

## LICENCE TO OCCUPY

This Agreement is dated for reference January 1, 2025.

BETWEEN:

**THE CORPORATION OF THE CITY OF COURTENAY**, a municipal corporation incorporated under the *Community Charter* and having an address of 830 Cliffe Avenue, Courtenay B.C. V9N 2J7

(the "**City**")

AND:

**THE SID WILLIAMS THEATRE SOCIETY (Inc. No. S-41522)**, a Society duly incorporated under the laws of the Province of British Columbia with a mailing address of 442 Cliffe Avenue, Courtenay, B.C. V9N 2J2

(the "**Society**")

**WHEREAS:**

A. The City is the owner in fee simple of those properties located in the City of Courtenay and 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

(collectively the "**Land**") on which the building known as the Sid Williams Theatre (the "**Theatre**"), is shown as shaded in blue in the attached Schedule A, has been constructed on the Land, and is owned by the City;

B. The Society wishes to manage and operate the Theatre on the Land under the terms and conditions of this Agreement and the Management and Operating Grant Fee for Services Agreement dated for reference January 1, 2025, an excerpt of which is attached as Schedule B (the "**Management and Operating Agreement**"), and the City wishes to grant to the Society an exclusive Licence to occupy and operate the Theatre on the Land under the terms

of this Agreement. For clarity, this Licence to Occupy excludes the Randy Wiwchar Plaza outlined in yellow in the attached Schedule A.

- C. This Agreement is intended to provide sufficient flexibility so as to satisfy the Society's mandate and the City's ownership of the Land and the Theatre; and
- D. This Agreement shall supersede any previous agreements related to the occupation, management and operational use of the Theatre and Land including the Licence to Occupy Agreement dated August 1, 2017 and Management and Operating Services Agreement dated August 1, 2017 and upon execution of this Agreement those previous agreements shall be null and void except to the extent of any indemnities surviving them.

NOW THEREFORE in consideration of mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties, the parties agree as follows:

## **1.0 LICENCE TO OCCUPY**

- 1.1** The City hereby grants to the Society a licence (the "**Licence**") in accordance with the terms of this Agreement to occupy the Land and Theatre subject to all of the terms and conditions including earlier termination as set out in this Agreement for the purpose of operating and managing the Theatre and inviting members of the general public to enter and enjoy the Theatre.
- 1.2** Subject to the terms of this Agreement, and in consideration of the payment of a Licence fee in the sum of ONE DOLLAR (\$1.00) each term, the receipt and sufficiency of which is hereby acknowledged, the City hereby grants to the Society an exclusive right by way of Licence to occupy and to use the Theatre for the purpose of operating a community and professional theatre.

## **2.0 TERM AND NEW AGREEMENT**

- 2.1** The term of this Agreement shall be five (5) years, commencing on January 1, 2025 and terminating on December 31, 2029 unless terminated earlier in accordance with this Agreement (the "**Original Term**") or extended by a Renewal Term or Renewal Terms as described in section 2.2.
- 2.2** Provided the Society is not in default under this Agreement, the City and Society may by mutual agreement extend this Agreement for three (3) additional five (5) year terms less a day (each a "**Renewal Term**" and the Original Term and all Renewal Terms agreed to by the parties constituting the "**Term**"). If the parties wish to renew this Agreement, the City and Society must each agree in writing no later than six (6) months before the end of the Original Term or the Renewal Term as the case may be under the same terms and conditions as outlined in this Agreement unless mutually amended in writing.

**2.3** If the City and Society have not negotiated a Renewal Term under section 2.2 and the Society should hold over after the expiration of the Term and the City should accept the Society's holding over, the new term created shall be on a month to month basis and the holding over shall be subject to the covenants and conditions herein contained so far as the same are applicable on a month to month basis.

