

THE CORPORATION OF THE COUNTY OF PRINCE EDWARD

BY-LAW NO. 3587-2015

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A BY-LAW TO AUTHORIZE THE MAYOR AND CLERK TO ENTER INTO A  
PUBLIC ART DONATION AGREEMENT  
BETWEEN THE CORPORATION OF THE COUNTY OF PRINCE EDWARD  
DAVID WARRICK AS AGENT AND TRUSTEE OF THE MACDONALD PROJECT

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**WHEREAS** pursuant Section 10 of the Municipal Act, 2001, S.O. 2001, c. 25, as amended, a single-tier municipality may provide any service or thing that the municipality considers necessary or desirable for the public;

**AND WHEREAS** the Council of the Corporation wishes to accept the gift of the Abernethy sculpture of John A. Macdonald entitled "Holding Court";

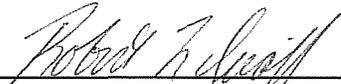
**AND WHEREAS** the Council for the Corporation of the County of Prince Edward desires to enter into a Public Art Donation Agreement with David Warrick as Agent and Trustee of The Macdonald Project, as attached hereto as Schedule 'A' to this by-law.

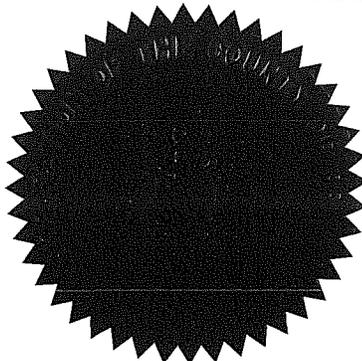
**NOW THEREFORE** the Council of the Corporation of the County of Prince Edward enacts as follows;

1. **THAT** the Public Art Donation Agreement, substantially in the form attached hereto as Schedule 'A' to this by-law between The Corporation of the County of Prince Edward and David Warrick as Agent and Trustee of The Macdonald Project be and the same is hereby approved.
2. **THAT** the Mayor and the Clerk be and are hereby authorized and directed to execute the said Public Art Donation Agreement.
3. **THAT** the provisions of this by-law shall come into force and effect on the day of final passing thereof.

Read a first, second and third time and finally passed this 9th day of June, 2015.

  
\_\_\_\_\_  
Kim White, CLERK

  
\_\_\_\_\_  
Robert L. Quaiff, MAYOR



# PUBLIC ART DONATION AGREEMENT

This Agreement made this 9<sup>th</sup> day of June, 2015

BETWEEN:

**THE CORPORATION OF THE COUNTY OF PRINCE EDWARD**  
*(hereinafter called the "County")*

-and-

**DAVID WARRICK as agent and trustee of**  
**THE MACDONALD PROJECT**  
**an unincorporated association**  
*(hereinafter called the "Donor")*

WHEREAS the Municipal Council of the County, at its meeting on March 25, 2015, approved the recommendation Motion CW-69-2015 to accept the donation by the Macdonald Project of a sculpture of Sir John A. Macdonald titled "*Holding Court*" subject to satisfactory planning and completion of design and installation requirements;

AND WHEREAS the proposed sculpture is a public art donation intended as a monument to recognize Sir John A. Macdonald within the Quinte Region in the year of the 200<sup>th</sup> Anniversary of Sir John A. Macdonald's Birthday and to contribute to the historical rejuvenation of Picton Main Street;

AND WHEREAS The Municipal Council of the County approved that the proposed location for the sculpture be on private property in front of The Armoury at 206 Picton Main Street, subject to obtaining a suitable Easement Agreement with the private property owner for public enjoyment of the sculpture;

NOW THEREFORE IN CONSIDERATION OF THE MUTUAL COVENANTS HEREIN CONTAINED AND THE PROVISION OF OTHER GOOD AND VALUABLE CONSIDERTION (THE RECEIPT AND ADEQUACY OF WHICH IS ACKNOWLEDGED) THE PARTIES HERETO HAVE AGREED AS FOLLOWS:

## **1. DEFINITIONS**

In this Agreement, the following definitions will apply:

**"Artist"** means Ruth Abernethy of Wellesley, Ontario, Canada, who was retained by the Donor to design and fabricate the Sculpture;

**"Final Acceptance"** means final acceptance of the Work in accordance with Section 10;

**"Gift"** means the donation of the Sculpture as set out in Section 2 of this Agreement;

**"Lands"** means the specific property identified as the preferred location of 206 Picton Main Street which is privately owned and over which the County has a specific Easement Agreement for the Sculpture only as per Schedule "A".

