

**MEMORANDUM OF UNDERSTANDING FOR USE
AND MANAGEMENT OF LINCOLN COUNTY CITIZENS CENTER**

This Memorandum of Understanding (the "MOU") is made and entered into effective January 1, 2025 (the "Effective Date"), by and between **Lincoln County**, a body corporate and politic authorized pursuant to the laws of the State of North Carolina (the "County"); and the **Lincoln Cultural Development Center, Inc.**, a North Carolina non-profit corporation (the "Cultural Center").

RECITALS:

A. The County is the owner of that tract or parcel of land, together with all improvements located thereon, with an address of 115 W. Main St., Lincolnton, Parcel ID No. 01200 and further known as the James Warren Citizens Center (the "Property").

B. The Cultural Center is a non-profit corporation dedicated to furthering, *inter alia*, the cultural well-being of the citizens of Lincoln County, and has experience managing the operations of events and event centers.

C. The Property contains many office spaces that are occupied by the County's employees, and also contains an auditorium that is used for many events, known as the Citizens Center Auditorium (the "Auditorium").

D. The County desires to contract with the Cultural Center to utilize its expertise in managing the operations of the Auditorium, and to license to the Cultural Center the right to use the Auditorium subject to the terms and conditions herein.

NOW, THEREFORE, for and in consideration of the mutual promises and covenants contained herein, the sufficiency and receipt of which are hereby acknowledged, the parties do hereby covenant and agree as follows:

- 1.** The above Recitals are incorporated herein by reference thereto.

2. Term. This MOU is effective upon the Effective Date and shall remain in full force and effect for one (1) year, and shall automatically renew on January 1st of each successive year unless one of the parties herein provides written notice of termination as provided for herein.

3. Amendments. This MOU shall be reviewed by both the County or Cultural Center. Any proposed amendments shall be considered by the Board of Commissioners and Cultural Center Board no later than November 30th of each year. If no amendments are presented, the MOU will automatically renew January 1st of each year.

4. Termination. This MOU may be terminated, without cause, by either party upon 30 days' written notice, which notice shall be delivered by hand or by certified mail to the last known address of the party.

5. Use of the Auditorium. The Cultural Center shall use the Auditorium for programs and events to support and advance the cultural well-being of Lincoln County residents ("Events"). However, the Auditorium shall still be available for use by the County, and the Court System, and use by the County or the Court System shall take priority over other uses. The Court System shall be defined herein as the state courts located within Lincoln County, known as Superior and District Courts of District 27B and the 39th Prosecutorial District.

6. Management of Auditorium Facilities. The Cultural Center will manage the Auditorium and Events that take place therein, which includes, but is not limited to, management of two (2) ticket booths, the lobby and foyer areas, the stage, lower and upper seating areas, and the commercial kitchen. A copy of the floor plan of the Auditorium is attached hereto as Exhibit A. The Cultural Center will also be responsible for the following items:

a. Scheduling of Events. The Cultural Center shall be responsible for scheduling and managing Events, subject, however, to County and Court System uses and operations, which shall take precedence. The Cultural Center will use the County's event management software. The Cultural Center shall have access to use the County's LED sign located on the Property, though in the event of a conflict of use between the County and the Cultural Center, the County's use shall have first priority.

b. Maintenance. The Cultural Center shall utilize the County's event management and maintenance software for the Auditorium. All general facility maintenance shall be the responsibility of the County. All maintenance requests will be entered in the County's maintenance software database. All janitorial services shall be the responsibility of the Cultural Center for all events, except for those events that are held by the County. If any event is held by the County, then the janitorial services shall be the responsibility of the County.

c. Training of Attendants. The County Maintenance and IT staff will train the Cultural Center staff on the operation of all equipment as it pertains to the efficient use of the auditorium. This shall include additional training from County Maintenance and IT when new equipment is purchased. Afterwards, it will be the responsibility of the Cultural Center to train all other individuals who are employed to work at the Events (the "Attendants"). If additional training is required from County Maintenance or IT, the County and Cultural Center shall work together to facilitate that training.

d. Hiring of Employees. The Cultural Center shall hire 1.5 employees to manage the Auditorium and all tasks herein required of the Cultural Center. The pay for said employees will be reimbursed by the County on a monthly basis, and the rate of pay shall be reviewed and decided by the Lincoln County Board of Commissioners.

e. Event Set Up. The Attendants shall be responsible for managing and setting up all Events; however, if any maintenance issues arise during set up, the Cultural Center shall enter a work order in the County's maintenance software and marked as "High" to advise the County of the issue's urgency.

