



The Corporation of the City of Courtenay

# Staff Report

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**To:** Council

**File No.:** 2240-20

**From:** Director of Recreation, Culture and Community Services

**Date:** November 27, 2024

**Subject:** Sid Williams Theatre Society Agreements and Discontinuation of the Theatre Ticket Surcharge Reserve

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## **PURPOSE:**

The purpose of the report is to seek Council's approval for the attached five-year Licence to Occupy (Attachment 1) and attached Management and Operating Grant Fee for Service Agreement (Attachment 2) with the Sid Williams Theatre Society (the Society) which outline:

- a) The terms and conditions by which the Society will continue to occupy, manage, and operate the Sid Williams Theatre (the Theatre);
- b) The service deliverables expected of the Society in return for grant funding and in-kind support provided by the City through the Management and Operating Grant Fee for Service Agreement (the grant agreement); and
- c) The financial and in-kind support and service levels the City will provide to the Society.

The report also seeks Council's approval of the discontinuation of the Sid Williams Theatre Ticket Surcharge reserve.

## **EXECUTIVE SUMMARY:**

The Licence to Occupy agreement that the Society currently holds covers the Society's exclusive licence to occupy the Sid Williams Theatre building and non-exclusive use of lands it utilizes for access to the building for its operations. The agreement has been updated to align with the standard licence to occupy agreement prescribed for the City's other core cultural service providers (Courtenay and District Historical Society, Comox Valley Art Gallery Society, and Comox Valley Arts). The agreement has also been updated to reflect the Society and City's roles in the asset management of the Theatre.

The proposed Management and Operating Grant Fee for Service Agreement outlines the Society's service deliverables and reporting requirements in return for receiving grant funds, both in-kind and financial from the City on an annual basis. The updated grant agreement proposes an increase in the gaming funding portion of the Society's annual management and operating fee by from \$105,000 per year to \$130,000 per year.

## **BACKGROUND:**

In regards to the Sid Williams Theatre, the City and the Society have a long partnership history in the investment and support of this community asset. This is demonstrated in the attached historical context summary (Attachment 3) provided by the Society. Key points include:

- The Sid Williams Theatre, through City ownership, has been serving the region since 1971.
- Significant historic support for the Theatre has been through volunteer-driven organizations.
- The history of how the Society was formed in 2000 at the recommendation of a Theatre Advisory Committee appointed by Courtenay Council.

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- Information on how the model of a non-profit operated theatre under management and funding agreements with the City came about.
- The significant financial contribution (over one million dollars) the Society has provided in theatre improvements since 2000. This funding was through the Theatre’s ticket surcharge (fee collected on every ticket sale), donations, fundraising, and grants from third party organizations.

According to the historical context summary:

*Theatre operations have also grown from a staff of 6 in the 1990’s to a staff of 15 and 150+ volunteers presently. The dollar volume of operations has grown from under a half million dollars annually to \$1.5 million. Combined front door (public) and stage door (performers) visits, the theatre hosts 50,000+ users annually and is one of the busiest professional theatre venues on Vancouver Island.*

**The Society’s Historic Occupation and Management of the Theatre:**

The Society has occupied and managed the Sid Williams Theatre through a licence to occupy agreement since 2000 as detailed below. In addition, over time, the City in consultation with the Society has made changes to ensure the Society manages and operates the Theatre as an arms-length organization. Staff have worked with the Society to put agreements in place that clarify the roles and responsibilities of each party and identify service deliverables in exchange for in-kind and financial support that is required to operate a community and professional performance theatre.

