



**OPERATING BUDGET SUPPORT GRANT AGREEMENT FOR
CAIN CENTER FOR THE ARTS**

This Operating Budget Support Grant Agreement (the “Grant Agreement”) entered into on this _____ of _____, 20____ by and between TOWN OF CORNELIUS, a North Carolina municipal corporation (“Town”), and the following Grantee, CORNELIUS ARTS/COMMUNITY CENTER, INC., a North Carolina non-profit corporation (“Grantee”).

WHEREAS, Town is authorized, pursuant to N.C.G.S. §160A-488, to establish and support public museums, art galleries, art centers, arts facilities and arts programs; and

WHEREAS, the Town and Grantee are parties to that certain Management Services Agreement dated April 3, 2017, as amended by the Amendment #1 to the Management Services Agreement dated March 4, 2019 (hereinafter, the “MSA”); and pursuant to which the Town engaged the services of Grantee for the purposes of marketing, fundraising, design and construction of an art center to be located in downtown Cornelius;

WHEREAS, construction of a new facility and the Grantee-owned and operated Cain Center for the Arts is expected to be complete during fiscal year 2023; and

WHEREAS, the Parties recognize and acknowledge that once the Center is open to the public, operating budget support from the Town will be necessary for at least an initial period of five years in order to allow the Grantee time to establish an operational endowment, robust programming, and fund-raising sufficient to support the Center;

WHEREAS, the Town will consider an annual Operating Budget Support Grant in an amount of \$411,000 in each year of the initial five year-period, upon Grantee’s submission of an Application annually and the Town’s consideration thereof; and

WHEREAS, Grantee has applied to the Town for the Operating Budget Support Grant for the Arts Center for the Town’s fiscal year 2023 by completing the Operating Budget Support Grant Application attached hereto and incorporated herein as “Exhibit A”;

WHEREAS, the Town has reviewed Grantee’s grant Application and awards to Grantee a grant award subject to the terms and conditions set forth below.

NOW THEREFORE, in consideration of the foregoing recitals, of mutual promises of the Parties and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Town and Grantee agree as follows:

1. Grant Award. The Town hereby grants to Grantee an Annual Operating Budget Support Grant for fiscal year 2023 in the amount of \$_____.
2. Use of Grant Awards. Grant Awards are to be used by Grantee solely for operating budget support for the Cain Center for the Arts as more particularly described in the Operating Budget Support Grant Application submitted by Grantee, attached hereto as Exhibit A and incorporated herein by reference.
3. Funding Period. Each funding period for the Grant Award begins on July 1 and terminates on June 30 (the "Annual Funding Period").
4. Payment of Grant Award. The Town shall pay the Grant Award to Grantee in four (4) equal quarterly installments during each Annual Funding Period, payments to be processed on the 1st day of July, October, January and April of the fiscal year for which a grant is awarded.
5. Accounting of Funds. Grantee shall submit to the Town a full and accurate accounting of Grantee's operations and capital projects (if applicable) summarizing the prior month's revenue and expenses with a statement(s) of activities (actual vs. budget) and summarizing the prior month's assets with a balance sheet on or before the 20th day of each month during each Funding Period.
6. Semi-Annual Reporting Requirements. At the second regular meeting of the Board of Commissioners of the Town of Cornelius in the month of January, Grantee shall provide to the Board a progress report to include an update on programs, performances, exhibitions, events, and productions; number of participants relative to the type of programs; demographic information on the participants; other relevant information; and a financial report demonstrating current year budget to actual financial results along with a narrative forecasting year-end results. If there is only one regular Cornelius Board of Commissioners meeting in the month of January, then the report shall be made at that meeting, regardless of when it occurs. A written report shall be provided to the Town concurrently with the in-person report.
7. Annual Reporting Requirements. Grantee shall submit to the Town an independently prepared audit of the Grantee's finances and a Final Report to the Town no later than October 1 of the Town's following fiscal year. The Final Report shall compare Grantee's actual performance during the Funding Period to that described in Exhibit A. The Final

Report shall summarize all expenditures made and all funding sources contributed to the operating budget of Grantee. The Final Report shall also include a summary of the prior year's programming to include programs, performances, exhibitions, events, and productions; number of participants relative to the type of programs; demographic information of the participants; number of scholarship recipients and total amount awarded. Grantee shall present the Final Report to the Board of Commissioners at a regular meeting of the Board no later than November 1 of the fiscal year following the Funding Period. Grantee shall retain and keep safe financial and other records that corroborate the information contained in the Semi-Annual Reports, audit and Final Report (invoices, receipts, pay vouchers, etc.) for a period of no less than five years. The Town shall have the authority to review these financial records from time to time.