**“Notice of Completion”** means notice given pursuant to Section 10;

**“Sculpture”** means the artwork entitled “Holding Court” which is a three-dimensional bronze rendering of Sir John A. Macdonald;

**“Sculpture Location”** means the location of the sculpture on the Lands as defined in Section 3 and on Schedule “A”; and

**“Work”** includes the design, fabrication and installation of the Sculpture and any required landscaping as a result of preparing the Lands at the Sculpture Location.

## 2. GIFT

- (a) The Donor hereby agrees to donate to the County, subject to terms as noted in 2 (b) on July 1, 2015, the Sculpture, which is to be designed, fabricated, shipped and installed at no cost to the County, for the purposes of serving as a piece of public art to be displayed on private property at the Armoury, 206 Main Street Picton.
- (b) The County shall accept such gift from the Donor upon approval:
  - (i) That the design and installation of the sculpture base meets engineering and materials standards for the size and weight of the sculpture and that the landscaping design and installation meet appropriate standards to mitigate potential drainage, maintenance and safety issues; and
  - (ii) All ground preparation, landscaping and installation of the sculpture are completed prior to registration of the easement and acceptance of the donation of the Sculpture by the County.
- (c) Notwithstanding the above, the Donor in its sole discretion, may terminate this agreement at any time before delivery of the Sculpture to the County and is under no obligation to donate the Sculpture to the County if, in its sole discretion, the Donor is not able to do so, the location changes and is not acceptable to the donor, or for any other reason.

## 3. SCULPTURE LOCATION

- (a) Subject to a separate registered Easement Agreement between the County and the Owner, currently Baker and Company Limited, the Sculpture shall be located at “The Armoury”, 206 Picton Main Street, Picton as per Schedule “A” attached landscape design.
- (b) The intention is that the Sculpture location be a permanent location. The Donor recognizes the limited possibility of an unforeseen event in which the Armoury site (206 Picton Main St) becomes either unsafe (i.e. a risk to the public or the integrity of the Sculpture itself), or legally untenable. In the unlikely need to re-locate the Sculpture, the Artist shall be consulted, and be required to approve the new location. The Donor currently owns the Sculpture as a work for hire and with this document is transferring that ownership to the County. However, the Artist shall retain perpetual rights under Canadian law that pertain to artistic expression, including the setting and manner in which this work of art is displayed (e.g. section 28.2 of the Copyright Act of Canada). Any modification to a painting, sculpture or engraving is deemed to prejudice the author. For those types of works, no evidence of actual prejudice is required under the

#### **4. DESIGN PROCESS**

The Donor agrees that the Sculpture to be donated to the County is in substantial conformity with the Proposal and the Design and Installation guidelines attached hereto as Schedule "B". The Donor agrees to notify the County immediately of any issues or concerns that arise with regards to the Proposal, Design and Installation guidelines attached hereto.

#### **5. COUNTY'S RESPONSIBILITIES**

The County shall:

- (a) Maintain appropriate insurance coverage for theft, vandalism and public liability following Final Acceptance of the Sculpture (refer to Section 10) and as per the Easement Agreement;
- (b) Ensure that the Easement Agreement for the use of private property for the Sculpture Location is in effect; and
- (c) Ensure that the Sculpture is cared for in a manner to maintain public interest and viewing.

The County will make available, at reasonable times, County staff members for the purpose of any necessary consultation with the Donor prior to installation.

#### **6. COSTS OF DONOR**

- (a) The Donor undertakes to complete the Work at his sole risk and expense, without any contribution by the County towards the Work except as otherwise specifically provided in this Agreement. Without limiting the generality of the foregoing or any other provision of this Agreement the Donor shall pay all costs associated with:
  - (i) preparation and review of the Proposal, including evaluation by a certified professional or agency;
  - (ii) design and fabrication of the Sculpture;
  - (iii) transportation and temporary storage of the Sculpture;
  - (iv) ground preparation, landscaping; drainage mitigation, maintenance and safety issues;
  - (v) installation of the Sculpture and necessary Work to complete the installation to meet guidelines as in Schedule "B"; and
  - (vi) anything else that is incidental or ancillary to any of the aforesaid and any other related cost that may arise as a result of the Agreement and the proper fabrication, transportation, installation and completion of the Work.

