



The Corporation of the City of Courtenay

Staff Report

To: Council

File No.: 2240-20

From: Director of Recreation, Culture and Community Services

Date: July 17, 2024

Subject: Comox Valley Art Gallery Society Licence to Occupy, Management and Operating Grant Fee for Service Agreement

PURPOSE:

The purpose of the report is to seek Council's approval for the attached Licence to Occupy (Attachment 1) and attached Management and Operating Grant Fee for Service Agreement (Attachment 2) with the Comox Valley Art Gallery Society (the Society) which outline:

- a) The terms and conditions by which the Society will continue to occupy, manage, and operate the Comox Valley Art Gallery (the Gallery) on the main floor and the basement of the Centre for the Arts;
- b) The terms and conditions by which a portion of the second-floor space of the Centre for the Arts will be occupied by the Society on a temporary basis as primary licensee through the licence to occupy (the licence);
- c) 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
- d) The financial and in-kind support and service levels the City will provide to the Society.

EXECUTIVE SUMMARY:

The Licence to Occupy agreement that the Society currently holds covers the Society's licence to occupy the main floor and the basement of the Centre for the Arts (located at 580 Duncan Avenue). The Society also holds a non-legally binding Memorandum of Understanding for its use of a portion of the second-floor space that was previously occupied by the Comox Valley Economic Development Society (CVEDS) and a lease for a small office on the second floor of the Centre for the Arts. All agreements are currently on a month to month term. The proposed Licence to occupy will incorporate all the separate agreements regarding the Society's occupation of space in the Centre for the Arts under one Licence agreement. The Licence renews the Society's occupation of the main floor and basement for a five-year term and further provides a one-year term for the space that the Society occupies on the second floor. A shorter term has been provided for use of the second floor to accommodate plans arising from the Cultural Strategic Plan recommending the completion of a feasibility study for the Centre for the Arts which is planned to be initiated this fall.

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 from the City on an annual basis.

BACKGROUND:

Since 1974, the Gallery has been operated and managed by the Society, a non-profit society governed by a volunteer board of directors. The Society's mandate is to engage the public through exhibitions, performances, all-ages make art projects, community collaborations, public events, and a shop featuring the work of local artists. The Society's programming includes the "Youth Media Project" training program and the "Walk With Me" arts-based community engaged research project in response to the toxic drug crisis.

Comox Valley Art Gallery Society Licence to Occupy, Management and Operating Grant Fee for Service Agreement

Working with the K'ómoks First Nation, the Gallery has installed Welcome Poles and Indigenous artwork in the outdoor plaza.

In 2022, there were approximately 29,935 total visitors and program participants that either attended a Gallery exhibition, participated in a community make-art workshop or were involved in the Youth Media Project.

The Society's Historic Use of the Centre for the Arts

The Society was designated primary use of the main and part of the basement floors of the Centre for the Arts facility by Council through resolution at the October 20, 2003 Committee of the Whole meeting. Table 1 summarizes the agreement and occupancy history of the Society at the Centre for the Arts.

Table 1: Society's Agreement and Occupancy History in the Centre for the Arts

YEAR	TIMELINE OF USE IN THE CENTRE FOR THE ARTS	AGREEMENT	Signing Authority
2004	<ul style="list-style-type: none"> Five-year licence to occupy approved for the Society to occupy the main floor and 80% of the basement floor with heat and power costs initially the responsibility of the Gallery. 	Licence to Occupy	Council
2010	<ul style="list-style-type: none"> Society's licence agreement renewed and revised so that the City takes financial responsibility for the heat and power for the occupied space. 	Renewal Licence to Occupy	Council
2013	<ul style="list-style-type: none"> Licence to Occupy amended to allow Society's expansion into the basement area formerly occupied by Musicfest. 	Amended Licence to Occupy	Council
2017	<ul style="list-style-type: none"> Five-year licence to occupy approved with four additional five - year options to renew and includes a grant agreement with the Society. The licence and grant agreement are currently on a month to month basis. 	Licence to Occupy Management and Operating Grant Fee for Service Agreement	Council
2018	<ul style="list-style-type: none"> 3-year lease approved for the Society to occupy a 132 square foot office (on second floor). The lease is currently on a month to month term. 	Lease agreement	Council
June 2020	<ul style="list-style-type: none"> Amendment to the Management and Operating Grant Fee for Service Agreement approved that increased the Society's funding by \$40,000 for providing public education and outreach in the community, as per the recommendations of the Cultural Service Review, 2019. Funding to increase by 2% annually, subject to annual budget approval by Council. 	Amended Management and Operating Grant Fee for Service Agreement	Council
July 2020	<ul style="list-style-type: none"> CVAGS occupies 50% of the former CVEDS space on the second floor for the Youth Media Project and an opioid project (Walk With Me). Also, to provide services that CVEDS would have provided through their lease: COVID-19 Safety 	Memorandum of Understanding	Director of Recreation and Community Services

	Plans, custodial, and 2 nd floor boardroom booking coordination.		
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CVAG request after CVEDS vacates in 2020

