

KCCA

PROJECT: Center for the Arts Campus

REQUESTING: \$60,000

DENIED: 02-19-2025 Board Meeting

Applicant Name: Johnathon M. Kerr Organization: Kane County Center for the Arts

Project Name: KCCA Campus Amount Requested: \$ \$60,000.00

Completion Date: Phased - TBD ☒ Recreation Project ☐ Transportation Project

Project Description: Architectural programming, conceptual design, and site evaluation services for the Kane County Center for the Arts campus. Through phased construction milestones the completed campus will feature art classrooms, studio spaces, exhibition galleries, indoor + outdoor performance spaces + associated support areas.

- Has your organization previously received funding from the District for this project?
☐ Yes ☒ No
- Has your organization received funding from the District for any other projects unrelated to this one?
☐ Yes ☒ No
- Have you ever been denied funding from the District?
☐ Yes ☒ No
- Have you already sought or do you intend to seek funding for this project from other sources within Kane County?
☒ Yes ☐ No
- Will you or a representative be prepared to present your project before the Board at a District meeting?
☒ Yes ☐ No
- Will funds be expended on the project within 90 days of receiving District funding?
☒ Yes ☐ No
- Do you understand and agree to the terms outlined in this Funding Request Form?
☒ Yes ☐ No

A successful award on this occasion does not guarantee subsequent funding in the future.

I hereby certify that the facts, figures and representation made in this application, including all attachments, are true and correct to the best of my knowledge. Failure to comply with the funding requirements established by the RTSSD may disqualify the applicant for future funding.

[Signature]
Signature

Johnathon M. Kerr
Printed Name

13 Feb 2024
Date

REAL ESTATE HOLD AGREEMENT

BETWEEN KANAB CITY AND THE KANE COUNTY CENTER FOR THE ARTS

THIS AGREEMENT RESERVING DEVELOPMENT RIGHTS ("Agreement") is made and entered into as of the ____ day of _____, 2025 (the "Effective Date"), by and between Kanab City, a municipal corporation and political subdivision of the State of Utah, having a business address at 26 N. 100 E., Kanab, Utah 84741 ("City" and "Owner"), and the Kane County Center for the Arts, a Utah nonprofit corporation, having a business address of 797 W. Willow Dr., Kanab, Utah 84741 ("KCCA" and "Developer") (collectively referred to as "Parties" and individually as "Party").

RECITALS

WHEREAS, the City owns certain real property encapsulating a full city block between 300 North and 405 North, and between Main Street and 100 East, identified as parcels K-C-3-1, K-10-Annex, and K-C-3-2 in the records of the Kane County Recorder, as well as the real property immediately adjacent to these roads (portions of which have been dedicated as public roads or become public roads by use, and portions that are undeveloped City property) (collectively considered "City Property");

WHEREAS, located towards the southeastern portion of the City Property is the location of the former Electric Plant, currently being used in a limited capacity for storage;

WHEREAS, the KCCA is interested in developing the former Electric Plant and approximately 1.5 acres of the City Property immediately adjacent to the former Electric Plant (identified as the "Electric Plant Property" or "Premises"), whose boundaries are yet to be defined, on terms as specified herein;

WHEREAS, the KCCA desires to develop a Performing Arts Center on the Electric Plant Property, which will include an art exhibit space, a 500-seat performing arts auditorium, classroom and meeting spaces, a parking lot, and an art walk/healing garden to serve the community and enhance cultural experiences in Kane County;

WHEREAS, the KCCA intends to honor local history by remodeling existing structures and constructing new facilities, ensuring accessibility, beauty, and cultural enrichment for residents and visitors; and

WHEREAS, the City is willing to hold the Electric Plant Property for a specified period to allow the KCCA to meet the necessary milestones outlined herein and prepare for a long-term lease agreement with the City;

WHEREAS, the KCCA desires to lease the Premises and begin construction and remodeling of the Premises in advance of consummating the purchase of said Premises, and The City is willing to lease the Premises and permit The City to begin construction and remodeling of the Premises; and

WHEREAS, as a result of the Kanab City Council's consideration and determination, the City concludes that the terms, conditions, and adoption of this Agreement will promote the health, safety, prosperity, security, and general welfare of the inhabitants and taxpayers of the City.

