

CULTURAL PROJECT COOPERATIVE USE AGREEMENT
(INCORPORATING CONSTRUCTION FUNDING AND LOCAL CONSTRUCTION
ADMINISTRATION)

This Cooperative Use Agreement (the "CU Agreement") is entered into and effective as of _____, _____, by and between the City of Columbus (the "City") acting by and through the Columbus Recreation and Parks Department as Project Sponsor (the "Project Sponsor"), and the State of Ohio (the "State"), acting by and through the Ohio Cultural Facilities Commission (the "Commission"), a state agency organized and operating under Ohio Revised Code (the "O.R.C.") Chapter 3383 (the "Act").

DEFINITIONS

The following capitalized terms shall have the following meanings throughout this CU Agreement. Capitalized terms not otherwise defined herein shall have the same meaning as such terms are defined in the O.R.C. or the Act.

"Act" means Chapter 3383 of the Ohio Revised Code.

"Auditor of State" means the State of Ohio Auditor of State.

"Bonds" means the State of Ohio Cultural and Sports Capital Facilities Bonds issued by the Treasurer of State pursuant to a General Bond Order dated August 31, 2005, as thereafter amended and supplemented.

"Business Plan" means a formal statement of a set of business goals, the reasons why such goals are believed attainable, and the plan for reaching such goals. It may be part of the Project Detail Form, together with other documents concerning the planning, funding and construction of the Cultural Project and the operation of the Facility.

"Commission" means the Ohio Cultural Facilities Commission.

"Commission Improvements" means any part of the Cultural Project paid for with proceeds of the Facility Bonds.

"Completion Date" means the date that the project has met the established final requirements for completion of the project, the date for which is set forth herein, in Article VII (Construction of Cultural Project), Section 3.

"Contractor" means any person providing labor or materials for the work contemplated by this CU Agreement, whether subcontractor, material men or otherwise, or any person acting on its behalf.

“CU Agreement” means this Cultural Project Cooperative Use Agreement (Incorporating Local Construction Administration and Funding), entered into and effective as of the date first above written.

“Cultural Project” means the capital improvements to the Facility, which may consist of constructing, reconstructing, rehabilitating, remodeling, renovating, enlarging, improving, altering, equipping and/or furnishing such facilities.

“Event of Default” means an occurrence that causes the failure to perform an act or obligation legally required, as defined in Article IX (Termination) of this CU Agreement.

“Facility” means the named Ohio cultural facility in accordance with Section 3383.01 (K)(2) of the Act which includes any capital facility in this state to which both of the following apply: (a) the construction of a cultural project related to the facility was authorized or funded by the general assembly pursuant to division (D)(3) of section 3383.07 of the Revised Code and proceeds of state bonds are used for costs of the cultural project, and (b) the facility is managed directly by, or is subject to a cooperative or management contract with, the Commission, and is used for or in connection with the activities of the commission, including the presentation or making available of culture to the public and the provision of training or education in culture. As used herein, “Facility” means the Bicentennial Park Amphitheater

“Facility Bonds” means the Bonds, together with any additional bonds issued by the State, all or a portion of the proceeds of which are used to finance improvements to the Facility.

“Full Funding” means that the Project Sponsor can demonstrate that the funds to pay for all hard and soft costs of the Cultural Project have been raised.

“General Assembly” means the General Assembly of the State of Ohio.

“General Building Services” means the same definition as set forth in Section 3383.01(F) of the Act, including, but not limited to, general custodial care, security, maintenance, repair, painting, decoration, cleaning, utilities, fire safety, grounds and site maintenance and upkeep, and plumbing.

“Governmental Authorities” means any governmental authority, including without limitation, any political subdivision, department, division, commission, agency or branch thereof, having jurisdiction over the Facility.

“I.R.C.” means the Internal Revenue Code of 1986, as amended, in Title 26 of the United States Code.

“Laws” means any statutes, ordinances, laws, rules, regulations, orders or notices, including any and all such laws pertaining to the Americans with Disabilities Act or

the Comprehensive Environmental Response, Compensation and Liability Act, any so called "Superfund" or "Superlien" law, the Toxic Substance Control Act, Ohio's Air Pollution Control Statute, Solid and Hazardous Wastes Statute, Water Pollution Control Statute, Petroleum Underground Storage Statute, or any other federal, state, or local statute, law, ordinance, code, rule, regulation, or order regulating or pertaining to contamination of the Facility by any hazardous substances, hazardous wastes, industrial wastes, other wastes, and/or petroleum, including but not limited to lead, asbestos, mold, radon, underground tanks, transformers, and toxic substances or any material affecting the health, safety or welfare of persons at the Facility.

"Local Match" means the contributions raised, or caused to be raised, by the Project Sponsor from sources other than the proceeds of the Facility Bonds.

"Local Share" means an amount equal to the total costs of the Cultural Project less the State Share.

"O.R.C." means the Ohio Revised Code.

"OPFC" means the Ohio Public Facilities Commission.

"OPFC Lease" means the lease agreement (the lease and the supplemental agreements together) entered into by the OPFC with the Commission dated August 1, 2005, as thereafter amended and supplemented.

