

TO:	CHAIR AND MEMBERS CORPORATE SERVICES COMMITTEE MEETING ON DECEMBER 10, 2013
FROM:	J. M. FLEMING MANAGING DIRECTOR, LAND USE PLANNING and CITY PLANNER
SUBJECT:	AGREEMENTS BETWEEN THE CITY OF LONDON AND FANSHAWE COLLEGE FOR MUTUAL BENEFIT AT MARKET LANE

RECOMMENDATION

That, on the recommendation of the Managing Director, Land Use Planning and City Planner, the attached proposed by-law **BE INTRODUCED** at the Municipal Council meeting on December 17, 2013 to authorize the Mayor and Clerk to execute two agreements for the mutual benefit of the City and Fanshawe College related to: the City's use of a discrete area within 137 Dundas Street for electrical and mechanical services that support Market Lane, and for an encroachment into Market Lane at 139 Dundas Street to permit stairs and ramping for Fanshawe's new building, attached hereto as Appendix "A".

BACKGROUND

Market Lane is a pedestrian space linking Dundas Street to the Covent Garden Market - one of the main hubs in Downtown London today. This space is not officially a "lane", but a vacant lot that has been utilized over the last 100 years as a convenient access way. In 2012, the City invested in upgrades to the Lane's basic infrastructure and installed enhancements that were selected through a national design competition. Market Lane is now a unique public space in keeping with Council's vision for the Downtown as a people-friendly place that provides quality urban spaces for residents.

At the start of the detailed design process for the Lane, it was announced that the adjacent building to the west of the Lane was purchased by Fanshawe College and would be their new Centre for Digital and Performance Arts. This created issues for the Market Lane project in coordinating the design and construction processes, but offered great opportunities to mesh the public space with the College's building and programming. Through numerous meetings, it was agreed that both parties would benefit from utilizing features of the other's project. Two agreements were created that allowed better integration of two projects and ensured:

- design coordination, by using similar materials on public and private lands;
- efficient use of building space, by permitting Fanshawe to utilize the Lane for one of their main entrances with the required stairs and ramp;
- cost savings to the City, by having access to basement space in Fanshawe's building for our irrigation system and electrical controllers;
- greatly enhanced programming of the public realm, by way of sliding doors that open to Fanshawe's performance stage, and;
- the opportunity for Fanshawe to utilize the Lane's electrical system to support those performances.

With these arrangements, the City saved capital funds in not having to install underground chambers to house our electrical and irrigation systems and Fanshawe could relocate one of

their main entrances to the Lane which facilitated the required accessibility and better suited their internal design requirements.

As announced recently by Fanshawe, the new Centre for Digital and Performance Arts will open in January 2014. Construction work in the Lane by Fanshawe's contractor wrapped up in November and the Lane was fully opened for use by the public. The City and Fanshawe are coordinating an event for the lighting of the Lane for (tentatively) December 20th. Through 2014, City staff will continue to work with Fanshawe on refining the planned programming of performances and events that utilize the Lane to maximize the vibrancy of the space, while ensuring that the Lane remains an attractive and safe link between Dundas St. and the Market.

PREPARED BY:
A.W. MACPHERSON MANAGER – ENVIRONMENTAL AND PARKS PLANNING
RECOMMENDED BY:
J. M. FLEMING DIRECTOR OF LANDUSE PLANNING AND CITY PLANNER

November 25, 2013

Appendix A – By-Law

Y:\Shared\parksplanning\REP&RECS - Working Reports\2013\MarketLaneAgreements.docx

APPENDIX A

By-law No.

A By-law to approve two Agreements between the Corporation of The City of London and The Fanshawe College of Applied Arts and Technology; and to authorize the Mayor and City Clerk to execute the Agreements.

