

PROVISION OF CULTURAL SERVICES AGREEMENT

This Agreement effective as of the 1st day of January, 2013.

BETWEEN:

THE CORPORATION OF THE TOWN OF AURORA
(hereinafter referred to as the "Town")

PARTY OF THE FIRST PART

- and -

CHURCH STREET SCHOOL CULTURAL CENTRE, being a duly
incorporated Corporation without share capital pursuant to the laws of the
Province of Ontario
(hereinafter referred to as the "Centre")

PARTY OF THE SECOND PART

WHEREAS the Centre, a non-profit corporation without share capital incorporated in the Province of Ontario, was incorporated to develop and operate a centre for the provision of Cultural Services on behalf of the Town;

AND WHEREAS the Town recognizes the value that the Centre contributes to the community and has determined in accordance with the terms of its Purchasing By-law that the sole source provision of Cultural Services from the Centre is fair and reasonable;

AND WHEREAS the Centre wishes to continue to provide Cultural Services from the School;

AND WHEREAS the Town has agreed to allow the Centre to provide these Cultural Services at the School pursuant to the terms of the Lease Agreement, which shall run concomitantly with this Agreement;

AND WHEREAS the Town and the Centre wish to replace the Provision of Cultural Services Agreement entered into by the Town and the Centre on June 9, 2009 with this Agreement;

AND WHEREAS the parties acknowledge that Cultural Services within Aurora are essential in developing a strong sense of community, and the provision of cultural programs and opportunities for the residents of Aurora contributes to the goals identified in the Town's Strategic Plan and adds value to the community;

AND WHEREAS the parties acknowledge that an important inducement for the Town to enter into this Agreement is the Centre's commitment to providing, as a public use, the opportunity for all residents of the Town to participate in cultural programming and offerings that are both accessible and affordable;

AND WHEREAS over the long-term, this Agreement provides an opportunity to promote, nurture, and expand Cultural Services to the residents of Aurora, and a balanced program of Cultural Services can make a contribution in achieving specific goals in the Town's Strategic Plan;

AND WHEREAS the Centre's Board of Directors has approved the terms of this Agreement and Council approved and authorized the execution of this Agreement in its meeting of January 22, 2013;

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the mutual covenants and agreements contained in this Agreement and other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged by the parties) the parties covenant and agree as follows:

DEFINITIONS AND INTERPRETATION

1. In this Agreement, the following words shall have the following meanings:
 - (a) "Board" shall mean the Board of Directors of the Centre;
 - (b) "Centre" means the Church Street School Cultural Centre, also known as the Aurora Cultural Centre;
 - (c) "Council" shall mean the Town Council consisting of the Mayor and Council Members elected by the constituents of the Town of Aurora;
 - (d) "Cultural Services" shall mean culture, arts, and heritage services;
 - (e) "Director" shall mean the Director of Parks & Recreation Services at the Town, or his or her designate;
 - (f) "KPI" shall mean the key performance indicators of the Centre, as provided for in section 15 and Schedule "A" of this Agreement, to ensure that the Centre is meeting the objectives set out in this Agreement;
 - (g) "Lease Agreement" shall mean the agreement between the Town and the Centre dated and effective as of the 1st day of January, 2013 setting out the terms and conditions regarding the lease of the School by the Town to the Centre in order to provide the services contemplated in this Agreement;
 - (h) "Grant" shall mean the monetary grant paid to the Centre by the Town, subject to the terms and conditions contained in this Agreement, for the provision of Cultural Services by the Centre;
 - (i) "School" shall mean the Town-owned building and lands known as the Church Street School, more particularly described as Lots 1, 2, 3, 4 S/S Mosley and Lots 1, 2, 3, 4 N/S Church St, Plan 68, Town of Aurora, Regional Municipality of York, and municipally known as 22 Church Street, Aurora, save and except the Aurora Room and those areas in the building highlighted in yellow on the building floor plan attached to the Lease Agreement as Schedule "G";
 - (j) "Term" shall mean the Term of this Agreement as set out in section 3 of this Agreement, and where the context requires, any renewal or extension thereof unless earlier terminated; and
 - (k) "Town" shall mean The Corporation of the Town of Aurora as governed and directed by Council.
2. The captions and headings in this Agreement are for convenience and reference only, and do not affect the scope, intent, or interpretations of any provision of this Agreement.

