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# CITY OF KELOWNA

## MEMORANDUM

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**Date:** December 11, 2002  
**File No.:** 2245-20

**To:** City Manager

**From:** Cultural Services Manager

**Subject:** **Legal Agreements with the Kelowna Visual Performing Arts Centre Society for the Rotary Centre for the Arts**

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### **RECOMMENDATION:**

THAT Council approve the legal agreements between the Kelowna Visual Performing Arts Centre Society (KVPACS) and the City of Kelowna for the management and operation, lease, and capital development of the Rotary Centre for the Arts (RCA) as attached to the report from the Cultural Services Manager dated December 11, 2002;

AND THAT the Mayor and City Clerk be authorized to execute the legal agreements on behalf of the City of Kelowna;

AND THAT Council appoint a City Councillor to act as a liaison (non-voting) to the KVPACS Board of Directors as provided for in the agreement.

### **BACKGROUND:**

More than a decade ago, a visionary group of Kelowna citizens initiated the concept of a new home for the visual and performing arts in Kelowna. These people formed the Kelowna Visual and Performing Arts Centre Society, and began collaborating with the City and many others to gather support for the concept and to initiate a fund raising campaign.

Located in the heart of the emerging Cultural District, Kelowna can now boast of the new *Rotary Centre for the Arts* – a 46,000 square foot arts and cultural facility costing approximately \$6.8 million.

The new arts and cultural facility is remarkably diverse, providing spaces for dance, music, artist studios, pottery, community meetings, commercial and non-profit art gallery displays, food/beverage services, as well as a 332 seat theatre supported by rehearsal rooms and a set construction shop.

When combined with the new Arts Common immediately adjacent, there is also an outdoor performance venue suitable for stage plays and musical concerts to accommodate an audience of several hundred people.

The City staff and KVPACS have now completed negotiations for a very comprehensive set of agreements and schedules which accurately describe the working relation between the City and KVPACS, goals and objectives for operating the RCA, and responsibilities for both parties.

### **DISCUSSION:**

The main agreement for the management, operation and lease of the Rotary Centre for the Arts is for a term of five years. There are benefits for the City, KVPACS, and especially the community, as we maximize the efficient use of tax dollars, as well as the services and facilities available to the community.

The agreement is a comprehensive set of documents that address in considerable detail the City's need to have the civic asset protected, while at the same time providing the KVPACS with the ability to manage and operate an exciting and vibrant facility in the heart of the cultural district.

The capital cost of the facility is \$6,776,140. The City will contribute \$2,982,630 and KVPACS will contribute the balance from a combination of fundraising, various grants and by borrowing \$1,100,000. KVPACS also assumes the total financial responsibility for the administration and programming, including debt servicing. In the unlikely event that the agreement is terminated, the City will assume the debt of KVPACS as it relates to this agreement only.

A complete list of documents contained in this agreement is:

#### **Management and Operating Agreement**

##### **List of Schedules**

Schedule "A"	Facility Lease
Schedule "A-1"	Sub-lease Authority, Spaces and Uses
Schedule "A-2"	Form of Sub Lease Agreement
Schedule "A-2-i"	Map of Leased Spaces
Schedule "A-2-ii"	Sub Lease Insurance Requirements
Schedule "A-2-iii"	Sub Lease Certificate of Insurance
Schedule "A-3"	Parking and Outdoor Areas Licence
Schedule "A-3-i"	Parking and Outdoor Area Map
Schedule "B"	Insurance Requirements
Schedule "B-1"	KVPACS Certificate of Insurance
Schedule "C"	Principles of Operation
Schedule "D"	Environmental Guidelines
Schedule "E"	HSBC Debt

#### **Capital Development and Contribution Agreement**

Schedule "E"	HSBC Debt
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While the overall agreements are complex, the following points capture the key ingredients;

1. The City appoints KVPACS to operate the facility and provide defined services to the public over a five year period,
2. The City provides a five year lease of the Rotary Centre of the Arts to the KVPACS,
3. KVPACS contributes towards the capital construction of the Rotary Centre for the Arts, consistent with the City of Kelowna financial plan,
4. KVPACS and the City of Kelowna are jointly responsible for the maintenance of the facility, the City contracts KVPACS to provide the maintenance services, and the City providing the funds for maintenance costs,
5. The City is responsible for any outstanding loan amount if the agreement is terminated,
6. KVPACS is fully responsible for all day-to-day operations, management decisions, and staffing the Facility,
7. Public access to the Facility is defined and assured over the life of the agreement,
8. KVPACS is authorized to sub-lease, rent and offer programs in specific spaces within the Facility,
9. The City provides theatre management services for the operation of the Mary Irwin Theatre for three years. KVPACS will reimburse the City for this management service,
10. The City may appoint a City Councillor and the Cultural Services Manager to act as liaison to the Board of Directors and attend meetings,
11. KVPACS will provide comprehensive reports to the City on many operational and financial issues on a regular basis,
12. The City always remains the legal owner of all property, the Facility and all major equipment,
13. KVPACS is granted a licence to control specified parking at the south side of the Facility,
14. KVPACS will provide extensive support and work in collaboration with the many stakeholders, to ensure the success of the Cultural District.

As Kelowna's Cultural District continues to grow and flourish, the *Rotary Centre for the Arts* will provide a significant focal point for the development of arts and culture in our community. Staff are pleased to present this comprehensive legal agreement for Council's consideration.

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JWR Oddleifson  
Cultural Services Manager

Pc     Director of Parks and Leisure Services  
       Financial Planning Manager  
       City Clerk