

Memo



Date: November 24, 2010
File: 1140-50
To: City Manager
From: S. Kochan, Cultural Services Manager and M. Johansen, Manager, Building Services
Subject: Kelowna Visual and Performing Arts Centre Society (KVPACS) operating the Rotary Centre for the Arts (421 Cawston Avenue)

Recommendation:

THAT Council approve amendments to the Lease and Operating Agreement dated January 1, 2008 between the Kelowna Visual and Performing Arts Centre Society (KVPACS) and the City for operation of the Rotary Centre for the Arts (RCA) as set out in Appendix A attached to the Report of the Manager, Cultural Services and Manager, Building Services dated November 24, 2010;

AND THAT Council authorizes the Mayor and City Clerk to sign the amendment to the Lease and Operating Agreement on behalf of the City of Kelowna.

Purpose:

KVPACS, as the organization operating the RCA, is seeking an amendment to its Lease and Operating Agreement to remove restrictions on use of Maintenance Funds paid to it by the City. Removal of the restrictions will assist the organization's cash flow and ability to access additional financing.

Background:

KVPACS entered into a five-year Lease and Operating Agreement (LOA) with the City effective January 1, 2008 for the operation of the RCA. The LOA expires on December 31, 2012.

Pursuant to the LOA, the City and KVPACS are jointly responsible for the maintenance of the facility. KVPACS is contracted to provide particular maintenance functions and in exchange for these services, the City pays to KVPACS an annual Maintenance Fund.

In 2010, the Maintenance Fund paid by the City to KVPACS is \$235,760. The amount paid is subject to the All Items Consumer Price Index and is adjusted annually. The City also pays to KVPACS an annual amount of \$41,000 (2010) for programming. The total amount paid by the City to KVPACS in 2010 is \$276,760. Municipal funding represents 29% of the RCA's total operating budget, with the remaining 71% being generated by earned revenue and fundraising.

Currently, Section 10.3 of the LOA provides in part:

'The KVPACS Maintenance Fund shall only be used by KVPACS for the following purposes and in 2008 the financial limits for these purposes shall be:

- (a) Facility Operator - \$46,000;
- (b) Payment of utilities supplied to or consumed at the Facility - \$64,000;
- (c) Janitorial services for the facility - \$90,000;
- (d) First Line and Preventative Maintenance - \$15,000;
- (e) Facility Refurbishment - \$5,000;...'

(10.3 cont'd) 'Any KVPACS Maintenance Funds not expended in a fiscal year must be identified in a reserve account and will only be used for the above purposes in following years. Any funds remaining upon the expiry or earlier termination of this Agreement shall be repaid to the City.'

It is proposed that the existing Section 10.3 be deleted and that new wording, as set out in Appendix A, be substituted.

The reasons for amending the existing Lease & Operating Agreement are as follows:

1. Staff from Real Estate & Building Services (REBS) have confirmed that the RCA building is well maintained and that KVPACS has fulfilled its maintenance responsibilities. KVPACS has confirmed that it will continue to conform to all LOA requirements regarding maintenance of the building. Further, REBS staff have implemented an annual process for building assessment which will also assist in early and pro-active identification of maintenance issues to be addressed.
2. KVPACS staff have been able to achieve efficiencies and cost savings and as a result expenditures attributable to maintenance have been less than the amount in the annual Maintenance Fund.
3. Due to the current wording of Section 10.3 of the LOA, and standard accounting practices, excess Maintenance Funds accumulate and appear in the KVPACS financial statement as a restricted amount which is an un-usable asset for the organization and is interpreted by funders as a liability to be repaid to the City on expiry of the LOA. As of June 30, 2010, the accumulated total in the Maintenance Fund is \$79,208.
4. Some expenditures made by KVPACS for leasehold improvements and equipment for facility maintenance have not been charged against the Maintenance Fund. These expenditures are projected to be \$34,234 as of June 30, 2011. The Director of Finance has recognized that these expenditures are properly attributable to the Maintenance Fund, thereby reducing the accumulated Maintenance Fund to \$44,974 as of June 30, 2011.
5. In order to facilitate cash flow, KVPACS has requested an extension of its existing line of credit at its financial institution and has been advised that this extension will not be granted unless the restrictions on use of the Maintenance Fund are removed.
6. For the balance of the term of the LOA, the City is prepared to remove restrictions on use by KVPACS of the annual Maintenance Fund, in accordance with the Agreement attached as Appendix A.
7. Further, in accordance with Appendix A, the City has agreed that \$22,487, representing 50% of the adjusted accumulated Maintenance Fund of \$44,974, will be due and payable to the City upon expiry of the Lease and Operating Agreement, unless further adjustments are agreed upon by the parties. This is to recognize the efficiencies that KVPACS has been

able to achieve within the boundaries of the existing LOA and to share the savings with the City.

Amendments to the LOA and the extension of the RCA line of credit will significantly improve the RCA's cash flow and will reduce the likelihood of additional budget requests to support the facility's operations between now and the end of 2012.

KVPACS has acknowledged that the change to the LOA is put forward on the condition that should utility costs increase, KVPACS will be solely responsible to cover these costs.

KVPACS will provide regular financial status updates to the Director of Finance.

Upon any renewal or renegotiation of the LOA, the provisions regarding the Maintenance Fund will be revisited, and the amendment sought in this report may, or may not, appear in the new agreement.

Internal Circulation:

General Manager, Community Services
Director, Recreation & Cultural Services
Director, Financial Services
Director, Real Estate & Building Services
Manager, Property Management
Manager, Building Services

Existing Policy:

This report is submitted pursuant to Council Cultural Policy #274.

