

MANAGEMENT AND OPERATING GRANT FEE FOR SERVICE AGREEMENT

THIS AGREEMENT dated for reference January 1, 2024

BETWEEN:

THE CORPORATION OF THE CITY OF COURTENAY, a municipal corporation incorporated pursuant to the Community Charter and having its offices at 830 Cliffe Avenue, Courtenay, BC, V9N 2J7

(the "**City**")

AND:

COMOX VALLEY ART GALLERY (INC. NO. 11024.), a society duly registered in accordance with the laws of British Columbia, having its mailing address at 580A Duncan Avenue, Courtenay, BC, V9N 2M7

(the "**Society**")

WHEREAS:

- A. It is the goal of the Society to manage and operate the Comox Valley Art Gallery (the "**Art Gallery**"), located at the Centre For the Arts with civic address 580 Duncan Avenue Courtenay, British Columbia, for community benefit;
- B. The City of Courtenay's strategic direction through the Official Community Plan Bylaw 3070, 2022 (the "OCP") are Reconciliation, Community Well-Being, Equity and Climate Action; the OCP identifies Arts, Culture and Heritage objectives and policies that support these cardinal directions; 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:
 - 1) complete the Strategic Cultural Plan; and
 - 2) implement the Strategic Cultural Plan.
- C. The City and the Society wish to enter into this Agreement for the Society to provide exhibitions, programming and interpretational and celebratory activities to promote contemporary art awareness in the community;
- D. The City and the Society acknowledge that the Society will partner with other organizations to undertake fundraising for its activities, operations and special projects to meet the Society's mandate, and the Society acknowledges that the City's grant is subject to the Society providing core deliverables as outlined in Schedule A of this Agreement; and
- E. This Agreement shall replace and supercede the previous Management and Operating Services Agreement dated June 16, 2020.

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 1st day of January, 2024 and expires the 31st day of December, 2028 unless terminated or extended as herein provided (the “**Term**”).

2. SERVICE AGREEMENT

2.1 During the Term, the Society shall, subject to the conditions herein set forth, plan, deliver, supervise, operate and manage the Art Gallery and provide the core deliverables listed in Schedule A.

2.2 Over the term of the Agreement the parties will consider whether any additional core deliverables will be delivered under Schedule A.

3. REPORTING

3.1 By March 31st of each year of this Agreement, the Society will provide the City with annual reporting including a financial plan for the upcoming fiscal year in a form acceptable to the City (the “**Financial Plan**”) covering each of the areas outlined in Schedule A for the next fiscal year.

3.2 By March 31st of each year of this Agreement, the Society will also present to Council a summary outlining the following information:

- (a) total number of visitors to the Art Gallery and total number of participants in the outreach programs, exhibitions and event attendance for the previous fiscal year;
- (b) summary of the exhibits, programs and events the Art Gallery held;
- (c) executive summary outlining how the Society met the key core deliverables outlined under Schedule A; and
- (d) total number of volunteer hours delivered.

4. GRANTING OF FUNDS

4.1 The City will grant to the Society:

- (a) a management and operating grant fee in return for completing the deliverables identified in Schedule A, to be paid according to the invoice schedule contained in Schedule B. The management and operating grant fee amount shall be subject to annual budget approval by City Council and may be considered for amendment subject to City Council approval;

- (b) an in-kind facility repair, maintenance, insurance, and utility contribution estimated in the amount of \$54,850 which is the City's in-kind contribution to the Society for facilities annual repair, maintenance, insurance, and utility budget:
 - (i) to be expensed at the discretion of the City's Civic Properties Maintenance Division in meeting the City's responsibilities and expenses identified in the Licence of Occupation dated for reference January 1, 2023 between the City and the Society (the "**Licence Agreement**");
 - (ii) calculated by prorating the City's total annual facility repair, maintenance, insurance and utility budget based on the rentable square foot occupied by the Society excluding the square footage of the Plaza as the same is defined in the Licence Agreement; and
 - (iii) subject to amendment and annual budget approval by City Council;
 - (c) strategic planning grant contribution in the amount of \$2,500 every four years commencing in 2024 subject to the Society's submission of its updated strategic plan to the satisfaction of the Director of Recreation, Culture, and Community Services; and
 - (d) during the term of which the Society has the licence for the Society's 2nd Floor Exclusive Use Area through the Licence Agreement, an annual reimbursement of up to \$2,000 for the purpose of replacement of equipment or custodial costs in the common areas of the 2nd floor of the Comox Valley Centre For the Arts utilized by the Facility occupants and approved in advance in writing by the Director of Recreation, Culture, and Community Services or designate.
- 4.2 The grant shall be paid by the City within forty-five (45) days of receipt of invoice from the Society, which invoices shall be submitted and paid separately due to BC Gaming Fund requirements according to the dates listed in the invoice schedule contained in Schedule B and subject to City Council's approval.
- 4.3 All operational revenue obtained from the management and operation of the Art Gallery will become the property of the Society. The Society covenants and agrees that all grant funds received by the Society from the City must be used exclusively towards Art Gallery operations.
- 4.4 Should there be a surplus in any year of operating revenues and the City contribution exceeding operation costs, the Society will be entitled to retain the surplus for Art Gallery 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 shall be subject to the approval of the City, shall be reviewed annually, and may be revoked or reduced by the City at any time in the event

of program priority changes, budget, grant, or other funding constraints. The City shall act in good faith and make all reasonable efforts to provide advance warning of funding reductions to the Society.

