

Bill No. 130
2016

By-law No. A.-_____

A by-law to approve the Grant Agreement between The Corporation of the City of London and the Grand Theatre; and to authorize the Mayor and the City Clerk to execute the Agreement.

WHEREAS subsection 5(3) of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, provides that a municipal power shall be exercised by by-law;

NOW THEREFORE the Municipal Council of The Corporation of the City of London enacts as follows:

1. The Grant Agreement attached as Schedule "A" to this by-law between The Corporation of the City of London and the Grand Theatre setting out the terms and conditions of the City's grant of funds to the Grand Theatre is approved.
2. The City Representative means Ms. Kate Graham, is delegated by by-law to act as the City Representative for the purposes of this Grant Agreement.
3. The Mayor and the City Clerk are authorized to execute the Grant Agreement approved under section 1 above.
4. This by-law shall come into force and effect on the day it is passed.

PASSED in Open Council on April 5, 2016.

Paul Hubert
Deputy Mayor

Catharine Saunders
City Clerk

First reading – April 5, 2016
Second reading – April 5, 2016
Third reading – April 5, 2016

SCHEDULE "A"

Grant Agreement

THIS AGREEMENT dated the _____ day of, 2016

Between

The Corporation of the City of London
(the "City")

-and-

Grand Theatre

WHEREAS s. 107 of the *Municipal Act, 2001*, S.O. 2001, c. 25, provides that a municipality may make grants, on such terms and conditions as to security and otherwise as the council considers appropriate, to any person, group, or body, including a fund, within or outside the boundaries of the municipality for any purpose that council considers to be in the interests of the municipality;

AND WHEREAS the Recipient has requested from the City a grant to assist the Recipient in the Recipient's activities as described in **Schedule A** ("the Funded Activity");

AND WHEREAS City Council approved that a grant be made to the Recipient in connection with the Recipient's activities upon such terms and conditions as are more particularly described in this agreement;

NOW THEREFORE in consideration of the mutual covenants and other terms and conditions in this Agreement, the parties agree each with the other as follows:

1. Definitions & Schedules

1.1 Definitions

In this Agreement, the following definitions apply:

"**City Representative**" means an individual delegated by by-law to act as City Representative for the purposes of this Agreement;

"**Eligible Expenditures**" means the expenditures that are listed in compliance with the terms and conditions set out in **Schedule B**;

1.2 Schedules **Forming Part of Agreement**

The following Schedules, form part of this Agreement:

Schedule A: Description of the Funded Activity

Schedule B: The Financial Provisions

and the parties agree that all references in this Agreement to "this Agreement" shall be deemed to include such Schedules.

2. Term

2.1 The Agreement shall commence on the Funded Activity Start Date, and shall terminate on the Funded Activity End Date as set out in **Schedule A** ("the Term"), or shall terminate on such earlier date as set out in this Agreement.

3. Grant

3.1 (a) Subject to the terms and conditions of this Agreement, the City shall make a grant to the Recipient as set out in **Schedule B**, which amount shall be payable as set out in **Schedule B**.

4. Use of Grant

4.1 The Recipient covenants and agrees that the Recipient shall use the grant solely for the purpose of paying the Eligible Expenditures in connection with the Funded Activity and for no other purpose.

5. Repayment of Grant

5.1 The City, in its sole discretion, may require the Recipient to repay to the City some or all of the grant based upon the City's assessment of the current year's final audited statement provided to the City under this Agreement.

5.2 If the Recipient uses some or all of the grant funds for purposes other than Eligible Expenditures, the Recipient covenants and agrees that it shall return such funds to the City immediately upon written demand of the City Representative.

5.3 The Recipient shall return all unexpended grant funds to the City within ninety (90) days of the end of the Term, unless the City Representative has given prior written approval for such grant funds to be spent on a specific program or activity.

6. Reports

6.1 The Recipient shall submit the reports as set out in **Schedule A**, on or before the date set out in **Schedule A** to the City Representative in a form and content satisfactory to the City Representative.

7. Right of Audit

7.1 (a) The City auditor or anyone designated in writing by the City auditor or the City Representative may audit and inspect accounts, records, receipts, vouchers, and other documents relating to the grant funds and shall have the right to make copies thereof and take extracts. For the purposes of this clause, audit includes any type of audit.

(b) The Recipient shall make available all facilities, physical and otherwise, for such audits and inspections and shall furnish the City and its authorized representatives with all such information as it, or they, may from time to time require with reference to such accounts, records, receipts, vouchers, and other documents.