### **3.0 SOCIETY'S RESPONSIBILITY AND EXPENSES**

**3.1** The Society shall at its own expense:

- (a) obtain all licences and permits required by statutory authority in connection with this Agreement and the Management and Operating Agreement;
- (b) comply with the Management and Operating Agreement;
- (c) operate and maintain the Theatre in a good state of repair and cleanliness to a reasonable standard agreed to by the City;
- (d) promote and publicize the use of the Theatre within the community;
- (e) program and book events within the Theatre;
- (f) collect admission fees and collect Theatre rental revenue and retain same to offset operating expenses of the Theatre;
- (g) set up and operate a Theatre ticket sale office;
- (h) hire, supervise and provide, at its cost, staff or volunteers which shall provide services sufficient to carry out the responsibilities set out in this Agreement to the successful operation of the Theatre;
- (i) assume the operating and maintenance cost of the Theatre which shall include cable, telephone, internet, exterior and interior window cleaning, janitorial service, theatrical and dressing room lamp and tube replacement, interior security, event security, Theatre operation liability and event liability and contents insurance, operations related remodeling or upgrades including painting and painting touch up and cost and maintenance of all equipment and furnishings related to the operation of the Theatre which shall include but is not limited to computers, furniture, fixtures, telephone and any equipment not attached to the structure of the building, in accordance with the cost apportionments in Schedule C;
- (j) undertake fundraising projects and the proceeds of such projects to be used solely for the operational and maintenance costs and capital improvements of the Theatre which includes costs for artistic, cultural, educational and outreach programming outreach for the purchase of furnishings, fixtures and equipment for the Theatre;

- (k) designate one of its staff members to act as the Society representative to deal on its behalf with the affairs of the Society in relation to the operation and management of the Theatre (the "**Society Representative**") as identified in section 21.3.
  - (l) subject to section 4.0, make such rules and regulations as are required to provide for the proper operation and governance of the Theatre provided that such rules and regulations are consistent with:
    - (i) the bylaws of the Society;
    - (ii) the provisions, terms and conditions of this Agreement; and
    - (iii) all applicable federal and provincial laws and City bylaws, regulations policies; and
  - (m) comply with its constitution and bylaws at all times and notify the City whenever a material change in the Society's constitution or bylaws occurs.
- 3.2** The Society shall not make any changes to any of its obligations under section 3.1 except as may be permitted in writing by the City, from time to time.
- 3.3** Should the Society request Theatre capital infrastructure upgrades, the cost shall be at the Society's expense unless agreed to in writing by the City.
- 3.4** The Society shall participate in the Theatre's capital and asset management process by submitting an updated five (5) year capital plan prioritizing capital projects by October 1<sup>st</sup> of each calendar year during the Term, which shall include but not be limited to budgetary capital cost estimates, supporting documents, requested City cost contributions including estimated grant funding from other sources.
- 4.0 ACCESS AND USE**
- 4.1** Access to and use of the Theatre by members of the Society and by the general public must be in accordance with policies developed by the Society for the operation of the Theatre, as approved by the City Representative as identified in section 21.2 having regard to relevant guidelines contained in applicable City documents.
- 4.2** The Society may not, except as permitted by section 3.1 or with prior written approval of the City:
- (a) replace, improve, alter, renovate, or add to the Land or the Theatre;
  - (b) construct or place any Theatre, structure or other fixtures or improvement on the Land;
  - (c) alter the grade or surface of the Land;
  - (d) trim, cut, remove, or in any way alter or damage trees on the Land;

- (e) use the Land or Theatre for any use or activity that, within the reasonable knowledge or understanding of the Society, which exposes the City to liability toward any person in the opinion of the City's insurer in the opinion of the City's insurer as communicated to the Society by the City's Representative per 21.2; or
  - (f) do anything in respect of the Land, that within the reasonable knowledge or understanding of the Society, could detrimentally affect use of the Land by the City after the Term.
- 4.3** Without limiting the generality of the foregoing, the Society must not release or introduce any pollution, contamination, waste, toxic waste, or toxic substance into or onto the Land or the environment or commit or permit any nuisance or waste to be committed or exist on or from the Land.
- 4.4** The Society must not use the Land or Theatre in any manner that, within the Society's reasonable knowledge or control, causes a nuisance to the owners or occupiers of neighboring lands, and without limiting the foregoing, must make reasonable efforts to ensure that traffic to and from the Land for special events or otherwise, does not cause a nuisance to those owners or occupiers.
- 4.5** The Society must reimburse the City for any damage or loss which occurs to the Land in connection with its use under this Agreement. For certainty, in this section damage or loss is defined as a change in the condition of the Land which would require repair or remediation as required by the authority having jurisdiction which includes but shall not be limited to damage or loss to land improvements, grading or environmental remediation. The City may repair any damage or loss so that the Land is in the condition in which it existed immediately before the damage or loss occurred, at the expense of the Society. The expense incurred by the City in making any repair, plus an amount equal to 15% of the expense on account of overhead and administration costs incurred by the City, is a debt due and owing by the Society to the City and is payable by the Society within fifteen (15) days after delivery of an invoice by the City.
- 4.6** The Society must carry on and conduct its activities on the Land and in, on and from the Theatre in compliance with any and all laws, statutes, enactments, bylaws, regulations and orders from time to time in force and obtain all required approvals and permits thereunder and not to do or omit to do anything in, on or from the Theatre or on or from the Land in contravention thereof. The Society must comply with all applicable laws and requirements in respect of its employees, including income tax, pension, insurance requirements and Workers' Compensation requirements.
- 4.7** The Society shall not make or allow to be made any alterations to the structure, mechanical service systems, or layout of the fire exiting of the Theatre and its surrounding grounds without the prior written consent of the City. Any alterations to which the City gives its consent shall be at the expense of the Society or shall be part of a separate funding agreement between the City and the Society.