- (b) The Donor shall be responsible for contracting for the construction of landscaping features at the Sculpture Location in consultation with the property owner at the Lands. The Donor shall be responsible for the cost of said construction, required liability, liability and theft or damage insurance and safety and this shall be completed at no cost to the County.
- (c) The Donor shall contribute \$10,000 towards the long term care and maintenance of the Sculpture at the time of Final Acceptance of the Sculpture. These funds shall be kept in trust by the municipality specifically for this purpose.

## **7. RIGHT OF OWNERSHIP AND USE**

- (a) The Donor hereby represents and warrants that:
  - (i) to the best of its knowledge and belief, the Sculpture is solely the result of the Artist's creative efforts and that the Artist has created the Work;
  - (ii) the Artist has transferred all right title and interest in the Sculpture to the Donor and as a result, the Donor is the lawful owner of the Sculpture and enjoys all right, title to and interest in the Sculpture, including but not limited to all copyrights in the Sculpture;
  - (iii) that the Sculpture is not encumbered by an debt, lien or charge;
  - (iv) to the best of its knowledge and belief, that said Sculpture does not, in any way, infringe on the rights of any third party; and
  - (v) that any recognition of funding or donations for the creation and/or installation of the Sculpture are the responsibility of the Donor and have been formally completed at the time of the unveiling.
- (b) As of the date of Final Acceptance, and subject to the terms of this Agreement with respect to retention rights, the Donor hereby irrevocably and perpetually transfers to the County all rights of ownership, including any and all copyrights, in the Sculpture.
  - (i) It is understood that the Donor and the County do not have any right to infringe upon the rights of copyright of the design of the Sculpture attributed to the Artist and the Artist's Estate according to Canadian laws.
- (c) The County also grants to the Donor the right to make two-dimensional reproductions, including but not limited to photographs of the Sculpture for their portfolio, media publicity, catalogues or other similar publications, which rights shall survive any termination of the Agreement.
- (d) It is understood that the intention of the Macdonald Project is to disband as of December 31, 2015. At such time, any responsibilities or reporting that must be completed (i.e., funding or donation obligations) remains the responsibility of the representatives of the Macdonald Project and shall not be assumed by the County.
- (e) All rights granted to the County under this Agreement shall enure to the benefit of the County's successors and assigns.

## **8. ALTERATION OF THE SCULPTURE LOCATION OR OF THE WORK**

The County recognizes the specific intention of the Donor in terms of the identified Location. Due to unforeseen circumstances:

- (a) The County shall make all reasonable efforts to notify the donor of any alteration of the Sculpture Location (as per Section 3(b)) that would significantly affect the intended character and appearance of the Sculpture, and shall consult with the Donor in the planning of any such alteration. The County agrees that it will not intentionally destroy, damage, alter or change the Sculpture in any way, however due to extenuating circumstances, the County is not precluded from removing the Sculpture from display as necessary for repair or to relocate; and
- (b) If any major alterations to the Sculpture Location that would affect the intended character and appearance of the Sculpture are made without consultation with the Donor, the Donor, at its option, may remove or obliterate any public notice associating the Donor with the Sculpture.

## **9. PUBLICITY**

The County has the right to publicize the Sculpture. The Donor may publicize in a positive manner the Sculpture, in art publications and in other media based on activities related to art and history.