THEREFORE, in consideration of the mutual covenants and agreements herein contained, the Parties agree as follows:

AGREEMENT

1. **Recitals.** The recitals are incorporated into this Agreement by reference.
2. **PURPOSE AND USE.** The Property shall be reserved and held for the KCCA, for the purpose of planning and developing a Performing Arts Center as envisioned by the KCCA.
 - (a) The anticipated Performing Arts Center will serve as a hub for community engagement through arts and education, featuring spaces for art exhibits, live performances, educational workshops, and public events.
 - (b) During the Hold Period, the KCCA shall not make any changes or improvements to the Property without the prior written consent of the City.
 - (c) Access to the Property for planning and design activities will be granted only with prior permission from the City Manager or his authorized agent.
 - (d) The City may continue to use and maintain the Property during the Hold Period, including making improvements thereto, as long as such usage and maintenance do not unreasonably interfere with the planning and development activities of the KCCA and the purpose of establishing a Performing Arts Center. [I.e., this Agreement is non-exclusive during the Hold Period.]
3. **TERM OF HOLD.** The "Hold" refers to the City's commitment to reserve the Electric Plant Property for the KCCA's planning and development activities related to the proposed Performing Arts Center. During this period, the City agrees not to sell, transfer, or otherwise encumber the Property in a manner that would interfere with the KCCA's ability to meet its obligations under this Agreement. The Hold Period shall be for five (5) years, commencing on the date of execution of this Agreement (the "Hold Period").
4. **OBLIGATIONS OF THE KCCA.** The KCCA agrees to meet the following milestones during the Hold Period:
 - (a) **Annual Updates.** The KCCA shall provide annual written updates to the City detailing progress, including funding status, design development, and any other relevant activities. Updates shall include plans for engaging local and national grant opportunities, collaborations with local entities, and detailed progress reports on fundraising and design efforts.
 - (b) **Preliminary Design.** A preliminary design for the Performing Arts Center shall be submitted to the City within two (2) years from the commencement of this Agreement. The design should include architectural concepts for all proposed spaces, including the auditorium, exhibit areas, classrooms, and outdoor features like the art walk and healing garden.
 - (c) **Coordination.** The KCCA shall coordinate with the City on the design of structures, improvements, and features. The Parties will work in good faith to determine the Property boundaries. The KCCA will provide the City with the opportunity to give meaningful input

and make a good-faith effort to incorporate input from the City in the planning and designing process.

- (d) **Final Concept.** A finalized concept and comprehensive plan for the Performing Arts Center, including architectural and engineered renderings, shall be submitted prior to the expiration of the Hold Period. This plan must demonstrate alignment with community needs and include projected timelines for construction phases.
 - (e) **Funding Milestone.** The KCCA shall secure one hundred percent (100%) of the funding required for Phase 1 and provide a financial plan showing the ability to cover operations and maintenance of the project before the City will consider entering into a long-term lease agreement. Funding may include grants, donations, and other non-City financial resources.
- 5. **CITY CONTRIBUTIONS.** The City may provide in-kind contributions to the project, such as assistance with site preparation or infrastructure support, subject to approval by the Kanab City Council. The City shall not be obligated to provide any financial support in the planning or development of the Performing Arts Center.
 - 6. **CONDITION OF PROPERTY.** The Property and any structures thereon are provided "as is," and the City makes no representations or warranties regarding their condition. The KCCA accepts full responsibility for conducting any necessary inspections or assessments to determine the suitability of the Property for its intended use.
 - 7. **Maintenance and Repair.** The City will keep and maintain the Property in good, reasonably clean, and sanitary condition during the Hold Period. The City shall not be required to repair or improve the Property beyond the current status, as of the Effective Date. The KCCA shall be responsible to make all repairs to the Property, fixtures, appliances, and equipment therein that may have been damaged by KCCA's misuse, waste, or neglect, or related to the planning and designing of the Performing Arts Center. The KCCA shall promptly notify the City in writing of any damage, defect, or destruction of the Premises.
 - 8. **PROHIBITED ACTIVITIES.** The KCCA shall not make any alterations, improvements, or changes to the Property during the Hold Period without the City's approval and written authorization. Any significant alterations, development, or exclusive usage of the Property shall require an executed lease agreement.
 - 9. **HOLD HARMLESS AND INDEMNIFICATION.** The KCCA agrees to indemnify, defend, and hold Kanab City, its officers, employees, and agents harmless from and against any and all claims, liabilities, damages, costs, and expenses (including reasonable attorney's fees) arising from or related to the KCCA's use of the Property, the performance of its obligations under this Agreement, or any act or omission of the KCCA, its employees, contractors, or agents.

The City shall give written notice of any claim, demand, action, or proceeding which is the subject of the KCCA's hold harmless and indemnification obligation as soon as practicable after the assertion or commencement of the claim, demand, action, or proceeding. If any such notice is given, the KCCA

shall be entitled to participate in the defense of such claim. Each Party agrees to cooperate with the other in the defense of any claim and to minimize duplicative costs and expenses.

