



ADMINISTRATIVE REPORT

Report Date: December 14, 2016
Contact: Glen Hodges
Contact No.: 604.325.2623
RTS No.: 11797
VanRIMS No.: 08-2000-20
Meeting Date: February 8, 2017

TO: Standing Committee on City Finance and Services
FROM: General Manager of Community Services
SUBJECT: Reserved Area Contract for Or Shalom at Mountain View Cemetery

RECOMMENDATION

THAT City Council approve a Reserved Area Contract with Or Shalom - Jewish Spiritual Community Association to reserve the use of up to 60 graves in Mountain View Cemetery in the form of the contract attached hereto as Appendix A.

REPORT SUMMARY

This report recommends that the City enter into a Reserved Area Contract with a Vancouver Jewish Synagogue - Or Shalom - for their exclusive use of an area comprising 60 graves at Mountain View Cemetery. The contractual reserve of these graves is necessary to meet one of the Jewish burial requirements for a delineated and contiguous group of graves. Mountain View Cemetery has a long history of similar agreements with fraternal organizations and another Jewish organization. Provisions exist within the Vancouver Charter and the current Mountain View Cemetery By-law for such agreements.

COUNCIL AUTHORITY/PREVIOUS DECISIONS

Provision for the use of areas in cemeteries is set out in the Vancouver Charter and the Mountain View Cemetery By-law.

1. Section 331(d) of the Vancouver Charter states that Council may establish the terms and conditions under which, and the fees for which, persons may acquire the right to make use of areas in cemeteries.
2. Section 2.5 of the Mountain View Cemetery By-law states that Council delegates to the cemetery committee the executive or administrative powers exercisable by Council under Section 331 of the Vancouver Charter.
3. Sections 4.1 and 4.2 of the Mountain View Cemetery By-law state that an organization that wishes to acquire a contract to reserve the use of a particular number of contiguous vacant and unlicensed lots exclusively for the interment of deceased members of the organization must apply to the cemetery manager and that a contract for such reservation must be satisfactory to the cemetery committee.

CITY MANAGER'S/GENERAL MANAGER'S COMMENTS

The City Manager supports the foregoing.

REPORT

Background/Context

Mountain View Cemetery is the only cemetery within the City of Vancouver and has been owned and operated by the City of Vancouver since 1886. In 1892 Mayor Oppenheimer set aside a portion of the cemetery for the exclusive use of Vancouver's Jewish community. In the early 1900's the City and the cemetery entered into formal agreements with several fraternal organizations to set aside graves in portions of the cemetery for exclusive use by their members. These organizations included various Masonic lodges, the Independent Order of Oddfellows and the Knights of Pythias. All of these agreements with fraternal organizations expired or were terminated by the late 1970's.

The availability of cemetery space in and around Vancouver for casket (full body) burial is in decline. Mountain View Cemetery and both corporate and municipal cemeteries in surrounding cities including Burnaby, North Vancouver, and New Westminster all have a small and finite amount of casket space remaining. While cremation is the predominant choice of disposition in the Vancouver health region there remains a strong demand for casket graves. This demand is driven by personal preference but even more so by religious requirements.

The Jewish faith requires full-body, casket burial. An additional requirement within the Jewish faith is that an area be delineated or marked to clearly indicate the Jewish burial area from non-Jewish burial areas. Many other faiths or groups with similar full-body, casket burial requirements do not have the religious requirement to be buried within a defined and contiguous area. While members of many faiths may choose or prefer to be buried with people of their same faith or belief it is not a religious requirement.

Mountain View Cemetery has run out of space on two other occasions. The first was in 1964 which resulted in the conversion of pathways and some roads to create new space. The second was in 1986 when pathway supply had been depleted and the sale of space was ceased by Council. By 1986, the cemetery was running out of available grave space and had used much of the extra capacity created after 1964 when the original inventory of graves was exhausted.