## **10. FINAL ACCEPTANCE**

- (a) The County shall inspect and agree to the engineered design and installation of the sculpture ensuring:
  - (i) that the plan meets engineering and materials standards for the size and weight of the sculpture;
  - (ii) that the landscaping design and installation meet appropriate standards to mitigate potential drainage, maintenance, and safety issues;
  - (iii) that immediate feedback of any concerns and/or approval regarding the Engineered plans are provided to the Donor in writing before the Work commences; and
  - (iv) such Work shall be completed in consultation with County staff representatives who shall periodically inspect the work in progress in stages of: ground preparation; ground work; base work; landscaping and Sculpture installation as per Schedule "B".
- (b) The Donor shall provide the County with a Notice of Completion certifying that all Work required of the Donor pursuant to this Agreement has been completed including the Installation as per Schedule "B" attached hereto.
- (c) Final Acceptance of the Sculpture shall occur when the Sculpture has been delivered and installed at the Sculpture Location and County representatives ( i.e., the Commissioner of Engineering, Development and Works or designate) have inspected the Sculpture and landscaped viewing area and found that it has been installed in accordance with the terms and conditions as set out in this Agreement and the Commissioner has issued a letter to the Donor acknowledging the final acceptance ("Letter of Final Acceptance").
- (d) The County shall have the sole authority to determine whether the Sculpture meets the requirements of this Agreement. If the County is not satisfied that the Sculpture meets the requirements of this Agreement, the County, in its sole discretion, may refuse to accept the Gift with no cost or liability to the County whatsoever.

- (e) The Final Acceptance of the Sculpture will result in the registering of the Easement Agreement with the owner at the Sculpture Lands on property title at which time the County will have taken on the rights and responsibilities as per Sections 5 and 7 of this Agreement.

## **11. WARRANTIES OF QUALITY AND CONDITION OF WORK**

The Donor makes no representations or warranties as to the quality of the design and/or workmanship of the Sculpture and shall not be liable for any damages arising from any such defects in the design or fabrication of the Sculpture. The design and fabrications of the Sculpture is the sole responsibility of the Artist whose representations as to fitness and quality has been set out in a separate agreement with the Donor and may be relied upon by both the Donor and the County.

## **12. TITLE**

Title to the Sculpture shall pass to the County upon Final Acceptance free and clear of any and all other interests and at no cost to the County.

## **13. REPUTATION**

- (a) The County agrees that it will not use the Sculpture or the Donor's name in a way which may bring the Sculpture or the Donor into disrepute.
- (b) The Donor agrees that the Donor will not make reference to the Sculpture or reproduce the Sculpture, or any portion thereof, in a way that may bring the Sculpture or the County into disrepute.

## **14. REPRESENTATIONS AND WARRANTIES**

### **(a) Mutual Representations**

Without limiting the generality of any other provision of the Agreement, each party represents to the other, and acknowledges that the other is relying on such representation in entering into this Agreement, as follows:

- (i) it has the requisite power, authority and capacity to enter into this Agreement and to perform the obligations hereunder;

- (ii) this Agreement has been duly authorized, executed, and delivered by it and constitutes a valid and binding obligation enforceable against it in accordance with its terms except as such enforcement may be limited by bankruptcy, insolvency and other laws affecting the rights of creditors generally and except that equitable remedies may only be granted in the discretion of a court of competent jurisdiction; and

### **(b) Representations of the Donor**

The Donor represents and warrants to the County, and acknowledges that the County is relying on such representations and warranties in entering into this Agreement as follows:

- (i) there are no bankruptcy, insolvency, reorganization, receivership, seizure, realization, arrangement or other similar proceedings pending against, or being contemplated by the Donor or, to the knowledge of the Donor, threatened against the Donor;

(ii) there are no actions, suits, proceedings, judgments, rulings or orders by or before any governmental authority or arbitrator, or, to the knowledge of the Donor, threatened against the Donor, that could have material adverse effect on the Donor of the Gift;

(iii) all requirements for the Donor to make any declaration, filing or registration with, give any notice to or obtain any licence, permit, certificate, registration, authorization, consent or approve of, any governmental authority as a condition to entering into this Agreement have been satisfied;

(iv) it and all of its employees, servants, agents, representatives, consultants and contractors and the respective workforce of each are fully qualified to perform the Work and/or perform obligations of the Donor under this Agreement and hold all requisite licences, rights and other authorizations required by law with respect thereto and all powers, capacities and authorities under governing legislation;

(v) it shall immediately notify the County about any damage or injury, including but not limited to personal injury and property damage, resulting out of the Work contemplated by the Agreement; and

(vi) the Donor shall notify the County immediately of any material change in the representations/warranties set out in subparagraphs (i) to (v) above.

