

Agreement



**The Corporation of the Town of Oakville
&
Oakville Arts Council**



September 2024

THIS AGREEMENT dated as of the _____ day of _____, 2024.

Between:

THE CORPORATION OF THE TOWN OF OAKVILLE

A municipal corporation in the Province of Ontario
(The "Town")

-and-

OAKVILLE ARTS COUNCIL ("OAC")

WHEREAS:

Whereas the Town of Oakville and the Oakville Arts Council share a common interest in the development of arts and culture.

Whereas the Town of Oakville and the Oakville Arts Council provide some unique and some shared services to the arts and cultural community that are mutually beneficial.

Whereas the Oakville Arts Council uses Town facilities and services.

Whereas the Town is a municipal corporation that has been the provider of significant funding to the Oakville Arts Council.

Whereas the Town and the OAC desire to support a vibrant, active, and sustainable cultural community in Oakville.

Whereas the Town and the OAC acknowledge that they have distinct accountabilities for their services.

Whereas clarity is required to identify how each party can and will effectively contribute to the shared vision and decision making, in view of both parties' limitations.

Whereas the Town acknowledges the need for cultural grants for not-for-profit groups to support the provision of cultural activities to the community.

Whereas the Town acknowledges the value of the OAC's contribution to supporting culture in Oakville.

GENERAL AGREEMENT

The Town and OAC consider it desirable and in the public interest to enter into this written agreement to identify their respective roles and responsibilities in relation to servicing the arts and cultural community of Oakville.

The Town and OAC will work collaboratively to achieve a shared vision outlined in this agreement. This agreement articulates outcomes, roles, and responsibilities of both parties to provide access to Annual

Reports and Workplans that have common interest to both parties that shall include the following:

- Cultural Grants
- Operating Grant
- License of office space (premises) **Covered under separate agreement.**
- Communication Protocols

This Agreement shall not be interpreted as obligating the Town to be directly or indirectly responsible for any portion of Oakville Arts Council ' operating costs or to extend funding for capital improvements. Oakville Arts Council shall be entirely and solely responsible for any cost overruns or budget deficits it may incur.

Subject to approval as part of the Town's budget process, the Town will provide a grant to OAC for its operations, and it will be escalated at the same rate as the Town's annual tax increase which is approximately the rate of inflation.

Subject to approval as part of the Town's budget process, the Town will provide grant funding for distribution to the local arts and culture groups that will be distributed through OAC.

CULTURAL GRANTS

Subject to approval as part of the Town's budget process, the Town will provide annual cultural grants with the purpose of enriching the community with cultural activity (with an annual inflationary increase subject to Council approval) to Oakville's not-for-profit arts groups excluding: The Oakville Centre for the Performing Arts, Oakville Museum, Oakville Galleries, The Oakville Historical Society and OAC.

OAC will administer the cultural grants program as an arms-length not-for-profit charitable organization, through a Grants Review Committee which reports to the OAC Board of Directors, with the intent of providing a peer advisory approach to funding Oakville's not-for-profit arts organizations.

OAC is accountable for establishing the Terms of Reference, Eligibility and Criteria, determining the Grants Review Committee, and approving the grants recommendations prior to going to Council.

OAC and the Town will each have a non-voting staff representative to sit on the Grants Review Committee.

OAC and the Town will work in partnership to establish ongoing performance indicators to evaluate and demonstrate effectiveness of grants program.

OAC and the Town will work in partnership to communicate a shared vision and market the cultural grants program to the greater community.

OAC Responsibilities

Elect a Chair for the Grants Review Committee from the OAC Board of Directors.

Select a Grants Review Committee that meets at least three times per year to review grant reports and applications and recommended changes to the program.

Annually review and approve Terms of Reference and Eligibility and Criteria of grants program.

Support and coordinate committee meetings and distribution of materials.

Create and provide application materials for the public to access.

Provide mentorship and training to Oakville's arts and cultural groups.

Provide a summary report to Grant Review Committee to help assess program measures of:

- Community Engagement (i.e. # of audience, volunteers, members, students)
- Community Impact (i.e. #/types of collaboration, partnerships, volunteer hours)
- Artistic Development/Merit (i.e. purpose, achievements, quality, innovation)
- Sustainability (i.e. diverse revenues, financial report, governance)

Review past grant agreements for compliance and outline any instances of deviation to the Grants Review Committee.