WHEREAS section 5(3) of the *Municipal Act*, 2001 S.O. 2001 c.25, as amended, provides that a municipal power shall be exercised by by-law;

AND WHEREAS section 9 of the *Municipal Act*, 2001 provides that a municipality has the capacity, rights, powers and privileges of a natural person for the purposes of exercising its authority under this or any other Act;

AND WHEREAS it is deemed expedient for the Corporation of The City of London (the "City") to enter into two Agreements with The Fanshawe College of Applied Arts and Technology ("Fanshawe"), being a License Agreement for the City's use of space within Fanshawe College's Centre for Digital and Performing Arts at 137 Dundas Street, and an Encroachment Agreement for an encroachment onto City lands at 139 Dundas Street for stairs and ramping to the main entrance to the Centre for Digital and Performing Arts (the "Agreements");

AND WHEREAS it is appropriate to authorize the Mayor and City Clerk to execute the Agreements on behalf of the City;

NOW THEREFORE the Municipal Council of the Corporation of the City of London enacts as follows:

1. The Agreements attached as Schedule "A" to this By-law, being the Agreements between the Corporation of the City of London and Fanshawe College are hereby AUTHORIZED AND APPROVED.
2. The Mayor and City Clerk are authorized to execute the Agreements authorized and approved under section 1 of this by-law.
3. This By-law shall come into force and effect on the day it is passed.

PASSED in Open Council on December 17, 2013

Joe Fontana
Mayor

Catherine Saunders
City Clerk

SCHEDULE A

LICENCE AGREEMENT

THIS AGREEMENT made as of the 17th day of, December, 2012

BETWEEN:

**THE FANSHAWE COLLEGE OF APPLIED
ARTS AND TECHNOLOGY**

(hereinafter referred to as the "Licensor")

OF THE FIRST PART

- and -

THE CORPORATION OF THE CITY OF LONDON

(hereinafter referred to as the "Licensee")

OF THE SECOND PART

WHEREAS the Licensor is the registered owner of the property located at 137 Dundas Street, London, Ontario as shown on Schedule A attached hereto (the "**Site**");

AND WHEREAS the Licensor has agreed to grant to the Licensee a non-exclusive licence to use a certain area of the Site for the purpose of installing, operating and maintaining certain equipment for a lighting controller and irrigation system servicing the lands owned by the Licensee as shown on Schedule A attached hereto (the "**Market Lane**").

NOW THEREFORE this Agreement witnesseth that in consideration of the covenants, terms, conditions and agreements contained herein, the receipt and sufficiency of which is hereby acknowledged, the Licensor and Licensee agree as follows:

1. Subject to the terms and conditions contained in this Agreement, the Licensor hereby grants to the Licensee the use, in common, with the Licensor, of the areas identified on the attached Schedule B (the "**Licensed Area**") located at the Site for the purpose of installing, operating and maintaining a lighting controller, including related equipment and other items as described in Schedule C and an irrigation system, including all related equipment and other items as described in Schedule C (collectively, the "**LCIS**").
2. The Licensee agrees to use the Licensed Area solely for the purpose of installing, operating and maintaining the LCIS.
3. Unless an earlier termination date is provided for herein, the term of this licence shall be twenty (20) years commencing on the 17th day of December, 2012 (the "**Term**").
4. The Licensee shall be responsible for all costs associated with the installation of the LCIS including, but not limited to, any required electrical power upgrades and metering of the water supply at LCIS equipment locations in the Licensed Area. The Licensor and Licensee

2176032.1

shall mutually agree to an acceptable LCIS design which must be in accordance with the Licensor's specifications and standards.

