

Memo



Date: May 7, 2010
File: 0700-20
To: City Manager
From: S. Kochan, Cultural Services Manager
Subject: Festivals Kelowna

Recommendations:

THAT Council accepts the proposal by Festivals Kelowna for repayment of its outstanding indebtedness of \$43,000 to the City of Kelowna attached as Appendix A to the report of the Cultural Services Manager dated May 7, 2010;

AND THAT COUNCIL approves an arms length independent governance structure for Festivals Kelowna as reflected in the amended Constitution and Bylaws attached as Appendices B and C to the report of the Cultural Services Manager dated May 7, 2010;

AND THAT COUNCIL authorizes the Director of Recreation & Cultural Services to enter into a 3 year agreement with Festivals Kelowna for the delivery of the following programs and such other services as may be agreed upon:

- Canada Day celebrations
- Parks Alive! - performances in parks
- Arts Alive! - artisan and craft vendors in parks
- Buskers Program - street entertainment at designated locations

AND FURTHER THAT Council directs the Cultural Services Branch to oversee the same annual review and reporting processes for Festivals Kelowna as are required from other professional arts grants recipients.

Purpose:

This report arises out of the following Council resolution (see last section in particular) from the November 23, 2009 P.M. regular meeting:

THAT City of Kelowna funding support continue to be provided to Festivals Kelowna for Parks Alive! (including Arts Alive! and Buskers Program) and Canada Day, in the amount of \$245,100 for 2010 and amounts in future years to be adjusted as needed;

AND THAT City of Kelowna funding of \$100,000 used for the Music & Arts Festival be removed from the Festivals Kelowna budget for 2010 and re-allocated for use in the Community Festivals, Events & Projects (CFEP) Grants;

AND THAT the 2009 Financial Plan be amended to provide an additional \$73,000 to Festivals Kelowna funded from the Festivals and Community Celebrations Reserve;

AND THAT for 2010 only, \$30,000 from CFEP funds be refunded to the Festivals and Community Celebrations Reserve;

AND THAT staff report back to Council with a Festivals Kelowna proposal for repayment, over a three year period commencing in 2010, of \$43,000 to the City of Kelowna (Festivals and Community Celebrations Reserve) and a revised arms length governance model for Festivals Kelowna.

A handwritten signature in black ink, appearing to be the name of the author, S. Kochan.

Background:

As part of a comprehensive review of arts and cultural granting programs, a report was presented to Council on November 23, 2009 by the Cultural Services Manager.

1. Repayment of Deficit

The November 23, 2009 report contained information about a \$73,000 deficit incurred by Festivals Kelowna associated with the 2009 Music & Arts Festival. Council agreed at the time to retire this deficit through use of reserve funds, and asked Festivals Kelowna to return with a plan for repayment of \$43,000 to the reserve, with the remaining \$30,000 being covered through other sources. The proposal for repayment over a period of three (3) years is set out on the attached Appendix A.

2. Revised Governance Structure

The November 23 report also provided information about the existing governance structure of Festivals Kelowna and identified a need to review and revise the structure. Staff's observations at the time were that Festivals Kelowna operated as a closely-held agency of the City due to the degree of control exercised by the City in the society's governance structure. Staff indicated that a preferred approach would be to create other mechanisms for oversight and accountability and have Festivals Kelowna operate as an arms-length, independent organization, similar to other non-profit arts service organizations which receive City of Kelowna support.

The Board of Directors and staff of Festivals Kelowna have spent considerable time over the last several months revising the organization's mandate, vision and governance structure. They remain committed to producing, as successful core programs, Parks Alive!, Arts Alive!, Canada Day celebrations and the Buskers Program. Festivals Kelowna will continue in this role, with annual funding support in the form of a professional arts grant through the Cultural Services budget. For 2010, the grant is \$245,100.

A revised Constitution and Bylaws for Festivals Kelowna are attached as Appendices B and C.