8. Material Failure to Perform. The Town shall have no obligation to pay the Grant Award or any remaining portion thereof should Grantee fail to provide required financial reporting or should Grantee materially fail to comply with Exhibit A including but not limited to a material failure to meet operating budget projections and/or programming goals. In the event of such material failure, Grantee shall return the full amount of the Annual Grant Award already paid to Town.
9. Operation Deficits. The Town shall not be responsible for nor liable for operating deficits of Grantee.
10. Consideration of Future Funding. Upon annual application by Grantee and upon material compliance with a prior year's Application, the Town shall consider additional Operating Budget Support Grants in amounts similar to that awarded herein for future fiscal years.
11. Town Credit. Grantee agrees to include the following credit on its website and in all promotion, publicity and printed programs during the Funding Period:

Cain Center for the Arts is supported by the Town of Cornelius

12. Indemnification. Grantee assumes sole responsibility and liability, and will defend, indemnify, and hold Town harmless from and against all liabilities, fines, suits, claims, demands, actions, injuries, damages, judgments, costs, expenses, penalties or losses of any kind or nature whatsoever (including without limitation for damage to real or personal property, and/or or injury or death to a person) (collectively, the "Liabilities") caused by, arising out of, or in any manner related to the operation, management, occupancy and/or use of the Art Center, including from intentional or negligent acts by Grantee or its agents, employees, licensees, contractors, patrons, guests, invitees, customers and other visitors, or the public; provided, however, that Grantee shall not be liable to Town for liabilities arising from or directly related to Town's gross negligence or willful misconduct. Grantee waives all claims against Town for liabilities arising from or related to the Art Center, except for claims arising from or directly related to Town's gross negligence or

willful misconduct. Grantee's indemnity obligations pursuant to this Section shall survive the termination or expiration of this Agreement.

13. Notices: Whenever this Agreement requires either party to give notice to the other, such notice will be given in writing and delivered in person (including by commercial courier service), mailed via the United States Postal Service, by certified or registered mail, return receipt requested, or via confirmed email to the party at the address set forth below, or at such other address designated by like written notice:

Town of Cornelius
21445 Catawba Avenue
P.O. Box 399
Cornelius, North Carolina 28031
Attention: Town Manager

Cornelius Arts/Community Center, Inc.

Attention: _____

14. Severability and Duration. If any provision of this Agreement is deemed or declared illegal, unenforceable or invalid, such provision will be read out of this Agreement, and will not affect the validity of any other provision or give rise to any cause of action of the parties against the other, and the remainder of this Agreement will be valid and enforced to the fullest extent permitted by law.
15. Waiver. Any waiver at any given time of any term or condition of this Agreement, or the failure to take action with respect to any breach of any such term or condition, will not be deemed to be a waiver of the term or condition with regard to any subsequent breach of the term or condition, or of any other term or condition of the Agreement.
16. Modifications. This Agreement may be modified, altered or amended only by written agreement executed by Town and Grantee.
17. Governing Law. This Agreement shall be governed in all respects, including as to validity, interpretation and effect, by the internal laws of the state of North Carolina, without giving effect to the conflict of laws and rules thereof. The language in all parts of this Agreement will be, in all cases, construed according to its fair meaning and not strictly for or against Town or Grantee.
18. Waiver of Jury Trial. The Parties waive trial by jury in any action, proceeding or counterclaim brought by or against the other with respect to any matter arising out of or in connection with this Agreement.

19. Relationship. The parties agree that neither any provision of this Agreement nor any act of the parties shall be deemed to create any joint venture relationship or other partnership agreement between Grantee and Town.
20. Time of the Essence. Time is of the essence for each of the provisions of this Agreement.
21. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which counterparts collectively shall constitute one Agreement. Signatures may be exchanged by copy, or with original signatures to follow. Each party shall be bound by its own copied signature and shall accept the copied signature of the other party.
22. Performance of Government Function. Nothing contained in this Agreement shall be deemed or construed to estop, limit, or impair Town from exercising or performing any regulatory, legislative, governmental or other powers or functions.

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IN WITNESS WHEREOF, the parties have executed this Agreement under seal in Cornelius, North Carolina, as of the Effective Date.

Cornelius Arts/Community Center, Inc.

Signature of Authorized Representative Date

Federal Identification #

Town of Cornelius

Signature of Authorized Representative Date

This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.

Signature of Authorized Finance Officer Date