TERM AND RENEWAL

3. This Agreement shall commence and be effective on the date that is noted above and shall end on the 31st day of December, 2027, subject to prior termination pursuant to the provisions of this Agreement.
4. No later than January 1, 2018, and every five (5) years thereafter, the Town and the Centre shall review the terms of this Agreement to ensure that it still meets the needs of the Town.
5. The Provision of Cultural Services Agreement entered into by the Town and the Centre on June 9, 2009 shall be deemed to be terminated by mutual agreement of the parties upon the effective date of this Agreement. In addition, the Grant Agreement entered into by the Town and the Centre on June 9, 2009 shall be deemed to be terminated by mutual agreement of the parties upon the effective date of this Agreement.
6. Should the Town wish to renew this Agreement it shall, no later than twelve (12) months prior to the expiry of the Term, notify the Centre in writing of its decision to renew this Agreement. Upon receipt of such written notice, the representatives of the Town and the Centre, provided that the Board determines that it wishes to do so, shall enter into good faith negotiations to extend the term of this Agreement with such amendments, if any, as they may mutually agree upon. Any such negotiations shall be predicated on the Centre not being in default of its Lease Agreement with the Town. As part of the negotiation process the Centre commits to providing the Town, by no later than six (6) months prior to the end of the Term, a plan for the continued long-term relationship between the Centre and the Town having regard for the strategic objectives of the current Council.
7. The parties acknowledge and recognize that the Town is not obligated to renew this Agreement or to enter into negotiations regarding this Agreement, and the Town may, if it chooses to commence negotiations, discontinue such negotiations with the Centre, in which case this Agreement shall expire and conclude at the end of the Term.

OPERATION AND MANAGEMENT OF THE CENTRE

8. Subject to the terms of the Lease Agreement and section 41 of this Agreement, the Centre shall have the exclusive right to provide Cultural Services programming at the School at the Centre's own cost and expense.
9. The operation, programming, and management of the Centre shall be vested in the Board in accordance with the by-laws, constitution, and Letters Patent of the Centre.
10. Council may, in its sole and absolute discretion, appoint up to two (2) Council representatives to the Board, and the Town shall inform the Board and the Centre about the nature of such appointments. The representatives appointed by Council shall have such rights and privileges at meetings of the Board as may be required by Council, and the Centre agrees to fully accommodate such rights and privileges for the Council representatives in the Centre's by-laws as required. Notwithstanding the foregoing, it is acknowledged and agreed that the representatives appointed by Council to the Board will have the same rights, privileges, and responsibilities as other Board members with regards to the application of laws governing the operation and management of not-for-profit non-share capital corporations in the Province of Ontario.
11. Recognizing that the parties are independent of each other, the Centre acknowledges that it is the employer of its employees providing such benefits

and remuneration as it, in its sole discretion, decides. No employee of the Centre shall be considered to be an employee of the Town.

12. The Centre agrees that it shall obtain and pay for its own legal advice and at no time shall the legal staff of the Town or lawyers acting on behalf of the Town provide legal advice to the Centre. The Town acknowledges that Grant funds may be used for normal operational and management requirements of the Centre. Except upon mutual agreement between the Town and the Centre regarding taking legal action, should the commencement of legal action against third parties be deemed necessary solely by the Centre, the Centre shall pay those legal expenses from its own reserves.
13. So long as the Centre receives Grant funding from the Town, no portion of the Centre's budget shall be used for "political purposes" or "political activities", as may be defined by the Canada Revenue Agency's Charities Directorate, including, without limiting the generality of the foregoing, making donations or grants to any political campaign.

SERVICES PROVIDED BY THE CENTRE

14. In accordance with the terms and provisions of this Agreement and the Lease Agreement, all of which are important and fundamental to the Town, the Centre agrees to provide Cultural Services on behalf of the Town at the School.
15. The provision of Cultural Services by the Centre shall be provided in accordance with the Centre's objectives, strategic plan, and business plan, together with the KPI and the terms of this Agreement. The KPI and the Centre's objectives, strategic plan, and business plan shall be complimentary to each other.

GOALS AND OBJECTIVES OF THE CENTRE

16. The Centre shall meet with the Director at least once per calendar year to review the Centre's annual KPI. All such KPI shall be attached to and form part of this Agreement as Schedule "A". Notwithstanding section 58 of this Agreement, any amendments to Schedule "A" that are agreed to in writing by the Centre and the Director shall constitute a valid amendment to this Agreement.
17. Once a year, pursuant to subsection 33(b) of this Agreement, the Centre shall submit to the Director a report regarding the KPI and the Centre's performance relating to the KPI. In the event that the Director feels that a particular KPI has not been met, or is concerned with some aspect relating to the KPI, the Centre and the Director shall discuss the Director's concerns and shall, acting in good faith, come to an agreement as to how to address the Director's concerns.
18. In order to provide guidance for the development and provision of cultural activities and services, to give recognition to the importance of cultural opportunities within the Town of Aurora and the contribution that culture makes to the quality of community life, and to provide a framework within which it can be achieved, the Town and the Centre have developed the following general objectives to be attained by the Centre in its provision of Cultural Services, which should be reflected in the KPI:
 - (a) to engage and enrich the community through arts, culture and heritage programming and promotion at the School;

- (b) to seek to make the Centre a dynamic hub in the historic heart of the Town of Aurora with an arts, culture and heritage focus; and
 - (c) to recognize the rich diversity of our community by presenting a broad spectrum of cultural programming.
19. As part of its operations, the Centre shall:
- (a) generate diverse artistic and cultural programming;
 - (b) work through partnerships to develop cultural and heritage programming;
 - (c) host heritage exhibits and events;
 - (d) recruit and utilize the service of community volunteers;
 - (e) engage with partners, businesses and community groups; and
 - (f) generate revenue towards development and support of current and future programming.