Changes which reflect the new autonomous, arms length status of Festivals Kelowna are generally summarized as follows:

- **Constitution:**
 - The Society has reaffirmed its commitment to producing high-quality events and working collaboratively with the festivals and special event community.
 - Festivals Kelowna has clarified its role as a fee-for-service event agency, rather than as a producer of City of Kelowna festivals and events. This allows for the society to undertake other projects which may attract external grants and earned revenue, which in turn assists the Society in building its capacity and sustainability.
- **Bylaws:**
 - City Council no longer approves membership in the Society and the City is not involved in nominations for members or the Board of Directors
 - City Management staff no longer have signing authority nor do they hold two (2) voting positions on the Board of Directors
 - The Board of Directors and the executive have full authority to approve and manage the organization's budget without prior approval of the City
 - Membership is open to anyone in the community who wishes to join upon compliance with the bylaws and payment of the applicable membership fee

3. Oversight and Accountability

Staff recommend that the City and Festivals Kelowna enter into a written agreement which will clarify the terms, conditions and expectations regarding the services to be provided by Festivals Kelowna. The suggested initial term for the agreement will be three years, with provision for: renewals, annual staff review of the organization's governance, programming and finances, and an annual report presented by the organization to Council.

The city's role in event development is an ongoing topic within a number of other planning processes including the Cultural Plan and the workplan arising out of the Outdoor Event Strategy. As these planning processes continue, the role of Festivals Kelowna as well as other models will be considered. Festivals Kelowna Directors and staff will continue to be consulted throughout the planning process.

Internal Circulation:

- General Manager, Community Services
- Director, Financial Services
- Director, Community & Media Relations
- City Clerk

Existing Policy:

This report is submitted pursuant to Council Policy 274 (Cultural Policy).

Financial/Budgetary Considerations:

The 2010 Cultural Services budget contains an allocation of \$245,100 for Festivals Kelowna, which will be reviewed on an annual basis in consultation with the organization, and in the context of services to be provided and any service agreements in place.

External Agency/Public Comments:

This report and its recommendations were developed in consultation with Festivals Kelowna staff and Board of Directors.

Considerations not applicable to this report:

Personnel Implications
Legal/Statutory Procedural Requirements
Legal/Statutory Authority
Alternate Recommendation
Community & Media Relations Comments

Submitted by:



S. Kochan, Cultural Services Manager

Approved for inclusion:  Director, Recreation & Cultural Services

CC:

J. Vos, General Manager, Community Services
K. Grayston, Director, Financial Services
C. Stephens, Director, Community & Media Relations
S. Fleming, City Clerk
R. Mills, Festivals Kelowna



FestivalsKelowna

APPENDIX A
COUNCIL REPORT
MAY 7, 2010

March 18, 2010

Keith Grayston
Director, Financial Services
City of Kelowna
1435 Water Street
V1Y 1J4

Dear Mr. Grayston,

On behalf of the Board of Directors of the Festivals and Special Events Development Society of Kelowna (Festivals Kelowna), please accept this letter outlining our proposed repayment schedule for the loan provided to the society by the City of Kelowna in December 2009.

It is our intention to repay the loan received from the City according to the following schedule:

Principal amount: \$43,000
Interest rate: 0%
Repayment period: 3 years
Payment frequency: Annual
Timing of payments: December of each year, with first payment to be made December 2010
Amount of payments: \$14,333.00

If you are in agreement with the payment plan as presented, please sign and return a copy of this letter.

Should you require additional information or have questions about this proposal, I can be contacted directly at 250-807-9889, or you can call Renata Mills, Executive Director, Festivals Kelowna, at 250-868-3326.

Thank you for your assistance.

Sincerely,


Alanna Vernon
President, Festivals Kelowna

I agree with the payment plan as presented by Festivals Kelowna.

Keith Grayston, Director, Financial Services, City of Kelowna

Date:

CONSTITUTION

- 1) The name of the Society is the *Festivals and Special Events Development Society of Kelowna*
- 2) The purpose(s) of the Society are:
 - a) To produce and develop events in Kelowna on a fee for service basis;
 - b) To work in collaboration with key agencies in the city of Kelowna in the strategic development of the Kelowna festivals and special events community for the perpetual benefit of the citizens of Kelowna;
 - c) To work collaboratively with and provide assistance to the Kelowna festival and special events community;
 - d) To provide similar or related services as determined by the Directors.
- 3) The purposes of the Society are to be carried on primarily within the geographic boundary of Kelowna, British Columbia. The clause is unalterable.
- 4) In the event of winding-up or dissolution of the Society, any assets of the Society, after payment of outstanding obligations, shall be transferred to the City of Kelowna. This clause is unalterable.

(revised April 2010)

SOCIETY ACT

BYLAWS

Bylaws of the *Festivals and Special Events Development Society of Kelowna*

Part 1 - Interpretation

(1) In these bylaws, unless the context otherwise requires: **"Society"** means the **Festivals and Special Events Development Society of Kelowna**

"directors" means the directors of the society for the time being;

"Society Act" means the *Society Act* of British Columbia from time to time in force and all amendments to it;

"registered address" of a member means the member's address as recorded in the register of members.

