

# MANAGEMENT AND OPERATING GRANT FEE FOR SERVICES AGREEMENT

## SID WILLIAMS THEATRE SOCIETY

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 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**") has been constructed on the Land, and is owned by the City.

B. It is the goal of the Society to manage and operate the Sid Williams Theatre for community benefit.

C. The strategic direction of the *Official Community Plan Bylaw 3070, 2022* (the "**OCP**") is reconciliation, community well-being, equity and climate action, and the OCP identifies arts, culture and heritage objectives and policies that support these cardinal directions;

- D. The City’s Cultural Service Review, 2019 recommendations and key findings include providing sustainable multi-year funding support to the Society and the City’s strategic priorities for 2023-2026 are to:
- (1) complete the Strategic Cultural Plan
  - (2) implement the Strategic Cultural Plan; and
  - (3) identify appropriate roles and responsibilities for the City in the delivery of economic development services in the region; and
- E. The City and the Society wish to enter into this Management and Operating Grant Fee for Services Agreement for the provision of a professional performance facility for community groups, commercial events to promote artistic, cultural and recreation activities in the community, which is in line with the OCP and the City’s Cultural Service Review, 2019; and
- F. In connection with this Agreement, the parties have also entered into a Licence to Occupy Agreement dated for reference January 1, 2025, an excerpt of which is attached as Schedule C (the “**Licence to Occupy Excerpt**”).

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. TERM**

- 1.1 This Agreement shall commence on the January 1, 2025, and expires on December 31, 2029 unless terminated or extended as herein provided (the “**Term**”).
- 1.2 If after the expiration of the Term 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.

**2. SERVICE AGREEMENT**

- 2.1 During the Term, the Society shall, subject to the conditions herein set forth, plan, deliver, supervise, and manage the Theatre and provide the services and deliverables as outlined in Schedule A (the “**Services and Deliverables**”).
- 2.2 Over the term of this Agreement the parties shall consider whether any additional Services and Deliverables shall be delivered under Schedule A.

**3. REPORTING**

- 3.1 By October 1st of each year during the Term of this Agreement, the Society shall provide the City with a financial plan for the upcoming fiscal year and a five-year financial plan

that includes the annual operating and capital budget plan for the upcoming fiscal year in a form acceptable to the City (together the “**Financial Plan**”).

- 3.2 By March 31<sup>st</sup> of each year during the Term of this Agreement, the Society shall also present to Council a summary providing the following information for the previous year of the Term:
- (a) total number of visitors to the Theatre and total number of participants in outreach programs and event attendance for the previous fiscal year;
  - (b) summary of the performances, programs and events the theatre operated;
  - (c) copies of new strategic plan and annual report;
  - (d) Financial summary for previous year, including operating revenue and expenses, grant funding and external funding secured, and value of rental subsidies provided;
  - (e) executive summary outlining how the Society satisfied its obligation to provide the Services outlined under Schedule A; and
  - (f) total number of volunteer hours delivered.

#### **4. GRANTING OF FUNDS**

- 4.1 Subject to annual budget approval and amendment by City Council, the City shall provide the following financial supports, grants and contributions to the Society:
- (a) a management and operating fee as invoiced by the Society and as outlined in accordance with the schedule contained in Schedule B for the Society’s provision of Services;
  - (b) an in-kind facility repair, maintenance, insurance, and utility contribution valued at approximately \$115,700 which is the City’s in-kind contribution towards:
    - (i) the annual repair, maintenance, insurance, and utility budget for the Theatre, to be expensed at the discretion of the City’s in meeting the City’s responsibilities; and
    - (ii) expenses identified in the Licence of Occupation dated for reference January 1, 2025, between the City and the Society;
  - (c) a strategic planning grant contribution in the amount of \$2,500 every four (4) years commencing in 2026, subject to the Society’s submission of its updated strategic plan to the satisfaction of the City’s Director of Recreation, Culture, and Community Services;

- (d) a theatre materials and small equipment grant up to a maximum of \$5,000 every year during the Term subject to the Society submitting an invoice with supporting back up to the satisfaction of the City's Director of Recreation, Culture, and Community Services at the end of each calendar year.