In June 2020, CVEDS unexpectedly ended their tenancy on the second floor of the Centre for the Arts, leaving the primary tenant space on the second floor vacant. The Society and Comox Valley Community Arts Council (CVA) requested immediate and joint occupancy of the former CVEDS space

The request letters were received for information at the July 20, 2020 Council meeting. City staff presented the following information regarding the Society’s requests at that meeting:

- CVAGS required additional space for their Youth Media Program and up-coming summer programs. The previous space in the basement was not suitable due to poor ventilation which was a highlighted challenge during the COVID-19 Pandemic.
 - They needed more office space for their summer students and planned opioid awareness project as there is limited office space on the main floor.
- Staff notified Council that temporary Memorandum of understanding (MOU) agreements were signed separately with the Society and CVA under the authority of the previous Director of Recreation and Cultural Services. The MOUs would continue to be in effect on a month to month basis until further direction is provided through Council.
 - Each MOU served as temporary agreements to ensure respective responsibilities and risk management requirements were clarified.
 - The MOU outlined the Society’s responsibilities to provide in-kind services similar to those of CVEDS as the main occupant including: booking the boardroom, janitorial services, distributing mail for the other tenants, and developing procedures for the building to be secured at the end of each night in collaboration with other tenants in response to past facility breach incidents.
 - The Society created a COVID-19 Safety Plan and coordinated COVID-19 compliant sanitation and cleaning for the common areas of the facility as required by the public health orders at the time to allow the building to re-open to the public under Phase 2 of BC’s Restart Plan, May 2020.

Staff identified that options for more permanent agreements would come forward at a future Council meeting for consideration including that Council consider entering in to a licence to occupy with the Society for the additional space given the Society had an existing License agreement in place. Following the recommendations of the Cultural Service Review, 2019 which identified the need for grant fee for service agreements for both CVAG and CVA, entering into licence agreements would put these two core cultural service groups on par with the other core cultural group such as the Sid Williams Theatre Society and the Courtenay and District Historical Society.

It is important to note that the original second floor space build out was intended for a single occupant and is may no longer be an efficient use of space, especially with multiple tenants. The feasibility study could inform a more efficient use of space that would be more purposeful for arts groups.

Below are the July 20, 2020 resolutions from Council providing staff direction in response to the requests:

That in response to the July 8th, 2020 letter from the Comox Valley Arts and the July 10th, 2020 letter from the Comox Valley Art Gallery requesting Council consider their proposal for additional facility space at the Comox Valley Centre for the Arts (580 Duncan Avenue):

That Council direct staff to investigate options and implications to enter into an agreement with the Comox Valley Art Gallery and Comox Valley Arts (in partnership) for the provision of additional facility space at the Comox Valley Centre for the Arts.

DISCUSSION:

Staff are asking Council to consider the approval of a proposed 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 for the main floor and basement of the Centre for the Arts as provided for in the current agreement. This maintains the existing service levels confirmed historically by City Council and affirmed through the Culture Service Review, 2019;
2. An interim temporary licence agreement for the 2nd floor space currently occupied by the Society. The licence will replace the memorandum of understanding. The term will be for one year that holds over month to month at the end of the one-year term. This interim temporary licence agreement will allow the City and the Society flexibility to consider the future outcome of the Centre for the Arts feasibility study that is scheduled to commence in fall 2024. It is intended that the Youth Media Project will continue to run out of a portion of space once the Society completes its funding negotiations with Service Canada. The space is temporarily being used by Walk With Me until the Society renews its funding with Service Canada;
3. The inclusion of the 132 square foot small office currently leased by the Society into the Primary Licence Area on the 2nd floor. This space is utilized as part of the Youth Media Program. Although, Service Canada has previously paid the rent for this lease, with the contract currently under negotiation, Service Canada is indicating it will no longer cover the monthly lease cost. Incorporating the space into the licence agreement will offer the Society more financial stability when grant funding is delayed.
4. Clarity in the respective parties' roles and responsibilities for facility operations, repairs and maintenance through the addition of a cost responsibility schedule;
5. Designates and clarifies the Society's role as the primary licence holder of the second floor and with that, provides facility coordination services such as centralizes the booking of the shared board room space on the second floor, collects and distributes all incoming mail to the facility, disperses City communications on matters affecting the Centre for the Arts and all its occupants, and ensures the common areas utilized by other Centre for the Arts occupants (kitchen, hallways, mail room, board room and washrooms) are being cleaned;
6. Extend the licence to occupy into the Centre for the Arts plaza where the Society will provide plaza coordination activities and programming when partnering with community organizations. When hosting events, the Society will provide risk management, public safety coordination and insurance coverage for events held on the Centre for the Arts plaza;
7. Facility public art installations subject to approval of the City and in accordance with any future City public art policies or bylaws;

8. Add 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 does not create an expectation or obligation of future licence renewals; and
9. Updated insurance language to meet Municipal Insurance Association of British Columbia (MIABC) recommendations.

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 Gallery on the main and basement floors, 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 budget estimated at \$52,100 in 2023.
5. Inclusion of a \$2,500 grant for the Society's strategic planning every four years starting in 2023; a recommendation identified by the Cultural Services Review, 2019 for all core cultural service providers.
6. Provision of an annual grant of \$2,000 to reimburse the Society for janitorial, equipment or appliances paid for by the Society that is located on in the common areas of the second floor that are also utilized by the other Centre for the Arts occupants.