(c) Should the Donor default on any of the representations or warranties set out in this Agreement, the County may, in addition to any other right to remedy otherwise available to it either at law or in equity, immediately terminate this Agreement, or refuse the Gift, or both.

## **15. WAIVER OR LIABILITY AND INDEMNIFICATION**

Neither party shall have any responsibility or liability for any damages, claims, actions, applications, suits, losses, injuries, including, but not limited to personal injury, of the other, its employees, servants, agents, representatives, consultants and contractors or to any person in the course of that person's entry onto or exit from the Lands in connection with the Work, and/or the Sculpture, or any damage that may be caused to any personal property of the other, its employees, servants, agents, representatives, consultants and contractors.

As per separate agreement with contractor, artist, and Land owner, the Donor shall remain responsible for specific conditions as set out in Section 14 above. The County shall be accountable for any liability or indemnification as a result of any funding agreements, agreement with the Artist or with the Land owner during installation of the Work.

## **16. INSURANCE**

It shall be the sole responsibility of the Donor to determine what insurance coverage, if any, is necessary and advisable for its own protection and/or to fulfill its obligations under this Agreement. Any such insurance shall be maintained and provided at the sole expense of the Donor.

## **17. SUCCESSORS AND ASSIGNS**

This Agreement, including all rights, privileges and benefits herein contained shall extend to, be binding upon and inure to the benefit of the parties hereto and their respective heirs, administrators, successors and assigns.

## **18. RESTRICTIONS ON ASSIGNMENT**

None of the parties to this Agreement may assign this Agreement in whole or in part without the prior written consent of the other.

## **19. ACCESS AND PRIVACY**

This Agreement and all schedules and attachments and any information provided pursuant to this Agreement are subject to the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c.M.56.

## **20. NOTICES**

Any notices required or permitted to be provided hereunder shall be in writing and shall be addressed as follows:

### **To the County:**

County of Prince Edward  
332 Picton Main Street  
Picton ON K0K 2T0  
Attention: County Clerk

### **To the Donor:**

The Macdonald Project  
c/o 6 Thorndale Cres.  
Toronto ON M8X2S8

Phone: 416 231 6179  
Attention: David Warrick, Chair

## **21. INVALIDITY OF PART NOT TO AFFECT REMAINDER**

Every provision of this Agreement is intended to be severable. If all or any part of any term or provision hereof is illegal, invalid or unenforceable for any reason, such illegality, invalidity or unenforceability shall not affect the validity or enforceability of the remainder of this Agreement.

## **22. WAIVER**

No omission or delay by either party in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise of such right, power or privilege preclude any other or further exercise thereof or of any other right, power or privilege. The rights and remedies herein provided are cumulative with and not exclusive of any rights or remedies provided by law or in equity.

## **23. NO PARTNERSHIP, TENANCY OR JOINT VENTURE**

Nothing in this Agreement shall be construed so as to constitute a relationship between the parties of employer/employee, agent, partners, joint ventures, co-owners, or otherwise as participants in a joint or common undertaking. Neither party, nor its employees, agents or representatives shall have any right, power or authority to act or create any obligation, express or implied, on behalf of the other.

**24. GOVERNING LAW**

This Agreement shall be construed in accordance with and governed by the laws, and subject to the jurisdiction of the courts, of the Province of Ontario.

**25. AMENDMENT OF AGREEMENT**

With the exception of the extension of time referred to in subsection , this Agreement may be amended by the mutual consent of the parties. Any such amendment must occur through a written amendment agreement approved by the parties

**26. COMPLETE AGREEMENT**

This Agreement constitutes the complete and exclusive statement of the agreement between the parties, which supersedes all proposals, oral or written, and all other communications between the parties, relating to the subject matter of this Agreement.

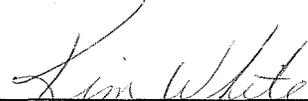
**27. INDEPENDENT LEGAL ADVICE**

The Donor acknowledges having reviewed this Agreement and having been made aware of its right to obtain independent legal advice and has either obtained said legal advice or has chosen not to obtain legal advice and enter into this Agreement willingly and of its own accord.