5. SOCIETY'S RESPONSIBILITY

- 5.1 The Society shall undertake fundraising projects and the proceeds of such projects will be directly related to the Society's responsibilities under this Agreement through operating, programming, staffing, maintenance and special projects associated with preservation and interpretation of the Art Gallery's collection and for the purpose of capital improvements or purchase of furnishings, fixtures, or equipment for the Art Gallery.
- 5.2 The Society shall partner with the City in Art Gallery capital improvement projects which activities may include:
- (a) the participation in project scope development;
 - (b) assist in grant writing proposals; and
 - (c) provide financial contributions to capital projects provided such projects are for the purpose directly related to the Society's core deliverables identified in Schedule A.
- 5.3 The Society covenants and warrants with the City that:
- (a) 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;
 - (b) board members and staff people of the Society must be subject to the Society's "Conflict of Interest" policies. 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;
 - (c) the Society will handle personal information provided by the City to the Society in accordance with the Personal Information Protection Act of British Columbia;
 - (d) the Society shall maintain proper accounting records with respect to income and expenditures in accordance with generally accepted accounting principles and upon reasonable notice, shall allow representatives of the City reasonable access to its books and records during normal business hours;

- (e) the Society will prepare and deliver to the City a reviewed statement of expense and income including other secured funding with respect to all revenues from and expenses for its activities including the use and operation of the Facility including the Art Gallery and Land as well as a reviewed statement of all related assets and liabilities. The Society will cause such annual financial statements to be reviewed by its accountant and thereafter submitted to the City for consideration no later than October 1st of each year for the most recent fiscal year;
- (f) the Society shall conduct each program and activity in an effective, efficient, safe and professional manner at all times; and
- (g) whenever appropriate, the Society shall publicly recognize the City of Courtenay as a major government funder for its contribution to the Society.

6. INSURANCE

- 6.1 The Society will obtain and keep in force throughout the existence of this Agreement comprehensive general liability insurance to protect and indemnify itself and the City against claims for bodily injury, death, property damage, property loss, economic loss, and broad form products and other loss or damage occurring with respect to third party liability claims arising from the provision of the agreed service in an amount not less than five million dollars (\$5,000,000.00) per claim and aggregate per year, with a cross liability clause and including the City as an additional named insured.
- 6.2 The insurance policies must list any major exclusions.
- 6.3 The Society will cause any insurance policy obtained by it pursuant to this Agreement to contain a waiver of subrogation clause in favour of the City.
- 6.4 The Society agrees to be responsible for any deductible amounts under the policies.

7. INDEMNIFICATION

- 7.1 The Society agrees to indemnify, defend and hold harmless the City, its agents, servants, employees, trustees, officers and representatives from any liability, loss or damage which the City may suffer as a result of any claims, demands, costs, actions, causes of actions, or judgments, including legal fees, asserted against or incurred by the City arising out of, during, or as a result of the provision of services outlined in this Agreement except such liability, loss, or damage which is the result of, or arising out of, the sole negligence of the City. The indemnities contained in this Agreement will survive the expiration or earlier termination of the Term.

8. NOTICE

- 8.1 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:

CITY OF COURTENAY
ATTN: Director of Recreation, Culture, and Community Services
830 Cliffe Avenue
Courtenay, BC
V9N 2J7

COMOX VALLEY ART GALLERY
ATTN: Executive Director
580 Duncan Avenue
Courtenay, BC
V9N 2M7

Either party may change its address for notice by providing notice to the other in accordance with this Agreement.

9. TERMINATION

- 9.1 This Agreement may be terminated under the following circumstances:
- (a) in the event that the Society fails to honour any of the provisions, covenants or warranties of the Agreement contemplated hereby or at any time in effect between the parties, the Society shall have thirty (30) working days to rectify the situation or the City may, at its option, terminate this Agreement by giving the defaulting party thirty (30) days written notice;
 - (b) in the event the Society goes bankrupt, is placed into receivership, takes advantage of any law for the protection of insolvent debtors, allows any judgement to be entered against it, or allows any of its assets to become the subject of seizure or distress; this Agreement shall immediately terminate;
 - (c) in the event the Society ceases to occupy and operate an Art Gallery at the current location, this Agreement shall immediately terminate;
 - (d) in the event this Agreement is terminated prior to the expiration of its Term, the City shall be released of its obligations under this Agreement to further fund the Society. The Society shall, if required by the City, refund to the City such monies as may have been advanced by the City as are in excess of amounts contributed or otherwise irrevocably committed by the Society in respect of the Financial Plan being provided by the Society; and

- (e) 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.