Provide a report to the Town no later than July 15th each year outlining:

- Grant allocations for the current year within appropriate arts discipline (digital arts, literary arts, performing arts, visual arts, and heritage & culture)
- Expected outcomes from grants as outlined in applications.
- Any changes to the grants program as submitted by OAC.
- Budget request for the following year with justification of any requested increase (based on current year requests and expected needs)

Provide each grant applicant with a written summary of comments from the Grant Review Committee including any strengths and weaknesses in the grant application upon release of the grant or notification of unsuccessful application.

Audits grant recognition by grant recipients to ensure compliance.

Town Responsibilities

Provide Grants Review Committee with a summary of Town Council's Strategic Goals.

Provide meeting space for the Grants Review Committee meetings and grant workshop.

Provide support through printing of grant materials through the Town print centre (if required).

Requisition grant cheques upon budget approval and distribute to Oakville's arts groups in accordance with OAC approved allocations.

OPERATING GRANT

OAC Responsibilities

Oakville Arts Council agrees to maintain all financial statements and records relating to the Premises and Operations for a period of seven (7) years following the completion of the period covered by those statements.

Provide the Town with an annual work plan for the following fiscal year and the annual report for the previous year, prior to November 1st. The report will include the following measures:

- Community Engagement (i.e. # of members, subscribers, volunteers).
- Community Impact (i.e. #/types of collaboration, partnerships, volunteer).
- Artistic Development/Merit (i.e. purpose, achievements, quality, innovation).
- Sustainability (i.e. diverse revenues, financial report, governance).
- Facilitate dialogue between the Town and OAC membership.

Advise the Town on community wide issues and challenges affecting the arts sector using accepted data gathering methods that may be related to the development or changes to cultural or arts policies within the Town.

Provide public access to local arts activities and opportunities.

Acts as a resource and referral agent between the general public and its members.

Provide Oakville's arts sector with opportunities for professional development, as resources permit.

Administer the Cultural Grant process as outlined in the Cultural Grants section of the Agreement and Appendix C, Cultural Grants Terms of Reference.

The Town's Responsibilities

Subject to Council direction and annual budget approval, the Town will issue assistance in a form of an annual operating grant, and it will be escalated at the same rate as the Town's annual tax increase which is approximately the rate of inflation to the OAC.

Provide OAC with an annual summary of Town Council's Strategic Goals, Cultural Business Plan, and cultural grants budget, once approved by Town Council.

Provide space at an appropriate venue for joint/supported programs, events, and meetings at no cost to OAC (as agreed upon an annual basis).

Provide space and opportunities (at the discretion of the Town) for the OAC membership to display arts and Culture related activities and events such as on bulletin boards and community arts brochure rack displays provided by the OAC.

Provide links from Town website to OAC website.

Will inform/seek input from OAC on matters related to the development or changes to cultural or arts policies within the Town.

1. LIAISON

The Town's designated representative will serve as the formal liaison with the OAC. Specifically, this includes:

- Liaise with OAC representative on matters pertaining to the legal agreement and general communication regarding town information.
- Assist / advise on OAC Council delegations.
- Represent the Town on the Cultural Review Committee