(collectively, the “**Funding**”)

- 4.2 Subject to annual budget approval and amendment by City Council, provided the Society has met the requirements to the satisfaction of the City as outlined in this Agreement, the management and operating fee shall be paid by the City within forty-five (45) days of receipt of an invoice from the Society, which invoices shall be submitted and paid separately and subject to the City's annual operating budget approved by City Council.
- 4.3 All revenue obtained from the management and operation of the Theatre shall become the property of the Society. The Society covenants and agrees that all revenue must be used exclusively for Theatre operations.
- 4.4 Should there be a surplus in any year of operating revenues and the City contribution exceeding operation costs, the Society shall be entitled to retain the surplus for Theatre operations and reserves. The Society must not incur a deficit in excess of accumulated surpluses.
- 4.5 Any Funding to be provided by the City:
  - (a) shall be subject to the approval of the City;
  - (b) shall be reviewed annually; and
  - (c) may be revoked or reduced by the City at any time in the event of program priority changes, budget, grant, or other financial constraints.

The City shall act in good faith and make all reasonable efforts to provide advance warning of Funding reductions to the Society.

- 4.6 In the event the Society fails to comply with the terms of this Agreement, the City may terminate this Agreement in accordance with section 8.1, or may withhold Funding until the Society is in compliance with this Agreement and provides evidence, in the form(s) satisfactory to the City, acting reasonably, of such compliance.

## **5. SOCIETY'S RESPONSIBILITY**

- 5.1 The Society agrees that it shall undertake fundraising projects and the proceeds of such projects shall be used by the Society to undertake its responsibilities under this Agreement through operating, programming, staffing, maintenance and special projects associated with the mandate of the Society for the purpose of capital improvements or purchase of furnishings, fixtures, or equipment for the Theatre for the benefit of the Theatre's operations and programming.

- 5.2 The Society shall partner with the City in Theatre building or ground capital improvement projects which activities may include:
- (a) participation in project scope development;
  - (b) assisting in grant writing proposals; and
  - (c) providing financial contributions to capital projects provided such projects are for the purpose directly related to the Society's Services identified in Schedule A.
- 5.3 The Society covenants and warrants with the City that:
- (a) the Society shall perform and comply with all applicable enactments in respect of its obligations under this Agreement and the Licence;
  - (b) the Society is, and shall remain throughout the term of this Agreement, a valid and subsisting Society in good standing incorporated pursuant to the laws of the Province of British Columbia, and shall not change its corporate structure or status, without the prior written consent of the City;
  - (c) board members and staff people of the Society must be subject to the Society's "Conflict of Interest" policies and no Society board member or staff person may knowingly engage in any activity that, in the opinion of the City would constitute a conflict of interest, or potential conflict of interest between that board member or staff person and either the Society or the City;
  - (d) Board members and staff members of the Society must be subject to such policies as the Society has established and will from time to time review and develop as needed, in particular such policies aligning the Society and City values, such as but not limited to: respectful workplace; equity, diversity, inclusion; anti-racism; ethical business practices and purchasing.
- (a) the Society shall manage records transferred to it from the City in accordance with the *Personal Information Protection Act of British Columbia* and shall be responsible for the management of all personal information gathered and compliance with all applicable enactments;
  - (b) the Society shall maintain proper accounting records with respect to income and expenditures in accordance with generally accepted accounting principles and upon reasonable notice, and shall allow representatives of the City reasonable access to its books and records during normal business hours;
  - (c) the Society shall provide the City and present to Council an annual revenue and expense operating and capital budget, and the Financial Plan by October 1<sup>st</sup> in each year of the Agreement, and a summary outlining the information required for annual report as detailed in section 3.2 by March 31<sup>st</sup> in each year the Agreement is in effect, provided that the City is contributing Funding to the Society;

- (d) the Society shall prepare and deliver to the City, at the Society's own expense, a reviewed statement of expense and income with respect to all revenues from and expenses for the use and operation of the Theatre and Land as well as reviewed statement of all related assets and liabilities. The Society shall cause such annual financial statements to be reviewed by its accountant and thereafter submitted to the City Representative for consideration no later than October 1<sup>st</sup> of each year for the most recent fiscal year;
- (e) the Society shall keep original invoices and account for all for the use and operation of the Theatre and Land, itemizing the names and positions of personnel, the hours worked by each, the type of services performed, and the hourly rate charged, together with copies of all subcontracts and invoices for the expenses;
- (f) the Society shall conduct each program and activity in an effective, efficient, safe and professional manner at all times;
- (g) the Society will at minimum allocate \$0.75 per Theatre event ticket sold towards the Society's ticket surcharge reserve that will be restricted to capital equipment or capital building expenditures; and
- (h) whenever appropriate or as directed by the City, the Society shall publicly recognize the City as a major government funder for its contribution to the Society.