"Operating Expenses" means all costs and expenses of operating the Facility, including without limitation, all expenses of providing General Building Services, all wages, benefits and taxes due to or to be withheld from the Project Sponsor's employees, any taxes levied, assessed or imposed upon personal property installed by the Project Sponsor or other persons in the Facility, all property and liability insurance required hereby, all printing and promotional expenses, and all taxes, assessments and utilities described in Sections 3 and 4 of Article IV (Repairs and Payment of Costs) of this CU Agreement.

"Prior Agreements" means any prior written agreements between the Project Sponsor and the Commission.

"Project Sponsor" means the organization with which the Commission, on behalf of the State of Ohio, has entered into this CU Agreement.

"Raised" means the receipt of either written pledges from credit-worthy entities, written funding commitments from governmental entities other than the State Share, written guarantees, cash receipts, or a combination of the foregoing.

"Resolution" means the resolution adopted by the Commission specified herein, which authorizes the execution of this CU Agreement and any other documents or other determinations and authorizations related to the Cultural Project.

“State” means the State of Ohio.

“State Appropriation” means the funds appropriated by the State to the Commission for the purpose of financing a portion of the costs of the Cultural Project.

“State Share” means a grant to the Project Sponsor, in an amount equal to the lesser of the State appropriation for the Cultural Project or the costs of the Cultural Project authorized for expenditure thereon by the Commission which shall be financed solely from the proceeds of the Facility Bonds.

“Treasurer” means the State of Ohio Treasurer of State.

RECITALS

1. Pursuant to O.R.C. Chapter 154, Article VIII Section 2i of the Ohio Constitution, and pursuant to a General Bond Order issued by the Treasurer on August 31, 2005, the Bonds were issued for the purpose of providing grant moneys to pay the costs of acquiring, constructing, reconstructing, rehabilitating, renovating, enlarging and otherwise improving, equipping and furnishing capital facilities, which are Ohio cultural facilities, as defined in Section 3383.01(K) of the Act.
2. The OPFC entered into the OPFC Lease pursuant to which the Commission will make lease rental payments, which will be assigned by OPFC to the Treasurer, in connection with Ohio cultural facilities.
3. The Commission is a body corporate and politic, an agency of state government and an instrumentality of the State, performing essential governmental functions of the State, duly created, existing and operating under and by virtue of the Act.
4. In accordance with Sections 3383.02(A) and 3383.04(C) of the Act, (a) the Commission shall engage in and provide for the development, performance and presentation or making available of culture to the public in this State, and the provision of training or education in culture, by the exercise of its powers under the Act, including the provision, operation, management and cooperative use of Ohio cultural facilities, and (b) the Commission may own, construct or provide for the construction of, lease, equip, furnish, administer, and manage or provide for the operation and management of, and cooperate in the use of, Ohio cultural facilities.
5. In accordance with Sections 3383.04(K) and (L) of the Act, the Commission may make and enter into all contracts, commitments and agreements, and execute all instruments, necessary or incidental to the performance of its duties and the execution of its rights and powers under the Act and do anything necessary or appropriate to carry out the purposes of and exercise the powers granted in the Act.

6. The Project Sponsor is a governmental agency as defined in Section 3383.01(G) of the Act and the Project Sponsor and the Commission wish to provide for the Cultural Project, consisting of the construction of, and the operation of, the Facility.
7. The 124th General Assembly of the State of Ohio in H.B. 675 appropriated \$1,000,000 to the Commission to finance all or a portion of the costs of the Cultural Project.
8. In accordance with Section 3383.07(A) of the Act, the Commission may determine that construction services for a cultural project be provided by the Commission, or a governmental agency or a cultural organization that occupies, will occupy, or is responsible for, the cultural facility. Construction services to be provided by such governmental agency or a cultural organization shall be specified in an agreement between the Commission and the governmental agency or cultural organization.
9. In accordance with Resolution No.R-09-22, adopted by the Commission on May 14, 2009, the Commission has determined that the Cultural Project meets all requirements of the Act and, subject to the fulfillment of certain conditions, has approved the expenditure of \$1,000,000 for the Commission Improvements.
10. In accordance with Section 3383.07(A) of the Act, the Commission has determined that the Columbus Downtown Development Corporation, on behalf of the Project Sponsor, being a cultural organization that owns and occupies, will occupy, or is responsible for, the Ohio cultural facility, shall be the construction administrator of the Cultural Project.
11. It is estimated that the total cost of the Cultural Project is approximately \$1,507,298. That portion of the Cultural Project constituting the Commission-funded improvements, construction of the amphitheater shall be paid for in whole by the Commission by a grant to the Project Sponsor, and such grant to the Project sponsor is financed with the proceeds of the Facility Bonds, together with any additional bonds issued by the State, all or a portion of the proceeds of which are used to finance improvements to the Facility and the remaining costs of the Cultural Project will be paid from the Local Share, as defined herein.
12. In accordance with Section 3383.07(C) of the Act, the Commission has determined that the Project Sponsor, as a governmental agency or cultural organization that occupies, will occupy, or is responsible for the Facility, shall provide the general building services, and the Project Sponsor is willing to assume responsibility for the provision of, and payment of costs of, such general building services for the Facility as provided herein.
13. Pursuant to Resolution No. R-09-22, adopted by the Commission on May 14, 2009, the Commission authorized the execution of this CU Agreement and determined that the cooperative use of the Facility, as provided in this CU Agreement,

contributes to the development, performance, and presentation of culture, or making the same available, to the public of this State.