POLICY ANALYSIS:

Cultural Service Review, 2019

- Explore the provisioning of additional space for the Comox Valley Art Gallery
- 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.

Section 24 Community Charter - Provision of Certain Kinds of Assistance

Publication of intention to provide certain kind of assistance

- 24 (1) A council must give notice in accordance with section 94 [public notice] of its intention to provide any of the following forms of assistance to a person or organization:
- (a) disposing of land or improvements, or any interest or right in or with respect to them, for less than market value.

FINANCIAL IMPLICATIONS:

The licence fee is \$1 and there is no annual fee or rent payable by the Society. Based on the current market information, the market value rent is approximately \$191,100 per year or \$15,925 per month; therefore, this amount each month is considered assistance to the Society.

The Society receives both grant and in-kind funding to support their delivery of arts and culture services for the community via the Comox Valley Art Gallery. This funding (2024) includes:

- \$65,000 from gaming for the management and operation of the Gallery...
- \$46,000 tax for public engagement and outreach
- \$55,700 in kind for its prorated share of facility repairs, maintenance and utilities
- \$45,200 for permissive tax exemptions
- \$ 90,200 assistance in lieu of base market rent

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

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

Funding Type	2024-2028 Five Year Financial Plan				
	2024	2025	2026	2027	2028
Financial contribution:					
Gaming Funded	\$ 65,000	\$ 65,000	\$ 65,000	\$ 65,000	\$ 65,000
Tax Revenue Funded Public Engagement Grant	46,000	47,000	48,000	49,000	50,000
Strategic Planning Grant (Every 4 Years)	2,500	-	-	-	2,500
Grant for facility common area expenses	2,000	2,000	2,000	2,000	2,000
Total Financial Grant	\$ 115,500	\$ 114,000	\$ 115,000	\$ 116,000	\$ 119,500
In-Kind Contribution:					
Rent (\$14 PSF + 3% increases each year)	\$ 90,200	\$ 92,900	\$ 95,700	\$ 99,000	\$ 102,000
Facility Repairs and Maintenance, Insurance and Utilities	55,700	56,800	57,900	59,100	60,300
Permissive Property Tax Exemption	45,200	48,600	52,500	56,700	61,200
Total In-Kind Support	\$ 191,100	\$ 198,300	\$ 206,100	\$ 214,800	\$ 223,500
Total Contributions	\$ 306,600	\$ 312,300	\$ 321,100	\$ 330,800	\$ 343,000

By including the small office in the temporary licence to occupy for the 2nd floor, rental revenue will be reduced by \$1,782 per year.

The total financial contribution to the Society is \$306,600 in 2024 and will increase by approximately 2-4% each year as a standard inflationary adjustment.

All financial grant contributions are in the 2024 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.

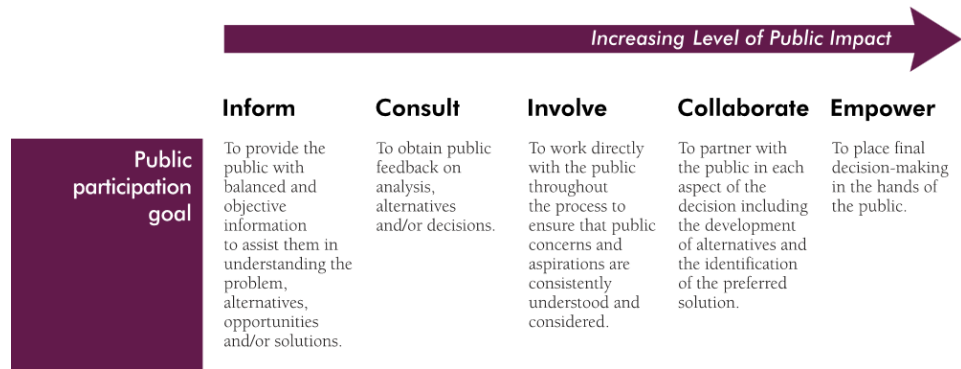
STRATEGIC PRIORITIES REFERENCE:

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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OPTIONS:

1. THAT Council authorize staff to execute the attached licence to occupy agreement between the City of Courtenay and Comox Valley Art Gallery Society for the occupation and use of a portion of the property located at 580 Duncan Avenue, Courtenay, British Columbia, legally described as PID: 028-799-925 Lot B, Section 61, Comox District Plan EPP15696, subsequent to the publishing of notice; and
 THAT Council authorize staff to execute the attached Management and Operating Grant Fee for Service agreement between the City of Courtenay and Comox Valley Art Gallery Society for the management and operation of an art gallery and provision of public education and outreach programs in the community.
2. THAT Council provide alternative direction to staff.

ATTACHMENTS:

1. Comox Valley Art Gallery Society Licence to Occupy dated January 1, 2024
2. Comox Valley Art Gallery Society Management and Operating Grant Fee For Service Agreement dated January 1, 2024

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)