GRANT APPROVAL AND PAYMENT

20. The yearly request for Grant funding in accordance with this Agreement shall be made to Council in accordance with the Town's current budget guidelines and requirements, beginning with the Town's 2013 budget-cycle year, and shall be subject to Council approval.
21. All Grant requests shall be for the Centre's operating and related capital costs for the upcoming or current fiscal year. The Town as part of its annual current budget review process will receive and review Grant requests from the Centre.
22. Nothing in this Agreement shall be interpreted as obligating the Town to be directly or indirectly responsible for any portion of the Centre's operating or capital budget, financial affairs, obligations or debts.
23. At the time of considering the Centre's Grant request, the Town and Council will consider the performance of the Centre, including the KPI results, and will review the Centre's business plan and financial statements, including the Centre's debts and liabilities.
24. Together with such other documents that are required by Council through the Town's budget process, the Centre shall ensure that the Board-approved detailed annual operating budget of the Centre and the business plan for the upcoming fiscal year (including the relevant KPI) are included with the Centre's Grant application.
25. The Town's approved Grant funding shall be paid in four (4) equal quarterly installments on the first day of each of January, April, July and October. No portion of the Grant shall be paid until Council has approved the Grant amount for the year, subject to section 26 of this Agreement.
26. In the event that Council has not approved the total yearly Grant prior to the commencement of the Centre's fiscal year, then upon the written request of the Centre the Director may authorize up to two (2) interim Grant amounts to be paid to the Centre, with each interim payment to be one-quarter ($\frac{1}{4}$) of the prior year's total Grant amount. Any such interim payments shall be deducted before payment from the subsequently approved Grant for the year. In such circumstances, the Director and the Centre will mutually agree on the

payment schedule of the balance of the Grant.

27. Any Grant amount that is not used by the Centre in the fiscal year for which it is requested shall be held in reserve by the Centre in accordance with the Centre's reserve fund policies.

TRANSPARENCY OF THE CENTRE'S OPERATIONS

28. The Board is committed to carrying out its mandate in an open and transparent manner in full compliance with the laws of the Province of Ontario and Canada which are applicable to the Centre. The Centre therefore agrees to:
- (a) adhere to principles and recognized industry standards for the conduct of non-profit boards of directors, including the implementation of a conflict of interest policy;
 - (b) recruit and maintain a capable board of directors and maintain a plan of succession;
 - (c) maintain a constitution, by-laws, and policies, all of which shall be, to the best of its efforts, in compliance with: (i) all Town by-laws, policies, and requirements that are applicable to the School, and (ii) all provincial and federal legislation governing non-profit corporations and charities;
 - (d) develop and adopt formal goals, objectives, and KPI for the Centre that are acceptable to the Town, in accordance with this Agreement;
 - (e) hire qualified employees to operate the Centre;
 - (f) make its constitution, by-laws, policies, quarterly financial reports, annual audited reports, and the annual report of the Centre available to the public and make all agendas, minutes, and formal reports of all Board meetings available to the public;
 - (g) make efforts to further engage the community in the business and success of the Centre;
 - (h) open to the general public its Annual General Meeting;
 - (i) hold regular quarterly meetings of the Board (one of which shall be the Annual General Meeting) that are open to the public, and at such meetings it shall make available to the public its financial updates, a summary of the Centre's activities, and provide an open forum for the public to speak to the Board; and
 - (j) adhere to the provisions of this Agreement.

FINANCIAL ACCOUNTABILITY

29. In order to be fiscally aligned with the Town's financial year the Centre's financial year-end shall be December 31. The Centre agrees to adhere to generally accepted accounting practices ("GAAP") and to keep all books, records, accounts, documents and vouchers necessary to record all financial transactions of the Centre.
30. The Town may, in its sole and absolute discretion, appoint an auditor of the Town's choosing to examine and/or audit the accounts and records of the Centre at any time during the Term of this Agreement and for a period of up

to five (5) years after the end of this Agreement to ensure compliance with the terms, conditions, and obligations under this Agreement. The Centre shall keep and make available to the Town and its appointed auditor for examination and audit, its accounts and records for the entire Term of the Agreement and for five (5) years after the end of this Agreement. If the Centre is wound-up during the post-Agreement period, a full copy of the audited financial statements of the Centre shall be physically transferred to the Town's possession.