*Table 1: Society’s Agreement and Occupancy History and Milestones*

YEAR	MILESTONE	AGREEMENT/ AUTHORIZATION	Signing Authority
2000	<ul style="list-style-type: none"> <li>• Five-year licence to occupy and Governance and Operating Agreement with provisions to renew for a further term.</li> </ul>	Licence to Occupy	Council
	<ul style="list-style-type: none"> <li>• City appointed members to Society’s Board</li> <li>• Approved Theatre’s annual Rental Rates</li> <li>• Theatre’s Ticket Surcharge Fee (\$2 per ticket sold) was apportioned as follows:                             <ul style="list-style-type: none"> <li>➤ \$0.75 to the Society for theatre operations</li> <li>➤ \$0.50 to the City to be held in trust for long term endowment fund, interest could only be used for Society Theatre Operations</li> <li>➤ \$0.50 to the City for building repairs, utilities, insurance, and maintenance</li> <li>➤ \$0.25 to the City be held in reserve for the purchase of capital equipment for the theatre.</li> </ul> </li> </ul>	Resolution	Council
2006	<ul style="list-style-type: none"> <li>• Five-year licence to occupy and Governance and Operating Agreement with an option to renew for an additional 5 consecutive years.</li> </ul>	Renewal Licence to Occupy	Council

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<b>2011</b>	<ul style="list-style-type: none"> <li>• Renewal of Licence to Occupy for a five-year term.</li> </ul>	Renewal of Licence to Occupy	Council
	<ul style="list-style-type: none"> <li>• \$0.50 Theatre’s Ticket Surcharge Fee (2000) originally held in trust by the City towards a long-term endowment fund was redistributed to day to day operations expenses. Endowment Fund was decommissioned.</li> </ul>	Council Resolution	Council
<b>2012</b>	<ul style="list-style-type: none"> <li>• Theatre’s ticket surcharge fee was reallocated:                             <ul style="list-style-type: none"> <li>➢ \$1.25 to Society’s day to day operations</li> <li>➢ \$0.75 City held theatre capital reserve to fund as-required capital equipment for the theatre</li> </ul> </li> <li>• Final year that City Council approved the Theatre’s rental rates.</li> </ul>	Council Resolution	Council
<b>2013</b>	<ul style="list-style-type: none"> <li>• Final year that the City appointed two members to the Sid Williams Theatre Society Board.</li> </ul>	Council Resolution	Council
<b>2017</b>	<ul style="list-style-type: none"> <li>• Five-year licence to occupy approved with four additional five-year renewal options and includes a grant agreement with the Society outlining service deliverables in return for City financial funding. The licence and grant agreement are currently on a month to month basis.</li> </ul>	Licence to Occupy and addition of a Management and Operating Grant Fee for Service Agreement	Council
<b>2018</b>	<ul style="list-style-type: none"> <li>• Society amended its bylaws to reflect that the City does not control the Society by removing the requirement that City Council appoint two of the Society’s board members.</li> <li>• City no longer required to consolidate the Sid Williams Theatre Society annual financial statement into the City’s annual financial statements as the City was deemed not to exercise control over the Society in the opinion of the City’s independent auditors.</li> </ul>	Society’s Bylaws Amendment through the Society’s Act	Society Board and Members

In review of the history since the Society was formed, the City initially approved the Theatre’s policies in regards to Theatre rental rates, appointing board members, and setting fees collected on ticket sales to fund Theatre operational and facility expenses. This oversight was in place early on when the Society was newly formed (May 2000) to protect the City’s significant investment in the Theatre. However, over time as the Society has demonstrated its ability to successfully and independently manage and operate the Theatre, the City has reduced its direct oversight of the Theatre’s policy decisions. The Society currently operates independently of the City as a separate non-profit Society.

**DISCUSSION:****Discontinuation of the Theatre Ticket Surcharge Reserve**

After the Society amended its bylaws in 2018 to reflect the Society's arm length relationship with the City, one outstanding task remains for the City to cease holding the Society ticket surcharge revenues as a City reserve and subsequent administration of disbursement back to the Society.