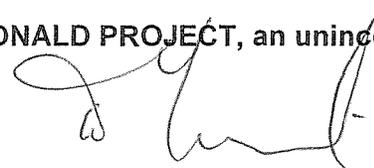
**IN WITNESS WHEREOF** the parties have executed this Agreement by virtue of affixing the signatures of their respective proper officers and agents duly authorized in that behalf.

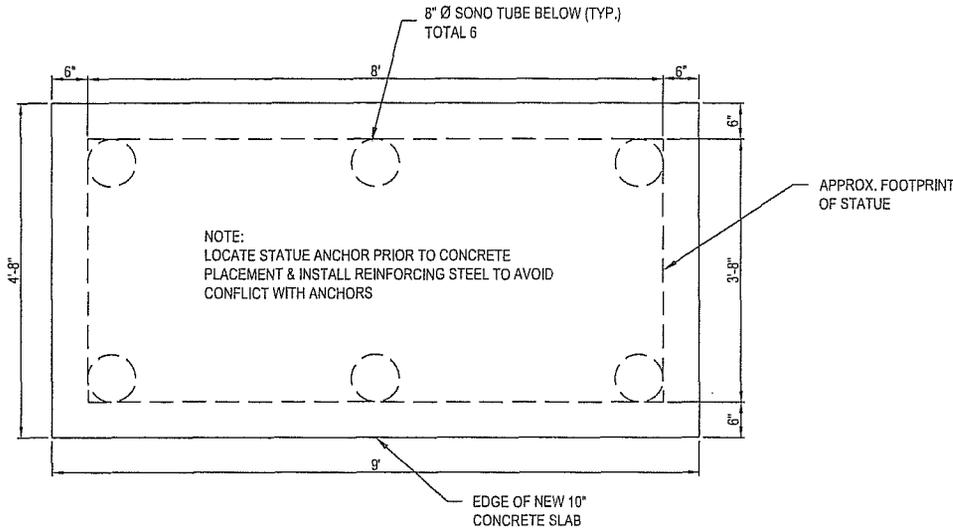
**THE CORPORATION OF THE COUNTY OF PRINCE EDWARD**

Per:   
Mayor Robert Quaiff

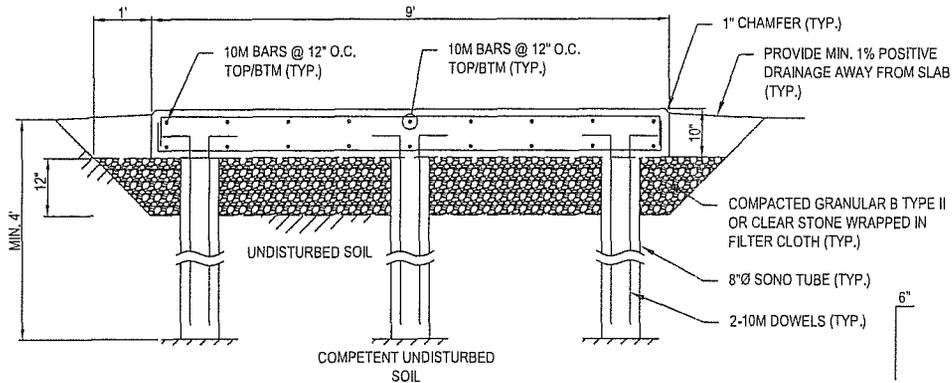
Per:   
Kim White, Clerk

**THE MACDONALD PROJECT, an unincorporated association**

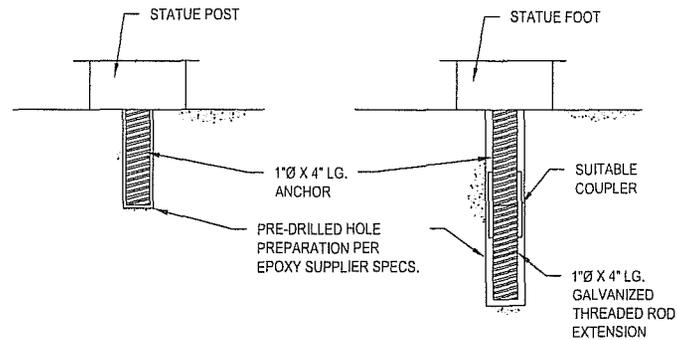
Per:   
David Warrick, Member  
Agent and trustee on behalf of the Donor