- 4.8 Any alterations or repairs carried out to the Theatre or Land must be done by City staff unless prior expressed written approval of the City is given with the exception of minor repairs as identified in section 3.1 or theatre operational equipment changes. Structural repairs or alternations to the Theatre may be carried out by the Society with the written approval of the City. The City may inspect the Theatre or Land at any time to ascertain its state of repair or operation and to ascertain whether the terms and conditions of this Agreement are being observed. Such inspections shall, wherever possible, be arranged in communication with the Society so as not to disrupt performances or rehearsals taking place inside the Theatre.
- 4.9 The Society must promptly pay for all work and materials supplied at its order or request to the Theatre and the Land and it must comply with all builder's lien legislation. If any lien is filed or the City should be subject to the payment of any claim by an unpaid worker or supplier, the Society must discharge the lien or otherwise take all steps required by the City to protect the City's interests.
- 4.10 The Society shall submit to the City, by October 1<sup>st</sup> of each year during the Term a Theatre Capital Asset Management Plan. The Theatre Capital Asset Management Plan shall outline the Society's five-year Theatre capital replacement priorities and shall 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.

## 5.0 CONSTRUCTION

- 5.1 The Society may undertake improvements, construction or renovations of the Theatre at the Society's sole expense ("**Improvements**") subject to the Society:
- (a) not being in default under this Agreement;
  - (b) having obtained the prior written consent of the City; and
  - (c) having achieved all necessary permits and approvals, including, without limitation, compliance with the Building Code.
- 5.2 In giving its consent to the Improvements, the City may impose any conditions, including, without limitation, location requirements, use restrictions, financial restrictions, insurance requirements and security obligations.
- 5.3 The Society acknowledges and agrees that any Improvements made by it do not constitute a partnership or other form of relationship between itself and the City, other than as licensor and licensee, and that any capital investment in the Land or Theatre by the Society does not create an obligation or expectation of future renewals of this Agreement.
- 5.4 The Society acknowledges and agrees that all Improvements become the property of the City upon affixation to the Theatre, without any obligation by the City to pay for such Improvements.

**5.5** The Society acknowledges that all Improvements, past and present, are to remain affixed to the Theatre and Land unless the City has given written permission to make a change.

**6.0 CITY'S RESPONSIBILITY AND EXPENSES**

**6.1** The City shall, at its own expense, subject to annual budget approval, provide:

- (a) maintenance of the Theatre, including:
  - (i) window replacement and repair;
  - (ii) replacement of major heating, ventilation and cooling equipment;
  - (iii) roof and drain repairs;
  - (iv) plumbing;
  - (v) building envelope repair and maintenance;
  - (vi) parking lot maintenance including snow removal and line painting, with parking lot snow removal including the area up to including the area outlined in red in schedule D;
  - (vii) structural repairs and maintenance;
  - (viii) electrical repairs and maintenance including building lamp and tube replacement (excluding theatrical and dressing room lamp and tube replacement);
- (b) capital building repairs and maintenance and facility infrastructure replacements provided said infrastructure replacement is an equivalent to what is being replaced and not an upgrade to existing infrastructure unless agreed to in writing by the City;
- (c) landscape maintenance on the Land;
- (d) maintenance and repair of the Theatre's fire safety systems;
- (e) water and sewage service to the Theatre;
- (f) maintenance and repair or replacement of the lobby elevator and stage lift provided any replacement is equivalent to what is being replaced and not an upgrade to the existing infrastructure;
- (g) preventative servicing and minor repairs of the major heating, ventilation, and cooling equipment;
- (h) Theatre building insurance against perils and under the terms and conditions that the City insures other similar types of buildings owned by the City;
- (i) exterior security patrols and interior security alarm system fees; and
- (j) water, garbage, hydro and heating fuels.