(2) The definitions in the *Society Act* on the date these bylaws become effective apply to these bylaws.

1. Words importing the singular include the plural and vice versa, and words importing a male person include a female person and a corporation.

Part 2 - Membership

2. The members of the society are the applicants for incorporation of the society, and those persons who subsequently become members in accordance with these bylaws and, in either case, have not ceased to be members.
3. Any person interested in becoming a member of the society may become a member upon their complying with and subject to the provisions of the by-laws of the Society, and upon payment of the appropriate membership fees.

- (a) Individuals and corporations may be admitted as voting members. Each voting member shall have one (1) vote on each question arising at all general and extraordinary meetings of the members of the society.
 - (b) The formalities of application for membership , the amounts of fees for respective classes of members, the time for payment of fees, and the privileges from time to time incidental to membership of various classes shall, from time to time, be determined by the directors.
4. A member cannot transfer their membership to another individual or organization.
5. Every member must uphold the constitution and comply with these bylaws.
6. A person ceases to be a member of the society:
- (a) by delivering his or her resignation in writing to the secretary of the society or by mailing or delivering it to the address of the society,
 - (b) on his or her death or, in the case of a corporation, on dissolution,
 - (c) on being expelled, or
 - (d) on having been a member not in good standing for 12 consecutive months.
7. (1) A member may be expelled by a special resolution of the members passed at a general meeting.
- (2) The notice of special resolution for expulsion must be accompanied by a brief statement of the reasons for the proposed expulsion.
- (3) The person who is the subject of the proposed resolution for expulsion must be given an opportunity to be heard at the general meeting before the special resolution is put to a vote.
8. All members are in good standing except a member who has failed to pay his or her current annual membership fee, or any other subscription or debt due and owing by the member to the society, and the member is not in good standing so long as the debt remains unpaid.

Part 3 - Meetings of Members

9. General meetings of the society must be held at the time and place, in accordance with the *Society Act*, that the directors decide.
10. Every general meeting, other than an annual general meeting, is an extraordinary general meeting.
11. The directors may, when they think fit, convene an extraordinary general meeting.

12. (1) Notice of a general meeting must specify the place, day and hour of the meeting, and, in case of special business, the general nature of that business.

(2) The accidental omission to give notice of a meeting to, or the non-receipt of a notice by, any of the members entitled to receive notice does not invalidate proceedings at that meeting.
13. The first annual general meeting of the society must be held not more than 15 months after the date of incorporation and after that an annual general meeting must be held at least once in every calendar year and not more than 15 months after the holding of the last preceding annual general meeting.

Part 4 - Proceedings at General Meetings

14. Special business is:
 - (a) all business at an extraordinary general meeting except the adoption of rules of order, and
 - (b) all business conducted at an annual general meeting, except the following:
 - (i) the adoption of rules of order;
 - (ii) the consideration of the financial statements;
 - (iii) the report of the directors;
 - (iv) the report of the auditor, if any;
 - (v) the election of directors;
 - (vi) the appointment of the auditor, if required;
 - (vii) the other business that, under these bylaws, ought to be conducted at an annual general meeting, or business that is brought under consideration by the report of the directors issued with the notice convening the meeting.
15. (1) Business, other than the election of a chair and the adjournment or termination of the meeting, must not be conducted at a general meeting at a time when a quorum is not present.

(2) If at any time during a general meeting there ceases to be a quorum present, business then in progress must be suspended until there is a quorum present or until the meeting is adjourned or terminated.

(3) A quorum is three (3) members present or a greater number that the members may determine at a general meeting.
16. If within 30 minutes from the time appointed for a general meeting a quorum is not present, the meeting, if convened on the requisition of members, must be terminated, but in any other case, it must stand adjourned to the same day in the next week, at the same time and place, and if, at the adjourned meeting, a quorum is not present within 30

minutes from the time appointed for the meeting, the members present constitute a quorum.