5. On the expiry or earlier termination of this Agreement and the licence, unless otherwise agreed in writing between the parties, the Licensee shall remove the LCIS from the Licensed Area and make good all damage to the Licensed Area and the Site occasioned by the affixation, installation or removal of the LCIS interest and restore the Licensed Area to the condition which is substantially similar to the condition of delivery to the Licensee of the Licensed Area at the commencement of the term of this Agreement, reasonable wear and tear being excepted. The Licensee shall pay to the Licensor the cost of removing any part of the LCIS which the Licensee shall have failed to remove and/or the cost of restoring the Licensed Area and the Site as required by this paragraph 5, if the Licensee fails to do so. Notwithstanding the foregoing, should the Licensee terminate this Agreement and no longer have a need for the LCIS, the Licensor, at its option, may request the Licensee not remove the LCIS or components thereof and retain ownership at no cost to the Licensor. If the Licensor exercises its option to retain the LCIS or components thereof, the Licensee shall still be obligated to remove its remaining LCIS equipment from the Site as required by this paragraph 5.

6. Licensee shall comply, at Licensee's expense, with all laws, by-laws, ordinances, regulations and directives of any public authority having jurisdiction affecting the Site or the Licensed Area or the use or occupation thereof including, without limitation, police, fire and health regulations and requirements of the fire insurance underwriters. The Licensee shall use reasonable commercial efforts to comply, at Licensee's expense, with the written policies and procedures adopted by the Licensor from time to time (collectively, "**College Policy**") as it applies to the Licensee's use of, and activities in, the Licensed Area and at the Site.

7. The Licensor shall provide reasonable physical security within the Site in accordance with College Policy. In the event that any damage, theft or loss affecting the LCIS is observed by Licensor, the Licensor shall notify the Licensee of such damage, theft or loss as soon as reasonably possible.

8. The Licensee shall, at the Licensee's own cost and expense, design, engineer, install, maintain, upgrade and repair the LCIS (collectively, the "**Work**") and to keep the Licensed Area in good state of repair and condition. Licensor will provide Licensee and its authorized representatives and agents access to the Licensed Area for personnel and necessary equipment, for the purposes of the Work, during the Licensor's regular daytime business hours, which the Licensor may change from time to time. . The Licensee shall use reasonable commercial efforts to provide the Licensor with no less than 48 hours notice of any proposed Work. For access outside of the Licensor's regular daytime business hours the Licensee shall contact the Licensor's Security Control Centre to arrange access and the Licensee agrees to reimburse the Licensor for reasonable costs incurred including but not limited to overtime and security costs. The Licensor shall have the right to cause the Licensee to discontinue, and the Licensee shall thereupon immediately discontinue the carrying on of any Work which does not, in the Licensor's reasonable opinion, meet the standards of College Policy.

9. Prior to any installation and operation of, or any relocation of the LCIS, Licensee will review the design of the LCIS, and the proposed location and layout of the LCIS, (collectively, the "**LCIS Plans**") with the designated representatives from the Facilities Management and Community Safety department of the Licensor (the "**Licensor's Representatives**"). All LCIS

Plans shall be approved in writing by the Licensor's Representatives prior to any work commencing. All work relating to the installation and operation or any relocation of the LCIS contemplated to be performed at the Site by the Licensee, including any work to be performed by Licensee's contractors or agents, shall be reviewed in advance with and to the satisfaction of the Licensor's Representatives. Licensee acknowledges and agrees to coordinate all work, in advance, through the Licensor's Representatives consistent with the Licensor's general requirements.

10. The Licensor agrees to provide the electrical power supply including one (1) fifteen (15) amp circuit and one (1) duplex receptacle, one (1) internet connection if requested by the Licensee and water supply for the LCIS. The Licensee agrees to provide for metering the water supply including without limitation, creating a separate account in the name of the Licensee with the appropriate authority and pay for any water consumption and all fees or charges relating to such consumption, associated with the operation and use of the irrigation system annually commencing on the commencement date of this licence. The Licensor agrees that it shall not shut off any source of electrical power, water or the internet connection to the LCIS except as may be necessary in connection with any maintenance and/or repairs of or to the Site by the Licensor or its employees, contractors or agents.

11. The Licensor shall not be held liable for any injury or damage to the Licensee, or to any property of the Licensee or anyone else, for any loss of profits or business interruption, indirect or consequential damages or for any other costs, losses or damages of whatsoever kind (collectively, the "**Losses**") arising from any interruption or failure in the electrical power, water supply or internet connection for the LCIS, save and except where any Losses result from the negligence or wilful misconduct of the Licensor or the Licensor's Representatives.