14. The Commission and the Project Sponsor wish to outline the terms and conditions of the CU Agreement as soon as possible to facilitate the completion of the Cultural Project and the operation of the Facility.

In consideration of the mutual promises and covenants set forth herein, the parties agree as follows:

ARTICLE I USE OF APPROPRIATIONS

Section 1. Use of State Moneys. The Project Sponsor agrees that the State Appropriation shall be used exclusively to pay for the costs of the Commission Improvements. To the extent such costs exceed the State Appropriation, the Project Sponsor will be required to pay the difference. The Commission shall have no obligation hereunder to pay for costs of the Cultural Project which exceed the amount of the Facility Bonds for the Cultural Project authorized by the General Assembly.

Section 2. Not Indebtedness of the State. It is expressly understood and agreed by the parties hereto that the obligations of the Commission created by or arising from this CU Agreement shall not be, represent or constitute the indebtedness, bonded or otherwise, of the State or the Commission within the meaning of such term in the Constitution or the laws of the State or a pledge of the faith or credit of the State or grant to the owners or holders of the Bonds any right to have the General Assembly levy any excises or taxes for the payment of any sums due hereunder.

All obligations of the Commission hereunder relating to expenditures, except obligations which are to be paid from the proceeds of the Facility Bonds, are expressly subject to the availability of funds appropriated by the General Assembly to the Commission for such purposes in accordance with limitations imposed by the General Assembly and the IRC.

ARTICLE II OPERATION/OWNERSHIP

Section 1. General. The Project Sponsor shall operate and manage the Facility pursuant to the terms of this CU Agreement and in accordance with the terms of the O.R.C. and the Act. The Project Sponsor shall also:

- (a) (i) operate and manage, or arrange for the operation and management by or at the direction of the Project Sponsor, the Facility so as to maintain the Facility as a first-class facility of its type available to the general public of the State, and (ii) take any and all actions reasonably necessary to ensure that the Facility is operated and managed for the presentation of culture to the public of this State;

- (b) use the Project Sponsor's staff as necessary to ensure that the Facility is managed in the best interests of the Commission, the OPFC, the Treasurer, and the State for the presentation of culture as defined in Section 3383.01(A) of the Act;
- (c) cooperate with the Commission, the OPFC, the Treasurer, and the State in the construction of the Cultural Project and the resolution of any issues, questions or concerns which the Commission, the OPFC, the Treasurer, or the State may have about the management of the Facility;
- (d) coordinate the resolution of any and all issues with the Commission's, the OPFC's, the Treasurer's, and the State's employees, agents, and servants; and
- (e) exercise the highest degree of professional skill and competence in ensuring the Facility is properly managed in accordance with the requirements of this CU Agreement.

Section 2. Powers. The Project Sponsor shall have all necessary powers of management, in accordance with the Act, with full authority to do all acts not restricted or prohibited herein or by law that are necessary or desirable for the proper operation and management of the Facility; provided, however, that the Project Sponsor shall take out or sell licenses, enter into or execute contracts, and hire or discharge employees only on its own behalf.

Section 3. Schedule of Operation/Control of Content. The Project Sponsor shall determine if all or any part of the Facility shall remain open to the general public during construction. For those portions of the Facility that are closed to the general public during construction, the Project Sponsor shall, after the Completion Date, as defined herein, open the remaining portion of the Facility to the general public as soon as reasonably possible. The Facility shall be open on such dates and at such times as are typical of similar types of facilities, and to such persons as the Project Sponsor shall determine, all in accordance with rules and regulations established by the Project Sponsor.

During any term of this CU Agreement, the Project Sponsor shall have the exclusive authority to schedule events and functions at the Facility.

Nothing herein shall permit, or be deemed to permit, the Commission, the OPFC, or the Treasurer to require the cancellation of any scheduled use of the Facility without the consent of the Project Sponsor. The Commission, the OPFC, and the Treasurer shall not control the content or presentation by, any use by, or the selection of, persons using the Facility.

Section 4. Ownership. Any part of the Cultural Project paid for with proceeds of the Facility Bonds, being the Commission Improvements, shall be owned by the Project Sponsor.

Section 6. Conveyance of Right to Use and Occupy. As security for the performance of the Project Sponsor's obligations under this CU Agreement, the Project Sponsor hereby conveys to the Commission the right to use and occupy the Cultural Project upon the Event of a Default, as described in Section 1 of Article IX of this CU Agreement. The Project Sponsor acknowledges and consents to the conveyance by the Commission to the OPFC of such right hereby conveyed to the Commission and acknowledges that the OPFC will lease the Cultural Project to the Commission pursuant to the OPFC Lease. The Commission acknowledges that, absent an Event of Default, it has no right to use or occupy the Cultural Project.

