

Agreement



The Corporation of the Town of Oakville & Oakville Arts Council



February 24, 2014

THIS AGREEMENT dated as of the _____ day of _____, 2013

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)
- 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.

The OAC will occupy office space provided by the Town in the Queen Elizabeth Park Community and Cultural Centre ("QEPCCC") as per Appendix A.

Subject to approval by the Town's Council as part of the Town's budget process, the Town will provide a grant to OAC for its operations and it will be escalated by the rate of inflation as identified during the annual budget process.

Subject to approval by the Town's Council 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.

In addition to the annual inflationary increase for the cultural and operating grants, OAC may request additional funding based on determined needs within the arts sector and will notify the Town of these needs prior to July 15th to work together to prepare the rationale and presentation report to Town Council as part of the Town's budget process.

CULTURAL GRANTS

Subject to the approval by the Town's Council 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 approval by Council 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 (July 2014- June 2015) 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 hours)
- 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 approval, the Town will issue assistance in a form of an annual operating grant and it will be escalated by the rate of inflation as identified during the annual budget process 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. License of Office (PREMISES)

The Town will provide space at Queen Elizabeth Park Community and Cultural Centre. See Appendix A - License Agreement

2. 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

3. INSURANCE AND INDEMNIFICATION

3.1. 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.

3.2. 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.

- 3.3. 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.

4. TERM

- 4.1. The Term of this Agreement, (the "Term") consists of the Initial Term (as defined below) plus any Renewal Term (also defined below).
- 4.2. Subject to any extensions or renewals as contemplated by this section 7, this Agreement shall be in effect for five (5) years, commencing on the date this Agreement is executed by the parties, and ending five years hence (the "Initial Term").
- 4.3. The Town hereby grants to the OAC the option to renew this Agreement, on the same terms and conditions as apply to the last year of the Initial Term, for one (1) further term of five (5) years ("Renewal Term"), for a total Ten often (10) years, provided that:
- 4.3.1. OAC is not in material breach under any of the provisions of this Agreement, or if in material breach, is proceeding diligently to cure such breach.
- 4.3.2. It is understood that a genuine disagreement as to the meaning of a provision of this Agreement is not a breach.
- 4.3.3. OAC has delivered to the Town, not less than three (3) months before the expiry of the Initial Term of this Agreement, notice of its intention to exercise the option to renew this Agreement.

5. TERMINATION

- 5.1. 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.
- 5.2. 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.
- 5.3. 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.
- 5.4. 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.

6. GENERAL

- 6.1. OAC shall not assign or transfer in any manner this Agreement without the prior written consent of the Town, acting reasonably.
- 6.2. OAC shall throughout the Term of this Agreement maintain its status as a not-for-profit corporation and charitable organization.
- 6.3. 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.

6.4. 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.

6.5. Time shall be the essence of this Agreement.

6.6. 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.

6.7. 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.

6.8. This Agreement shall be construed and governed by the laws of the Province of Ontario.

6.9. 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.

6.10. 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.

6.11. 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.

6.12. This Agreement shall extend to, ensure to the benefit of, and be binding upon, the parties hereto and their respective successors and permitted assigns.

6.13. 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.

THIS LICENSE made as of the 1st day of February 2012.

BETWEEN:

THE CORPORATION OF THE TOWN OF OAKVILLE

hereinafter called the "Town"

OF THE FIRST PART

and

THE OAKVILLE ARTS COUNCIL

hereinafter called the "OAC"

OF THE SECOND PART

1. PREMISES

In consideration of the License Fee and Additional License Fee as hereinafter defined and in further consideration of the covenants and agreements hereinafter reserved and contained on the part of the OAC to be repaid, observed and performed, the Town does hereby license to the OAC use of those premises situate, lying and being in the Town of Oakville, in the Regional Municipality of Halton consisting of an area comprising approximately 454 square feet, as outlined on Schedule "A" attached hereto and forming part of this licence, for use by the OAC as office space, storage space, program space and event space, all contained within a facility known as the Queen Elizabeth Park Community Centre (hereinafter referred to as the "Facility") which licensed premises are hereinafter referred to as the "Premises".