## **7.0 THE CITY'S RIGHTS**

**7.1** The City hereby reserves from the grant of Licence to the Society under section 1.1 the right for the City, its agents, employees, and contractors to access any part of the Theatre upon reasonable notice, with or without tools and equipment, for purposes of inspection, maintenance, installation and for purposes of fulfilling the City's obligations under section 6.1, without compensation to the Society.

**7.2** If at any time that the Society does not perform its obligations under this Agreement, with reasonable notice pursuant to section 16.2 given to the Society of the failure to perform and opportunity to rectify the failure, the City may, but it is not required to, perform those obligations on the Society's behalf and at the Society's cost.

## **8.0 MUNICIPAL TAXES**

**8.1** The City may, subject to the authority provided by current legislation, exempt the Land and Theatre from taxation for general municipal purposes, pursuant to the tax exemption provisions of the *Community Charter*.

## **9.0 SOCIETY'S PROPERTY**

**9.1** The Society agrees that it has sole responsibility for loss or damage to personal property of the Society or its members located in the Theatre or on the Land from time to time.

**9.2** The Society agrees that all fixtures purchased, installed and permanently affixed to the Theatre by the Society shall become the property of the City upon their affixation. The City shall allow the Society to have exclusive use of all such fixtures, as long as the Society remains in occupation of the Theatre. The Society agrees that the replacement, sale or disposal of Theatre fixtures may only be undertaken with the approval of the City and the disposal or sale of a permanent Theatre fixture(s) must comply with the City's Asset Disposal Directive. Any revenue generated from the disposal or sale of a permanent fixture shall be designated City revenue, unless both parties have agreed to an alternate use of the revenue.

**9.3** The Society may retain ownership of any equipment or apparatus not permanently affixed to the theatre building if such equipment or apparatus is purchased with the Society's own funds or funds donated to the Society by external parties. The Society agrees that the removal from the theatre, sale, or disposal of any such equipment or apparatus, except for minor purchases not critical to the operation of the Theatre, may only be undertaken with the express approval of the City.

**9.4** The Society may from time-to-time purchase equipment or apparatus not permanently affixed to the Theatre building using funds provided by the City in conjunction with funds obtained via other grants and donations; in such cases, Society versus City ownership or co-ownership of such equipment or apparatus shall be determined on a case-by-case basis under a separate agreement. Notwithstanding the foregoing, any



equipment or apparatus purchased with funds from the Society's ticket surcharge reserve restricted to capital equipment and building capital expenditures shall be owned by the City.

The Society agrees that the removal from the Theatre, sale, or disposal of such equipment or apparatus, except for minor purchases not critical to the operation of the Theatre, may only be undertaken with the express approval of the City.

- 9.5** Ownership of such equipment or apparatus deemed as owned by the Society under sections 9.3 and 9.4 shall remain with the Society until such time as dissolution of the Society occurs, at which time the ownership of such equipment or apparatus would be vested with the City for the purposes of providing a theatre/performing-arts service to the community with exception of items held on loan from other agencies.

## **10.0 INSURANCE**

- 10.1** The City shall maintain fire and comprehensive property damage insurance against all risks, against loss or damage to any personal property located on the Land or in the Theatre which insurance must be for replacement cost.

- 10.2** The Society shall unless otherwise agreed in writing by the City, provide and maintain in force during the Term a commercial general liability insurance policy or policies with a limit of not less than five million dollars (\$5,000,000) inclusive per occurrence and including the following provisions:

- (a) coverage for personal injury and property damage, including but not limited to all premises and operations necessary or incidental to the performance of this Agreement:
  - (i) blanket contractual liability, products and completed operations, tenants' legal liability, non-owned automobile liability, owner's and contractor's protective liability, contingent employers' liability and breach of conditions clauses;
  - (ii) maintain liability insurance related to the serving of alcohol;
  - (iii) a cross-liability clause and a waiver of subrogation clause in favour of the City; and
  - (iv) the City named as an additional insured;
- (b) provide and maintain in force during the Term all-risks property insurance and business interruption insurance with extended coverage endorsement upon its merchandise, stock-in-trade, furniture, fixtures and improvements to the full replacement value thereof to include earthquake, flood, vandalism and other risks;
- (c) provide and maintain in force during the Term motor vehicle insurance, including personal injury and to provide a certificate confirming liability insurance in the amount of not less than two million dollars (\$2,000,000) with the Insurance