17. Subject to bylaw 19, the president of the society, the vice president or, in the absence of both, one of the other directors present, must preside as chair of a general meeting.
18. If at a general meeting:
 - (a) there is no president, vice president or other director present within 15 minutes after the time appointed for holding the meeting, or
 - (b) the president and all the other directors present are unwilling to act as the chair,the members present must choose one of their members to be the chair.
19. (1) A general meeting may be adjourned from time to time and from place to place, but business must not be conducted at an adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.
 - (2) When a meeting is adjourned for ten (10) days or more, notice of the adjourned meeting must be given as in the case of the original meeting.
 - (3) Except as provided in this bylaw, it is not necessary to give notice of an adjournment or of the business to be conducted at an adjourned general meeting.
20. (1) A resolution proposed at a meeting need not be seconded, and the chair of a meeting may move or propose a resolution.
 - (2) In the case of a tie vote, the chair does not have a casting or second vote in addition to the vote to which he or she may be entitled as a member, and the proposed resolution does not pass.
21. (1) A member in good standing present at a meeting of members is entitled to one vote.
 - (2) Voting is by show of hands or by electronic voting if approved by the membership from time to time.
 - (3) Voting by proxy is not permitted.
22. A corporate member may vote by its authorized representative, who is entitled to speak and vote, and in all other respects exercise the rights of a member, and that representative must be considered as a member for all purposes with respect to a meeting of the society.

Part 5 - Directors and Officers

23. (1) The directors may exercise all the powers and do all the acts and things that the society may exercise and do, and that are not by these bylaws or by statute or otherwise lawfully directed or required to be exercised or done by the society in a general meeting, but subject, nevertheless, to:

- (a) all laws affecting the society,
- (b) these bylaws, and
- (c) rules, not being inconsistent with these bylaws, that are made from time to time by the society in a general meeting.

(2) A rule, made by the society in a general meeting, does not invalidate a prior act of the directors that would have been valid if that rule had not been made.

24. The president, vice-president, secretary and treasurer shall each be directors and officers of the society.
25. The society shall be governed by a Board of Directors (“The Board”) consisting of a minimum of three (3) directors and a maximum of eleven (11) directors, of which at least one (1) shall be from the private sector. The number of directors may be amended from time to time at a general meeting. The board shall be responsible for the stewardship of the society and shall approve plans that take into account the opportunities available to and risks affecting the society.
26. Subject to bylaw 27, directors shall serve a term of two (2) years and may be re-elected a maximum of three times consecutively, for a total of six (6) years.
- (a) Directors must retire from office at the completion of their term when their successors are elected.
 - (b) An election may be by acclamation, otherwise it must be by ballot, and the ballot may be in any format, including electronic, that the board decides in its discretion.
27. At the society’s first annual meeting, the members must appoint directors for staggered terms as follows:
- (a) At least three (3) of the directors shall serve a one (1) year term; and
 - (b) At least four (4) directors shall serve a two (2) year term.
28. (1) If a director resigns his or her office or otherwise ceases to hold office, and the number of directors becomes less than seven (7), the members must appoint a new director from the membership.
- (2) An act or proceeding of the directors is not invalid merely because there are less than the prescribed number of directors in office.
29. (1) The directors may at any time appoint a member as a director to fill a vacancy in the directors.
- (2) A director so appointed holds office only until the conclusion of the next annual general meeting of the society, but is eligible for re-election at the meeting.

30. The members may, by special resolution, remove a director before the expiration of his or her term of office, and may elect a successor to complete the term of office. Reasons for expulsion include:
- (a) Acting in such a manner as to bring the reputation of the society into disrepute.
 - (b) Absence from (3) consecutive board meetings without the prior approval of the President.
31. A director must not be remunerated for being or acting as a director but a director must be reimbursed for all expenses necessarily and reasonably incurred by the director while engaged in the affairs of the society.

Part 6 - Proceedings of Directors

32. (1) The directors may meet at the places they think fit to conduct business, adjourn and otherwise regulate their meetings and proceedings, as they see fit.
- (2) The directors may from time to time set the quorum necessary to conduct business, and unless so set the quorum is a majority of the directors then in office.
- (3) The president is the chair of all meetings of the directors, but if at a meeting the president is not present within 30 minutes after the time appointed for holding the meeting, the vice president must act as chair, but if neither is present the directors present may choose one of their number to be the chair at that meeting.
- (4) A director may at any time, and the secretary, on the request of a director, must, convene a meeting of the directors.
33. (1) The directors may delegate any, but not all, of their powers to committees consisting of the director or directors and other individuals as they think fit.
- (2) A committee so formed in the exercise of the powers so delegated must conform to any rules imposed on it by the directors, and must report every act or thing done in exercise of those powers to the earliest meeting of the directors held after the act or thing has been done.
- (3) The board may in its sole discretion, remove any person from a committee.
34. A committee must elect a chair of its meetings, but if no chair is elected, or if at a meeting the chair is not present within 30 minutes after the time appointed for holding the meeting, the directors present who are members of the committee must choose one of their members to be the chair of the meeting.
35. The members of a committee may meet and adjourn as they think proper.
36. For a first meeting of directors held immediately following the appointment or election of a director or directors at an annual or other general meeting of members, or for a meeting

of the directors at which a director is appointed to fill a vacancy in the directors, it is not necessary to give notice of the meeting to the newly elected or appointed director or directors for the meeting to be constituted, if a quorum of the directors is present.