2. TERM

- (a) The term of this License shall be three years and eleven months commencing the 1st day of February 2012, and terminating on the 31st day of December 2015 (hereinafter referred to as the “Term”).
- (b) Never having been in default hereunder the OAC shall have the right, no later than six months before the end of the Term or any Renewal Term to notify the Town, in writing, of its intention to enter into negotiations concerning a three (3) year extension of the Term. Any such extension (hereinafter referred to as the “First Renewal Term”) shall be on terms satisfactory to the parties hereto in their respective unfettered discretions. Provided further that the OAC is in possession of the Premises pursuant to successful negotiation of a First Renewal Term, or subsequent Renewal Term, it shall be entitled to require negotiation of a further three (3) year Renewal Term in the manner aforesaid no later than six months prior to termination of the then current Renewal Term, *mutatis mutandis*. There shall be no further renewal rights thereafter.

3. LICENSE FEE

- (a) Subject to the provisions of section 3(e) hereof the License Fee shall be the sum of six thousand eight dollars and forty cents (\$6,008.40) per annum as outlined in Schedule “B” plus the Harmonized Sales Tax, or any replacement thereof and any similar tax imposed by competent authority from time to time. The License Fee and applicable taxes shall be payable by OAC to the Town in advance on February 1st in each year of the Term or any Renewal Term.
- (b) All sums payable by OAC to the Town hereunder other than License Fee shall be deemed to be Additional License Fee.
- (c) The OAC shall pay the Town as Additional License Fee the monies and other charges, costs and expenses provided to be paid in this license by the OAC promptly at the times when they become payable.

- (d) All payments required to be made by the OAC under or in respect of this license shall be made to the Town's Senior Manager , Recreation Services or his or her designate at 1225 Trafalgar Road in the Town of Oakville or at such other place as the Town may hereafter from time to time direct in writing to the OAC.
- (e) The parties hereto acknowledge that the amount of the License Fee as aforesaid, which the parties hereto acknowledge is a special rate, is conditional upon the OAC remaining a not for profit organization. In this regard the OAC hereby covenants and agrees that it shall submit to the Town, no later than the last day of February of each year of the Term or of any Renewal Term a true copy of its financial statements for the immediately preceding twelve months, prepared by an individual or organization with qualifications acceptable to the Town, acting reasonably, prepared in accordance with generally accepted accounting principles. If the OAC ceases to be a not for profit organization, the License Fee will immediately be renegotiated to reflect then market rent or license fees for similar premises.

4. **INSURANCE**

The OAC covenants and agrees at all times during the Term or any Renewal Term hereof, at its own expense, to insure and keep insured the Premises and the activities carried on therein. The OAC will insure at its own expense its liability as occupier and user of the Premises and provide and keep such insurance in force during the Term or any Renewal Term hereof for the benefit of both the Town and the OAC and furnish to the Town upon execution of this license a complete copy of such insurance policy. Such policy shall name the Town as an additional insured and the policy shall include a cross liability clause endorsement and shall be in an amount of not less than three million dollars (\$3,000,000.00) with not more than one thousand (\$1,000.00) dollars deductible. As a term of the aforementioned policy, the insurer will provide the Town a minimum of thirty (30) days' notice of cancellation.

OAC COVENANTS

The OAC covenants with the Town:

- (a) OAC acknowledges that notwithstanding that the Town is exempt from payment of property taxes, such taxes may become applicable as a result of the OAC's occupation and use of the Premises. If the Municipal Property Assessment Corporation, or successor entity, determines that property taxes are payable, they shall be paid by the OAC.
- (b) This license shall be fully net and carefree to Town. Without limiting the generality of the foregoing OAC covenants and agrees to pay License Fee and Additional License Fee, including applicable taxes, in the manner and at the times provided in this license, without deduction, abatement or set-off. License Fee and Additional License Fee herein provided to be paid shall be net to the Town and clear of all costs and charges arising from or relating to the Premises or their use including personal and other property and that the OAC covenants to pay all charges, impositions, expenses of every nature and kind relating to the Premises, including business taxes levied as a result of the OAC's occupation and use of the Premises.
- (c) To pay Additional License Fee when due.
- (d) That in the event of the OAC failing to pay any insurance premiums or charges which it has herein covenanted to pay, the Town may pay the same and shall be entitled to charge the sums so paid to the OAC who shall pay them, together with interest, as Additional License Fee, due on the next ensuing License Fee day.
- (e) To, at its own expense, maintain and keep the interior of the Premises and every part thereof (except structural elements, as defined by the Town acting reasonably) in good order and condition and promptly make all needed repairs and replacements except structural repairs and replacements, (reasonable wear and tear and damage by fire, lightning and tempest only excepted).
- (f) That it shall be lawful for the Town and its agents, at all reasonable times, without notice, during the Term or any Renewal Term hereof, to enter the Premises to inspect the condition thereof. Where an inspection reveals repairs and/or replacements are necessary, which are properly the responsibility of the OAC, the Town shall give the OAC notice in writing and thereupon the OAC will, within thirty (30) days from the date of delivery of the notice, make the necessary repairs in a good and workmanlike manner. If the OAC fails to make the requisite repairs and /or replacements to the Premises, the Town may, but shall not be

- obliged to, make them, and the OAC shall remit the cost of them, together with interest, as Additional License Fee due on the next ensuing day that License Fee is payable hereunder.
- (g) Notwithstanding the foregoing, if in the unfettered opinion of the Town acting reasonably a situation exists whereby immediate repairs are required to ensure public safety or to avoid potential substantial property damage, and it is not practical for the OAC to perform such repairs immediately, Town shall have the right, but not the duty, to effect such repairs forthwith and the OAC shall forthwith upon demand reimburse the Town for all costs expended by the Town in connection therewith including, without limiting the generality of the foregoing Town's staff costs reasonably attributable thereto.
- (h) The OAC will, at the expiration or sooner determination of the Term or any Renewal Term peaceably surrender and yield up unto the Town the Premises and appurtenances
- (i) That the OAC will, in the maintenance, use and occupation, or to the making of any repairs, replacements, additions, changes, substitutions or improvements of or to the Premises or any part thereof promptly comply with all requirements of municipal, regional, provincial and federal governmental or quasi-governmental authorities having jurisdiction, police and fire departments and utilities providers.
- (j) To use the Premises during the normal operating hours of the Facility and only:
- i) in connection with creation, display, sale and storage of art and art supplies;
 - ii) as an office;
 - iii) for meetings of members of the OAC held in furtherance of carrying on the business of the OAC in planning and prepare for regular OAC functions and events intended to support the objectives of the OAC
- (k) Never to use the Premises for residential purposes, including short term residential purposes.
- (l) Operation of a gift shop, gallery sales, café or other revenue producing activities shall be by the Town exclusively. Notwithstanding the foregoing, all revenues derived from current OAC events including classes, workshops, exhibitions and lectures shall, if conducted within the Premises be for the OAC exclusively, and if conducted elsewhere within the Facility be determined by the parties hereto on a case by case basis.

- (m) Sponsorship and marketing rights of the Facility shall be the Town's only. Provided however that current sponsorship and marketing rights of OAC events shall remain the property of the OAC whether conducted within the Premises or elsewhere.
- (n) No propane tanks or other fuel tanks shall be stored in the Premises.
- (o) Not to alter the Premises in any way.
- (p) Not to assign or transfer this license or any part thereof without first obtaining the consent in writing of the Town, the granting or withholding of which consent shall be within the unfettered discretion of the Town, acting reasonably.
- (q) That the Town shall not in any event whatsoever, including the negligence of the Town or any person for whom the Town is at law responsible, be liable or responsible in any way for any personal injury or death that may be suffered or sustained by the OAC or any employee of the OAC or any customer of the OAC or any other person who may be upon the Premises or for any loss or damage or injury to any property belonging to the OAC or to its employees or to any other person while such property is on the Premises.
- (r) That the OAC will indemnify, save harmless and defend the Town of and from all liabilities, fines, suits, claims, demands and actions of any kind or nature, and all expenses incidental thereto, to which the Town shall or may become liable due directly, indirectly or consequentially, in whole or in part to any breach, violation or non-performance by the OAC of any covenant, term or provisions hereof or by reason of any injury or death resulting from occasioned to or suffered by any person or persons or damage or loss of any property by reason of any act, neglect or default on the part of the OAC or any of its agents, invitees employees, or others on the property with or without the knowledge or consent of the OAC, it being agreed that the Town is in no way responsible for, or able to control access to, the Premises while same are in the possession of OAC. Such indemnification in respect of any such breach, violation or non-performance, damage to property, injury or death occurring during the Term or any Renewal Term shall survive the termination of this license or any renewal thereof, anything in this license to the contrary notwithstanding.