Corporation of British Columbia on any licensed motor vehicles of any kind used by the Society in providing services;

- (d) on every contract of insurance required to be maintained pursuant to the provisions of this Agreement include a provision requiring the insurer to give the City thirty (30) days prior written notice before making any material change in said insurance, or termination, or cancellation thereof;
- (e) on the first day of the Term and thereafter immediately upon demand, deliver to the City a certificate or certificates of insurance as evidence that such insurance is in force, including evidence of any insurance renewal policy or policies. Every certificate or certificates of insurance shall include certification by the Insurer that the certificate or certificates of insurance shall include, certification by the insurer that the certificate or certificates of insurance specifically conforms to all of the provisions required herein;
- (f) ensure that all insurance required to be maintained by the Society under this Agreement is:
  - (i) underwritten by a responsible insurance company or companies licensed to do business in the province of British Columbia; and
  - (ii) primary and does not require the sharing of any loss by any insurer that insures the City;
- (g) have the full responsibility to provide and maintain, at its own expense additional insurance coverage, if any, including workers compensation, that are necessary and advisable for its own protection and/or to fulfill its obligations under this Agreement; and
- (h) deliver a certified copy of any required certificate of insurance to the City within ten (10) days after demand therefore by the City.

**10.3** The Society shall neither cancel nor approve any material change to the insurance policy(s) without having first received written approval of the City.

**10.4** The Society shall require comprehensive general liability insurance from applicants requesting the use of the Theatre for a major event. A major event would include all activities where:

- (a) alcohol is to be served;
- (b) the number of participants is anticipated to exceed seventy-five (75) persons;
- (c) the activity is considered by the Society or the City to be high risk in nature; or
- (d) such other event is designated by the City.

**10.5** The minimum liability insurance requirements are:

- (a) a comprehensive general liability policy of not less than \$2,000,000 including public liability and property damage;
- (b) the City is named as an additional insured;
- (c) a cross-liability clause; and
- (d) confirmation that the required insurance is currently in force and submitted to the Society staff a minimum of two (2) weeks prior to the event taking place.

## **11.0 INSURANCE RECOVERIES**

**11.1** The parties agree that any recovery of insurance proceeds by the Society in respect of damage to or destruction of the Theatre and fixtures and contents installed by the Society shall be applied to replace or repair the same unless the Society and the City agree otherwise.

## **12.0 INDEMNIFICATION AND RELEASE**

**12.1** The Society shall release, indemnify and save harmless the City and its elected and appointed officials, officers, employees, agents and successors from and against any and all liabilities, obligations, damages, penalties, claims, costs, fines, suits, demands and causes of action to, by or on behalf of the Society, any person, group, firm or corporation arising from:

- (a) the occupation or use of the Theatre or the Land by the Society or its invitees, employees, agents, contractors, subcontractors, officers, members or any other person or persons for whose acts the Society is liable in law, or from any breach of the Society of any covenant or term of provision of this Agreement by the Society or its members, servants or agents or that might arise during the occupancy of the Theatre and the Land by the Society under this Agreement; save and except where any such matter is the cause of an act by the City or anyone for whom the City is in law responsible; and
- (b) any matter related to this Agreement, save and except for those legitimate claims which may arise from negligence or willful misconduct by the City and its elected and appointed officials, officers, employees, and agents.

**12.2** The indemnities contained in this Agreement shall survive the expiration or earlier termination of this Agreement.

## **13.0 SOCIETY'S STANDING**

**13.1** The Society shall ensure that it complies with all legal requirements to maintain its standing as a Society under the Society Act.

## **14.0 SOCIETY NOTIFICATION OF CHANGE TO CONSTITUTION OR BYLAWS**

**14.1** The Society shall immediately advise the City in writing of any material changes to its

constitution or bylaws.

#### **15.0 AMENDMENT OF AGREEMENT**

**15.1** This Agreement may only be amended by a subsequent written agreement signed by the parties.

#### **16.0 ASSIGNMENT AND SUBLICENSING**

**16.1** The Society shall not assign the benefit of this Agreement in whole or in part without the prior written consent of the City and, except as specifically and expressly provided in this Agreement.