12. The Licensee acknowledges that the Licensor owns and/or operates wired and wireless internet and intranet services (collectively, the "**Communications Facilities**"). In the event that the lighting controller is connected to the Communications Facilities and the lighting controller interferes or causes a disruption with the Communications Facilities, including but not limited to viruses or malicious intrusions, the Licensee shall be responsible, at the Licensee's cost and expense, to correct any such interference problem or disruption caused by the lighting controller in an expedient manner acceptable to the Licensor.

13. Notwithstanding anything contained in this Agreement, the Licensor may at any time and from time to time make changes to the Site by the construction, removal, relocation or alteration of any buildings, structures, installations, services, or improvements (collectively the "**Licensor Improvements**"). Where Licensor Improvements require the relocation of the LCIS within or outside the Licensed Area and/or the construction of pipes, conduits, utilities and other necessary facilities in and through the Licensed Area, the Licensor shall provide ninety (90) days written notice to the Licensee. The Licensee shall be responsible, at the Licensee's cost and expense, for the relocation of the LCIS if such relocation is required by the Licensor as a result of any such changes made to the Site and/or Licensed Area by the Licensor.

14. The Licensee agrees that if it wishes to relocate the LCIS, the Licensee shall provide the Licensor with revised LCIS Plans for approval. The Licensor shall, at its sole discretion, approve or deny the Licensee's request. The Licensee shall be responsible, at the Licensee's cost and expense, to relocate the LCIS.

15. The Licensor will not be liable for any death or injury arising from or out of any occurrence in, upon, at or relating to the Licensed Area, or damage to the property of the Licensee or of others located in the Licensed Area, nor will it be responsible for any loss of or damage to any property of the Licensee save and except for the negligence or wilful misconduct of the Licensor or the Licensor's Representatives.

16. The Licensee shall indemnify and save harmless the Licensor, together with its directors, officers, employees and agents, against any and all claims, actions, damages, losses, liabilities and expenses (including, without limitation, those in connection with bodily injury (including death), personal injury or damage to property) arising from or out of the use by the Licensee of the Licensed Area, occasioned wholly or in part by the installation, relocation, operation, maintenance or removal of the LCIS, occasioned wholly or in part by any act or omission of the Licensee or by any person permitted by the Licensee to be in the Licensed Area, or due to or arising out of any breach by the Licensee of this Agreement.

17. The Licensee shall at its own expense obtain and maintain during the term of this Agreement, and provide the Licensor with evidence of comprehensive general liability insurance for an amount not less than Five Million (\$5,000,000.00) Dollars and shall include the Licensor as an additional insured with respect to Licensee's use and operations on the Site; such policy to include non-owned automobile liability, personal injury, broad form property damage, contractual liability, the Licensee's and contractors' protective, completed operations, contingent employer's liability, cross liability and severability of interest clauses. The aforementioned policy will not be cancelled or permitted to lapse unless the insurer notifies the Licensor in writing at least thirty (30) days prior to the date of cancellation or expiry. The Licensee will provide evidence of such insurance to the Licensor promptly at inception of this Agreement and thereafter on each insurance renewal date.

18. This Agreement and the grants of license contained herein may be terminated by either party upon the party wishing to terminate giving the other party no less than one hundred and eighty (180) days prior notice in writing. The Licensor shall have the right to terminate this Agreement in the event that the Licensee defaults on any provision of this Agreement and such default has not been cured to the full satisfaction of the Licensor within fifteen (15) days of written notice thereof being delivered by the Licensor to the Licensee.