- (s) To pay the sum of fifty (\$50.00) dollars monthly for use of the telephone and internet lines within the Facility and for contribution to the routine maintenance of the Facility. Notwithstanding the foregoing, the aforementioned sums shall not include connection charges to the Premises, nor for repair to any equipment within the Premises, levied by service providers, which charges shall be paid directly to such providers by the OAC.

5. **TOWN'S COVENANT**

The Town covenants with the OAC that the OAC, if in compliance with this license, shall peaceably enjoy and possess the Premises for the Term or any Renewal Term hereof without any interruption or disturbance by the Town or any other person or persons claiming under it. If meeting rooms are available within the Facility from time to time, the OAC shall have the right to use such rooms, at no additional charge, between the hours of 9am to 5pm only for internal meetings of members of the OAC.

6. **PROVISOS**

Provided always and it is hereby agreed:

- (a) That in the case without the written consent of the Town, the Premises shall not be used for a period of thirty (30) days while the same are suitable for use by the OAC, or in case the Term or any Renewal Term hereby granted or any of the goods and chattels of the OAC be at any time seized or taken in execution or in attachment by any creditor of the OAC or the OAC shall make any assignment for the benefit of creditors or become bankrupt or insolvent or take the benefit of any Act now or hereafter in force for bankrupt or insolvent debtors or any order shall be made for the winding-up of the OAC, then and in every such case, the OAC shall be in default. The Town, at any time after it has notified the OAC of the default and the OAC has failed to cure the default within thirty (30) days, may re-enter the Premises, and repossess the Premises in its former state as though the OAC were holding over after the expiration of the Term or any Renewal Term or hereof, and the Term or any Renewal Term hereof shall, at the option of the Town, become forfeited
- (b) That notwithstanding the benefit of any present or future statute taking away or limiting the Town's right of distress, none of the goods and chattels of the OAC on the Premises at any

time during the Term or any Renewal Term or hereof shall be exempt from levy by distress for License Fee and / or Additional License Fee in arrears.

- (c) The OAC shall from time to time at the request of the Town produce to the Town satisfactory evidence of the due payment by the OAC of all payments required to be made by the OAC, pursuant to the provisions of this license.
- (d) If the OAC defaults in the payment of License Fee or Additional License Fee, and the default continues for fifteen (15) days after written notice of it to the OAC by the Town, or if the OAC defaults in the observance or performance of any covenant or agreement in this license and the default continues for fifteen (15) days after written notice of it, the Term or any Renewal Term or hereof, shall at the option of the Town, terminate this License and the OAC shall vacate and surrender the Premises to the Town, but the OAC shall not thereby be released from his obligations pursuant to this license but which shall survive such termination and remain in full force and effect.
- (e) Upon termination of the Term or any Renewal Term or hereof, the Town may immediately re-enter the Premises and remove all persons and property using any means permitted by law, and repossess the Premises.
- (f) That if and whenever during the Term or any Renewal Term hereby demised the Premises shall be destroyed or damaged by fire, lightning, entry of water, tempest, or other peril then, at the option of the OAC, this license may be terminated by either of the parties hereto at its sole and unfettered discretion and the Town shall not thereby become liable to the OAC for any losses or damages of whatsoever sort due directly or indirectly, in whole or in part to such termination.
- (k) The OAC shall not erect or paint any sign at or on the exterior of the building within which the Premises are contained.
- (l) That the failure of the Town to insist upon a strict performance of any of the agreements, terms, covenants and conditions hereof shall not be deemed a waiver of any rights or remedies that the Town may have and shall not be deemed a waiver of any subsequent breach or default in any of such agreements, terms, covenants and conditions and the rights

and remedies of the Town under this license, or otherwise available to it under law, may be exercised and enforced either concurrently or successively.