In consultation with the Society, there is consensus that the funds should be retained by the Sid Williams Theatre Society to respond to Theatre capital expenditures when needed. With the City holding the reserve on behalf of the Society, it places an administrative burden on both organizations and a barrier for the Society to access reserve resources when the Society clearly controls how the ticket surcharge funds are spent. For example, historically the City would need to budget the amount to be spent from the reserve, ensure the proposed capital expense meets the City's capital expense thresholds, and the proposed amount would be required to be included in the City's annual capital budget process. As a result, the Society is consistently tied to the City budget approval timelines and budgeting processes. The theatre ticket surcharge is a funding stream for the Society to directly fund Theatre capital expenses utilizing a source of revenue that is based on a fee generated by direct users of the Theatre's services. According to the Society's box office database, Theatre users are regional, with a small percentage coming from outside the Comox Valley:

- Courtenay 37%
- Comox 25%
- CVRD 16%
- Cumberland 5.5%
- Campbell River 4%
- Rest of Vancouver Island & Sunshine Coast 5%
- Outside Vancouver Island 3%
- No postal code provided 4.5%

Based on the historical context of the establishment of the Theatre Ticket Surcharge and associated City reserve, and the current structure of the relationship between the Society and the City, including the Society's independent operations, staff recommend the Theatre Ticket Surcharge Reserve be discontinued so the Society can fully control and utilize its reserve funds towards capital expenses. Facility improvement ticket surcharges are commonly applied practices in the industry to support theatres in maintaining and funding infrastructure repairs and improvements. To ensure that funds received from the ticket surcharge are reinvested back into the Theatre, a clause will be added to the grant agreement that restricts these funds to be spent on capital equipment or capital building related expenditures. In addition, the City held reserve funds would be released after staff receive and approve the Society's Theatre Ticket Surcharge Reserve policy that confirms the same.

**Licence to Occupy and Grant Agreement**

Staff are asking Council to consider the approval of a new licence to occupy agreement with the Society which would provide the following:

1. A five-year term with three remaining five-year renewal options. This maintains the existing service levels confirmed historically by City Council and affirmed through the Culture Service Review, 2019 and confirmed in the Draft Strategic Cultural Plan;
2. Clarity in the respective parties' roles and responsibilities for facility operations, repairs, and maintenance through the addition of a cost responsibility schedule with language providing clarification that the City is responsible for capital upgrades or replacements at the same service level as the existing asset being replaced or upgraded;

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3. Additional language to clarify that any capital improvements carried out by the Society do not constitute a partnership or other form of relationship between the Society and the City other than licensor and licensee and do not create an expectation or obligation of future licence renewals;
4. Updated insurance language to meet Municipal Insurance Association of British Columbia (MIABC) recommendations;
5. Updated language regarding the ownership of capital improvements made by the Theatre carried out by the Society including removing language referring to ownership of equipment or apparatus purchased with funds held by the City in trust (with the discontinuation of the theatre ticket surcharge reserve); and
6. Updated language requiring the Society to submit an annual capital plan outlining the Society's five-year Theatre capital replacement priorities and include details such as estimated project costs, proposed funding both internal and external non-City funding sources, and requested City support (in-kind and financial), and a written synopsis for each project. The information provided will help inform the City's asset management plan for the Theatre which is essential to ensure the Theatre's service levels are considered in the Society and City's long-term financial plan to achieve sustainable service delivery. The information provided will also provide a business case to support any service level increases requested by the Society for Theatre improvement capital projects.

The proposed Management and Operating Grant Fee for Service Agreement provides the following:

1. A five-year term to align with the term of the Licence to Occupy agreement;
2. Identifies the Society's service deliverables and annual reporting requirements;
3. Outlines the grant funding the Society receives on an annual basis that was established for the Society's management and operation of the Theatre, subject to annual operating budget approval by Council;
4. The City's in-kind services provided to the Society through the City's annual operational maintenance, repair, insurance, and utility budgets estimated at \$115,700 for 2025;
5. Inclusion of a \$2,500 grant for the Society's strategic planning every four years; a recommendation identified by the Cultural Services Review, 2019 for all core cultural service providers;
6. Consolidation of the annual \$4,500 grant (historically provided) to reimburse the Society for janitorial supplies into the annual management and operating grant (tax funded portion);
7. Confirmation of an annual grant of \$5,000 (historically provided) to reimburse the Society for non-capital equipment, repairs or maintenance items at the discretion of the Director of Recreation, Culture, and Community Services.
8. Addition of language that confirms the Society will at minimum allocate \$0.75 per event ticket sold towards the Society's theatre surcharge reserve that will be restricted to capital equipment or capital building expenditures.