ARTICLE III LOCAL MATCH/LOCAL SHARE/FULL FUNDING

Section 1. Contribution of Local Match. In accordance with Section 3383.07(D)(2) of the Act, the Project Sponsor shall provide, raise, or cause to be raised, from sources other than the proceeds of the Facility Bonds, the Local Match amounting to not less than fifty percent (50%) of the total state funding for the Cultural Project, the State Share. The Commission acknowledges and agrees that the nature and amount of the Local Match satisfies the requirement of Section 3383.07(D)(2) of the Act, and agrees to provide a grant to the Project sponsor equal to the State Share

Section 2. Local Share. The Local Share shall be an amount equal to the total costs of the Cultural Project less the State's Share. The apportionment of such costs between the Local Share and the State's Share are set forth on Exhibit A.

The source of the Local Share by the Project Sponsor is set forth on Exhibit B. Notwithstanding the foregoing, prior to the distribution of any State funds, the Executive Director shall, in her sole discretion, review the projected amounts and sources of the Local Share to ensure that there are sufficient funds to build the Cultural Project and fully fund the Cultural Project, as required in the Resolution.

Section 3. Full Funding. The Project Sponsor acknowledges that Full Funding of the Cultural Project occurs when it can demonstrate, to the satisfaction of the Executive Director of the Commission, in her sole discretion, that funds to pay for all hard and soft costs of the Cultural Project have been Raised, as hereinafter defined. These costs include but are not limited to design, construction, land acquisition, environmental assessment and remediation, exhibits, furniture, fixtures, equipment, construction management and other professional service fees, legal fees, marketing, start-up operations, operating endowments, utilities and other start-up costs, insurance, performance or payment bonds, taxes and permits.

ARTICLE IV REPAIRS AND PAYMENT OF COSTS

Section 1. Maintenance. The Project Sponsor agrees to maintain and keep the Facility in good order and repair, ordinary wear and tear and damage by insured casualty excepted. If structural or capital repairs or improvements to the Facility shall be required, whether as a result of ordinary wear or tear or otherwise, the Project Sponsor shall promptly repair the same at its own expense.

Section 2. General Building Services. The Project Sponsor shall provide all General Building Services for the Facility.

Section 3. Taxes and Assessments. The Project Sponsor shall pay and discharge, or cause to be paid and discharged, when the same shall become due and payable, and before any penalty, interest or costs accrue thereon or become due for any reason, all real estate taxes, levies, licenses and other assessments which are levied, confirmed, imposed upon or become due and payable out of, in respect to, or become a lien on, all or any part of the Facility or the use of the Facility, whether general or special, ordinary or extraordinary, unforeseen or foreseen, and of any kind and nature whatsoever, including, without limitation, personal property taxes, sales taxes, and income taxes, if applicable.

Section 4. Utilities. The Project Sponsor shall pay and discharge, or cause to be paid and discharged, when the same shall become due and payable and before any penalty, interest or costs accrue thereon or become due for any reason, all gas, water, steam, electricity, heat, power, telephone or other utility charges incurred in the operation, maintenance, use and upkeep of the Facility.

Section 5. Other Operating Expenses. The Project Sponsor shall pay and discharge, or cause to be paid and discharged, when the same shall become due and payable and before any penalty, interest or costs accrue thereon or become due for any reason, all other operating expenses of the Facility not otherwise described in Section 3 or 4 of this Article IV.

ARTICLE V COMPENSATION AND EXPENSES

Section 1. Fees for Service. The Project Sponsor shall receive, as compensation for its services under this CU Agreement, all of the sums the Project Sponsor is able to produce from the management of the Facility in excess of the Operating Expenses, as hereinafter defined, of the Facility. Such sums shall include charges for the use of the Facility, admission fees for persons viewing exhibits or performances or attending functions at the Facility, and the sale of concessions and incidentals.

Section 2. Operating Expenses. The Project Sponsor shall be solely responsible for, and shall pay, any and all Operating Expenses of the Facility.

ARTICLE VI REPRESENTATIONS OF THE PARTIES

Section 1. Commission Representations Regarding Facility. The Project Sponsor acknowledges that the Commission has not and does not make any representations or warranties to the Project Sponsor regarding the Facility.

Section 2. Use of Facility. The Project Sponsor represents and warrants that:

- (a) it is and will continue to be a governmental agency as defined in section 3383.01(G) of the Act;
- (b) it will not use or occupy, or permit the use or occupation of, the Facility for other than the lawful purposes described herein nor will it permit the Facility to be in violation of any statutes, ordinances, laws, rules, regulations, order or notices, including any Laws of Governmental Authorities;
- (c) it will comply with, or cause compliance with, all Laws, now or hereafter in effect, of any Governmental Authorities affecting the Facility, and will secure and maintain, or cause to be secured and maintained, all licenses and permits required by any Governmental Authorities for, the construction of the Cultural Project, or the use, maintenance, repair and operation of the Facility;
- (d) when constructed in accordance with the plans and specifications describing the Cultural Project, the Facility will be fit for its intended use as an Ohio cultural facility to be used as amphitheater
- (e) the Project Sponsor will obtain and keep in effect any and all approvals, permits and authorizations required by all Governmental Authorities to construct the Cultural Project;
- (f) it will not use or occupy, or permit the use or occupation of, the Facility for any business or purpose which would be deemed hazardous, or render the insurance thereon void or cause the insurance risk to be more hazardous;
- (g) it will not do or permit to be done any act or thing which might materially impair the value of the Cultural Project or the continued character of the Facility as an Ohio cultural facility, or commit or permit any material waste of the Cultural Project or the Facility;
- (h) it will take all legally required precautions for the safety of the Project Sponsor's employees at work and other persons in or about the Facility, be responsible for the prevention of accidents in or about the Facility, and regularly emphasize to its employees and other persons the need for continual attention to accident prevention efforts and strategies;