31. The Centre shall make available to the Town's designated auditor, in a timely manner, any records, documents and information they may require and shall ensure access by them to the School at all reasonable times and upon not less than two (2) weeks' notice for audit and evaluation purposes.
32. During the Term of this Agreement, the Centre shall provide a written response to the Director within five (5) business days of receiving his written inquiry concerning any aspect of this Agreement.
33. Unless otherwise agreed to by the Town in writing or otherwise provided for in this Agreement, the Centre agrees and shall provide to the Director the following information/documentation:
 - (a) within seventy-five (75) days of the end the 1st, 2nd and 3rd quarters of each calendar year of this Agreement, its unaudited quarterly financial statements, together with the year-end budget, year-to-date actuals, and the forecasted year-end position, as approved by the Board (save and except that the forecasted year-end position will not be required at the end of the 1st quarter), with such reports to detail the balances and purposes of any reserve or reserve fund accounts on hand;
 - (b) by April 30th of each year of this Agreement:
 - (i) a report certifying the Centre's corporate and charitable status is in good standing as a corporation without share capital, and a statement that the Centre agrees to maintain same for the upcoming fiscal year;
 - (ii) current proof of insurance as required by this Agreement, as evidenced by an insurance certificate(s) for each type of required insurance;
 - (iii) current proof of WSIB insurance;
 - (iv) a copy of its annual operating budget;
 - (v) a statement comparing the Centre's current liabilities to its current assets and liquid assets;
 - (vi) the Centre's audited financial statements together with an audit report from an independent auditor, and a management commentary as approved by the Board;
 - (vii) a report on the Centre's delivery of the previous year's KPI (excluding the year 2012) and the new KPI that will be in effect, where applicable; and
 - (viii) the balances and purposes of any reserve or reserve fund accounts on hand.
34. During the Term of this Agreement and for any renewal period, the Centre shall maintain readily available on its public website the following information:

- (a) annual budgets and audited annual financial statements relating to the most recent three (3) fiscal years;
 - (b) quarterly managerial commentaries;
 - (c) annual reports;
 - (d) the constitution, by-laws, and strategic plan of the Centre;
 - (e) an updated list of the members of the Board;
 - (f) agendas, minutes, and formal reports of all Board meetings, including the Annual General Meetings of the Centre;
 - (g) notices of upcoming public meetings of the Board and Annual General Meetings of the Centre; and
 - (h) email contact information for the President and Vice-President of the Board, and the Centre's Executive Director.
35. The Centre shall submit to the Director:
- (a) notice of upcoming meetings of the Board;
 - (b) notice of change of the Directors and Officers of the Board and Centre within thirty (30) days of the change taking place;
 - (c) notice of the Annual General Meeting of the Centre;
 - (d) within ten (10) days of preparation, draft minutes of the Centre's Annual General Meeting, and within ten (10) days of approval, approved minutes in cases where the membership of the Centre must approve the minutes at its next Annual General Meeting;
 - (e) a copy of the Centre's constitution, by-laws, and policies, including any changes passed by the Board; and
 - (f) a list of the names, addresses, contact information and position of the Centre's Board of Directors and Officers.
36. The Centre confirms and agrees that all documents and information specified in this Agreement to be submitted to the Director may be made public, and the Director may present such items to Council for information as the Director deems necessary, in his or her sole and absolute discretion, subject to any requirement to protect "personal information" as defined and required by the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended.
37. Notwithstanding the Centre's Letters Patent, by-laws, policies, constitution or regulations, in the event of the winding up, dissolution or cancellation of the Centre, following the payment of any debts and liabilities of the Centre, and the fulfillment of any conditions contained in any agreements regarding external or third-party donations to the Centre, all of the Centre's material assets shall belong to the Town and any remaining cash assets of the Centre shall be given to the Town for the Town to administer. The Town shall place such remaining funds into an existing or new reserve fund of the Town to be used for such arts and cultural purposes as the Town may determine, in its sole and absolute discretion. The Centre agrees to amend the Centre's Letters Patent (and its by-laws, policies, constitution and regulations, if applicable or necessary) as soon as possible following the execution of this Agreement so that it reflects the terms of this section.