#### *Management and Operating Grant Funding Increase Request*

The Society has submitted its 2024/2025 to 2028/2029 Pro-Forma Budget (Attachment 4). For the first time in several years (COVID-19 pandemic years excluded), the Society has recorded a deficit at the end of its current (2023/2024) fiscal year. In the Society's attached Executive Summary to the Pro Forma Financial Plan (Attachment 5), this is due to increased operating costs from key cost drivers such as:

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- Labour and technology to keep up with minimum labour costs, retain and attract qualified staff, and the replacement of smaller equipment delayed due to the COVID-19 pandemic;
- Event production costs (artist fees and film licensing);
- Security required for crowd management;
- Other administrative, banking, and insurance costs;
- Overall inflation and reduction in other government funding; and,
- Shift of theatre surplus previously used to cover operational deficits into theatre improvement capital projects.

Also, as the Theatre capital equipment ages and requires upgrades and replacement, the Society's increased involvement in Theatre capital planning has resulted in Society staff spending more time involved in project planning and project management as opposed to theatre operations.

The Society is requesting an increase in the City's grant contribution of \$20,000 (rounded up) per year and that the City funding increase annually by the Consumer Price Index (CPI) as opposed to two percent (2%) per year (historical annual increase). Without an increase in funding, the Society must continue to absorb rising costs due to inflation which have exceeded two percent (2%) over the past years, which for the first time in many years, resulted in the Society facing a deficit in the recent fiscal year end.

In light of this information and discussions staff have had with the Society, staff are proposing the following grant schedule to address the Society's financial request:

1. The gaming funded portion of the annual management and operating grant will increase by \$25,000 from \$105,000 per year to \$130,000 per year. The additional \$5,000 per year that is over and above the Society's original request is to cover the equivalent value of anticipated CPI increases over the next five years.
2. The tax funded portion of the Society's grant will remain with an annual increase of two percent (2%) per year to align with the contractual increases for all other cultural service providers. The annual separate grant of \$4,500 for janitorial supplies will be consolidated into the annual tax funded management and operating grant and increase by two percent (2%) starting in 2025.

The increased annual management and operating grant will help provide financial sustainability to the Society over the next five years. There is currently sufficient room in the annual gaming fund budget to meet the request of the Society. However, it is important to note that the City's gaming revenue sourced funds do not increase each year and remain relatively static with the exception of 2020 – 2021 when gaming funds decreased as a result of the COVID -19 pandemic.

Recognizing the regional service that the Sid Williams Theatre provides to the community, the Society has also requested an increase from Town of Comox and the Comox Valley Regional District. However, the Society notes in its Executive Summary that the amounts requested from each local government jurisdiction do not accurately reflect the ratio of patron visits and rental usage of the theatre from across the region. In the Draft Strategic Cultural Plan, a foundational element to translate the plans vision into actionable goals, is for the City to lead regional cultural advocacy in the areas of regional collaboration and investment to reflect the regional impact of Courtenay's arts and culture assets which include the Sid Williams Theatre.

**POLICY ANALYSIS:*****Cultural Service Review, 2019***

- The cultural service partners (Sid Williams Theatre Society, Comox Valley Art Gallery Society, Comox Valley Arts and Courtenay and District Historical Society) have a limited capacity to sustain an appropriate level of service with the current funding model.

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- The City could consider partnering with the Comox Valley Regional District to diversify revenue over a three-year period and develop a funding formula that reflects the Theatre’s regional role as a cultural provider.
- Work with all cultural partners in developing facilities plans, including the identification of use alternatives and non-traditional spaces
- Continue to optimize all multi-year agreements with Cultural Partners as required to provide stability and capacity building in cultural development in the area.

