

## LICENCE TO OCCUPY AGREEMENT

THIS AGREEMENT DATED THE 1<sup>ST</sup> DAY OF 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, B.C., V9N 2J7

(the “**City**”)

AND:

**THE COMOX VALLEY ART COMMUNITY ART COUNCIL (INC. NO.7703.)**, a Society duly registered in accordance with the laws of British Columbia, having its mailing address at 580 Duncan Avenue, Courtenay, BC, V9N 2M7

(the “**Licensee**”)

WHEREAS:

- A. The City owns lands having a civic address of 580 Duncan Avenue, Courtenay, British Columbia, legally described as PID: 028-799-925, Lot B, Section 61, Comox District, Plan EPP15696 (the “**Land**”);
- B. The building known as the Centre For the Arts (the “**Building**”) has been constructed on the Land, and is owned by the City; and
- C. The City has agreed to grant the Licensee an exclusive licence to occupy a portion of the Building for use as an administrative office all on the terms and conditions herein set forth.
- D. This Agreement shall supercede any previous agreements related to the occupation and use of the Building and Land including the Memorandum of Understanding dated July 28, 2020 and upon execution of this Agreement shall deem said agreement null and void.

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. LICENCE TO OCCUPY**

- 1.1 Subject to the terms of this Agreement, the City hereby grants to the Licensee the exclusive licence to occupy that part of the second floor of the Building having an area of 738 square feet as shown outlined in purple in Schedule A hereto (the “**Licenced Area**”).
- 1.2 Subject to the terms of this Agreement, the Licensee shall have, in connection with the Licenced Area: a non-exclusive right and licence, in common with the City and other users of the Building, to use the entrances, lobbies, hallways, stairways, second floor meeting room/boardroom (“**Boardroom**”), second floor washrooms, second floor kitchen and mail room (the “**Common Areas**”) outlined in green in Schedule A and Schedule B; and
- 1.3 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), the receipt and sufficiency of which is hereby acknowledged, the City hereby grants to the Licensee the right by way of the Licence to occupy the Land and Building in accordance with this Agreement.

## **2. TERM**

- 2.1 The term of this Agreement shall be for a period of two years (two) years commencing on January 1, 2024 and ending on December 31, 2025 (the “**Term**”).

## **3. HOLDING OVER**

- 3.1 If the Licensee should hold over after the expiration of the Term and the City should accept the Licensee’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.

## **4. USE OF PREMISES**

- 4.1 The Licensee will use the Licenced Area solely as an administrative office and a digital creation hub, and for no other purpose except with the prior written approval of the City.

## **5. REPAIRS AND MAINTENANCE**

- 5.1 The Licensee shall be responsible for assuming the operating and maintenance cost of the Licenced Area which will include: cable, telephone, internet, interior window cleaning, interior janitorial service and interior janitorial supplies, lamp and tube replacement, interior security, cost of all risk property insurance, liability and contents insurance, operations related remodeling, painting or upgrades subject to the City’s advance approval in accordance with section 5.5 of the Agreement, and cost and maintenance of all equipment and furnishings related to the Licenced Area which will include computers, furniture, fixtures, and any equipment not attached to the structure of the Building in accordance with Schedule B;

- 5.2 The Licensee shall not make any structural repairs or alterations to the Building without the City's prior written consent.
- 5.3 Any damage to the Licenced Area, the Building or the Land caused by the Licensee or its invitees will be the Licensee's responsibility. Use of office equipment belonging to the City and/or the primary Licensee will be at the Licensee's sole risk and expense.
- 5.4 The Licensee shall reimburse the City for expenses incurred by the City in repairing any damage caused to the Licenced Area or Common Areas or the Building, the improvements thereon or any part thereof as a result of the negligence or wilful act of the Licensee, its invitees, Licensee's, agents or other persons from time to time in or about the Licenced Area, the Building or the Land.
- 5.5 In addition to the Licensee's obligation for the operating and maintenance costs of the Licenced Areas under section 5.1, the Licensee may undertake improvements, construction or renovations of the Licenced Areas at the Licensee's sole expense ("Improvements") subject to the Licensee:
- a) not being in default under this Licence;
  - 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*.
- 5.6 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.
- 5.7 The Licensee 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 Building by the Licensee does not create an obligation or expectation of future Licence renewals.
- 5.8 The Licensee acknowledges and agrees that all Improvements become the property of the City upon affixation to the Building, without any obligation by the City to pay for such Improvements.
- 5.9 The Licensee acknowledges that all Improvements, past and present, are to remain affixed to the Land.
- 6. LICENSEE'S RESPONSIBILITY AND EXPENSES**
- 6.1 The Licensee shall comply with its constitution and bylaws at all times and shall notify the City whenever a change in the Licensee's constitution or bylaws occurs.
- 6.2 All Society operational expenses will be paid by the Licensee.

6.3 The Licensee shall in all respects abide by and comply with all applicable enactments of the federal government, provincial government, the City or any other governing body whatsoever and with all local building and fire codes and any internal procedures and rules established by the City, in any manner affecting the Land.