#### **17.0 TERMINATION OF AGREEMENT**

**17.1** Either party may terminate this Agreement at any time by giving the other party six (6) months advance notice of its intention to terminate, such notice to be given in writing on the last day of any month.

**17.2** Upon breach by the Society of any term or condition of this Agreement, the City may give to the Society thirty (30) days' notice to commence action to correct such breach to the satisfaction of the City. If such breach is not corrected within a reasonable period at the City's discretion, or if the Society fails to begin and diligently pursue steps to cure the breach to the reasonable satisfaction of the City within thirty (30) days after notice of the breach is given by the City, the City may terminate the Licence and this Agreement by giving notice of termination to the Society. The City may recover all fees, costs and damages due to the City under this Agreement by suit or otherwise.

**17.3** The City may immediately terminate this Agreement if any of the following events arise:

- (a) the Society makes an assignment for the benefit of creditors;
- (b) the Society fails to follow constitution and bylaws;
- (c) the Society becomes bankrupt or insolvent or takes the benefit of any act now or hereafter in force for bankrupt or insolvent debtors;
- (d) that any order is made for the winding up of the Society;
- (e) the Society is struck off the corporate register for any just reason whatsoever;  
or
- (f) the Society or the City terminates the Management and Operating Agreement.

**17.4** Waiver by the City of any breach of any term, covenant or condition of this Agreement by the Society must not be deemed to be a waiver of any subsequent default by the Society. Failure by the City to take any action in respect of any breach of any term, covenant or condition of this Agreement by the Society must not be deemed to be a waiver of such term, covenant or condition.

**17.5** No reference to or exercise of any specific right or remedy by the City prejudices or precludes the City from any other remedy, whether allowed at law or in equity or expressly provided for in this Agreement. No such remedy is exclusive or dependent upon any other such remedy, but the City may from time to time exercise any one or more of such remedies independently or in combination. Without limiting the generality of the foregoing, the City is entitled to commence and maintain an action against the Society to collect any moneys not paid when due, without exercising the option to terminate this Agreement.

## **18.0 SURRENDER OF CONTROL OF THEATRE**

**18.1** The Society shall, at the expiration or earlier termination of this Agreement, unless the parties enter into a new agreement, peaceably surrender and yield the Theatre to the City in good and substantial repair in all aspects, reasonable wear and tear and damage by force majeure only accepted. The Society is not entitled to any compensation for any loss, including economic loss, or injurious affection or disturbance resulting in any way from the termination of the Licence in this Agreement.

## **19.0 DEFAULT**

**19.1** Should the Society default in the observance or performance of any of the terms and conditions of this Agreement the City may, in addition to its right to terminate this Agreement pursuant to section 16.0 herein, pursue such other remedies as are provided to it in law.

## **20.0 STRICT PERFORMANCE**

**20.1** The failure of the City to insist upon strict performance of any covenant or condition contained in this Agreement or to exercise any right or option hereunder shall not be construed or operate as a waiver or relinquishment for the future of any such covenant, condition, right or option and no waiver shall be inferred from or implied by anything done or omitted by the City save only express written waiver in writing.

## **21.0 NOTICE**

**21.1** Any notice or instrument required to be given or made by this Agreement shall be in writing and either delivered in person, faxed or sent by registered mail to the other party at the address set out below, or at such other address as each party may designate by notice in writing to the other party:

**21.2** Any notice herein provided or permitted to be given by the Society to the City shall be sufficiently given if delivered to the City addressed to:

City of Courtenay  
830 Cliffe Avenue  
Courtenay BC, V9N 2J7  
City Representative: Director of Recreation and Cultural Services

**21.3** Any notice herein provided or permitted to be given by the City to the Society shall be sufficiently given if delivered to the Society addressed to:

Sid Williams Theatre Society  
442 Cliffe Ave  
Courtenay, BC V9N 2J2  
Society Representative: General Manager

**21.4** The address for notice may be changed by either party from time-to-time by providing written notice of such change as herein contained.

**21.5** If any question arises as to when notice was given, it shall be deemed to have been received by the intended recipient on the earlier of the day it was received, or on the fifth (5<sup>th</sup>) day after it was mailed, faxed or otherwise given to the intended recipient.

## **22.0 GENERAL**

**22.1** Wherever the singular or masculine is used herein, the same shall include the feminine, plural and body corporate or politic where the context or the parties so require.