Subsequent to the 1986 closure, changes in disposition preferences (the trend from casket burial toward cremation), innovations for increased density of cemetery space (columbaria - essentially 'condos for cremated remains') and provisions within provincial legislation allowing cemeteries to reclaim graves all contributed toward the potential for reopening the cemetery. The resulting Vision Plan (1998) and Mountain View Cemetery Master Plan (2000) adopted by City Council eventually led to the revitalization and reopening of the cemetery in December 2008.

The reopening of the cemetery as a viable option for people to be able to purchase graves has resulted in renewal of this important civic space and significant revenue increases. Annual revenues of \$200,000 in 2007 have now grown to more than \$2.2 million in 2015. The bulk of this new revenue has come from the sale of grave space for casket (full body) burial.

Strategic Analysis

The recent reopening of the cemetery in 2008 has resulted in a very limited and finite remaining capacity for casket burial in Mountain View Cemetery. The only casket space currently available is in graves that have been reclaimed under provisions in the provincial Act. These spaces are scattered across three main sections of the cemetery and primarily in groups of 1 to 4 adjacent graves. These spaces are sufficient to satisfy some of the general need for casket space but are insufficient to meet the contiguous and delineated Jewish burial area requirements of the Jewish community.

The Or Shalom Spiritual Community Organization began in 1982 and since 1993 has been operating out of their facility at 10th Avenue and Fraser Street. When the restoration of the historic Jewish area was initiated by the Schara Tzedek Cemetery Board (STCB) in 2014 Or Shalom became interested in the potential for their community to have their specific Jewish burial needs also met within Mountain View Cemetery. While there is a historic Jewish area in Mountain View Cemetery, limited capacity within this area will not provide for the Or Shalom needs to be met within the existing area.

There are two primary attributes of the Or Shalom interest in Mountain View Cemetery that make it a unique opportunity: the small size of the group and the location of their facility on Fraser Street. The community presently consists of around 300 members. With an aging membership their anticipated burial needs could be met for several years with a small grouping of graves. There is currently only one area within the cemetery that can accommodate a group of up to 60 contiguous casket grave sites. This area is immediately adjacent to Fraser Street and the intersection of 33rd Avenue - a location that is considered very undesirable by cemetery customers (even the Mountain View Cemetery Master Plan excluded this area as potential space for interment). However, since their facility is located several blocks north of the cemetery on Fraser Street, the Or Shalom group feels a connection with this otherwise undesirable space.

The interest expressed in this underutilized area and the opportunity to provide cemetery space for a Vancouver community with specific religious burial needs creates an opportunity for the cemetery to achieve new and unanticipated revenue.

The area being proposed for this reserved area contract is currently not designated for interment space within the 100 year Mountain View Cemetery Master Plan and has no anticipated revenue attached to it. At current rates it would result in \$1,380,000 of revenue if all 60 sites sold. The actual revenue will be determined based on rates in effect at the time of sale.

Implications/Related Issues/Risk

Financial

The proposed reserved area contract provides that the City will convert the Or Shalom area for use for a maximum of 60 burial lots at the City's cost. There are no costs associated with this conversion. Moreover, the proposed reserve area contract provides that the City will construct and install a suitable fence, structure or other demarcation to delineate the Or Shalom area to a maximum cost of \$5,000. Accordingly, the total financial expenditure by the City is estimated to be \$5,000.

Legal

Legal Services has prepared the Reserved Area Contract Agreement for this proposal. The Cemetery Committee is satisfied with the reserved area contract as proposed. While Section 2.5 of the Mountain View Cemetery By-law provides that Council delegates to the cemetery committee the executive or administrative powers exercisable by Council under Section 331 of the Vancouver Charter, an abnormality in the enactment of this section necessitates that Council approve this reserved area contract. A further report to Council will address the proper delegation these powers to the cemetery committee.

CONCLUSION

The interest expressed by the Or Shalom Spiritual Community Organization represents a unique opportunity for Mountain View Cemetery to provide space for a local group with specific burial needs. Engaging in this agreement would also result in significant additional revenue from a portion of the cemetery considered to be undesirable and with no previous revenue opportunities identified.