7. Fees and Revenues. All fees associated with the use of the Auditorium shall be reviewed and approved by the County's Board of Commissioners. Initially, the fee schedule shall be reviewed by the County's Board of Commissioners and the Cultural Center's Board of Directors. All fees and revenues from use of the Auditorium, and any Event that occurs within, shall be distributed as follows:

a. To the County.

i. All revenues received from the use of the Auditorium would be paid to the County as revenue, except for ticket sales for Events.

ii. All penalties or additional fees associated with the use of the Auditorium would be paid to the County as revenue.

b. To the Cultural Center.

i. All revenues generated from the ticket sales for Events in the Auditorium would be paid to the Cultural Center.

8. Appeals. All appeals concerning the use of the Auditorium, or any issues regarding the use of the Auditorium shall be heard by the Board of Commissioners at a regularly scheduled meeting. The Board of Commissioners shall have the final decision-making authority for all appeals.

9. Liability Coverage. The County shall be responsible for maintaining liability insurance for the Property and the Auditorium at an amount deemed reasonable by the County in its sole discretion. In addition to the responsibility of the County to maintain liability insurance, the individual or entity that uses the Auditorium shall be required to obtain liability coverage as described in the fee schedule, and the agreement entered into between the Cultural Center and the User.

10. Indemnity. To the extent allowed by law, the Cultural Center shall indemnify, defend and hold harmless the County, its elected and appointed officers, and its duly authorized agents, servants, and employees from any and all costs, expenses, or liabilities (including costs, expenses or liabilities to third parties and attorney's fees) which are caused by or arise from the Cultural Center's breach of this Agreement or the negligent or willful acts or omissions of the Cultural Center or its agents, servants, employees or subcontractors provided such cost, expenses or liabilities do not arise as a result of the negligent or willful acts or omissions of the County.

11. Capital Improvements Plan. The County and the Cultural Center shall enter into a non-binding Capital Improvements Plan ("CIP") which shall be drafted by County staff and Cultural Center staff. The intent of the CIP is to improve the overall experience at the Auditorium for all Lincoln County residents. The funding of said capital improvements shall be the responsibility of the County and shall require approval by the Board of Commissioners.

12. Alcohol on the Premises. The Cultural Center may, from time to time, but not more than eight (8) times per year, hold events at the Auditorium during which beer and wine may be sold in accordance with (i) a permit from the North Carolina Alcoholic Beverage Control Commission and (ii) any other permitting required under state or local laws. If the Cultural Center exceeds the above-stated allowance within a calendar year, then the Cultural Center may request for an additional waiver for each event from the County Manager. The sole discretion of whether or not to grant said waiver shall be that of the County Manager.

13. General Provisions

a. **Amendment.** Either party may request changes to this MOU. Any changes, modifications, revisions or amendments to this MOU which are mutually agreed upon by and between the parties to this MOU shall be incorporated by written instrument, and effective when executed and signed by all parties to this MOU.

b. **Governing Law and Venue.** The construction, interpretation and enforcement of this MOU shall be governed by the laws of the State of North Carolina. The courts of the State of North Carolina shall have jurisdiction over any action arising out of this MOU and over the parties, and the venue shall be Lincoln County.

c. **Entire Agreement.** This MOU represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations and agreements, whether written or oral.

d. **Severability.** Should any portion of this MOU be judicially determined to be illegal or unenforceable, the remainder of the MOU shall continue in full force and effect, and either party may renegotiate the terms affected by the severance.

e. **Non-Waiver.** Lincoln County and its governing body does not waive its sovereign immunity by entering into this MOU, and fully retains all immunities and defenses provided by law with respect to any action based on or occurring as a result of this MOU. To the extent any part of this MOU may be deemed a waiver of immunity of the County, it shall be interpreted in such a way (including, but not limited to, a deletion of such provision) as not to constitute a waiver thereof.

f. **No Third-Party Beneficiary Rights.** The parties do not intend to create in any other individual or entity the status of a third-party beneficiary, and this MOU shall not be construed so as to create such status. The rights, duties and obligations contained in this MOU shall operate only between the parties to this MOU, and shall inure solely to the benefit of the parties to this MOU. The provisions of this MOU are intended only to assist the parties in determining and performing their obligations under this MOU. The parties to this MOU intend and expressly agree that only parties signatory to this MOU shall have any legal or equitable right to seek to enforce this MOU, to seek any remedy arising out of a party's performance or failure to perform any term or condition of this MOU, or to bring an action for the breach of this MOU.

IN WITNESS WHEREOF, the parties to this MOU through their duly authorized representatives have executed this MOU on the days and dates set out below, and certify that they have read, understood, and agreed to the terms and conditions of this MOU as set forth herein.

LINCOLN COUNTY

BY: Bud Cesena

11-18-2024

Name: Bud

Date

Title: Vice Chairman Lincoln County Commission



LINCOLN CULTURAL DEVELOPMENT CENTER, INC.

BY: Cathy G Davis

11-18-24

Name: Cathy G. Davis

Date

Title: Executive Director

EXHIBIT "A"
(the Floor Plan)