01 FOUNDATION PLAN  
S1 1:25



02 FOUNDATION SECTION  
S1.1 1:25



03 ANCHOR DETAIL  
S1.1 NTS

**FOUNDATION NOTES:**

**APPLICABLE STANDARDS/CODES:**

1. ALL WORK AND MATERIALS SHALL COMPLY WITH THE ONTARIO BUILDING CURRENT EDITION.

**CONCRETE NOTES:**

1. ALL FOOTINGS SHALL REST ON NATURAL UNDISTURBED SOIL OR STRUCTURAL FILL CAPABLE OF SUSTAINING MINIMUM 2,100psf SOIL BEARING STRENGTH.
2. BEARING CAPACITY SHALL BE VERIFIED BY A QUALIFIED PERSON PRIOR TO CONCRETE POUR.
3. CONSULT A GEOTECHNICAL ENGINEER IF ADVERSE SOIL CONDITIONS ARE ENCOUNTERED.
4. PROTECT FRESHLY POURED CONCRETE FROM FROST OR FREEZING. DO NOT POUR CONCRETE ON FROZEN GROUND.
5. CONCRETE STRENGTH AT 28 DAYS SHALL BE 32MPa AND AIR ENTRAINED WITH 5-7% AIR CONTENT, MAXIMUM 3" SLUMP.
6. CONCRETE CONSTRUCTION SHALL CONFORM TO C.S.A A 23M SERIES.
7. CONCRETE COVER FOR REINFORCEMENT SHALL BE 70mm ± 10mm.
8. REINFORCING STEEL SHALL CONFORM TO C.S.A. STANDARD 630.18 GRADE 400 (GRADE 60).
9. GRANULAR FILL TO BE GOOD QUALITY 'B' TYPE II OR CLEAR STONE, PLACED IN 12" (MAX.) LIFTS AND COMPACTED TO 98% OF STANDARD PROCTOR MAXIMUM DRY DENSITY (SPMDD)
10. CONTRACTOR SHALL CHECK AND VERIFY ALL DIMENSIONS BEFORE COMMENCEMENT OF WORK AND REPORT ANY DISCREPANCIES TO THE ENGINEER.
11. CONTRACTOR TO LOCATE ANCHOR LOCATIONS AND DRY FIT STATUE PRIOR PERMANENTLY INSTALLING THE STATUE
12. QUIKCRETE HIGH STRENGTH ANCHORING EPOXY (AVAILABLE AT LOWES) OR APPROVED EQUAL, SHALL BE USED TO ANCHOR THE STATUE. FOLLOW SUPPLIER SPECIFICATIONS FOR DRILLING AND CLEANING OF HOLE.

**GENERAL NOTES:**

- ALL WORK SHALL BE IN ACCORDANCE WITH RELEVANT CODES AND GUIDELINES
- ALL DRAWINGS AND ADDENDA ARE TO BE READ AS AND IN CONJUNCTION WITH THE SPECIFICATIONS
- CONTRACTOR MUST REPORT ANY DISCREPANCIES TO THE ENGINEER FOR RESOLUTION BEFORE COMMENCING THE WORK
- ANY CHANGES MUST BE APPROVED BY THE ENGINEER

A A DETAIL NO.  
B B DWG. NO. - WHERE DETAILED

STAMP



DWG NAME:

SIR JOHN A STATUE  
FOUNDATION

ISSUED FOR PERMIT/CONSTRUCTION

**PROJECT INFORMATION:**

THE ARMOURY  
MAIN STREET, PICTON

**Q&E ENGINEERING INC.**  
CIVIL-STRUCTURAL ENGINEERS  
684 MONEYMORE ROAD, ROSLIN, ON,  
O. (613) 707 - 0106  
M. (613) 813-2808  
qtan@qe-engineering.com