19. The Licensee acknowledges that there may be environmentally hazardous materials (including, without limitation, asbestos and lead) in and on the Site, including the Licensed Area, and that the Licensee's use of the Licensed Area and any other part of the Site is at the Licensee's own risk. The Licensee hereby releases the Licensor, together with its directors, officers, employees and agents from any and all actions, causes of actions, claims, demands and proceedings of whatever kind, damages, indemnity costs, compensation or any other remedy which the Licensee may now or in the future have as a result of the presence of environmentally hazardous materials in and on the Site including the Licensed Area.

20. Any notices that may or are required to be given under this Agreement shall be sent to Licensee at **P.O. Box 5035, London, Ontario N6A 4L9** and to the Licensor at **1001 Fanshawe College Boulevard, PO Box 7005, London, ON, Attention: Executive Director, Facilities Management & Community Safety**, or to such other address as shall have been given by either party to the other for such purpose, and any notice given shall be well and sufficiently given if mailed or delivered to the other party and any such notice shall be deemed

to have been given when delivered, and if mailed, within five (5) days after the mailing of such notice by prepaid registered post.

21. It is understood and agreed that this Agreement shall not constitute the parties hereto as partners nor create a joint venture between them and neither party shall be deemed to be a representative or agent of the other party.

22. This License shall not be assignable by the Licensee without the prior written consent of the Licensor provided such consent may be unreasonably withheld.

23. The Licensor shall be entitled to assign this Agreement, upon written notice to the Licensee, to any successor or assignee of its interest in the Site.

24. The parties agree that the provisions of the *Commercial Tenancies Act, R.S.O. 1990*, do not apply to this Agreement.

25. This Agreement and the license shall be governed by and construed in accordance with the laws of the Province of Ontario.

IN WITNESS WHEREOF, the parties have executed this agreement by their duly authorized signing officers, as of the above date.

**THE FANSHAWE COLLEGE OF APPLIED
ARTS AND TECHNOLOGY**

Per: 

Per: _____

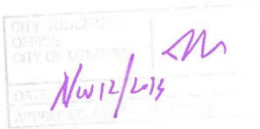
We have authority to bind the College.

THE CORPORATION OF THE CITY OF LONDON

Per: _____

Per: _____

We have authority to bind the Corporation.