CO-ORDINATION OF ACTIVITIES BETWEEN THE TOWN AND THE CENTRE

38. Upon commencement of this Agreement, the Town and the Centre shall form a committee, hereinafter referred to as the "Joint Initiatives Committee" or the "JIC", to: (a) consider co-ordinated activities between the Town and the Centre; (b) consider collaborative programming between the Town and the Centre; (c) co-ordinate Town use of the School, including the role of Centre staff and resources in such use; and (d) discuss maintenance of the School, including Town access to the School for maintenance purposes.
39. The Joint Initiatives Committee shall be comprised of four (4) members, being: (a) the Director; (b) one (1) other Town staff person appointed by the Director; (c) the Executive Director of the Centre; and (d) one (1) other Centre staff person or Board member. Each party has the right to appoint an alternate(s) to the JIC as necessary.
40. The Joint Initiatives Committee shall meet as necessary, but in any event shall have regular meetings at least three (3) times a year in April, June, and November.
41. In addition to those areas already identified for current exclusive use by the Town, beginning on January 1, 2014 the Town shall have exclusive use of the "Aurora Room" and such other building space as highlighted in yellow on the floor plan attached as Schedule "G" to the Lease Agreement, for the purpose of operating a museum for heritage artifacts and other ancillary uses at the Town's sole discretion. In addition, Schedule "B" attached hereto and forming part of this Agreement shall show the times and spaces to be allocated for other heritage displays by the Town at the School. Notwithstanding section 58 of this Agreement, any amendments to Schedule "B" that are approved by the Director and the Centre, and completed in accordance with this section, shall constitute a valid amendment to this Agreement.

REPRESENTATIONS AND OBLIGATIONS OF THE CENTRE

42. The Centre represents and warrants that:
 - (a) it has the legal capacity and full right and power to enter into this Agreement and that it knows of no reason, fact or event, current or imminent or probable that would diminish this capacity and authority;
 - (b) there is no agreement with any other person or body that would in any way interfere with the rights of the Town under this Agreement; and
 - (c) the Centre has no real or apparent conflict of interest as of the date of execution of this Agreement and that it shall avoid any conflict of interest in the performance of its obligation under this Agreement and disclose without delay, any actual or potential conflict that may arise during the performance of its obligation under this Agreement.
43. During the Term of this Agreement, the Centre shall:
 - (a) take all necessary action to maintain itself in good standing, to preserve its legal capacity and to inform the Town without delay of any failure to do so;
 - (b) disclose without delay any pending or potential lawsuits and audits;
 - (c) take all reasonable steps necessary to achieve the objectives set out in the KPI; and

- (d) follow the standards that are part of the Standards Program of Imagine Canada™, and seek accreditation pursuant to the Standards Program of Imagine Canada™.

INSURANCE

- 44. At all times during the Term, the Centre shall maintain at its own expense:
 - (a) Comprehensive General Liability insurance at an amount not less than Five Million Canadian Dollars (\$5,000,000.00 CAD) per occurrence against claims for personal injury or death and property damage or loss arising out of all operations of the Centre at the School, including coverage for all operations and liabilities assumed by the Centre pursuant to the obligations and responsibilities contained in this Agreement;
 - (b) All Risks insurance at an amount not less than Two Million Canadian Dollars (\$2,000,000.00 CAD) per occurrence on its chattels, including but not limited to equipment, vehicles, computer hardware and software, office equipment, and fixtures on, in or around the School; and
 - (c) Director's and Officer's Liability insurance which will extend coverage for the Centre's Board of Director's with a minimum coverage of One Million Canadian Dollars (\$1,000,000.00 CAD).
- 45. All such insurance shall be placed with an insurer acceptable to the Town and shall have the Town named as an additional insured and loss payee in the insurance policy. The insurance policy or policies shall contain a cross-liability clause protecting the Town against claims by the Centre as if it were separately insured. The insurance must contain a waiver of subrogation rights against the Town and against those for whom it is, in law, responsible. The insurance policies must contain a clause that such insurance will not be cancelled, changed, or allowed to lapse without the Town first having received not less than thirty (30) days written notice of such cancellation, change, or potential lapse.
- 46. The Centre shall not do, or permit to be done, anything on the School or bring or keep anything therein which will in any way increase the risk of fire or the rate of fire insurance on the School, or on property kept therein, or conflict with the laws relating to fires or with the regulations of Central York Fire Services or with any insurance policy upon the School or any part thereof, or conflict with any of the rules of the Regional Municipality of York's Department of Health Services or with any statute or municipal by-law. The Town shall post lease loads or occupancy limits in each room of the School; however, the Centre must comply with such posted lease loads or occupancy limits.
- 47. The Centre shall not by its act or omission cause any policy of insurance relating to the School to be cancelled or the School or any part thereof to be made uninsurable. In the event the Centre so causes such insurance policy to be cancelled or so causes the School to be made uninsurable then the Town may at its option (provided it has provided reasonable written notice to the Centre and the Centre has failed to commence or having commenced, is not diligently proceeding to cure the situation, and subject to force majeure) either:
 - (a) terminate this Agreement and following such termination the Centre shall forthwith deliver up vacant possession of the School to the Town in the condition they are required to be maintained hereunder; or

- (b) at the Centre's sole expense enter upon the School and remedy the condition.