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RESERVED AREA CONTRACT
OR SHALOM

THIS RESERVED AREA CONTRACT (the “Contract”) is entered into as of the 3rd day of October, 2016

BETWEEN:

CITY OF VANCOUVER
453 West 12th Avenue
Vancouver, British Columbia
Canada V5Y 1V4

(the “City”)

AND:

OR SHALOM - JEWISH SPIRITUAL COMMUNITY ASSOCIATION
(Soc. No. S-0019184)
710 East 10th Avenue
Vancouver, British Columbia
Canada V5T 2A7

(“Or Shalom”)

AND WITNESSES THAT WHEREAS:

RECITALS

- A. Or Shalom is a community association created under the *Society Act* (British Columbia) that is affiliated with the Or Shalom Synagogue (the “Synagogue”) in Vancouver, British Columbia;
- B. The Synagogue, through Or Shalom, wishes to acquire a contract to reserve the use of 60 contiguous, vacant and unlicensed lots exclusively for the interment of deceased members of the Synagogue, and Or Shalom has applied to the manager (the “Cemetery Manager”) of Mountain View Cemetery (“MVC”) for such contract; and
- C. The Cemetery Manager has identified an area (the “Or Shalom Area”) of MVC that satisfies the needs of the Synagogue and its cemetery committee (the “Cemetery Committee”) and MVC has agreed to convert such area for use for burials and to designate the Or Shalom Area as shown outlined in heavy black on the sketch plan attached hereto Schedule A for the purposes set out in Recital B on the terms and conditions hereof,

NOW THEREFORE, in consideration for the premises and of the covenants, representations and warranties herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each party, the parties agree as follows:

1. **Creation of Or Shalom Area.**
 - (a) The City agrees to convert the Or Shalom Area for use for a maximum of 60 burial lots.
 - (b) The City agrees to construct and install a suitable fence, structure or other demarcation (the “**Perimeter Treatment**”) sufficient to meet the minimum requirements to enable the use of the Or Shalom Area for Jewish burials. The Perimeter Treatment will be designed by the City with input from Or Shalom. The City will not be obligated to spend more than \$5,000, inclusive of applicable taxes, on the Perimeter Treatment. Additional improvements or enhancements to the Perimeter Treatment may be funded by Or Shalom.
2. **Designation of Or Shalom Area.** Upon the conversion of the Or Shalom Area as referred to in Section 1(a), the City agrees that all rights of interment in respect of all lots within the Or Shalom Area will be reserved exclusively for purchase by members of the Synagogue and that it will not sell any right of interment in respect of any lot within the Or Shalom Area to any person without the written approval of Or Shalom.
3. **Order of Sale of Rights of Interment within Or Shalom Area.** Or Shalom acknowledges that the sale of rights of interment in respect of lots within the Or Shalom Area will proceed from the southernmost end of the Or Shalom Area and will proceed contiguously northward.
4. **Sale of Rights of Interment and Oversight of Interments within Or Shalom Area.**
 - (a) Or Shalom will have the right to determine, as provided herein, whether any person who wishes to purchase a right of interment in respect of any lot within the Or Shalom Area is a member in good standing of the Synagogue.
 - (b) The City agrees that Or Shalom will have the exclusive right to oversee all interment and funeral services within the Or Shalom Area.
 - (c) In the case of a dispute between Or Shalom and any person seeking to purchase a right of interment in respect of a lot or an interment in the Or Shalom Area as to whether a person is a member in good standing of the Synagogue, or whether the remains of persons to be buried in the Or Shalom Area have been properly prepared for burial, the Cemetery Committee of the Synagogue will be the sole arbiter and its decision will be final.
 - (d) The City agrees that any licence for a right of interment in respect of any lot within the Or Shalom Area will include a rider stating that Or Shalom must be consulted prior to any interment or funeral service within the Or Shalom Area and that any interment or funeral service within the Or Shalom Area will be subject to the oversight rights granted to Or Shalom.
5. **Covenants.** Or Shalom covenants, represents and warrants as follows:
 - (a) the Recitals to this Agreement are true and accurate;