10. DEFAULT OR BREACH.

- (a) Upon the happening of one (1) or more of the following events or conditions the Owner or the City, as applicable, shall be in default or breach ("Default") under this Agreement:
 - i. A warranty, representation, or statement made or furnished by the KCCA under this Agreement is intentionally false or misleading in any material respect when it was made;
 - ii. A determination by the City made upon the basis of substantial evidence that the KCCA has not complied in good faith with one (1) or more of the material terms or conditions of this Agreement; or
 - iii. Any other event, condition, act, or omission, either by the City or the Owner, (i) violates the terms of, or (ii) materially interferes with the intent and objectives of this Agreement.
- (b) Upon the occurrence of Default, the non-defaulting party shall give the other party thirty (30) days written notice specifying the nature of the alleged Default and, when appropriate, the manner in which said Default must be satisfactorily cured. In the event the Default cannot reasonably be cured within thirty (30) days, the defaulting party shall have such additional time as may be necessary to cure such Default so long as the defaulting party takes action to begin curing such Default with such thirty (30) day period and thereafter proceeds diligently to cure the Default. After proper notice and expiration of said thirty (30) days or other appropriate cure period without cure, the non-defaulting party may declare the other party to be in breach of this Agreement and may take the actions outlined in the Remedies provision included herein. Failure or delay in giving notice of Default shall not constitute a waiver of any Default.
- (c) Any Default or inability to cure a Default caused by strikes, lockouts, labor disputes, acts of God, inability to obtain labor or materials or reasonable substitutes therefor, governmental restrictions, governmental regulations, governmental controls, enemy or hostile governmental action, civil commotion, fire or other casualty, and other similar causes beyond the reasonable control of the party obligated to perform, shall excuse the performance by such party for a period equal to the period during which any such event prevented, delayed or stopped any required performance or effort to cure a Default.

11. REMEDIES.

- (a) The KCCA agrees not to initiate or support any legal action against the City arising from this Agreement.
- (b) Any dispute or allegation of default relating to this Agreement shall first be noticed and negotiated between the Parties.
- (c) If the dispute or alleged default persists, a Party may terminate the Agreement or request the matter be submitted to mediation. The Parties must agree before any medication

settlement is binding. The Parties will jointly appoint an acceptable mediator and will share equally in the cost of such mediation.

- (d) The exclusive remedies under this Agreement shall be non-monetary and include termination of the Agreement or specific performance.
- (e) The Parties hereto agree to bear their own legal fees and costs arising out of or related to the negotiation and documentation of this Agreement. In the event of any litigation between the Parties arising out of or related to this Agreement, the prevailing Party shall not be entitled to an award of reasonable court costs, including reasonable attorney fees. In the event that a dispute over or relating to the terms of this Agreement is resolved short of a final contested decision by a court of competent jurisdiction, the Parties shall cover their or its own costs, including reasonable attorney fees, whether incurred in litigation or otherwise. The Parties agree that an advisory opinion rendered by a representative of the Utah Property Rights Ombudsman, while potentially helpful in reaching a resolution to a dispute between the Parties, shall not be considered grounds for awarding attorney fees, civil fines, or penalties, nor consequential damages.
- (f) This provision shall survive the termination of this Agreement.

12. **Governmental Immunity.** The City is a governmental entity under the Governmental Immunity Act of Utah, Utah Code §§ 63G-7-101 et seq. (the "Immunity Act"). The City does not waive any defenses or limits of liability available under the Immunity Act and other applicable laws. The KCCA agrees and stipulates to the City maintaining all privileges, immunities, and other rights granted by the Immunity Act and all other applicable laws. Nothing in this Agreement should be interpreted as a waiver of the City's privileges, immunities, and other rights granted by the Immunity Act and all other applicable laws.
13. **NON-MONETARY NATURE.** This Agreement does not create or confer any monetary value or financial obligations on the City. The Parties agree that this is a non-monetary agreement intended to provide a framework for collaboration.
14. **THIRD-PARTY RESTRICTION.** No third party shall be granted any rights, benefits, or involvement in this Agreement without the prior written consent of both the City and the KCCA.
15. **CITY USE OF PROPERTY.** The City retains the right to use the Property for any lawful purpose during the Hold Period, provided that such use does not unreasonably interfere with the KCCA's planning activities.
16. **LEASE AGREEMENT.** Upon successful completion of the milestones outlined in Section 4, the City anticipates entering into a long-term lease agreement with the KCCA. While State law does not allow the City to dictate and bind a future City Council to a legislative decision (i.e., approval of a lease agreement), the Parties shall negotiate the terms of the lease agreement in good faith. The anticipated lease terms shall include:
 - (a) An initial lease term of thirty (30) years, with options for five (5) year renewals.
 - (b) Permission for the KCCA to make structural, interior, and exterior improvements to the Property, subject to the terms of the lease.