2176032.1

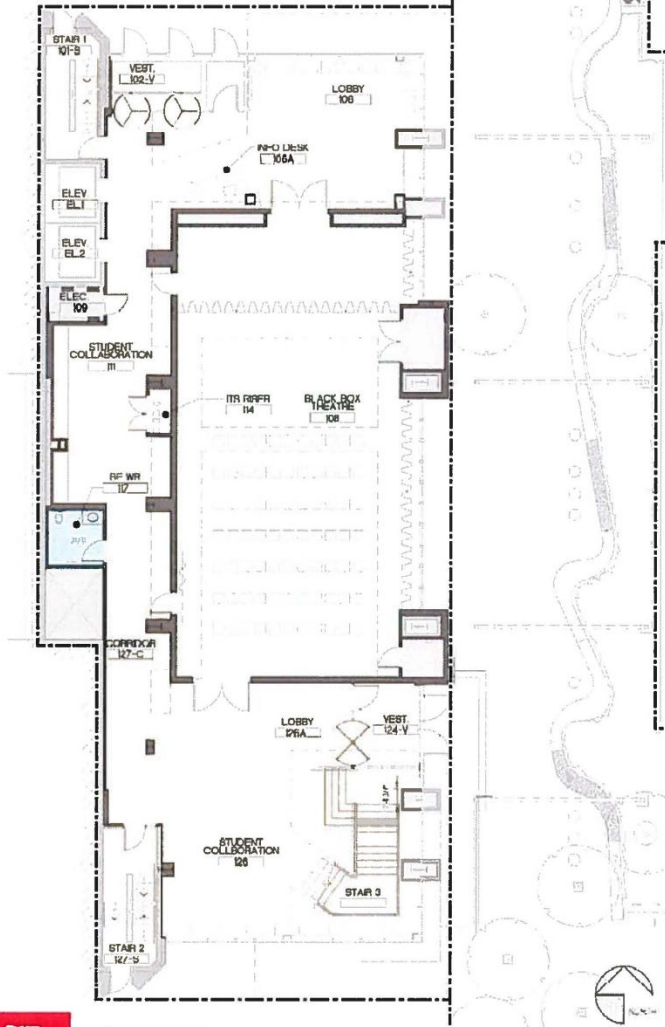
SCHEDULE A

FANSHAWE COLLEGE CENTRE FOR
DIGITAL AND PERFORMANCE ARTS

137 Dundas Street - the Site

Schedule A

Market Lane



GROUND FLOOR PLAN

February 14, 2013

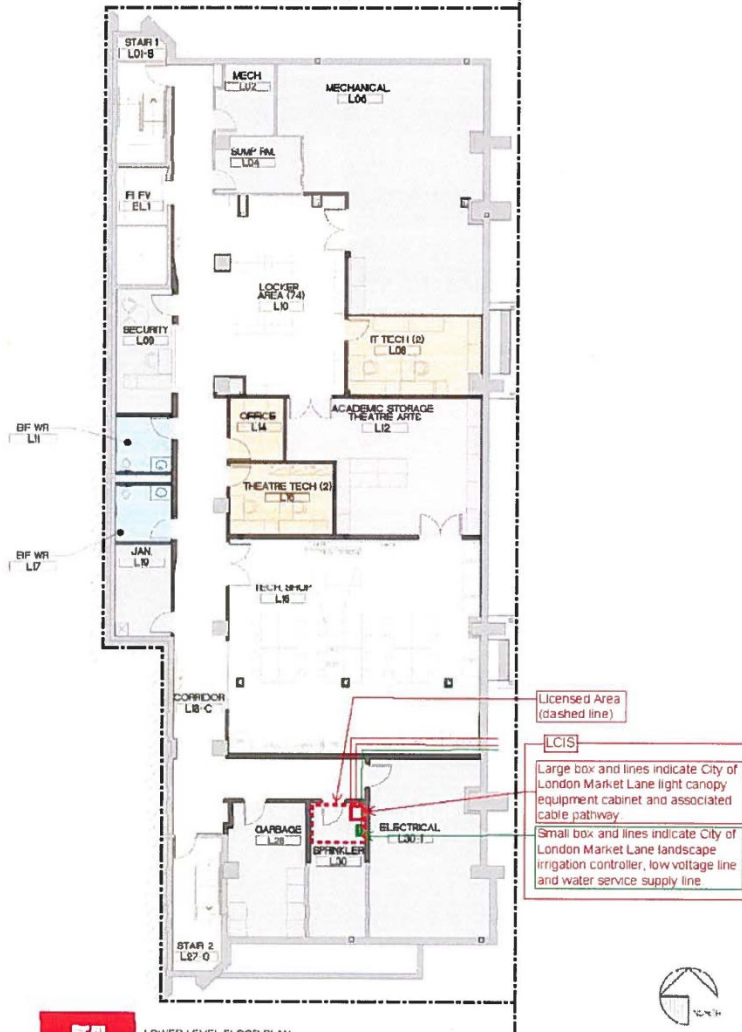
2176032.1

SCHEDULE B

FANSHAWE COLLEGE CENTRE FOR DIGITAL AND PERFORMANCE ARTS

Schedule B

137 Dundas Street - the Site



LOWER LEVEL FLOOR PLAN

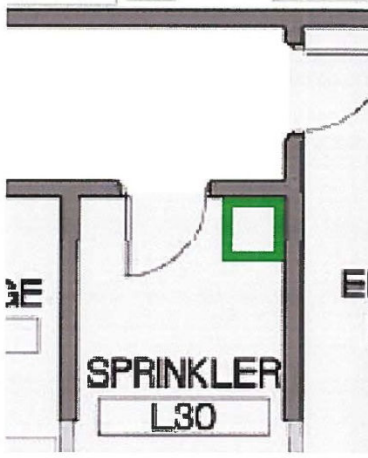
February 14, 2013

2176032.1


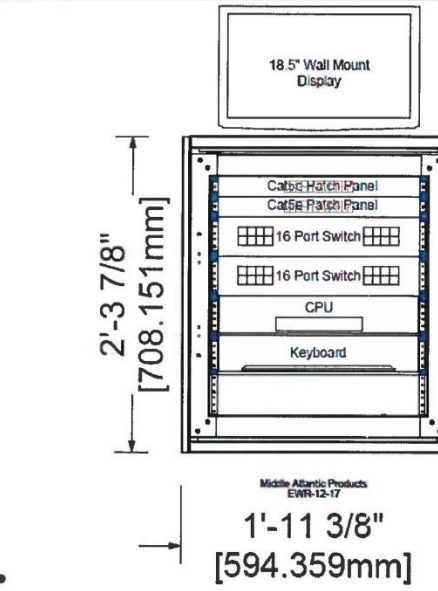

SCHEDULE C


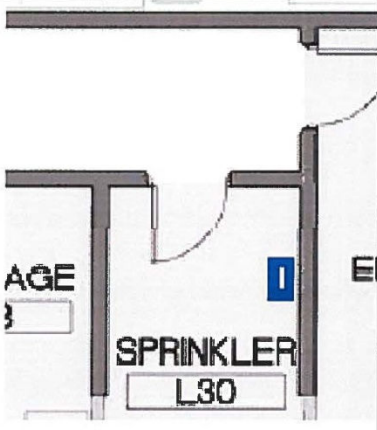


Schedule C - LCIS

City of London Equipment Detail located at 137 Dundas St.

<ul style="list-style-type: none">• <u>Electrical Equipment Details</u>•• 2 x 16 Port Network Switch – 60 watts each• 1 x Mac Mini Computer running Madrix – 90 watts• 1 x Monitor – 180 watts• 1 x Router – 50 watts• In a• 18”w x 24”h x 17”d Middle Atlantic Products Network Cabinet• Model : EWR-12-17••	 <p>The diagram is a floor plan of a room. A green square is drawn on the plan, indicating the location of the equipment. Below the square, the text 'SPRINKLER L30' is written. To the left and right of the room, the letter 'E' is partially visible, and to the right, 'EL' is also partially visible. The room has a door on the right side.</p>