10. GENERAL TERMS

- 10.1 This Agreement will enure to the benefit of and be binding upon the parties hereto and their respective heirs, executors and permitted assigns.
- 10.2 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.
- 10.3 Each party will 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.
- 10.4 This Agreement contains the entire agreement between the parties and supersedes all prior written and oral communication with respect to the subject matter of this Agreement.
- 10.5 This Agreement will 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.
- 10.6 This Agreement may not be assigned by the Society without the consent of the City.
- 10.7 No amendment or variation of the terms, conditions, warranties, covenants, agreements or undertakings set out in this Agreement will be of any force or effect unless the same is reduced to writing, and duly executed by each party.
- 10.8 No consent or waiver, express or implied, by any part of any breach or default by another under this Agreement will:
 - (a) be valid unless it is in writing and stated to be a consent or waiver pursuant to this section;
 - (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 in any other or subsequent instance.
- 10.9 Time is of the essence in the performance of each obligation under this Agreement.

10.10 Each provision of this Agreement is intended to be severable, and the unenforceability or invalidity of any particular provision under any applicable law will 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 will be deemed also to be invalid or unenforceable.

10.11 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. This Agreement may be executed and transmitted by electronic means and if so executed and transmitted this Agreement will 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 signatories:)
)
)
)
)
)
)
_____)
Susie Saunders Director of)
Recreation, Culture and Community Services)

COMOX VALLEY ART GALLERY,)
by its authorized signatories:)
)
_____)
Glen Sanford, Executive Director)
)
)
_____)
Name)

**“SCHEDULE A” TO MANAGEMENT AND OPERATING GRANT FEE FOR SERVICE
AGREEMENT
SERVICES AND DELIVERABLES**

i. Manage and operate a public art gallery.

1. Collect admission and donation fees and retain the same to offset operating expenses of the Art Gallery.
2. Promote and publicize the use of the Art Gallery within the community.
3. Establish, collect and preserve the Art Gallery collection.
4. Hire, supervise and provide, at its cost, staff or volunteers which will provide services sufficient to carry out the responsibilities set out in this Agreement to the successful operation of the Art Gallery.

ii. Foster awareness, exploration, and development of contemporary art.

5. Schedule exhibits which highlight local, regional or provincial, national and international artist.
6. Offer educational programming suitable for all age groups.
7. Partner with other local organizations to support visual arts awareness in the community.
8. Provide educational support to students looking to further post- secondary education in the field of visual arts.

iii. Provide an inclusive and accessible Art Gallery.

9. Operate an Art Gallery which is inclusive and accessible to members of the community despite physical or economic barriers.

iv. Establish a public education and outreach program in the community.

10. Host artists talks and artist-led community make art projects for all ages.
11. Partner with SD 71 to establish regular K-12 tours, make-art engagements and K-12 curriculum support for exhibitions.
12. Outreach to care givers, children and youth programs through make art programs.
13. Facilitate historical and cultural practice knowledge-sharing between K'ómoks First Nation Elders and children.
14. Incorporate Indigenous perspectives and content into programming and partner with K'ómoks First Nation and other Indigenous peoples living in the unceded territories.
15. Foster outreach to community organizations and businesses.
16. Increase advertising and promotion of gallery events and exhibitions through several media outlets and social media.

v. 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 core deliverables which will include:

17. development of a format which the Society and other core culture service providers on how it will report annually to the City on how the core deliverables outlined in this section were met; and
18. collect cultural interest holder's and community feedback on the effectiveness of achieving these core deliverables and what the communities' service expectations are.

**“SCHEDULE B” TO MANAGEMENT AND OPERATING GRANT FEE FOR SERVICE
AGREEMENT
INVOICE SCHEDULE**

Table A Management and Operating Grant Fee

Date of Invoice	Management and Operating Grant Fee *(Tax Revenue Funded)	Date of Invoice	Management and Operating Grant Fee (BC Gaming Funded)
April 1st	\$22,550	April 1st	\$32,500
August 1st	<u>\$22,550</u>	August 1st	<u>\$32,500</u>
2023	\$45,100	2023	\$65,000
April 1st	\$23,000	April 1st	\$32,500
August 1st	<u>\$23,000</u>	August 1st	<u>\$32,500</u>
2024	\$46,000	2024	\$65,000
April 1st	\$23,500	April 1st	\$32,500
August 1st	<u>\$23,500</u>	August 1st	<u>\$32,500</u>
2025	\$47,000	2025	\$65,000
April 1st	\$24,000	April 1st	\$32,500
August 1st	<u>\$24,000</u>	August 1st	<u>\$32,500</u>
2026	\$48,000	2026	\$65,000
April 1st	\$24,500	April 1st	\$32,500
August 1st	<u>\$24,500</u>	August 1st	<u>\$32,500</u>
2027	\$49,000	2027	\$65,000
April 1st	\$25,000	April 1st	\$32,500
August 1st	<u>\$25,000</u>	August 1st	<u>\$32,500</u>
2028	\$50,000	2028	\$65,000

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