INDEMNITY

- 48. Notwithstanding any other terms, covenants and conditions contained in this Agreement, the Centre shall promptly indemnify and hold harmless the Town from and against any and all claims in connection with any injury or any loss or damage to property arising from or out of this Agreement, or any occurrence in, upon or at the School, or the occupancy or use by the Centre of the School, or any part thereof, or occasioned wholly or in part by any fault, default, negligence, act or omission of the Centre or by any person permitted to be on the School premises by the Centre. The Town acknowledges and agrees that the Centre is not liable if any claims, injury, loss or damage is due to the negligence, act, fault or default of the Town or those for whom it is in law responsible, or due to any peril against which the Town is or ought to have been insured under the terms of this Agreement.
- 49. The Centre shall further indemnify and save harmless the Town from any and all liabilities, fines, suits, claims, demands, costs and actions of any kind or nature whatsoever to which the Town shall or may become liable for or suffer by reason of: (a) any breach, violation or non-performance by the Centre of any covenant, term or provision set out in this Agreement; or (b) any breach, violation, or non-performance by the Centre of any covenant, term or provision set out in any agreement it may have with a third-party, member of the Centre, Board member, or employee of the Centre.

NON-COMPLIANCE

50. If the Centre:

- (a) fails to comply with any provision of this Agreement;
- (b) fails to submit any document required to be submitted in this Agreement by the applicable deadline;
- (c) fails to perform the services as required pursuant to sections 14 and 15 of this Agreement;
- (d) in the Director's sole and absolute determination, repeatedly fails to meet a particular KPI or fails to adequately address a particular KPI within a reasonable period of time;
- (e) in the Director's sole and absolute determination, causes a circumstance or event of such a serious nature that requires and warrants the termination of this Agreement; or
- (f) breaches a term or condition set out in the Lease Agreement,

then Council may, in its sole and absolute discretion, direct that the Town:

- (i) withhold any portion of Grant payment to the Centre until the breach is remedied by the Centre;
- (ii) forfeit the Grant payment for that period;
- (iii) terminate this Agreement in accordance with section 53 of this Agreement; or

- (iv) waive the failure to comply and pay the Grant payment for that period.

- 51. The failure of the Town to require performance of any term or condition of this Agreement shall not act as an estoppel against the Town should it seek to enforce the terms of this Agreement at a future date. Furthermore, a waiver of any breach or default of this Agreement by the Town shall not constitute a waiver of any subsequent breach or default, or waiver of the provision itself.

DEFAULT AND TERMINATION

- 52. This Agreement may be terminated by the Director on behalf of the Town, without notice, if:
 - (a) the Centre declares bankruptcy;
 - (b) a receiver is appointed on account of the Centre's insolvency or in respect of any of its property; or
 - (c) the Centre makes a general assignment for the benefit of creditors.
- 53. This Agreement may be immediately terminated by Council, on behalf of the Town, if the Centre fails to comply with any of the terms of this Agreement after having received thirty (30) days prior written notice from the Director requesting compliance. Upon notice of such termination, the Centre shall return any unused Grant funds to the Town forthwith.
- 54. Council, on behalf of the Town, may pass a resolution to terminate this Agreement at any time and for any reason whatsoever by providing six (6) months written notice to the Centre. The Centre shall, forthwith at the end of such notice period, return any unused Grant funds to the Town. Council may, at its sole and absolute discretion, provide for the transitioning and continuation of Cultural Services programming by the Centre for an additional period of time up to six (6) months past the notice period.
- 55. In the event that the Town terminates this Agreement, the Lease Agreement shall also be terminated and shall end on the termination date of this Agreement.

DISPUTE RESOLUTION

- 56. In the event of a dispute between the parties as to any matter arising from this Agreement, the parties may meet to discuss and attempt to resolve the dispute. In the event that the parties are unable to resolve the dispute at such a meeting, the parties may mutually agree to engage and share the cost of the services of an independent third party facilitator to assist in resolving the dispute. Should such independent third party assistance fail to resolve the dispute, the Director shall put the matter before Council to make a decision. Any decision made by Council shall be a final decision on the matter, and the Centre covenants and agrees to waive any claim it may have against the Town or Council in the event that Council does not decide the dispute in favour of the Centre.