--	--

2176032.1

	 <p>18.5" Wall Mount Display</p> <p>2'-3 7/8" [708.151 mm]</p> <p>Cat6 Patch Panel Cat6 Patch Panel</p> <p>16 Port Switch 16 Port Switch</p> <p>CPU</p> <p>Keyboard</p> <p>Middle Atlantic Products EWR-12-17</p> <p>1'-11 3/8" [594.359 mm]</p>
<ul style="list-style-type: none">• Irrigation System Control• 1 x Pro-C Hunter Irrigation Controller.	

<p>Pro-C</p> <p>Residential and Light Commercial Irrigation Controllers</p> <p>PC Series Modular Controller Indoor/Outdoor Models</p> <p>Owner's Manual and Installation Instructions</p> <p>Please leave with property owner</p>  <p>Hunter</p>	
	

SCHEDULE "A"
to By-law No. S.-

THIS AGREEMENT made in duplicate this ____ day _____ of ____

B E T W E E N:

THE CORPORATION OF THE CITY OF LONDON

(hereinafter called the "City")

OF THE FIRST PART

A N D

THE FANSHAWE COLLEGE OF APPLIED ARTS AND TECHNOLOGY

(hereinafter called "Fanshawe")

OF THE SECOND PART

WHEREAS Fanshawe represents that it is the registered owner of certain lands and premises in the City of London, in the County of Middlesex, which abut on the west side of Market Lane, known municipally as 137 Dundas Street, in the City of London, County of Middlesex, and being more particularly described in Schedule "A" attached hereto (the "Fanshawe Lands");