## **7. USE OF BOARDROOM**

7.1 The Licensee may book the second-floor Boardroom in the Building for use on a first come first serve basis through the second-floor primary License of Occupation holder as designated by the City.

## **8. ASSIGNMENT AND SUBLICENCING**

8.1 The Licensee shall not assign the benefit of this Agreement in whole or in part or grant or permit any sub-licence of the Licenced Area or Common Areas or any part thereof and shall not permit any business to be conducted in or from the Licenced Area or Common Areas or any part thereof by any sub-licence or concessionaire, without the prior written consent of the City.

## **9. RELEASE AND INDEMNITY**

9.1 The Licensee hereby releases, indemnifies and saves harmless the City and its elected and appointed officials, officers, employees, agents, successors and assigns from any and all liabilities, obligations, losses, damages, costs, penalties, fines, demands, claims, suits, causes of actions or actions whatsoever (including without limitation, the full amount of all legal fees, costs, charges and expenses) by any person arising directly or indirectly from

- a) any breach, violation, or non-performance of any covenant, condition or agreement in this Agreement set forth and contained on the part of the Licensee to be fulfilled, kept, observed and performed; or
- b) any damage to property in or about the Licenced Area, the Land or the Building.

This indemnity shall survive the expiry or sooner determination of this Agreement.

## **10. INSURANCE**

10.1 The Licensee is responsible for insuring all personal property and contents in the Licenced Area, to full replacement cost against risk of fire and other risks against which a prudent owner would insure. Without limiting the foregoing, the Licensee shall, at its own expense, secure and maintain in force during the Term of this Agreement or any renewal thereof:

- a) a policy of comprehensive/commercial general liability insurance providing coverage against claims for personal injury, death, property damage and other potential loss and damage upon, in, or about the Land and Building, and arising out of or in connection with Licensee's use and occupation of the Building or any

part thereof in an amount of not less than TWO MILLION (\$2,000,000) DOLLARS, or such other amount as the City may reasonably request, inclusive per occurrence;

- b) a policy for Licensee's legal liability in an amount of not less than FIVE HUNDRED THOUSAND (\$500,000) DOLLARS, or such other amount as the City may reasonably request; and
- c) a policy for non-owned automobile liability, in an amount of not less than TWO MILLION (\$2,000,000) DOLLARS, or such other amount as the City may reasonably request.

10.2 The Licensee shall ensure that all policies of insurance pursuant to this Agreement:

- a) are underwritten by a responsible insurance company or companies licensed to do business in the Province of British Columbia and that meet with the reasonable approval of the City;
- b) contain a waiver of subrogation clause in favour of the City;
- c) contain a clause requiring the insurer not to cancel or change the insurance without first giving the City THIRTY (30) DAYS' written notice thereof;
- d) name the City as an additional insured; and
- e) contain a cross liability clause.

10.3 Upon the City's request, the Licensee shall deliver to the City certified copies of the policies of insurance required to be maintained by the Licensee under this Agreement.

10.4 The Licensee agrees that if it does not provide or maintain in force such insurance, the City may take out the necessary insurance and pay the premium therefore for periods of one year at a time, and the Licensee shall pay to the City as additional fees the amount of such premium immediately upon demand.

10.5 The Licensee shall not do or suffer or permit to be done, or omit to do or suffer or permit another person to omit to be done, any act or anything which may render void or voidable, or which may conflict with, the requirements of any policy or policies of insurance, including any regulations of fire insurance underwriters applicable to such policy or policies, whereby the Land or Building or the contents of the Land or Building are insured, or which may cause any increase in premium to be paid in respect of any such policy or policies. In the event that any such policy or policies is or are cancelled by reason of any act or omission of the Licensee, the City shall have the right, at its option, to terminate this Agreement forthwith by giving written notice of termination to the Licensee, and in the event that the premium to be paid in respect of any such policy or policies is or are increased by any act or omission of the Licensee, including the use of the premises for the purposes for which they are licenced in this Agreement, the Licensee

shall pay to the City the amount by which said premiums shall be so increased, as additional fees.

**11. TERMINATION**

11.1 Either the Licensee or the City may terminate this Agreement for any reason provided SIXTY (60) DAYS' advance written notice is delivered to the other party.

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

- a) the Licensee makes an assignment for the benefit of creditors;
- b) that the Licensee fails to hold a general meeting of members for a consecutive period of eighteen (18) months or longer;
- c) the Licensee 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 Licensee;
- e) the Licensee is struck off the Corporate Register by the Registrar for any just reason whatsoever; or
- f) the Licensee or the City terminates the Arts and Culture Fee for Service Agreement dated June 16, 2020 and amended June 1, 2024, herein attached as Schedule D.

**12. NOTICE**

12.1 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:

City of Courtenay  
830 Cliffe Avenue  
Courtenay, BC V9N 2J7  
Attention: Director of Recreation, Culture, and Community Services

Any notice herein provided or permitted to be given by the City to the Licensee will be sufficiently given if delivered to the Licensee addressed to:

Comox Valley Community Art Council  
580 Duncan Ave  
2<sup>nd</sup> Floor,  
Courtenay, BC  
V9N 2M7  
Attention: Executive Director

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

- 12.2 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 day after it was mailed, faxed or otherwise given to the intended recipient.