- (i) no notice has been received and no action has been commenced or threatened regarding the Project Sponsor's compliance with, or failure to comply with, any Laws of any Governmental Authorities;
- (j) the Project Sponsor is not aware of any matter or circumstance, currently existing or with the passage of time or notice, which would prevent the construction of the Cultural Project in a timely manner in accordance with the plans and specifications describing the Cultural Project;
- (k) the Project Sponsor will complete construction of the Cultural Project by the Completion Date, hereinafter defined, in a proper manner;
- (l) prior to the execution hereof, the Project Sponsor has not acted on behalf of, or held itself out as acting on behalf of, the Commission, the OPFC, the Treasurer or the State in taking out or selling licenses, entering into or executing contracts, performing the work contemplated hereunder, hiring or discharging employees or conducting the business of the Project Sponsor;
- (m) the Auditor of State has not issued a finding for recovery against the Project Sponsor and the Project Sponsor agrees to give notice to the Commission in the event such finding is made;
- (n) it will comply with, or cause compliance with, all appropriate accounting and budgeting procedures in accordance with generally accepted accounting principles, consistently applied;
- (o) the Project Sponsor hereby acknowledges that pursuant to O.R.C. Section 2909.33 (C), the State is prohibited from conducting business with any entity to which the aggregate compensation paid by the governmental entity exceeds \$100,000.00 in any fiscal year, unless the contracting entity shall certify to the governmental entity that it does not provide material assistance to any organization on the United States Department of State Terrorist Exclusion List;
- (p) The Project Sponsor hereby affirmatively represents and warrants to the State that it has not provided any material assistance, as that term is defined in O.R.C. Section 2909.33 (C), to any organization on the United States Department of State Terrorist Exclusion List;
- (q) Pursuant to O.R.C. Section 2909.33 (C), the Project Sponsor has provided, or will provide, the Commission with a completed declaration of material assistance/nonassistance as provided in O.R.C. Section 2909.33(A)]; and
- (r) in addition to those obligations in (a) - (q) above it will use its best efforts to prevent accident or injury to the Project Sponsor's employees and other persons in or about the Facility.

Section 3. Restrictions of Record. The Project Sponsor hereby represents and warrants that there are not now, and there will not be, any restrictions of record with respect to the Facility or the Cultural Project, including without limitation, any encumbrances, liens or other matters, which would interfere with or otherwise impair the use of the Facility as an Ohio cultural facility or the rights and obligations granted hereunder by the Project Sponsor to the Commission. The Project Sponsor represents that it is the fee simple owner of the premises on which the Facility is located, as described in Exhibit C attached hereto, and that the only restrictions of record with respect to the Facility or the Cultural Project are (a) any state of facts which an accurate survey might show, (b) all zoning regulations, restrictions, rules and ordinances, and other laws and regulations now in effect or hereafter adopted by any Governmental Authorities having jurisdiction over the Facility and (c) all matters of record pertaining to the Facility including the items identified on said Exhibit C.

Section 4. Business Plan. The Project Sponsor acknowledges that it has provided the Commission a Business Plan concerning the planning, funding and construction of the Cultural Project and the operation of the Facility. The Project Sponsor further warrants that construction of the Cultural Project will be in accordance with the Business Plan, including the costs of, and any changes to the scope of, the Cultural Project. The Project Sponsor agrees that it will immediately advise the Commission of any change in the construction of the Cultural Project from that described in the Business Plan.

Section 5. Negative Pledge; Prohibition Against Disposition. The Project Sponsor shall not assign, transfer, pledge or otherwise encumber all or any part of the Facility, including the Cultural Project, with any mortgage, security interest or lien, nor shall the Project Sponsor dispose of any part of the Facility, including the Cultural Project, without replacement or substitution with improvements substantially similar to those Commission Improvements provided for herein, without the prior written consent of the Commission, which consent shall not be unreasonably withheld.

ARTICLE VII CONSTRUCTION OF CULTURAL PROJECT

Section 1. Commencement. The Project Sponsor shall provide all construction services for the Cultural Project. By August 2010, the project sponsor shall commence or cause commencement of construction of the Cultural Project. Costs for Commission Improvements, currently estimated at \$1,000,000, shall be paid for by the Commission from the proceeds of the Facility Bonds available for such purpose. Additional costs of the Cultural Project shall be paid for from the Local Share.

Section 2. Construction Standards. The Cultural Project shall be completed substantially in accordance with the plans and specifications prepared by Keith Meyers of MSI. The Commission shall be notified of any material changes of which it has not previously been advised and shall have the opportunity to review, comment and generally consult on such changes. Material changes shall be those changes which

individually or in the aggregate are the lesser of ten percent (10%) of the Cultural Project costs or Fifty Thousand Dollars (\$50,000).