Financial/Budgetary Considerations:

Paragraph 9.2 of the Lease and Operating Agreement provides in part that 'KVPACS may seek supplemental funds for the purpose of...

- a) Accessibility to programs and services
- b) Increase in arts related programming
- c) Maintaining levels of income
- d) Funding for matching grants from other levels of government
- e) Legislative changes
- f) Achieve objectives as defined in KVPACS' constitution
- g) Achieve defined objectives of the City's Cultural Services [Branch.]'

A supplemental budget request to benefit the RCA has been submitted for the 2011 budget. If the recommendations in this report are approved, the supplemental request will be withdrawn.

External Agency/Public Comments:

The recommendations in this report were developed in consultation with the Executive Director of the Rotary Centre for the Arts, and the Board of Directors of KVPACS.

Considerations not applicable to this report:

Legal/Statutory Procedural Requirements

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

Submitted by:



S. Kochan, Cultural Services Manager



M. Johansen, Manager, Building Services

Approved for inclusion:



(J. Vos, General Manager, Community Services)

cc: General Manager, Community Services
Director, Recreation & Cultural Services
Director, Financial Services
Director, Real Estate & Building Services
Manager, Property Management
Manager, Building Services
Executive Director, Rotary Centre for the Arts

APPENDIX A
To Council Report November 24, 2010
Re: Kelowna Visual & Performing Arts Centre Society
Amendment to Lease & Operating Agreement for Rotary Centre for the Arts

DOCUMENT APPROVAL			
Facility Lease - Amendment			
Cir.	Dept.	Date	Int.
	R & CS		
	City Clerk		
	Finance		
	REBS		

**AMENDMENT TO LEASE AND OPERATING AGREEMENT
OF THE ROTARY CENTRE FOR THE ARTS**

THIS AMENDMENT dated November 30, 2010

BETWEEN:

CITY OF KELOWNA, a municipal corporation pursuant to the laws of British Columbia having an address at 1435 Water Street, Kelowna, B.C., V1Y 1J4

(the 'City')

AND:

KELOWNA VISUAL AND PERFORMING ARTS CENTRE SOCIETY (Inc. No. S32185) a society registered under the laws of British Columbia and having an office at 421 Cawston Avenue, Kelowna, B.C., V1Y 6Z1

('KVPACS')

WHEREAS:

- A. The City is the owner of lands and premises at 421 Cawston Avenue, Kelowna, BC, including the building known as the Rotary Centre for the Arts (RCA);
- B. The City entered into a five year Lease and Operating Agreement (the 'Agreement') commencing January 1, 2008 with KVPACS for the RCA;
- C. The Agreement provides that the City will annually pay to KVPACS a Maintenance Fund;
- D. The Agreement contains provisions which restrict usage of the Maintenance Fund;
- E. KVPACS seeks, and the City has agreed, to change the provisions in the Agreement which restrict usage of the Maintenance Fund;

NOW THEREFORE; in consideration of the mutual covenants, conditions and agreements herein contained, the City and KVPACS agree to amend the Agreement as follows:

1. With regard to Article 10, Section 10.3 KVPACS MAINTENANCE FUND:

Delete the entire section and REPLACE WITH the following:

10.3 KVPACS MAINTENANCE FUND

The annual KVPACS Maintenance Fund shall first be used by KVPACS for the following purposes:

- (a) Facility Operator;
- (b) Payment of utilities supplied to or consumed at the Facility;
- (c) Janitorial services for the facility;
- (d) First Line and Preventative Maintenance; and
- (e) Facility Refurbishment.

Building Services will conduct an annual walk through of the building in May of each year in conjunction with a review of Maintenance Fund expenditures. The purpose of the walk through and review will be to:

- Assess the condition of the building;
- Identify and value maintenance tasks (if any) remaining to be fulfilled by KVPACS; and
- Quantify the amount of remaining Maintenance Funds which may then be used by KVPACS for other purposes consistent with the terms of this Lease and Operating Agreement.

The amount of the payment to be made by the City pursuant to section 9.4(b), shall be increased annually for each year following the first year of the Term by the same percentage as the percentage increase (if any) during the preceding calendar year in the All Items Consumer Price Index for British Columbia as published by Statistics Canada.

If KVPACS considers that maintenance and repair costs have increased by more than the BC All Items Consumer Price Index for items 10.3 (a), (c), (d), and (e) then KVPACS shall meet with the City designate for a review. If a funding increase is justified for any of the four purposes, the City designate will bring forward a supplemental budget requesting an increase in funds at the time the City considers its own budget requests, provided that approval of the supplemental funds will be at the discretion of City Council.

KVPACS will not seek a funding increase for 10.3 (b) for the remainder of the term of the agreement.

Upon the termination of this agreement, the amount of \$22,487, representing an adjusted balance of accumulated KVPACS Maintenance Funds, will be repayable by KVPACS to the City, unless further adjustments to the amount repayable are agreed upon by the parties.

IN WITNESS WHEREOF the parties have executed this Amendment Agreement.

SIGNED, SEALED AND DELIVERED by the City in the presence of:

The City of Kelowna, by its
Authorized Signatories:)

Mayor)

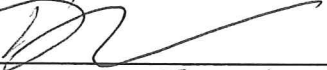
City Clerk)

Witness


Address

Occupation


Kelowna Visual and Performing Arts)
Centre Society, by its Authorized)
Signatories:)



Kenneth Ihas, President)



Tyler Neels, Treasurer)



Witness



Address



Occupation