- (b) to apply criteria for the determination of whether:
 - (i) persons wishing to purchase a right of interment in respect of any lot within the Or Shalom Area are members in good standing; and
 - (ii) remains of persons to be buried in the Or Shalom Area have been properly prepared for burialin a consistent and transparent manner;
- (c) to advise the City if any of the representations and warranties made by Or Shalom have become inaccurate; and
- (d) to advise the City in writing of any proposed improvements to or renovations of the Or Shalom Area prior to any fund-raising activities for same.

6. Release and Indemnity. Or Shalom will release, and will indemnify and save harmless the City and its elected officials, officers, employees and agents from and against any and all actions, causes of action, claims, disputes and suits, whether at law or in equity, and any and all costs (including legal costs on an indemnity basis), damages, expenses and losses, of any kind or nature whatsoever arising out of or in any way related to or that would not or could not be sustained “but for” this Agreement, any breach of any covenant or agreement on the part of Or Shalom contained in this Agreement, any misrepresentation (whether innocently made or not) or any inaccuracy of any representation or warranty made by Or Shalom in this Agreement.

7. Termination.

- (a) Or Shalom acknowledges as follows:
 - (i) that the Or Shalom Area forms part of Mountain View Cemetery, which is a public cemetery owned and operated by the City;
 - (ii) that in agreeing to enter into this Agreement, the City has relied on the covenants, representations and warranties of Or Shalom herein.
- (b) In light of the foregoing, the City reserves its right to terminate this Agreement upon the happening of any of the following events:
 - (i) Or Shalom materially breaches any of its covenants in this Agreement;
 - (ii) Or Shalom has made a material misrepresentation in this Agreement; or
 - (iii) the City Council of the City of Vancouver, acting reasonably, determines that this Agreement is no longer in the best interests of the operation of a public cemetery.
- (c) The parties acknowledge and agree that no termination of this Agreement will in any manner whatsoever affect or impact on any lots within the Or Shalom Area in respect of which a right of interment has been purchased prior to

termination, and that, should Or Shalom cease to be a legal entity, lots purchased within the perimeter will be maintained in perpetuity consistent with previous burials in the Or Shalom Area.

8. General Terms.

- (a) This Agreement is subject to approval by City Council.
- (b) No legal rights or obligations will arise or be created by the tabling and discussion of this Agreement or any amendments to them until the City Council of the City of Vancouver has approved the arrangements contained in this Agreement and the City and Or Shalom have executed this Agreement on terms and conditions satisfactory to the City Manager, the General Manager of Community Services and the Director of Legal Services.
- (c) All notices, requests, demands and other communications which are required or permitted to be given under this Agreement will be in writing and will be deemed to have been duly given upon the delivery or receipt thereof, as the case may be, if delivered personally or sent by registered or certified mail to the address of the applicable party set out on page 1 of this Agreement or to such other address as a party may notify the other party of in writing.
- (d) This Agreement may not be assigned by Or Shalom without the express written consent of the City, which consent will not be arbitrarily withheld.
- (e) No alteration, change or modification of the terms of this Agreement will be valid unless made in writing and signed by the parties hereto.
- (f) This Agreement and the Schedules attached hereto embody the entire agreement and understanding between the parties hereto; there are no other agreements, representations or understandings, oral or written, between or by either of the parties with reference to the subject matter hereof that are not merged herein and superseded hereby.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective authorized signatories as of the date first written above with good intent to fulfill their respective commitments and obligations herein.