**OCP, 2022**

*Arts and Culture Chapters:*

- ACH 7: Continue to support the downtown as the region’s arts, culture, and heritage hub by ensuring key cultural partners such as the Comox Valley Art Gallery, the Courtenay and District Museum, the Sid Williams Civic Theatre, and the Comox Valley Community Arts Council continue to be located downtown, and promoting and investing in public art and cultural opportunities downtown.

**FINANCIAL IMPLICATIONS:**

The Theatre Ticket Surcharge reserve balance is \$57,620.97 as of September 30, 2024. If approved by Council, these balance of these funds plus accrued interest to date will be returned to the Society.

The licence fee for the Licence to Occupy agreement is \$1 and there is no annual fee or rent payable by the Society. Based on the current market information for a triple net lease (NNN):

- The base market value rent is approximately \$294,400 per year;
- The City’s expenses for repairs, maintenance, insurance, and utilities is \$115,700 per year based on the annual budget; and,
- The permissive tax exemption is approximately \$43,300 per year.

Therefore, the total of these amounts (\$453,400 for 2025) are considered assistance to the Society.

The Society will receive both grant and in-kind funding to support their delivery of arts and culture services for the community through the management and operation of the Sid Williams Theatre. This funding (for 2025) includes:

- \$130,000 grant from gaming for the management and operation of the Theatre (\$105,000 in 2024)
- \$217,300 from tax revenue grant funding for the management and operation of the Theatre (\$213,000 in 2024)

The five-year assistance calculation is summarized in the Table 2.

*Table 2: Five Year Financial and In-kind Assistance Summary*

		2025-2029 Five Year Pro-Forma Financial Plan					
Funding Type	FORECAST 2024	2025	2026	2027	2028	2029	5 YEAR TOTAL
<b>Financial contribution:</b>							
Gaming Funded	\$105,000	\$130,000	\$130,000	\$130,000	\$130,000	\$130,000	<b>\$650,000</b>
Tax Revenue Funded Management and Operating Grant	\$213,000	\$217,300	\$221,500	\$226,000	\$230,500	\$235,100	<b>\$1,130,400</b>

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Strategic Planning Grant (Every 4 Years)			\$2,500				\$2,500
Grant for small equipment and materials	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000	\$25,000
<b>Total Financial Grant</b>	<b>\$323,000</b>	<b>\$352,300</b>	<b>\$359,000</b>	<b>\$361,000</b>	<b>\$365,500</b>	<b>\$370,100</b>	<b>\$1,807,900</b>
<b>In-Kind Contribution:</b>							
Rent (\$18.36 PSF + 3% increases each year)	\$285,600	\$294,400	\$303,200	\$312,300	\$322,000	\$332,000	\$1,563,900
Facility Repairs and Maintenance, Insurance and Utilities	\$113,600	\$115,700	\$119,200	\$122,800	\$126,500	\$130,300	\$614,500
Permissive Property Tax Exemption	\$40,900	\$43,300	\$46,500	\$50,200	\$54,200	\$58,500	\$252,700
<b>Total In-Kind Support</b>	<b>\$440,100</b>	<b>\$453,400</b>	<b>\$468,900</b>	<b>\$485,300</b>	<b>\$502,700</b>	<b>\$520,800</b>	<b>\$2,431,100</b>
<b>Total Contributions (Grant and In-Kind)</b>	<b>\$763,100</b>	<b>\$805,700</b>	<b>\$827,900</b>	<b>\$846,300</b>	<b>\$868,200</b>	<b>\$890,900</b>	<b>\$4,239,000</b>

The total financial and in-kind contribution to the Society is \$805,700 in 2025 and will increase by approximately two to three percent (2-3%) each year based on the agreements and City inflationary budget increases.

All financial grant contributions are in the 2024 operating budget and 2025 proposed operating budget. All non-gaming funded grants are funded through tax revenue.