The construction of the Cultural Project shall be made in accordance with all applicable Laws of all Governmental Authorities, including without limitation, the Ohio Building Code as administered by the Division of Industrial Compliance at the Ohio Department of Commerce, or any successor agency thereto, all easements, rights and restrictions of record affecting the Facility.

Section 3. Completion; Delays. Subject to the provisions of the next succeeding paragraph, the Cultural Project shall be substantially completed on or before June 2011.

The Project Sponsor shall not be liable for any delay in the commencement of, or completion of, the Cultural Project, nor be deemed to be in default of Sections 1 or 3 of this Article if commencement or completion of the Cultural Project shall be delayed by (i) the Project Sponsor's inability to secure needed labor or materials, (ii) stormy or inclement weather, (iii) strikes, labor disputes, lockouts, work stoppages or like labor troubles, (iv) fire or other catastrophe, (v) acts of God, (vi) regulations or restrictions imposed by any governmental agency or authority, or (vii) any act, or failure to act, by the Commission, the Ohio Office of Budget and Management, the State of Ohio Controlling Board, or any other State board, commission or agency which delays commencement or completion of the Cultural Project, or otherwise impacts the Project Sponsor's ability to perform its obligations hereunder, except such acts or failure to act resulting from the acts or failure to act by the Project Sponsor.

In such event, the Commencement Date of construction, and the Completion Date of construction shall be postponed by the period of time equal to the delay caused by any such acts as defined above and approved by the Commission Executive Director in her sole discretion.

Section 4. Relationship between Parties. The Project Sponsor agrees to cooperate with the Commission in the construction of the Cultural Project and the resolution of any issues, questions or concerns which the Commission may have about the construction of the Cultural Project.

Section 5. Commission Meetings. The Project Sponsor agrees to have its representative, or another authorized agent thereof, attend and make such presentations as may be appropriate at any Commission meeting upon the request of the Commission's Executive Director.

Section 6. Warranties. The Project Sponsor shall endeavor to provide that any warranties in connection with work on the Commission Improvements or the Cultural Project run directly to the benefit of the Commission. If that is not possible, the Project Sponsor shall endeavor to provide that such warranties be assignable by the Project Sponsor to the Commission. If such warranties do not run directly to the Commission or cannot be assigned to the Commission, the Project Sponsor shall cooperate with the Commission in pursuing any remedies available under said warranties.

Section 7. Ownership of the Commission Improvements. All right, title and interest in the improvements constituting the Commission Improvements, and any substitutions, modifications or improvements made thereto in accordance with this Article VII, shall vest in the Project Sponsor.

ARTICLE VIII TERM

Section 1. Term. The term of this CU Agreement shall commence on the date hereof and, unless otherwise terminated as provided in this CU Agreement, shall expire on the later of (a) fifteen (15) years from the Completion Date, or (b) the date upon which all Facility Bonds issued to finance or refinance the grant to the Project Sponsor described in Section 2 of Article III of this CU Agreement, and all obligations of the Treasurer or other issuing authority to financial institutions, including without limitation any insurance company providing a credit support instrument, arising in connection with such Facility Bonds have been paid in full.

ARTICLE IX TERMINATION

Section 1. Events of Default - Termination. The Commission may, upon ten (10) days' prior written notice to the Project Sponsor, terminate this CU Agreement:

- (a) if the Project Sponsor fails to maintain its status as a governmental agency as defined in Section 3383.01(G) of the Act;
- (b) (i) upon cessation of construction of the Cultural Project for a period in excess of sixty (60) days for reasons other than those set forth in Section 3 of Article VII (Construction of Cultural Project) hereof or (ii) abandonment of the Cultural Project;
- (c) failure to commence construction on the Cultural Project by the Commencement Date or failure to complete construction of the Cultural Project by the Completion Date;
- (d) if the Project Sponsor shall become insolvent, make a general assignment for the benefit of creditors, be generally unable to pay its debts when they are due, or be a debtor in any receivership proceeding or any other proceeding brought under the federal Bankruptcy Act or similar act and not cause such proceeding to be terminated within thirty (30) days following the commencement thereof;
- (e) upon the determination by the Commission in its sole discretion of any material inaccuracy in any of the representations or a failure to abide with the warranties or covenants made by the Project Sponsor in Sections 2, 3 or 4 of Article VI

(Representations of the Parties), or in Articles VII (Construction of Cultural Project), XII (Insurance), XV (Tax Covenants) of this CU Agreement; or

- (f) except as provided in subsections (a) - (e) above, upon failure by the Project Sponsor to observe any covenant, condition, or agreement herein contained on its part to be performed or observed and the continuance of such failure without curing the same within a period of thirty (30) days after receipt of prior written notice of such failure; provided, in the case of any failure referred to in this clause (c) which cannot with diligence be cured within such thirty (30) day period, if the Project Sponsor shall proceed promptly and continuously to cure the same with diligence, then upon receipt by the Commission of a certificate of the Project Sponsor stating the reason that such failure cannot be cured within such time and stating that it is proceeding with diligence to cure the default, the thirty (30) day time period shall be extended as may be reasonably necessary to cure the default with due diligence.

Each of the foregoing is an "Event of Default."