AND WHEREAS as a result of alterations being made to the building including the building envelope constructed on the Fanshawe Lands (the "Building"), part of the Building will encroach onto Market Lane as more particularly shown on Schedule "B" hereto (the "Encroachment");

AND WHEREAS Fanshawe has petitioned the Municipal Council of The Corporation of the City of London that they be allowed to maintain and use the Encroachment;

AND WHEREAS the City has consented to permit Fanshawe to maintain the Encroachment on certain terms and conditions:

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the premises and the sum of TWO DOLLARS (\$2.00) of lawful money of Canada, now paid by Fanshawe to the City, the receipt and sufficiency whereof is hereby acknowledged, Fanshawe and the City covenant and agree to do and perform, at their expense the following matters and things:

1. Fanshawe shall be permitted to encroach onto Market Lane to the extent shown on Schedule "B" and shall have the right to construct, reconstruct, alter and maintain the Encroachment for as long as the Building at 137 Dundas Street remains. Upon the removal of the Building at 137 Dundas Street, the right to maintain the Encroachment shall cease.
2. Fanshawe agrees to use and maintain the Encroachment at all times at Fanshawe's sole risk and expense. The obligation to maintain the Encroachment shall include the obligation to remove ice and snow therefrom.
3. Fanshawe shall have the right to enter onto Market Lane for the purpose of inspecting, maintaining, repairing and cleaning the Encroachment and/or the Building, or for other purposes as agreed to by both parties.
4. Fanshawe shall at its own expense obtain and maintain during the term of this Agreement, and provide the City with evidence of comprehensive general liability insurance for an amount not less than Five Million (\$5,000,000.00) Dollars and shall include the City as an additional insured with respect to Fanshawe's use and operations on the property described in this Agreement; such policy to include non-owned automobile liability, personal injury, broad form property damage, contractual liability, Fanshawe's and contractors' protective, completed operations, contingent employer's liability, cross liability and severability of interest clauses. The aforementioned policy will not be cancelled or permitted to lapse unless the insurer notifies the City in writing at least thirty (30) days prior to the date of cancellation or expiry. Fanshawe will provide evidence of such insurance to the City promptly at inception of this Agreement and thereafter on the insurance renewal date.
5. Fanshawe and its successors and assigns, will at all times indemnify and save harmless the

City of and from all loss, costs and damages which the City may suffer, be at or be put to, for or by reason of or on account of the existence of the Encroachment or the use or maintenance of the Encroachment or anything done or purported to be done pursuant to this Agreement or the by-law respecting the Encroachment, or either of them, or anything which may arise by reason of the use and maintenance of the Encroachment, this Agreement, or the by-law respecting the Encroachment, or any act or neglect in carrying out anything to be done pursuant to the said by-law, this Agreement or by reason of the existence, use, maintenance or repair or lack of repair of the Encroachment.

6. This Agreement shall be binding upon the Parties and, their heirs, executors, administrators, successors and assigns, and the covenants herein contained shall be deemed to run with the lands and premises and bind the Parties and occupiers thereof from time to time.

IN WITNESS WHEREOF the Parties hereto have hereunto set their hand and seal.

SIGNED, SEALED AND DELIVERED

THE FANSHAWE COLLEGE OF
APPLIED ARTS AND TECHNOLOGY

in the presence of



WITNESS

I/We have authority to bind the Corporation

THE CORPORATION OF THE CITY OF
LONDON

CITY CLERK'S
OFFICE
CITY OF LONDON
DATE: *Nov 12/2013*
APPROVED: *[Signature]*

2176029.1

SCHEDULE A

Legal Description of Property:

Part Lot 13, S/W Dundas Street, Part 1, 2, 33R4045; London bearing PIN 08321-0013(LT).

SCHEDULE B

FANSHAWE COLLEGE CENTRE FOR
DIGITAL AND PERFORMANCE ARTS