- (m) Any notice, letter, request or demand herein provided for or given hereunder shall be sufficiently given if delivered or mailed by registered mail addressed in the case of the Town, to: the Manager, Realty Services, Office of the Town Solicitor, 1225 Trafalgar Road, Oakville, Ontario, L6J 5A6 and to the OAC at the Premises. Any notice mailed as aforesaid shall, except when there is an interruption of mail service due to strikes or other job actions, be conclusively deemed to have been given upon delivery or, in the case of mailing, on the fifth business day following the day on which such notice is mailed as aforesaid. In the event that mail delivery is interrupted by strikes or other job action, delivery shall be by personal delivery only. Either Town or OAC may at any time give notice in writing to the other or others of any change of address of the party giving such notice from and after the giving of such notice and address therein specified shall be deemed to be the address of such party for the giving of such notices thereafter.
- (n) Provided that the Town has negotiated with the OAC in good faith if the OAC remains in possession of the Premises after the end of the Term or any Renewal Term without an agreement in writing, it shall be as a monthly licensee at a monthly License Fee equal to one-sixth of the then current annual License Fee, and Additional License Fee, payable in advance on the first day of each month and otherwise subject to all terms of this agreement insofar as they may be applicable to a monthly tenancy.
- (o) Either party hereto shall have the right, in its sole and unfettered discretion, at any time during the Term or Renewal Term, to terminate this license and the right of occupancy created thereby upon giving to the other sixty days' written notice to the other party, whereupon the OAC covenants and agrees to surrender the Premises to the Town in accordance with such notice. Neither party shall thereby be liable for any loss of whatsoever sort sustained by the other due directly or indirectly, in whole or in part to such termination.
- (p) This license shall be read with such changes in gender and number as the context may require and Schedule "A" attached hereto shall form part of this agreement as if set out fully and contained within the body of this agreement.

(q) All covenants, terms and conditions contained in this license shall be severable, and should any covenant, term or condition be declared invalid or unenforceable, the validity and enforceability of the remaining covenants, terms and conditions shall not terminate thereby.

(r) OAC's repair and indemnification covenants as herein provided shall survive and not merge on termination of the Term or any Renewal Term herein provided.

(s) This license is conditional upon obtaining approval and ratification by resolution of Town of Oakville Town Council, failing which this license shall be null and void and of no legal effect. It is expressly understood and agreed that preparation, execution and delivery of this license by Town of Oakville staff shall not be deemed to be an offer and no agreement between the parties hereto shall arise or exist until confirmed and ratified by Town of Oakville Town Council as aforesaid.

(t) This license shall extend to, enure to the benefit of, and be binding upon, the parties to it and their respective successors and permitted assigns if any, as appropriate.

IN WITNESS WHEREOF the parties hereby have hereunto executed these presents as of the 1st day of February 2012.

**THE CORPORATION OF THE TOWN OF
OAKVILLE**

CAO: Ray Green

Acting Clerk: Vicki Tytaneck

THE OAKVILLE ARTS COUNCIL

Chairperson:
I have authority to bind the organization

Oakville Arts Council Licence Agreement - Schedule A



- A078 – Arts Council Office



Oakville Arts Council License Agreement - Schedule B

Oakville Arts Council				
Lease of A078 (office, Exclusive access)	454 square ft	\$ 10.00	\$ 4,540.00	
Access to A115 or C073 for Board other mee	40 hours	\$ 17.00	\$ 680.00	
Black box/Rehersal Hall AGM	4 hours	\$ 50.85	\$ 203.40	
Storage # 1 in A043	60 square ft	\$ 1.00	\$ 60.00	
Internet Expense	12 month	\$ 35.00	\$ 420.00	
Phone	3 phones	\$ 35.00	\$ 105.00	
Total			\$6,008.40	

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. • Town representative will provide summary of Town’s Strategic

			<p>Goals as approved by Council</p> <ul style="list-style-type: none"> • 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 representative with written notification of issues including supporting materials. • 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.

Appendix C – Cultural Grant Committee Terms of Reference



CULTURAL GRANTS

Administered by the Oakville Arts Council

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