Section 2. Remedies Upon Default. Whenever an Event of Default has occurred, the Commission may:

- (a) terminate this CU Agreement upon no less than ten (10) days' prior written notice; or
- (b) take whatever action at law or in equity may appear necessary or desirable to enforce performance and observance of any obligation, agreement or covenant of the Project Sponsor.

Upon termination of this CU Agreement after completion of the Cultural Project, for any reason other than at the stated expiration of its term, the Project Sponsor shall repay the Commission the percentage of the grant described in Section 2 of Article III of this CU Agreement equal to the ratio of (x) the number of months from the event triggering the reimbursement to the final scheduled maturity date of the Facility Bonds used to finance the grant to the Project Sponsor (y) the total number of months that such Facility Bonds are scheduled to be outstanding. Such repayment amount shall be calculated by the OPFC.

Notwithstanding the foregoing, if this CU Agreement is terminated prior to the Completion Date of the Cultural Project, the Project Sponsor shall immediately repay to the Commission the amount of state funds used to pay costs of the Cultural Project.

The requirements to make payment to the Commission as provided in this Section shall survive the termination of this CU Agreement.

ARTICLE X INSPECTION

Section 1. Inspection. The Commission reserves the right to enter the Facility and inspect it at all reasonable times for any purpose.

ARTICLE XI EMPLOYEES

Section 1. Employment. The Project Sponsor shall select, employ, pay, supervise, direct and discharge all employees it deems necessary for the management and operation of the Facility, in such numbers, at such wages, and with such benefits as determined by the Project Sponsor in its sole and reasonable judgment. In connection therewith, the Project Sponsor (a) shall deduct from the compensation of such employees and keep a record of all withholding and other taxes, contributions and deductions as are required by law or contract, (b) shall carry unemployment compensation insurance and workers' compensation insurance (including, when required by law, employer's liability insurance and compulsory non-occupational disability insurance) covering employees in amounts sufficient to comply with all statutory benefits as required by the laws of the State.

Section 2. Contracts. The Project Sponsor shall have the right and privilege to enter into contracts with, and to utilize the services of, such independent contractors as the Project Sponsor deems necessary for the management and operation of the Facility, upon such terms, provisions, and conditions as the Project Sponsor deems appropriate in its sole and reasonable judgment. In accordance with Section 2 of Article XIII (Contracting) hereof, the Project Sponsor shall not act on behalf of, or bind, the Commission, the OPFC, the Treasurer, or the State. This CU Agreement is not intended to grant to the Commission, the OPFC, the Treasurer, or the State the right to control the employees or employment practices of the Project Sponsor.

Section 3. Non-Discrimination. During the term of this CU Agreement, the Project Sponsor shall not discriminate in the hiring of employees or in entering into any contracts on the basis of race, creed, color, sex, national origin or ancestry, or sexual orientation.

ARTICLE XII INSURANCE

Section 1. Coverage. Unless otherwise stated, the Project Sponsor shall maintain, or cause to be maintained, at no cost or expense to the Commission, the insurance identified in this Article XII. Unless otherwise stated, such insurance shall remain in force at all times from the date hereof through the term of this CU Agreement, with companies authorized to do business in Ohio with a Best rating of at least A-.

The Project Sponsor shall provide that each policy names the Commission, the OPFC, the Treasurer and the State, as additional insureds and loss payees, as the case may be, as their interests may appear. The Project Sponsor shall provide a waiver of subrogation in favor of the Commission, the OPFC, the Treasurer and the State.

The Commission shall be given at least ten (10) days' prior written notice of any proposed modification, non-renewal or cancellation thereof and written notice of any submission of any claim within fifteen (15) days thereof.

The Project Sponsor shall furnish the Commission with certificates of insurance, evidence of payment of premiums thereon, and any amendments and endorsements to such policies on an annual basis and as the Commission may reasonably request from time to time. Any insurance which may be provided by the Commission shall not be contributory, but shall be excess only after the Project Sponsor's insurance shall have been exhausted.

The Project Sponsor warrants that it will comply with all conditions of each policy to assure that each policy is kept in full force and effect and that any and all insurance claims be made on a timely basis as required in the conditions of each of the following policies identified in this Article XII. The Project Sponsor and the Commission shall re-evaluate the adequacy of insurance coverages set forth below no less often than every three (3) years and at such time as the annual reports are required by Article XVIII (Reports) hereof. The Project Sponsor shall pay the deductible under any insurance policy required hereunder.

Section 2. Builder's Risk Insurance. From the date hereof and until the completion of the construction of the Cultural Project, the Project Sponsor shall maintain, or cause to be maintained, a Builder's Risk Insurance Policy for **[insert \$ amount – should be at a minimum, equal to the construction cost]** to insure against "Risks of direct physical loss" caused by or resulting from "Special" perils to all real and personal property intended for use in the construction of the Cultural Project, while at the project site, in transit or at any other location. Real and personal property shall include, but shall not be limited to, foundations, excavations, scaffolding, grading, filling, fences, sidewalks, paving, falsework, temporary buildings and structures, trees, grass, shrubbery, and plants.