**22.2** Headings are provided for convenience only and do not form part of the terms of this Agreement. Wherever the singular or masculine is used herein, the same shall include, the feminine, plural and body corporate or politic where the context or the parties so require.

**22.3** If any section of this Agreement shall be found to be illegal or unenforceable, then such section shall be considered to be separate and severable from this Agreement and the remaining sections of this Agreement shall be unaffected thereby and shall remain and be enforceable to the fullest extent permitted by law as though the illegal or unenforceable section had never been included in this Agreement.

**22.4** There are no promises or obligations by or on behalf of either party other than the express covenants and provisions contained in this Agreement upon which any rights against either party may be founded. This Agreement constitutes the entire agreement between the parties hereto, and shall supersede all negotiations representations, documents, and previous agreements made by either party in respect to the management, operations and maintenance of the Theatre.

**22.5** This Agreement shall enure to the benefit of and be binding upon the parties hereto and upon the parties' respective successors and assigns.

**22.6** Except as specifically provided, nothing in this Agreement affects the rights and powers of the City in the exercise of its functions, rights, power or authority under any enactments, which may be fully and effectively exercised as if this Agreement had not been made.

**22.7** Time shall be of the essence in this Agreement.

**22.8** The parties' rights and obligations which, by their nature, extend beyond the termination of this Agreement, shall survive any termination of this Agreement.

**22.9** Each party hereto shall execute and deliver all such further assurances, documents and instruments and do all such further acts as may be reasonably required to carry out the full intent and meaning of this Agreement.

**22.10** In the event that an agreement between the City Representative and the Society cannot be reached on matters involving the City's or the Society's interests, the Society or the City Representative may appeal the matter to the City Council. A decision of the Council shall be final and be binding on all matters that require City consent or approval.

**22.11** It is understood and agreed that the Society and all agents, servants and employees of the Society are not and shall not be deemed to be agents, servants or employees of the City.

**22.12** This Agreement may be executed by the parties and transmitted electronically and in counterparts and if so executed and transmitted shall be for all purposes as effective as if the parties had executed and delivered an original hereof.

IN WITNESS WHEREOF the parties hereto have executed this Agreement on the reference date above.

**THE CORPORATION OF THE CITY OF COURTENAY,**

by its authorized signatories:

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**THE SID WILLIAMS THEATRE SOCIETY,**

by its authorized signatories:

\_\_\_\_\_  
Name:

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

SCHEDULE A  
THE THEATRE (Shaded in blue)  
Randy Wiwchar Plaza (Shaded in Orange)





**SCHEDULE B**  
**MANAGEMENT AND OPERATING AGREEMENT**

**THIS PAGE INTENTIONALLY LEFT BLANK  
AGREEMENT TO BE INSERTED AFTER  
EXECUTION**

**SCHEDULE C**  
**COSTS APPORTIONMENTS**

	ITEM	CITY 100% All Year	SOCIETY 100% All Year
1	Heating Fuels	100% All Year	
2	Water	100% All Year	
3	Electricity	100% All Year	
4	Preventative maintenance and repairs and replace of HVAC systems	100% All Year	
5	Dumpster rental and garbage removal	100% All Year	
6	Parking lot snow removal	100% All Year	
7	Snow removal from patron entrances and exits.		100% All Year
8	Landscaping/maintenance of common areas outside of the Theatre	100% All Year	
9	Window cleaning-interior		100% All Year
10	Window cleaning-exterior		100% All Year
11	Furnishings and equipment supply and repair		100% All Year
12	Janitorial services and supplies		100% All Year
13	Security patrol services	100% All Year	
14	Facility security alarm hardware and installation services		100% All Year
15	Telephone equipment and maintenance		100% All Year
16	Telephone service plan, cable and internet.		100% All Year
17	Parking lot maintenance	100% All Year	
18	Exterior waste cleanup	Removal of debris due to urban issues: 100% All Year	100% All Year
19	Fire safety systems maintenance	100% All Year	
20	Facility theatre operational maintenance & repairs including lamp and tube replacement, interior re-paint and paint touch ups.		100% All Year
21	Structural, building envelop, plumbing, and electrical repairs and maintenance.	100% All Year	100% if damage caused by Society's use.
22	Stage and lobby elevator repair and maintenance and replacement.	100% All Year Elevator replacement provided the replacement is equivalent to existing infrastructure unless agreed to in writing by the City.	100% of Upgraded Replacement.

**SCHEDULE D  
PARKING LOT**