37. A director who may be absent temporarily from British Columbia may send or deliver to the address of the society a waiver of notice, which may be by letter, facsimile or electronic mail of any meeting of the directors and may at any time withdraw the waiver, and until the waiver is withdrawn,
- (a) a notice of meeting of directors is not required to be sent to that director, and
 - (b) any and all meetings of the directors of the society, notice of which has not been given to that director, if a quorum of the directors is present, are valid and effective.
38. (1) Questions arising at a meeting of the directors or committee of directors must be decided by a majority of votes.
- (2) In the case of a tie vote, the chair does not have a second or casting vote.
39. A resolution proposed at a meeting of directors or committee of directors need not be seconded, and the chair of a meeting may move or propose a resolution.
40. A resolution in writing, signed by all the directors and placed with the minutes of the directors, is as valid and effective as if regularly passed at a meeting of directors.

Part 7 — Duties of Officers

41. (1) The president presides at all meetings of the society and of the directors.
- (2) The president is the chief executive officer of the society and must supervise the other officers in the execution of their duties.
42. The vice-president must carry out the duties of the president during the president's absence.
43. The secretary is responsible for the following:
- (a) conducting the correspondence of the society;
 - (b) issuing notices of meetings of the society and directors;
 - (c) keeping minutes of all meetings of the society and directors;
 - (d) having custody of all records and documents of the society except those required to be kept by the treasurer;
 - (e) having custody of the common seal of the society; and
 - (f) maintaining the register of members.

44. The treasurer is responsible for :
- (a) keeping the financial records, including books of account, necessary to comply with the *Society Act*;
 - (b) rendering financial statements to the directors, members and others when required; and
 - (c) ensuring the board does not approve expenditures beyond the approved annual budget.
45. The offices of Secretary and Treasurer may be held by one person who is to be known as the Secretary/Treasurer.
46. In the absence of the secretary from a meeting, the directors must appoint another person to act as secretary at the meeting.

Part 8 — Seal

47. The directors may provide a common seal for the society and may destroy a seal and substitute a new seal in its place.
48. The common seal must be affixed only when authorized by a resolution of the directors and then only in the presence of the persons specified in the resolution, or if no persons are specified, in the presence of the president and secretary or president and secretary treasurer.

Part 9 — Borrowing

49. In order to carry out the purposes of the society the directors may, on behalf of and in the name of the society, raise or secure the payment or repayment of money in the manner they decide, and, in particular but without limiting that power, by the issue of debentures.
50. A debenture must not be issued without the authorization of a special resolution.
51. The members may, by special resolution, restrict the borrowing powers of the directors, but a restriction imposed expires at the next annual general meeting.

Part 10 — Auditor

52. This Part applies only if the society is required or has resolved to have an auditor.
53. The first auditor must be appointed by the directors who must also fill all vacancies occurring in the office of auditor.
54. At each annual general meeting the society must appoint an auditor to hold office until the auditor is re-elected or a successor is elected at the next annual general meeting.
55. An auditor may be removed by ordinary resolution.

56. An auditor must be promptly informed in writing of the auditor's appointment or removal.
57. A director or employee of the society must not be its auditor.
58. The auditor may attend general meetings.

Part 11 — Notices to Members

59. A notice may be given to a member, either personally, by mail or by email to the member at the member's registered address.
60. A notice sent by mail is deemed to have been given on the second day following the day on which the notice is posted, and in proving that notice has been given, it is sufficient to prove the notice was properly addressed and put in a Canadian post office receptacle.
61. (1) Notice of a general meeting must be given to:
 - (a) every member shown on the register of members on the day notice is given, and
 - (b) the auditor, if Part 10 applies.(2) No other person is entitled to receive a notice of a general meeting.

Part 12 — Bylaws

62. On being admitted to membership, each member is entitled to, and the society must give the member without charge, a copy of the constitution and bylaws of the society.
63. These bylaws must not be altered or added to except by special resolution.

(revised April 2010)