(c) The Recipient shall cause all such accounts, records, receipts, vouchers, and other documents required under this clause, to be preserved and kept available for audit and inspection at any reasonable time, and from time to time, until the expiration of seven years from the date of disbursement of the grant under this Agreement, or until the expiration of such lesser or greater period of time as shall be approved in writing by the City Representative.

8. Official Notification

8.1 (a) Any notice required or permitted to be given under this Agreement shall be given or provided by personal delivery, mail, courier service, or fax at the postal address or fax number, as the case may be, of the receiving party as set out below:

The City
City Clerk
300 Dufferin Avenue
London, Ontario N6A 4L9
Fax #: 519 661-5920

The Recipient
As set out in **Schedule A**

(b) Any notice that is delivered personally or by courier service shall be deemed to have been received upon delivery, or if sent by mail five working days after the date of mailing, or in the case of fax, one working day after they are sent.

(c) Either party to this Agreement may, at any time, give notice under this section to the other of a change of address and thereafter such changed address shall be substituted for the previous address set out in subsection (a).

9. Informing the Public of the City's Contribution

9.1 (a) The Recipient acknowledges that the City may publicize the name of the Recipient, the amount of the grant and the nature of the activity supported under this Agreement.

(b) The Recipient shall acknowledge the support of the City under this Agreement in all its primary marketing and promotional materials.

10. Termination

Termination Without Default

10.1 Despite any other provisions in this Agreement, the City may terminate this Agreement for any reason, effective upon the giving of fifteen (15) days' prior written notice to the Recipient. Upon termination, the Recipient agrees to pay the City any unused portion of the grant funds.

Termination Where Default

10.2 The following constitute events of default, the proof of which to the contrary lies upon the Recipient:

- (a) the Recipient becomes bankrupt or insolvent, goes into receivership, or takes the benefit of any statute from time to time being enforced relating to bankrupt or insolvent debtors;
- (b) an order is made or resolution passed for winding up or for the dissolution of the Recipient or it is dissolved;
- (c) the Recipient ceases actual bona fide operation for a period of thirty (30) days;
- (d) the Recipient has knowingly submitted false or misleading information to the City;
- (e) the Recipient is in breach of the performance of, or compliance with, any term, condition or obligation on its part to be observed or performed under this Agreement;
- (f) the Recipient refuses or neglects to comply with any reasonable requirement from the City Representative which he or she is entitled to stipulate under this Agreement;

- (g) the Recipient assigns or transfers or attempts to assign or transfer this Agreement; or
- (h) the Recipient ceases to be a non-share capital, non-profit corporation accorded charitable status by the Canada Revenue Agency.

10.3 If an event of default occurs, all of the grant funds paid in the calendar year in which the default occurs and any grant funds advanced thereafter shall be deemed to be a loan and all such funds shall be immediately due and payable in full upon the written demand of the City Representative. The City reserves the right to demand interest on any amount owing by the Recipient at the then current rate charged by the City on accounts receivable.

10.4 If an event of default occurs, the City may, at any time, take one or more of the following actions in addition to any other remedy that may be available to it:

- (a) provide the Recipient with an opportunity to remedy the event of default;
- (b) terminate this Agreement at any time, including immediately, upon the City Representative giving written notice to the Recipient.

10.5 If under section 10.4 the City has provided the Recipient with an opportunity to remedy the event of default and the Recipient does not remedy the event of default within the time specified by the City in the notice, the City may in its sole discretion extend the notice period or terminate this Agreement.

10.6 Where the City has terminated this Agreement, the City shall have no further responsibility or liability under this Agreement and any termination by the City shall be without compensation, penalty or liability on the part of the City, and shall be without prejudice to any of the City's legal or equitable rights or remedies.

10.7 The Recipient acknowledges and agrees that the provisions in this Part 10 are for the sole benefit of the City and may be waived in whole or in part by the City Representative at any time.

11. Indemnity

11.1 The Recipient shall indemnify and save the City, its officers, directors, employees, agents and Councillors, harmless from and against all claims, actions, losses, expenses, costs or damages of every nature and kind that the City may suffer, caused or alleged to be caused by any wilful or negligent act, omission or delay on the part of the Recipient or its officers, directors, employees, contractors or agents, in connection with anything purported to be or required to be done by the Recipient in connection with this Agreement or the Funded Activity.