2. INSURANCE AND INDEMNIFICATION

- 2.1. Unless caused by or to the extent contributed to by the negligent act or omission of OAC or anyone for whom it is at law responsible for, the Town hereby fully indemnifies, holds harmless, and shall defend OAC from and against any and all actions, suits, claims, and demands, and from all loss, costs, charges, and expenses, including legal expenses, which may be brought against or made upon OAC by any party whatsoever, or which may be incurred, sustained, or paid by OAC, in consequence of the performance or non-performance by the Town of any of the Town's obligations pursuant to this Agreement, including but not limited to any of its maintenance, repair, services, programs, and operation obligations, or in consequence of any use of the Premises by the Town, its agents, employees, or invitees. This indemnification in respect of any breach, violation, non-performance, damage to property, or injury or death occurring during the Term of this Agreement, shall survive any termination of this Agreement.
- 2.2. Separate from and additional to the insurance maintained by the Town, OAC shall maintain throughout the Term comprehensive liability and property insurance satisfactory to the Town, in which the Town shall be named as an additional insured, with respect to Oakville Arts Council obligations and all operations and liability assumed under this Agreement. Such insurance coverage shall include the contents of the Premises, all works of art, and any other personal property of OAC on any Town property. Separate from and additional to the insurance maintained by the Town, OAC shall also maintain throughout the Term its own Directors and Officers insurance policy satisfactory to the Town. The costs to OAC of maintaining its own insurance are considered operating expenses of OAC.
- 2.3. Unless caused by or to the extent contributed to by the negligent act or omission of the Town or anyone for whom it is at law responsible for, OAC hereby fully indemnifies, holds harmless, and shall defend the Town from and against any and all actions, suits, claims, and demands, and from all loss, costs, charges, and expenses, including legal expenses, which may be brought against or made upon the Town by any party whatsoever, or which may be incurred, sustained, or paid by the Town, in consequence of the performance or non-performance by OAC of any of OAC obligations pursuant to this Agreement, including but not limited to any of its maintenance, repair, services, programs, and operation obligations, or in consequence of any use of the Premises by OAC, its agents, employees, or invitees, including any third party claims or damages to persons or property of whatever sort associated with or arising directly or indirectly from OAC programs on the Premises. This indemnification in respect of any

breach, violation, non-performance, damage to property, or injury or death occurring during the Term of this Agreement, shall survive any termination of this Agreement.

3. TERM

- 3.1. The Term of this Agreement, (the "Term) **from June 1, 2024, to December 31, 2025.**

4. TERMINATION

- 4.1. Notwithstanding anything herein contained, if, in the opinion of the Town, OAC is in material breach of this Agreement, including a default by OAC in payment of the fees and charges as provided for in this Agreement, the Town shall provide ninety (90) days' written notice to OAC advising of such breach, and OAC shall forthwith rectify such breach or take corrective action to the satisfaction to the Town. Should OAC fail to rectify the breach or take corrective action to the satisfaction of the Town, acting reasonably, the Town shall so advise OAC, and may obtain immediate possession of the Premises, whereupon this Agreement shall be at an end, and OAC shall surrender and vacate the Premises and deliver vacant possession to the Town.
- 4.2. In the event of early termination by reason of material breach of the Agreement by OAC, the Town shall not be liable to OAC for any costs or losses directly or indirectly, in whole or in part, sustained by OAC as a result thereof.
- 4.3. Upon termination of this Agreement, OAC shall forthwith remove, in a good and workmanlike manner, and at its own expense, all its property from the Premises, and shall clean, restore, and leave the Premises in good order and in such condition as existed at the commencement of the Term, normal wear and tear excepted, failing which the Town may complete the removal, cleaning, and restoration, and OAC shall reimburse the Town for such reasonable costs. Where OAC fails to remove its property from the Premises upon termination of this Agreement, the Town shall have the right to remove and store OAC's goods and chattels from the Premises, and the cost of removal and storage shall be reimbursed to the Town by OAC.
- 4.4. At the option of the Town, this Agreement may be terminated without notice in the event that OAC becomes insolvent or bankrupt, has a receiver appointed, makes an assignment to a creditor, or vacates or abandons the Premises.

5. GENERAL

- 5.1. OAC shall not assign or transfer in any manner this Agreement without the prior written consent of the Town, acting reasonably.
- 5.2. OAC shall throughout the Term of this Agreement maintain its status as a not-for-profit corporation and charitable organization.
- 5.3. Notice for the purpose of this Agreement shall be deemed effectively given to OAC, if delivered or mailed by registered mail, addressed to the Executive Director of OAC at Oakville Arts Council, 2302 Bridge Road, Oakville, Ontario, L6H 2G6 or such other address as OAC shall

have advised the Town in writing; and to the Town, if delivered or mailed by registered mail, addressed to the Director, Recreation and Culture 1225 Trafalgar Road, Oakville, Ontario, L6H 0H3 with a copy to the Senior Manager, Cultural Services, Recreation and Culture 1225 Trafalgar Road, Oakville, Ontario, L6H 0H3, or such other address as the Town shall have advised OAC in writing. If mailed, notice shall be deemed to have been received five (5) business days following the mailing.