## **6. NOTICE**

6.1 Notice, when and if required to be given to either party by this Agreement, shall be deemed effectively given and received if given in writing to the other party by registered mail or personal service addressed as follows:

- (a) City of Courtenay  
830 Cliffe Avenue, Courtenay, BC, V9N 2J7  
Attn: Director of Recreation, Culture and Community Services
- (b) Sid Williams Theatre Society  
442 Cliffe Avenue, Courtenay, B.C., V9N 2J2  
Attn: General Manager

Either party may change its address for notice by providing notice to the other party.

## **7. DEFAULT**

- 7.1 If a party has not complied with one or more of its obligations under this Agreement, then the party is in default.
- 7.2 No consent or waiver, express or implied, by any part of any breach or default by either party under this Agreement shall:

- (a) be valid unless it is in writing and stated to be a consent or waiver pursuant to this section 7.2;
- (b) be relied on as a consent to or waiver of any other breach or default of the same or any other nature;
- (c) constitute a general waiver under this Agreement; or
- (d) eliminate or modify the need for a specific consent or waiver under this section 7.2 in any other or subsequent instance.

## **8. TERMINATION**

- 8.1 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.
- 8.2 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.
- 8.3 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 Licence with excerpts of which are herein attached as Schedule C.
- 8.4 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.

8.5 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.

## **9. INDEMNIFICATION AND RELEASE**

9.1 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 any default by the Society in its obligations under this Agreement and any injury or damage thereby caused to person or property (including death) except to the extent that such actions, proceedings, costs, damages, expenses, claims, and demands as set forth in this section 9.1 arise from the negligence of the City or its elected officials, officers, agents, employees, or others for whom the City is responsible in law.

## **10. GENERAL TERMS**

10.1 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.

10.2 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.

10.3 This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective heirs, executors and permitted assigns.

10.4 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.

10.5 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.

10.6 Each party shall execute, or cause to be executed, such further and other documents and



instruments, and do, or cause to be done, such further and other things as they are authorized to do and as may be necessary to implement and carry out the intent of this Agreement.

- 10.7 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.
- 10.8 This Agreement shall be governed by and construed in accordance with the laws of the Province of British Columbia, or, to the extent that matters of paramount federal jurisdiction are involved, the laws of Canada.
- 10.9 This Agreement may not be assigned by the Society without the consent of the City.
- 10.10 No amendment or variation of the terms, conditions, warranties, covenants, agreements or undertakings set out in this Agreement shall be of any force or effect unless the same is reduced to writing, and duly executed by each party.
- 10.13 Time is of the essence in the performance of each obligation under this Agreement.
- 10.14 The parties' rights and obligations which, by their nature, extend beyond the termination of this Agreement, shall survive any termination of this Agreement.
- 10.15 Each provision of this Agreement is intended to be severable, and the unenforceability or invalidity of any particular provision under any applicable law shall not affect the validity of any other provision, except that if, on the reasonable construction of this Agreement as a whole, the other provision is expressly stated, or is by reasonable implication intended by the parties, to be dependent on the validity and enforceability of the particular provision, the other provision shall be deemed also to be invalid or unenforceable.
- 10.16 Nothing contained or implied in this Agreement will fetter in any way the discretion of the City. Further, nothing contained or implied in this Agreement will derogate from the obligation of the Society under any other agreement with the City or, if the City so elects, prejudice or affect the City's rights, powers, duties or obligation in the exercise of its functions pursuant to the *Community Charter* or the *Local Government Act*, as amended or replaced from time to time, or act to fetter or otherwise affect the City's discretion, and the rights, powers, duties and obligations of the City under all public and private statutes, bylaws, orders and regulations.
- 10.17 This Agreement may be executed in separate counterparts, each of which when so executed shall be deemed an original, but all such counterparts shall together constitute one and the same document.
- 10.18 This Agreement may be executed and transmitted by electronic means and if so executed and transmitted this Agreement shall be for all purposes as effective as if the parties had delivered an executed original Agreement.