CITY OF VANCOUVER
per:

Authorized Signatory

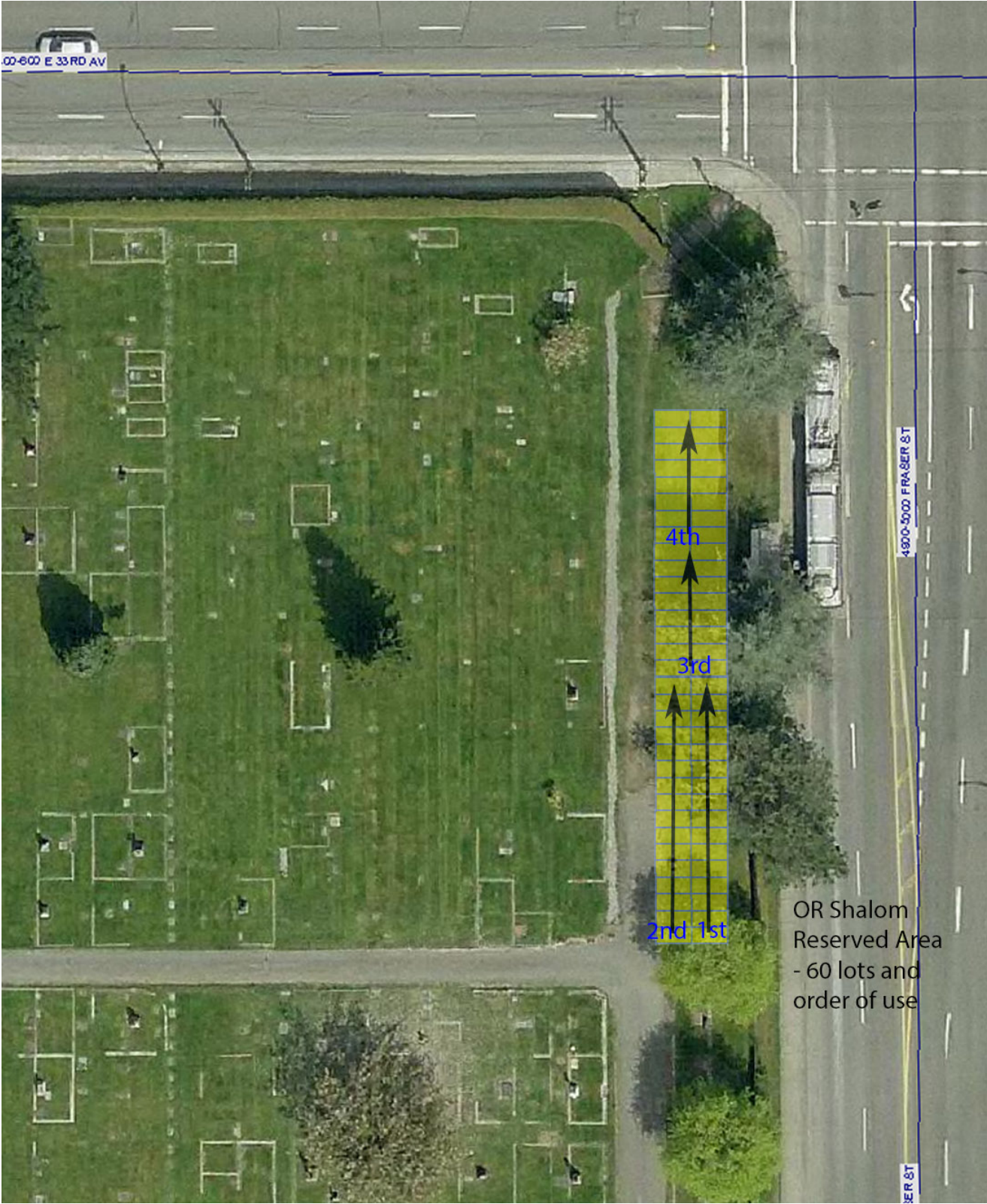
Authorized Signatory

OR SHALOM - JEWISH SPIRITUAL COMMUNITY ASSOCIATION
per:

Authorized Signatory

Authorized Signatory

SCHEDULE "A"
OR SHALOM AREA



LOCATION OF OR SHALOM AREA
WITHIN MOUNTAIN VIEW CEMETERY