### **13. GENERAL**

- 13.1 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.
- 13.2 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.
- 13.3 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.
- 13.4 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 use and occupation of the Licenced Area and Common Areas.
- 13.5 This Agreement shall not fetter the discretion of the City's municipal council and all powers of the City are expressly reserved, subject only to the terms of this Agreement.
- 13.6 This Agreement shall enure to the benefit of and be binding upon the parties hereto and upon the parties' respective successors and assigns.
- 13.7 Time shall be of the essence in this Agreement.
- 13.8 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.
- 13.9 This Agreement shall be governed by the laws and courts of British Columbia and of Canada applicable therein.
- 13.10 This Agreement may be signed in counterparts and such counterparts shall constitute a valid and binding agreement.

As evidence of their agreement to be bound by the above terms and conditions, the parties have executed this agreement below, on the respective dates written below.

**THE CORPORATION OF THE  
CITY OF COURTENAY,** )  
by its authorized signatories: )  
)  
)  
)  
)  
\_\_\_\_\_)  
Corporate Officer )

**COMOX VALLEY COMMUNITY  
ART COUNCIL** )  
by its authorized signatories: )  
)  
)  
\_\_\_\_\_)  
Jennifer Casey, Executive Director )  
)  
)  
\_\_\_\_\_)  
Name )



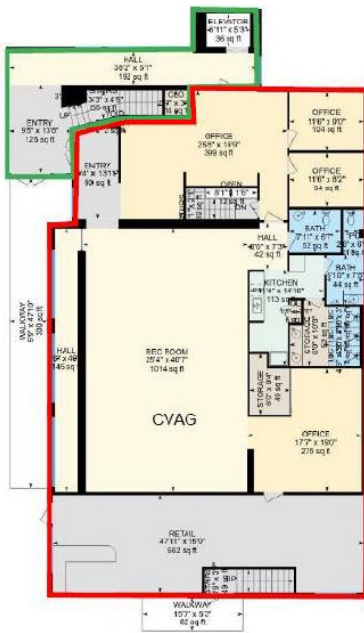
Schedule A



2nd Floor Total Exterior Area 4152 sq ft  
Total Interior Area 3963 sq ft

### Schedule B

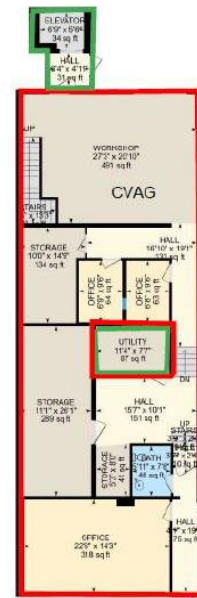
- COMOX VALLEY ART GALLERY SOCIETY (CVAG)
- COMOX VALLEY ART COMMUNITY ART COUNCIL (CVA)
- Common Areas/Utility Room
- Single Office Tenants:
  - Comox Valley Exhibition (CVEX)
  - Comox Valley Youth Music Centre (CYMC)
  - DCBIA
- Shared Storage Room: CVEX/CYMC/DCBIA



**Main Floor** Total Exterior Area 4138 sq ft  
Total Interior Area 3948 sq ft



**2nd Floor** Total Exterior Area 4152 sq ft  
Total Interior Area 3963 sq ft



**Basement** Total Exterior Area 2325 sq ft  
Total Interior Area 2166 sq ft

**SCHEDULE C:**  
**COST APPORTIONMENT**

	ITEM	CITY	LICENSEE
1	Heating Fuels	100% All Year	
2	Water	100% All Year	
3	Electricity	100% All Year	
4	Preventative maintenance and repairs and replacement of HVAC systems	100% All Year	
5	Dumpster rental and garbage removal	100% All Year	
6	Parking area snow removal	100% All Year	
7	Snow removal from exterior entrances.	100% All Year	
8	Landscaping of common areas outside of the Building	100% All Year	
9	Window cleaning-interior		100% All Year
10	Window cleaning-exterior	100% once a year	
11	Furnishings and equipment supply and repair		100% All Year
12	Janitorial Services and supplies in Exclusive Licensed Areas		100% All Year
13	Security patrol services	100% All Year	
14	Building 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 perimeter waste cleanup	100% All Year	
19	Fire safety systems maintenance	100% All Year	

20	Licensed Area operational maintenance & repairs including repainting, paint touch up and lamp and tube replacement.		100% All Year
21	Common Area repairs and maintenance	100% All Year	100% if damage caused by Licensee's use.
22	Structural, building envelop, plumbing, electrical repairs and maintenance.	100% All Year	100% if damage caused by Licensee
23	Elevator repair and maintenance	100% All Year	

**SCHEDULE D**

**Arts and Culture Fee for Service Agreement  
AMENDMENT #1**

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