- 5.4. No condoning or overlooking by the Town or OAC of any default, breach, or non-observance by the other shall operate as a waiver of such party's rights hereunder in respect of any continuing or subsequent default or breach. All rights and remedies herein are cumulative and alternative.
- 5.5. Time shall be the essence of this Agreement.
- 5.6. This Agreement constitutes the entire agreement between the parties hereto and supersedes all prior agreements and understandings whatsoever with respect to its subject matter and may not be amended except by an instrument in writing duly approved and executed by the Town and Oakville Arts Council. There are no conditions, warranties, representations, or other agreements in connection with this Agreement except as specifically set out herein.
- 5.7. If any part of this Agreement shall be declared illegal or unenforceable by a court of competent jurisdiction, it shall be severed from and deemed never to have formed a part of this Agreement, and the remainder of this Agreement shall remain in full force and effect and enforceable in accordance with its terms.
- 5.8. This Agreement shall be construed and governed by the laws of the Province of Ontario.
- 5.9. All references shall be read with such changes in number and gender as may be appropriate according to whether the reference is to a male or female person or a corporation or partnership.
- 5.10. The insertion of headings is for convenience of reference only and shall not be construed so as to affect the interpretation or construction of this Agreement.
- 5.11. The preparation of this Agreement shall not be deemed to be an offer to OAC, and no agreement or contract between the parties hereto shall arise or exist except through the execution of the Agreement by OAC and by the Town after same has been authorized by Council of The Corporation of the Town of Oakville.
- 5.12. This Agreement shall extend to ensure to the benefit of, and be binding upon, the parties hereto and their respective successors and permitted assigns.

5.13. This Agreement is conditional upon being approved and ratified by the Board of OAC and the Council of the Town, and execution by signing officers duly authorized to bind the parties. Neither this Agreement nor notice thereof shall be registered against title to the Premises or any other Town property.

IN WITNESS WHEREOF the parties have caused this Agreement to be executed by their respective officers who are duly authorized to do so.

OAKVILLE ARTS COUNCIL

Per: _____
President

Per: _____
Executive Director

We have the authority to bind the corporation.

THE CORPORATION OF THE TOWN OF OAKVILLE

Per: _____
CAO

Per: _____
Acting Clerk

We have the authority to bind the corporation.

Appendix B - Communications Protocol

As of the date of this agreement the designated Town representative is the Senior Manager, Cultural Services and the designated OAC representative is the Executive Director.

Any communication by the OAC-to-OAC members or the public relating to the Town will be communicated to and verified by Town staff before distribution.

Any communication by the Town to members of the public relating to the OAC will be communicated to the OAC and verified OAC staff by before distribution.

Communications regarding joint programs and activities will be signed off on by both parties.

In the interest of transparency and communication both the OAC and the Town will make every attempt to advise the other of any issues of mutual concern

	Communication type/Frequency	Parties	Details
1	In person meetings /monthly	Town representative and OAC staff	<ul style="list-style-type: none"> • Town staff will initiate a schedule of meetings. • Set agenda jointly. • Email follow up notes will be shared within 5 days of meeting. Responsibility will be shared for follow up notes, alternating between town and OAC. • Update on on-going initiatives and outline any next steps for upcoming programs. • Meetings may deal with information sharing, logistics or strategy or consultation. • Other staff may attend as needed for all or part of the meeting based on agenda. Each party is responsible for extending the invitation to appropriate representatives within their organization based on agenda items.
2	Town Annual presentation to OAC board OAC board can request additional updates from town staff/as required	Town representative to OAC Board	<ul style="list-style-type: none"> • Town representative will provide a verbal presentation and provide copies of Town’s Strategic Goals document to OAC Board.

			<ul style="list-style-type: none"> • Town representative will provide summary of Town's Strategic Goals as approved by Council. • Provide update to board on Recreation and Culture Department priorities, projects, and initiatives for the upcoming year. • Provide information on past year activity relating to the Cultural sector.
3	OAC Annual update to Town Council	Art Council Board to Town Council	<ul style="list-style-type: none"> • Provide annual update to council on Strategic Plan and priorities, projects, and initiatives for the upcoming year. • Provide information on past year activity relating to the cultural sector. • OAC will work with Town staff on scheduling the meeting.
4	Town to OAC Cultural Grants Committee/annually/attend all meetings	Town representative to OAC Cultural Grants Committee	<ul style="list-style-type: none"> • Town representative sits as a non-voting member of the Cultural Grants committee. • Town representative will provide summary of Town's Strategic Goals as approved by Council to the Committee • Town representative will update committee on any other Town issues that may be relevant to the Cultural Grants allocations.
5	OAC issues identification/as needed	OAC to Town representative	<ul style="list-style-type: none"> • In the interest of transparency and communication, both the OAC and the Town will advise the other of any issues of mutual concern at first informally through monthly update meetings, or if urgent, in a timely manner for early resolution. • If issues cannot be immediately resolved and the OAC feels the issue is of an urgent nature, the OAC will provide the Town