12. Insurance

12.1 Throughout the term of this Agreement, the Recipient agrees to obtain and maintain at its sole expense:

- (a) Comprehensive general liability insurance on an occurrence basis for an amount of not less than Two Million Dollars (\$2,000,000.00) and shall include the City as an additional insured to cover any liability resulting from anything done or omitted by the Recipient or its employees, or agents, in carrying out the Funded Activity, such policy to include non-owned automobile liability, personal liability, personal injury, broad form property damage, contractual liability, owners' and contractor's protective products and completed operations, contingent employers liability, cross liability and severability of interest clauses. The Recipient shall submit a completed standard Insurance Certificate (Form #0788).
- (b) In addition, the Recipient shall furnish the City with a Blanket Position Policy or equivalent Fidelity Bond in an amount not less than the maximum single payment amount or fifty percent (50%) of the City's contribution of this grant; whichever is greater, to a maximum of One Hundred Thousand Dollars (\$100,000). The City shall be shown on the Policy as a named Obligee as their interest may appear with respect to any loss or misuse of funds held by the Recipient as described in this Agreement.
- (c) The City reserves the right to request such higher limits of insurance or other types of policies appropriate to this Agreement as it may reasonably require.
- (d) Failure to satisfactorily meet these conditions relating to insurance shall be deemed a breach of this Agreement.
- (e) On the signing of this Agreement and within thirty (30) days after any subsequent change or renewal of its insurance coverage, the Recipient shall provide the City with evidence that it has obtained the insurance coverage required under this section. The Recipient shall notify the City forthwith of any lapse, cancellation or termination of any such insurance coverage.

13. Services to Vulnerable Populations

13.1 The Recipient shall ensure that where services are provided to vulnerable populations, it obtains a Police Vulnerable Sector Check (PVSC) for all employees, Board Members, volunteers and students providing these services. Failure to do so may result in immediate termination of this Agreement.

13.2 Where the Recipient provides services to vulnerable populations, it shall ensure it has appropriate policies and procedures in place with respect to providing services to those vulnerable populations including Criminal Offence Discretion, Serious Occurrence Reporting, Orientation and Training, Fire Safety and Emergency Information.

14. Compliance with Laws

14.1 The Recipient shall carry out the Funded Activity in compliance with all applicable federal, provincial and municipal laws, by-laws, policies, guidelines, rules and regulations. The Recipient shall obtain, prior to the commencement of the Funded Activity, all permits, licenses, consents and other authorizations that are necessary to the carrying out of the Funded Activity.

15. *Municipal Freedom of Information and Protection of Privacy Act and the Municipal Act, 2001*

15.1 The Recipient acknowledges that all records in the City's custody or control (including any records provided by the Recipient to the City) are subject to the provisions of the *Municipal Freedom of Information and Protection of Privacy Act*, and such records may be disclosed by the City to the public upon request under that Act. The Recipient further acknowledges that pursuant to the *Municipal Act, 2001*, the proceedings of City Council are matters of public record. The Recipient acknowledges that the City does not make any covenants with respect to maintaining the confidentiality of any records the Recipient provides to the City.

16. Assignment

16.1 The Recipient shall not assign this Agreement or any interest in this Agreement without the prior written consent of the City.

17. Relationship Between the Parties

17.1 The Recipient is not in any way authorized to make a promise, agreement or contract on behalf of the City. This Agreement is a funding agreement only, not a contract for services or a contract of service or employment. The City's responsibilities are limited to providing financial assistance to the Recipient towards the Eligible Expenditures. The parties hereto declare that nothing in this agreement shall be construed as creating a partnership, an employer-employee, or agency relationship between them. The Recipient shall not represent itself as an agent, employee or partner of the City.

18. Entire Agreement

18.1 This Agreement constitutes the entire agreement between the parties and supersedes all prior agreements, arrangements, letters of intent, understandings, negotiations and discussions, whether oral or written, of the parties pertaining to the Funded Activity. The Recipient acknowledges that it has read this Agreement, understands it and agrees to be bound by its terms and conditions.

19. Waiver

19.1 Failure by either party to exercise any of its rights, powers or remedies shall not constitute a waiver of those rights, powers or remedies.