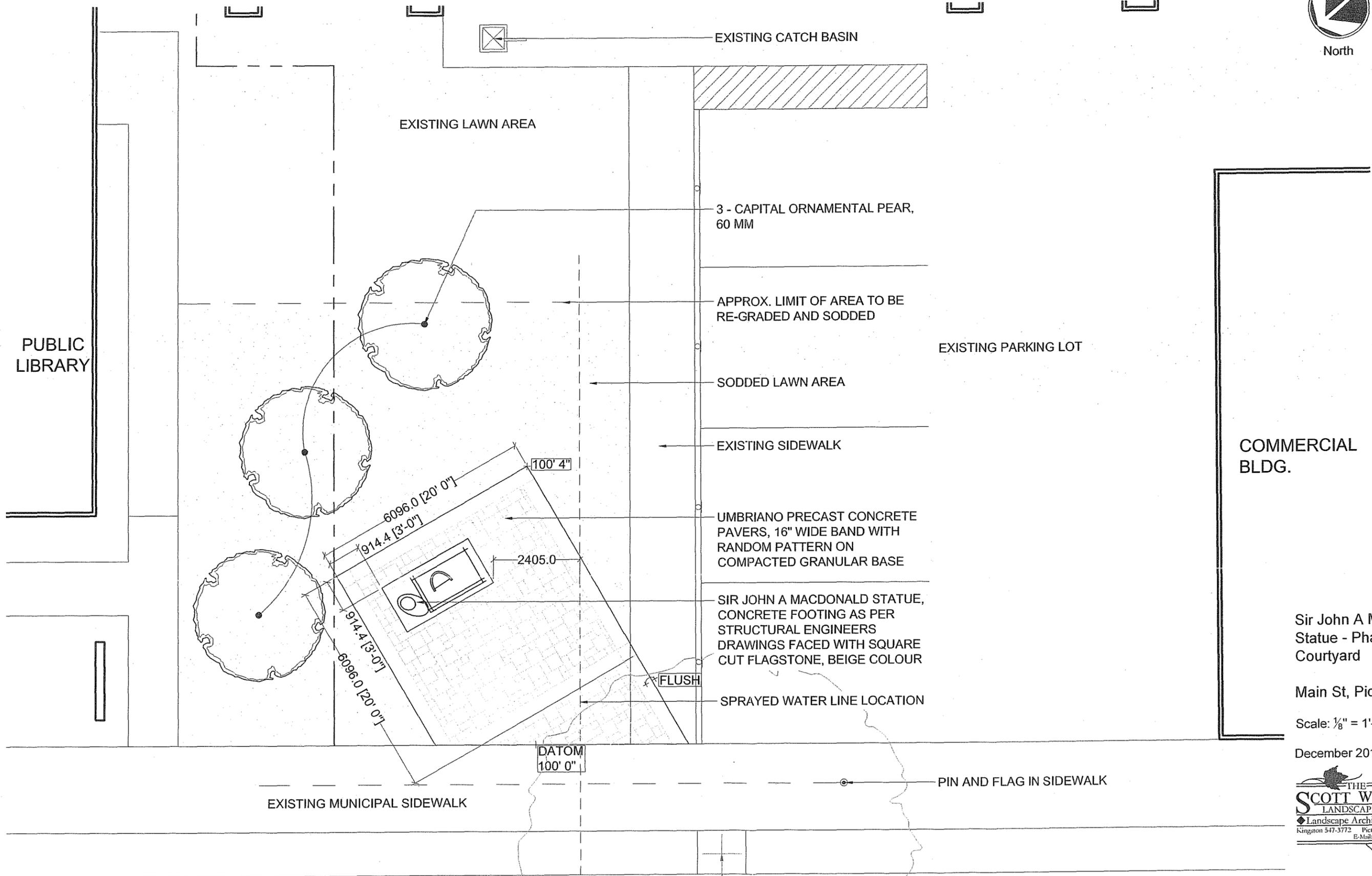
DATE 13-05-2015

DWG #

SCALE AS NOTED

5-1

Schedule "A"



Sir John A MacDonald  
Statue - Phase One Statue  
Courtyard

Main St, Picton ON

Scale: 1/8" = 1'-0"

December 2014

THE  
**SCOTT WENTWORTH**  
LANDSCAPE GROUP LTD.  
Landscape Architects and Contractors  
Kingston 547-3772 Picton 476-1181 Belleville 969-7992  
E-Mail: design@swlg.ca