- (c) Responsibility for all costs and liabilities associated with the development of the Property and operation of the Performing Arts Center.

17. TERMINATION.

- (a) This Agreement shall automatically terminate if the KCCA fails to meet any of the milestones outlined in Section 4, unless automatic termination is waived in writing by the City.
- (b) The KCCA may terminate this Agreement at any time if it determines that the project is not feasible by providing written notice of termination to the City. Upon termination, the City may reclaim the Property for other development purposes.
- (c) In the event the KCCA fails to meet the milestones outlined in Section 4, or if the KCCA chooses to terminate this Agreement due to project infeasibility, the City may reclaim the Property for other development purposes.
- (d) The City reserves the right to terminate this Agreement at any time if it determines that the KCCA's actions, inactions, or progress are inconsistent with the terms and intent of this Agreement, or if the City identifies a more pressing public need for the Property. Termination by the City shall require written notice to the KCCA with a minimum thirty (30) days' notice prior to the effective termination date.

- 18. NOTICES** All notices, demands, approvals, or communications required or permitted under this Agreement shall be in writing and delivered personally, by certified mail, return receipt requested, or by electronic mail with confirmation of receipt, to the following addresses:

(a) TO THE CITY:

Kanab City
Attn: City Manager
26 North 100 East
Kanab, Utah 84741
Email: kludwig@kanab.utah.gov
Phone: (435) 644-2534

(b) TO THE KCCA:

Kane County Center for the Arts
Attn: _____

Email: _____
Phone: _____

Upon prior agreement or acknowledgment of the Parties, notice may be provided by electronic mail if receipt of the notice provided thereof is confirmed by the receiving party.

- 19. ELECTRONIC TRANSMISSION AND COUNTERPARTS.** Electronic transmission of a signed copy of this Agreement, any addenda, and counteroffers, and the retransmission of a signed copy shall be the same as delivery of an original. This Agreement may be executed simultaneously in two (2) or more

counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

20. MISCELLANEOUS.

- (a) Nothing in this Agreement shall be interpreted as granting the KCCA any exclusive right, privilege, or option to purchase the Property nor to possession, use, or any form of ownership in the assets and fixtures located at or within the Property, be they affixed or unaffixed.
- (b) This Agreement shall be governed by the laws of the State of Utah.
- (c) All provisions of State Law and the City ordinances shall be applicable to the development of the Property, except to the extent this Agreement is more restrictive or modifies the applicability of one or more City ordinances.
- (d) This Agreement does not exempt nor override any procedure, process, necessary approvals, design standards, provision of applicable State law, building code, fire code, or Kanab City ordinance (e.g., General, Land Use, and Subdivision) except where specifically outlined in this Agreement, and as permitted by law.
- (e) The Parties agree, intend, and understand that the obligations imposed by this Agreement are only such as are consistent with state and federal law. The Parties further agree that if any provision of this Agreement becomes, in its performance, inconsistent with state or federal law or is declared invalid, this Agreement shall be deemed amended to the extent necessary to make it consistent with state or federal law, as the case may be, and the balance of the Agreement shall remain in full force and effect. If the City's approval of the development of the Property is held invalid by a court of competent jurisdiction, this Agreement shall be null and void.
- (f) Time shall be of the essence with respect to the duties imposed on the Parties under this Agreement. Unless a time limit is specified for the performance of such duties each Party shall commence and perform its duties in a diligent manner in order to complete the same as soon as reasonably practicable.
- (g) The City and the KCCA agree that this Agreement constitutes the entire agreement between the parties and supersedes any prior understandings or agreements.
- (h) This Agreement may not be modified except in writing, signed by both parties.
- (i) This Agreement may not be assigned by the KCCA to another person, agency, or entity, in whole or in part, without the prior written consent of the City.
- (j) The Parties acknowledge that this Agreement has been negotiated and prepared in an arms-length transaction and that all Parties have been deemed to have drafted this Agreement and this Agreement shall not be interpreted against any Party as the draftsman.
- (k) The provisions of this Agreement are severable, and the invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of the remaining provisions.

21. The Parties each warrant and acknowledge that (i) they have read and understood the terms of this Agreement; (ii) they have had the opportunity to retain legal counsel of their choice throughout the

negotiations that preceded the signing of this Agreement; and (iii) they have entered into this Agreement for reasons of their own and not based upon representations of any other Party hereto.

22. **Authority of Signers.** Each Party executing this Agreement represents and warrants his or her authority to do so and to bind the legal entity to which he or she represents.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above Effective Date.

KANAB CITY:

By: _____

Name: _____

Title: Mayor

KANE COUNTY CENTER FOR THE ARTS:

By: _____

Name: _____

Title: Authorized Representative