**ADMINISTRATIVE IMPLICATIONS:**

The agreements will be administered by the Recreation, Culture, and Community Services Department which will continue to be the City liaison to the Society and oversee the associated arts and culture planning work.

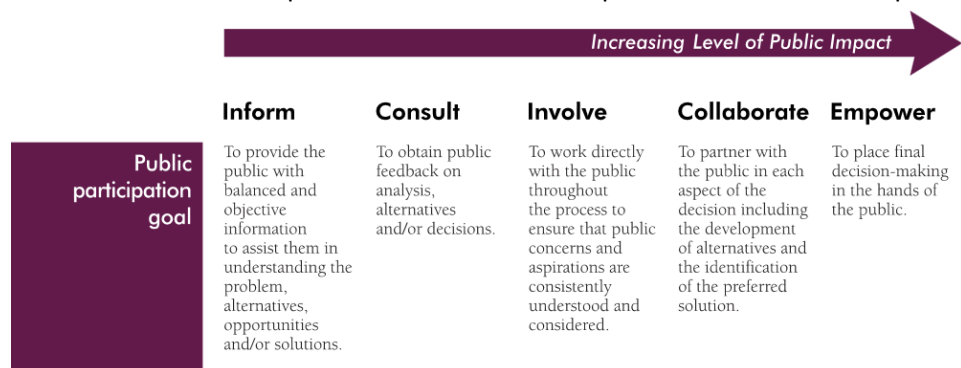
**STRATEGIC PRIORITIES REFERENCE:**

This initiative addresses the following strategic priorities:

- Arts, Culture, and Heritage - Complete Strategic Cultural Plan

**PUBLIC ENGAGEMENT:**

Staff would inform the public based on the IAP2 Spectrum of Public Participation:





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Public notice requirements under section 24, 26 and 94 of the Community Charter have been met.

**OPTIONS:**

1. THAT Council authorize staff to execute the attached licence to occupy agreement between the City of Courtenay and Sid Williams Theatre Society for the occupation and use of a portion of the property located at 442 Cliffe Avenue and 410 Cliffe Avenue, Courtenay, British Columbia, legally described as:

PID: 006-240-224: Lot 2, Section 61, Comox District, Plan 3189

PID: 006-240-151: Lot 1, Section 61, Comox District, Plan 3189

PID: 009-159-029: Lot 55, Section 61, Comox District, Plan 311

PID: 009-159-070: Lot 58, Section 61, Comox District, Plan 311

PID: 009-159-142: Lot 59, Section 61, Comox District, Plan 311

PID: 009-159-169: Lot 60, Section 61, Comox District, Plan 311

PID: 009-159-185: Lot 61, Section 61, Comox District, Plan 311

PID: 009-159-207: Lot 62, Section 61, Comox District, Plan 311; and

THAT Council authorize staff to execute the attached Management and Operating Grant Fee for Service agreement between the City of Courtenay and Sid Williams Theatre Society for the management and operation of a 500 seat community and professional performing arts theatre.

2. THAT Council authorize the discontinuation of the Theatre Ticket Surcharge Reserve and the balance of the Theatre Ticket Surcharge Reserve be transferred to the Sid Williams Theatre Society, subject to staff receiving and approving the Society's Theatre Ticket Surcharge Reserve policy.
3. THAT Council provide alternative direction to staff.

**ATTACHMENTS:**

1. Sid Williams Theatre Society Licence to Occupy dated January 1, 2025
2. Sid Williams Theatre Society Management and Operating Grant Fee For Service Agreement dated January 1, 2025
3. Historical Context Summary of the Theatre and City Partnership – July 30, 2024
4. Sid Williams Theatre Society Pro-forma Five Year Financial Plan
5. Executive Summary SWTS Pro-forma Five Year Financial Plan

Prepared by: Joy Chan, Manager of Business Administration

Reviewed by: Adam Langenmaier, Director of Financial Services

Susie Saunders, Director of Recreation, Culture and Community Services

Concurrence: Geoff Garbutt, M.Pl., MCIP, RPP, City Manager (CAO)