			<p>representative with written notification of issues including supporting materials.</p> <ul style="list-style-type: none"> • Further if the issues are of concern to the OAC, and the OAC and town representatives are unable to resolve then OAC and town staff can escalate the issue to senior town staff through the Director and if not resolved by the Director to the Commissioner.
6	OAC Issues escalation to Town Council/as needed	Art Council Board to Town Council	<ul style="list-style-type: none"> • Any OAC arts council issues that cannot be mutually resolved by town and OAC staff. • If OAC issues cannot be mutually resolved with town staff as outlined in the “OAC Issues Identification” section and the OAC feels the issue is still of concern, the OAC will work with Town staff to arrange a delegation to council. • In advance of the delegation to Council, the OAC will brief town staff on the content of the presentation.
7	Town issues Identification/as requested	Town representative to OAC	<ul style="list-style-type: none"> • In the interest of transparency and communication both the OAC and the Town will advise the other of any issues of mutual concern at first informally through monthly update meetings, or if urgent, in a timely manner for early resolution. • Further if issues cannot be immediate resolved and the Town feels the issue is still of concern the Town will provide the OAC representative with written notification of issues including supporting materials. • Further if the issues are of concern to the Town and the OAC staff is unable to resolve the issues then the Town staff

			can escalate the issue to the OAC board.
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Appendix C – Cultural Grant Committee Terms of Reference



GRANTS REVIEW COMMITTEE TERMS OF REFERENCE

GENERAL COMMISSION

The Grants Review Committee is commissioned by and responsible to the Board of Directors of the Oakville Arts Council. It is responsible for making recommendations on the distribution of Town of Oakville grants to cultural organizations.

APPOINTMENT AND COMPOSITION

- The Grants Review Committee shall be comprised of four to a maximum of seven members, and the composition of the committee will change each year with a minimum of one new members.
- Grants Review Committee members can serve to a maximum of six years.
- The Chair of the Grants Review Committee shall be a current member of the Oakville Arts Council Board of Directors and be appointed by and report to the Oakville Arts Council Board of Directors concerning the Cultural Grants program.
- A staff representative of the Oakville Arts Council and the Town of Oakville shall serve as resources to the Committee and shall be non-voting members.
- Nominations for the remaining positions on the Grants Review Committee shall be sought from the community-at-large, with a demonstrated knowledge of arts and culture in Oakville.
- Grant Review Committee members must be arm's length from any applicant organization. The term "at arm's length" describes a relationship where persons act independently of each other or who are not related to any organization that is applying (as members, board members, or others that may directly gain from the grant).
- Each year, the Oakville Arts Council Board of Directors or Executive will appoint the Grants Review Committee and approve the administrative process.

COMMITTEE RESPONSIBILITIES

- To receive applications for cultural grants on behalf of the Town of Oakville.
- To review all applications for conformity with the established Cultural Grants criteria.
- To request clarification or additional information necessary to enable a complete review.
- To debate and establish grant levels for all applications.
- To offer constructive comment concerning the grant applications to assist the Town of Oakville Budget Committee in appreciating the rationale for the recommendation of the allocations and to assist future applicants.
- To reconvene to hear appeals, if necessary, as directed by the Budget Committee or Council.
- To reconvene as necessary and as directed to review grants applications.
- The Grants Review Committee will review applications for grants to cultural organizations, excluding: The Oakville Centre for the Performing Arts, Oakville Museum, Oakville Galleries, The Oakville Historical Society and the Oakville Arts Council.

CONFLICT OF INTEREST

Grants Review Committee members must declare any conflicts of interest prior to the grants review assessment meeting.

Oakville Arts Council - www.oakvillearts.com