NOTICE

- 57. For matters related to the operation and interpretation of this Agreement, the contact person for the Town shall be the Director, and the contact person for the Centre shall be the Centre's Executive Director. All other information that is required to be submitted in accordance with this Agreement, including

notices, demands, requests, agreements, consents, approvals and payment (hereinafter collectively called a "Notice") which may be or are required to be given pursuant to the terms and conditions of this Agreement shall be in writing and shall be delivered personally to the following:

TO THE TOWN:

100 John West Way, Box 1000
Aurora, Ontario, L4G 6J1

Attention: Town Clerk
Telephone No.: (905) 727-3123
Fax No.: (905) 726-4732

TO THE CENTRE:

22 Church Street
Aurora, Ontario, L4G 1G4
Attention: Executive Director
Copy: Secretary of the Board

A copy of any notice given in accordance with this section shall also be delivered to the Director and the Chief Administrative Officer for the Town and the President of the Board. Such copy may be delivered in person, by email or by facsimile transmission.

Any notice given in accordance with this section shall be deemed to have been given on the day of delivery.

Either party hereto may at any time give notice under this section to the other of a change of address, email address, or facsimile number and thereafter such changed address shall be substituted for the previous address set out in this section.

GENERAL TERMS

58. This Agreement constitutes the entire agreement between the parties pertaining to this Agreement and supersedes all prior agreements, understandings, negotiations and discussion, whether oral or written, of the parties. This Agreement may not be modified or amended except pursuant to an agreement in writing duly executed by the Town and the Centre.
59. All rights and benefits and all obligations of the Town under this Agreement shall be rights, benefits and obligations of the Town in its capacity as a party to this Agreement and shall not derogate from the rights, benefits and obligations of the Town in its function as a municipal corporation, including any requirement to obtain Council approval prior to taking any action in accordance with this Agreement.
60. It is further agreed and declared that these presents shall extend to, be binding upon and enure to the benefit of the parties hereto and the permitted successors and assigns of the Centre, where the written consent of the Town has been so provided.
61. The terms of this Agreement shall survive the termination of this Agreement as may be necessary to give full and proper effect to the obligations contained herein.
62. Town policies affecting Town facilities (as may be amended from time to time) shall be deemed to form part of this Agreement, shall apply to the School, and shall be followed by the Centre at all times. The Town covenants and agrees

to provide notice to the Centre forthwith after implementing any changes to Town policies that affect Town facilities.

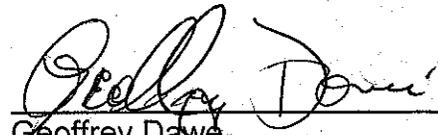
63. This Agreement shall be construed and enforced in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.
64. The invalidity or unenforceability of any provision or covenant contained in this Agreement shall not affect the validity or enforceability of any other provision or covenant herein contained and any such invalid provision or covenant shall be deemed to be severable.
65. The parties agree that they are not partners or joint venturers and that the Centre is not the agent of the Town and has no authority to bind the Town.
66. The Centre covenants and agrees not to register, or cause or permit to be registered, this Agreement or any other document evidencing this Agreement against title to the School (or any part thereof). In addition, the Centre further covenants and agrees not to give, register, or permit to be registered any encumbrance against the School.
67. The terms and conditions of this Agreement and any supplements, modifications, amendments to, or renewals of this Agreement to which both parties agree shall be made in writing, duly executed and shall be made under and subject to the covenants, provisions and agreements contained herein.

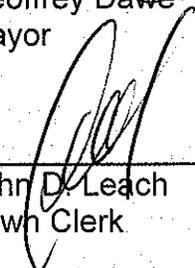
IN WITNESS WHEREOF the Town and the Centre have executed this agreement as of the date first written above.

Approved as to Form
By Legal Services
Signature Waverly N...
Date: Feb. 26, 2013

APPROVED
TOWN OF AURORA
Council <u>13-01</u>
Committee _____
Date <u>January 22, 2013</u>
Report # <u>CAOTD-023</u>

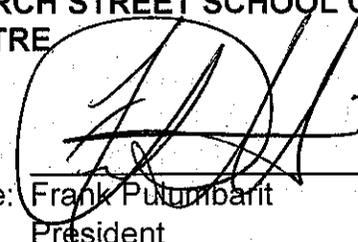
THE CORPORATION OF THE TOWN OF AURORA

Per: 
Name: Geoffrey Dawe
Title: Mayor

Per: 
Name: John D. Leach
Title: Town Clerk

We have authority to bind the Corporation.

CHURCH STREET SCHOOL CULTURAL CENTRE

Per: 
Name: Frank Putumbarit
Title: President

I have authority to bind the Corporation.