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 signatias )  
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\_\_\_\_\_)  
Name: )  
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Title: )

**SID WILLIAMS THEATRE SOCIETY** )  
by its authorized signatories )  
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\_\_\_\_\_)  
Name: )  
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\_\_\_\_\_)  
Name: )

**SCHEDULE A**  
**SERVICES AND DELIVERABLES**

**1) Support arts and culture in the community:**

- a) Manage a professional theatre to house professional and commercial rental groups.
- b) Provide subsidized rental rates to qualified non-for-profit community renters.
- c) Provide financial and educational support to students looking to further post-secondary education in the performing arts.
- d) Partner with other local organizations to support arts and culture in the community.
- e) Incorporate Indigenous perspectives and content into programming and collaborate with K'ómoks First Nations and Indigenous peoples living in the unceded territories.

**2) Provide an inclusive and accessible theatre experience.**

- a) Operate a theatre which is inclusive and accessible to members of the community despite physical or economic barriers.

**3) Support diverse events and programs:**

- a) Schedule and promote a wide range of theatrical experiences of performers both local and global to attract audiences of all age groups and interests.

**4) Fundraise and apply for grants:**

- a) Undertake fundraising projects and that the proceeds of such projects shall be used solely for the operational and maintenance costs of the Theatre or be used to make capital improvements to the Theatre or for the purchase of equipment for the Theatre.

**5) Manage and schedule the Theatre.**

- a) Manage and schedule the rental and booking of theatre space and coordinate the receipt of all required risk management and technical requirements for said rentals and bookings.

**6) Partner with the City and develop an annual cultural summary in collaboration with other cultural interest holders to report to Council on how the Society is achieving its Services which shall include:**

- a) development of a format which the Society and other culture service providers use to report annually to the City on how the Services outlined in this section were met; and
- b) collect cultural interest holder's and community feedback on the effectiveness of achieving these Services and what the communities' service expectations are.

**SCHEDULE B**

**INVOICE SCHEDULE**

<b>Date of Invoice</b>	<b>Management and Operating Grant Fee * (Tax Revenue Funded)</b>	<b>Date of Invoice</b>	<b>Management and Operating Grant Fee (BC Gaming Funded)</b>	<b>TOTAL Annual Management and Operating Grant Funding</b>
1-Jan-25	\$54,300			
1-Apr-25	\$54,300	1-Apr-25	\$65,000	
1-Aug-25	\$54,300	1-Aug-25	\$65,000	
1-Oct-25	<u>\$54,300</u>		-	-
<b>2025 Total</b>	<b>\$217,200</b>	<b>2025 Total</b>	<b>\$130,000</b>	<b>\$347,200</b>
1-Jan-26	\$55,375			
1-Apr-26	\$55,375	1-Apr-26	\$65,000	
1-Aug-26	\$55,375	1-Aug-26	\$65,000	
1-Oct-26	<u>\$55,375</u>		-	-
<b>2026 Total</b>	<b>\$221,500</b>	<b>2026 Total</b>	<b>\$130,000</b>	<b>\$351,500</b>
1-Jan-27	\$56,500			
1-Apr-27	\$56,500	1-Apr-27	\$65,000	
1-Aug-27	\$56,500	1-Aug-27	\$65,000	
1-Oct-27	<u>\$56,500</u>		-	-
<b>2027 Total</b>	<b>\$226,000</b>	<b>2027 Total</b>	<b>\$130,000</b>	<b>\$356,000</b>
1-Jan-28	\$57,625			
1-Apr-28	\$57,625	1-Apr-28	\$65,000	
1-Aug-28	\$57,625	1-Aug-28	\$65,000	
1-Oct-28	\$57,625		-	-
<b>2028 Total</b>	<b>\$230,500</b>	<b>2028 Total</b>	<b>\$130,000</b>	<b>\$360,500</b>
1-Jan-29	\$58,775			
1-Apr-29	\$58,775	1-Apr-29	\$65,000	
1-Aug-29	\$58,775	1-Aug-29	\$65,000	
1-Oct-29	\$58,775		-	-
<b>2029 Total</b>	<b>\$235,100</b>	<b>2029 Total</b>	<b>\$130,000</b>	<b>\$365,100</b>
<b>TOTAL 5 YRS</b>	<b>\$1,130,300</b>		<b>\$650,000</b>	<b>\$1,780,300</b>

\*To increase at 2% each year subject to the City’s annual operating budget approved by City Council.

**SCHEDULE C**

**LICENCE TO OCCUPY EXCERPT**

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AGREEMENT TO BE INSERTED AFTER  
EXECUTION**