20. Circumstances Beyond the Control of Either Party

20.1 Neither party shall be responsible for damage caused by delay or failure to perform under the terms of this Agreement resulting from matters beyond the control of the parties including strike, lockout or any other action arising from a labour dispute, fire, flood, act of God, war, riot or other insurrection, lawful act of public authority, or delay or default caused by a common carrier that cannot be reasonably foreseen or provided against.

21. Governing Law

21.1 This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario.

22. Headings

22.1 Descriptive headings are inserted solely for convenience of reference, do not form part of this Agreement and are not to be used as an aid in the interpretation of this Agreement.

23. Canadian Currency

23.1 Any reference to currency is to Canadian currency and any amount advanced, paid or calculated is to be advanced, paid or calculated in Canadian currency.

24. Other Agreements

24.1 If the Recipient:

- (a) has failed to comply (a "Failure") with any term, condition or obligation under any other agreement with the City;
- (b) has been provided with notice of such Failure in accordance with the requirements of such other agreement;
- (c) has, if applicable, failed to rectify such Failure in accordance with the requirements of such other agreement; and
- (d) such Failure is continuing,

The City may suspend the payment of the grant for such period as the City determines appropriate or terminate this Agreement at any time, including immediately, upon giving written notice to the Recipient.

25. Execution of Agreement.

25.1 The Recipient represents and warrants that:

- (a) It has the full power and authority to enter into this Agreement; and
- (b) It has taken all necessary actions to authorize the execution of this Agreement.

26. Survival

26.1 The following provisions and any applicable cross-referenced provisions and schedules shall continue in full force and effect for a period of seven (7) years from the date of expiry or other termination of this agreement: Section 1 and any other applicable definitions, Section 5, Section 6, Section 7, Section 8, Section 10.4, Section 11, Sections 18 to 26 inclusive and, Schedule "A".

IN WITNESS WHEREOF the parties to this Agreement have set their hands and seals:

SIGNED SEALED AND DELIVERED

THE CORPORATION OF THE CITY OF LONDON

Date: _____

 Matt Brown, Mayor

Date: _____

 Catharine Saunders, City Clerk

Grand Theatre

Date: _____

 (Signature)

 (Print Name)

 (Print Title)
 I/We have authority to bind the Corporation

Date: _____

 (Signature)

 (Print Name)

 (Print Title)
 I/We have authority to bind the Corporation

SCHEDULE A – Operating-Grant
THE FUNDED ACTIVITY

1. Full Legal Name of Recipient: Grand Theatre

Address for Service of Notice: 471 Richmond Street, London, ON N6A 3E4

Primary Contact Name: Executive Director, Deb Harvey Phone #: 519 672-9030 ext. 255

Fax #: 519 672-2620

E-mail: dharvey@grandtheatre.com

2. Funded Activity Start Date (date for which funding will be commenced): 2016 April 5

3. Funded Activity End Date (date for which funding will end subject to budget approval noted in Clause 24 of this agreement): 2019 April 5

4. FUNDED ACTIVITY DESCRIPTION:

4.1 Operating financial assistance to the Recipient to be used solely by the Recipient for the purposes of its objects as set out in its Articles of Incorporation as follows:

- 4.1(a) To present and assist in the presentation of high calibre live theatre principally in the City of London and district.
- 4.1(b) To provide an opportunity for professional and non-professional directors, performers, playwrights, costume and set designers, stage managers and production technicians to develop their skills in the Theatre.
- 4.1(c) To give active assistance to other dramatic and cultural groups in the community and area and to actually co-operate with other theatres and with regional and national theatre groups.
- 4.1(d) To foster when appropriate any opportunities to work in the fields of radio, television and film.
- 4.1(e) To collect money by way of donations or otherwise to accept gifts, legacies, devises and bequests and to hold, invest, expend or deal with the same in furtherance of the objects of the Corporation.

5. REPORTING

5.1 The Recipient shall provide the following reports to the City Representative, on or before the dates set out below, or on such other date as agreed to in writing by the City Representative:

- 5.1(a) Mid-Year Report (for April – August 31) due September 30; to include:
 - 5.1(a)(i) Outcome Reporting – mid-year report highlighting April 1 to August 31 outcomes. Outcome reporting shall include the Recipient's previous performance season's cultural initiatives to implement London's Cultural Prosperity Plan.
 - 5.1(a)(ii) Financial Reporting – Mid-year financial monitoring through review of an un-audited financial statement to June 30; and
- 5.1(b) Annual Report for Previous Performance Season, Audited Financial Statement and First Quarter Monitoring Report – due November 30; to include:
 - 5.1(b)(i) Audited Financial Statement to be signed by the Recipient's auditor.
 - 5.1(b)(ii) First Quarter Financial Monitoring Report includes July, August and September revenue and expenditure statement to be signed by the Recipient Board Chair or Treasurer of the Board and authorized employee of the Recipient; and
- 5.1(c) Second Quarter Financial Monitoring Report – due February 28; to include:
 - 5.1(c)(i) Financial Reporting – 2nd quarter financial monitoring includes October, November and December revenue and expenditure statement; to

be signed by the Recipient Board Chair or Treasurer of the Board and authorized employee of the Recipient; and,

5.1(d) Third Quarter Financial Monitoring Report – due May 30; to include:

5.1(d)(i) Financial Reporting – 3rd quarter financial monitoring includes January, February and March revenue and expenditure statement; to be signed by the Recipient Board Chair or Treasurer of the Board and authorized employee of the Recipient.

SCHEDULE B FINANCIAL PROVISIONS

1. Maximum Contribution of the City

1.1 The total maximum amount of the City's contribution towards the Funded Activity under this Agreement is \$500,000 per year in each year during the Term.

2. Disbursement of Grants

2.1 Subject to the Recipient's compliance with the provisions of this Agreement, the grant funds shall be disbursed to the Recipient annually over the Term of this Agreement, as set out below.

2.2 The following portions of the grant will be paid upon the following triggering events occurring:

2.2(a) The sum of \$250,000 will be paid by the City to the Recipient within thirty (30) days of execution of this agreement;

2.2(b) The sum of \$125,000 will be paid by the City to the Recipient within thirty (30) days of receipt of the Mid-year Report satisfactory to the City;

2.2(c) The sum of \$125,000 will be paid by the City to the Recipient within thirty (30) days of receipt of the audited financial statement due in November to the satisfaction of the City.

3. ELIGIBLE EXPENDITURES

3.1 Funded Activity Budget

Eligible Expenditures include the Recipient's operating expenditures, including, but not limited to, operating expenditures in the following categories and subject to the conditions and restrictions in section 3.2 below:

- i) Production
- ii) Administration
- iii) Marketing
- iv) Development and Special Projects
- v) Operations
- vi) Box Office and Systems

3.2 Conditions Governing Eligible Expenditures

Eligible Expenditures are subject to the following conditions and restrictions:

- (a) expenditures must be incurred during the fiscal year of each of the multi-year agreement years;
- (b) expenditures must, in the sole opinion of the City Representative, be reasonable;
- (c) the portion of the cost of any goods and services purchased by the Recipient for which the Recipient may claim a tax credit or reimbursement are not eligible;
- (d) depreciation of capital assets is not eligible;
- (e) fines and penalties are not eligible;
- (f) the cost of alcoholic beverages or travel expenses are not eligible.

4. TERMS OF PAYMENT

4.1 Subject to subsections (2) and (3), the City will make payment of the grant funds by way of advance payments. Each payment shall cover a specific period as set out in paragraph 2.0 of **Schedule B** (hereinafter referred to as the "Payment Period") from the start to the end of the Term.

4.2 Each advance shall cover the Recipient's estimated financial requirements for each Payment Period. Such estimate shall be based upon a cash flow forecast that, in the sole opinion of the City Representative, is reliable and up-to-date.

- 4.3 If the amount of an advance payment for a Payment Period exceeds the actual amount of Eligible Expenditures incurred by the Recipient during the Payment Period, the City reserves the right to deduct the excess amount from any subsequent advance payment to be made under this Agreement, or to require repayment of that part of the grant funds.
- 4.4 The City may withhold any payment due to the Recipient under this Agreement:
- 4.4(a) if the Recipient has failed to submit when due any report required by the City under this Agreement;
 - 4.4(b) if the Recipient has budgeted on a deficit basis or is operating on a deficit basis;
 - 4.4(c) pending the completion of an audit of the Recipient's books and records, should the City decide to undertake such an audit;
 - 4.4(d) if the Recipient is not in compliance with any applicable laws, regulations, by-laws, Council Policies, or if applicable the vulnerable populations requirements;
 - 4.4(e) in the event that an audit of the Recipient's books and records indicates mismanagement or use of funds, in the sole opinion of the City Representative;
 - 4.4(f) the Recipient is in breach of the performance of, or compliance with, any term, condition or obligation on its part to be observed or performed under this Agreement.