SCHEDULE "A"

KEY PERFORMANCE INDICATORS (KPI) FOR THE CENTRE

KPI	How calculated	Related to Centre strategic plan goal
1a). Customer Satisfaction with Program Mix	Include "program mix" question(s) in annual customer satisfaction survey	1
1b). Customer Satisfaction with Quality Level	Include "quality level" question(s) in annual customer satisfaction survey	1
1c). Customer Satisfaction with Overall Governance	Include "governance" question(s) in annual customer satisfaction survey	2
1d). Customer Recognition and Awareness of the Centre	Include "recognition" question(s) in annual customer satisfaction survey	5
2. Programming spending vs. total spending	Programming spend / Total spend	3
3. Programming hours per capita	Programming hours / Aurora population	3
4. Earned revenue as a % of Town grant	Earned revenue / Town grant	3
5. Value of free programs delivered	Average cost per person to attend similar venues out of town, less Town grant per capita	3
6. Number of partnerships	(current year partners-previous year partners) / previous year partners	2
7. Volunteer hrs as a % of paid hrs	YoY change in volunteer hrs / paid hrs	2
8. Change in visitors annually	(current year visits-previous year visits) / previous year visits	5

Aurora Cultural Centre Strategic Plan Goals
1. Deliver high-quality arts, culture and heritage programs that are diverse, accessible and appealing to multiple audiences.
2. Establish and sustain long-term collaborative partnerships and relationships with our stakeholders
3. Secure sufficient resources to achieve the goals defined by our strategic plan, in order to contribute more fully to the well-being of our community
4. Be a respected role model for a well-managed organization demonstrating best practices in transparency, accountability and good governance to our customers, stakeholders, staff and donors
5. Be recognized by Aurora and our neighbouring communities as a vibrant and accessible centre of cultural and social activity

SCHEDULE "B"

SPACE FOR MAJOR EXHIBITS OF THE AURORA COLLECTION

1. The Owners of the Aurora Collection will have exclusive use of the "Aurora Room" (as shown on the floor plan attached to the Lease Agreement) beginning on January 1, 2014 for the purpose of operating a museum at the Town's sole discretion, at no expense to the Centre.
2. In addition to permanent display space in the Aurora Room, the Centre will consider additional requests from the Owners of the Aurora Collection for 6 – 8 week collaborative exhibitions in gallery spaces other than the Aurora Room via the Joint Initiatives Committee. Exhibitions outside of the Aurora Room will be subject to availability, and to the same rotation schedule and the Centre's jury process as all other exhibitions at the Centre.

DISPLAY CASES RELATED TO THE AURORA COLLECTION

1. LIBRARY ROOM: 12 months continuous use [26 ft x 10 ft]
2. RECEPTION AREA: 12 months continuous use of one glass display case [4 ft by 5 ft high]

OTHER EXCLUSIVE USE OF SPACE RELATED TO THE AURORA COLLECTION

1. Library Room: 1 full day per week exclusive use of the Library Room, plus more time on an 'ad hoc' basis, subject to availability.
2. Brevik Hall: The Centre will provide 3 individual days per year in Brevik Hall for events related to the Aurora Collection, subject to availability of the room.
3. Administrative Area: As indicated on Schedule "G" of the Lease Agreement.
4. Storage/Archive Areas: As indicated on Schedule "G" of the Lease Agreement.

INFRASTRUCTURE

As there will be permanent displays of artifacts in the Aurora Room requiring permanent infrastructure exclusively for that purpose, display infrastructure beyond those noted above will be the responsibility of the owners of the Aurora Collection. Should a collaborative exhibit be planned in galleries other than the Aurora Room given sufficient advance notice it may be possible to incorporate the following for the length of the display: (a) glass display towers; (b) display plinths; (c) hanging infrastructure; and (d) acrylic painted display panels.

OTHER CONSIDERATIONS

Space will be provided on a temporary basis, where and when available, for staff and volunteers who are working on cataloguing and assessing the Aurora Collection.

AURORA CULTURAL CENTRE STAFF SUPPORT

1. Presence on the Centre's website.
2. Front desk person during business hours, if available, to welcome and direct visitors to the Aurora Collection.
3. Extended Hours: During the Centre's after-hours special events, the Aurora Collection exhibit could be open by request and be provided the same security as any exhibition in the Centre. It could be lit, open, and re-locked by Centre staff, upon request of the owners of the Aurora Collection.
4. Opening and Closing: If staff hired by the Owners of the Aurora Collection are unavailable during the hours that Cultural Centre staff is working, by request Centre staff could open and close the exhibit, as well as turn exhibit lighting on and off.
5. Knowledgeable Volunteers: The Centre's volunteers are informed about all exhibits in the Centre in order to provide information to the public. They do not act as docents and are located at reception.
6. Hillary House Promotion: Promotional materials are welcome to be displayed at the Centre.
7. eBlasts: Displays of the Aurora Collection at the Centre will be included in regularly scheduled eBlasts to the Centre's mail list.
8. Website Link: A link to the website of the Owners of the Aurora Collection will be on our website.

