by Electronic Transmission was not a business day.

Any Party may change its address for Notice by giving notice to other parties as provided in this Section.

6.8 Arbitration

All disagreements and disputes arising under this Agreement shall be settled, if possible, by good faith negotiations between the Parties, which negotiations shall not terminate until the designated representatives of each Party to the dispute, which shall not be more than two (2) persons for each Party, have considered the dispute. If a disagreement or dispute cannot be settled in accordance with the foregoing, then the dispute shall be settled by arbitration. The arbitration will take place at the Library, unless otherwise agreed by the Parties. Within twenty (20) days after the Party requesting arbitration has given written notice of such request to the other Party, the Parties (acting reasonably) shall jointly appoint a single arbitrator who shall be an individual with significant experience in and understanding of the library and archives sector. If the Parties are unable to appoint a single arbitrator within the said twenty (20) day period, then the Library shall appoint one arbitrator and the Society shall appoint one arbitrator, both such arbitrators to be appointed within ten (10) days after the end of the aforementioned twenty (20) day period, with a third arbitrator (with significant experience in and understanding of the library and archives sector) then being selected by those two arbitrators within five (5) days following their appointment. Such third arbitrator shall alone conduct the arbitration. The decision of the single arbitrator so appointed by the other two arbitrators shall be final and binding and not subject to appeal and the procedures and substance of the arbitration shall be governed by the *Arbitrations Act* (1991) (Ontario).

IN WITNESS WHEREOF the parties hereto have executed the Agreement effective as of the date first above written.

Kitchener Public Library Board

Per: _____
Chief Executive Officer
Kitchener Public Library
I have authority to bind the Corporation

Waterloo Historical Society

Per: _____
President
I have authority to bind the Waterloo
Historical Society.

SCHEDULE A

Contacts

For the Kitchener Public Library Board

Sonia Lewis
Chief Executive Officer
Kitchener Public Library
85 Queen Street North
Kitchener ON N2H 2H1

Tel: 519-743-0271, ext. 244
Email: sonia.lewis@kpl.org

For the Waterloo Historical Society:

Marion Roes
President
Waterloo Historical Society
c/o Grace Schmidt Room of Local History, Kitchener Public Library
85 Queen Street North
Kitchener, ON N2H 2H1

Tel: 519-883-1448
Email: mlroes@sympatico.ca