In the event of loss or damage that causes the enforcement of any law or ordinance regulating construction, repair or use of property, the Builder's Risk Insurance Policy is to provide financing to demolish the undamaged property including the cost of clearing the job site and any increased cost of repair or reconstruction of the damaged and undamaged property. Reasonable extra costs of temporary repairs and expediting the repair of damaged property is to be included in the Builder's Risk Insurance Policy without limitation. These costs are to include, but are not limited to, overtime, express freight, and construction administrator services and expenses required to limit loss.

The limit of insurance on the property shall be no less than the full replacement cost. The perils of earthquake and flood are to be the same as required by the Cooperative Use Agreement.

Consequential loss resulting from delay in completion of the project caused by loss, damage or destruction to real or personal property by the "special" perils is to be insured in the amount of \$1 million.

Section 2. Commercial General Liability Insurance (ISO 1997 or later occurrence form).

The Project Sponsor shall maintain, or cause to be maintained, commercial general liability insurance to pay on behalf of the Project Sponsor claims for damages for "bodily injury," "property damage," "personal injury" and "advertising injury" as defined in the insurance policy which may arise out of, result from, or be incurred in connection with the Facility. The insurance should include coverage for "personal injury" and "advertising injury" the Project Sponsor has assumed in any contract or agreement.

The minimum coverage amount shall be no less than shall be no less than \$__ million per occurrence, \$__ million annual aggregate, with a \$__ million umbrella for the Cultural Facility.

Section 3. Special Form Property Insurance. The Project Sponsor shall maintain, or cause to be maintained, special form property insurance to insure against "risks of direct physical loss" **[if in a flood plain or otherwise requiring special perils, use the following and list the perils: "caused by or resulting from the "special" perils of _____,]** on or about the Facility belonging to the Project Sponsor, in an amount not less than the full replacement cost of the Facility.

Section 4. Workers' Compensation Insurance. The Project Sponsor shall comply with the Workers' Compensation Statute of the State of Ohio by purchasing the required insurance or by being qualified by the Bureau of Workers' Compensation to self insure this exposure. If self insured, the Project Sponsor will purchase an excess compensation policy for no less than \$1,000,000 each accident and \$1,000,000 each employee for disease.

Section 5. Employer's Liability Insurance. The Project Sponsor shall maintain, or cause to be maintained, employer's liability insurance to cover "bodily injury" by accident or disease including death at any time resulting from or sustained by any employee of the

Project Sponsor arising out of and in the course of his/her employment. The limits of insurance are to be \$1,000,000 each employee for "bodily injury" by accident or disease and \$1,000,000 "bodily injury" by accident or disease annual aggregate.

Section 6. Proceeds. Upon damage or destruction of any of the Cultural Project or Facility and a decision not to rebuild the Cultural Project or the Facility, proceeds of any insurance shall first be paid to the Commission, the OPFC, the Treasurer or the State, in an amount equal to the depreciated value of the Commission Improvements, as described in the CU Agreement. The balance of any insurance proceeds shall be paid to the Project Sponsor.

Section 7. Continuity of Insurance. The Project Sponsor shall ensure that the Facility is continually insured in accordance with this CU Agreement.

Section 8. Political Subdivisions. If the Project Sponsor is a governmental agency, as defined in ORC 3383.01(G), the Project Sponsor may satisfy, in whole, or any portion of the foregoing insurance obligations under this Article, by:

- (a) requiring that private entities that enter into contracts with the Project Sponsor for the operation or management of the Project Facility, hold harmless and indemnify the OPFC, the Commission, the Treasurer, or the State from any claim of any third party arising out of or related to the operation or management of the Project, including the costs of defense of any related action, suite or proceeding; or
- (b) purchasing and maintaining insurance in an amount to be determined by a qualified risk assessor to insure the OPFC, the Commission, the Treasurer and the State against liabilities, claims, costs, losses, and expenses, joint or several, imposed or asserted against the OPFC, the Commission, the Treasurer, and the State resulting from any claim of any third party arising out of or related to the Project, and such insurance shall name as additional insureds under such policy the OPFC, the Commission, the Treasurer, and the State; or
- (c) name the OPFC, the Commission, the Treasurer, and the State as additional insureds under a self insurance program or joint self insurance pool created under ORC 2744.08 or ORC 2744.081, respectively, and operated by or on behalf of the Project Sponsor.

If the Project Sponsor desires to avail itself of the alternate form of meeting its insurance obligations under this Section 8, the Project Sponsor shall provide to the Commission written certification, in a form acceptable to the Commission, setting forth how it meets the requirements of this Section 8 and the manner in which such insurance obligation(s) is being met under this Section 8.

ARTICLE XIII CONTRACTING

Section 1. Contracts. Subject to the provisions of Sections 2 and 3 of this Article XIII, and Section 4 of Article II (Operation/Ownership) hereof, the Project Sponsor shall have the full authority to contract with appropriate persons for the design and construction of the Cultural Project, including the Commission Improvements. Prior to entering into any contracts for said work, the Project Sponsor shall submit bid packages and proposed forms of contracts to the Commission and the Commission shall have the right to review, comment on and generally consult with the Project Sponsor regarding all such bid packages and contracts.

Section 2. Non-Binding. The Project Sponsor shall not act on behalf of, or hold itself out as acting on behalf of, the Commission, the OPFC, the Treasurer or the State in taking out or selling licenses, entering into or executing contracts, performing the work contemplated under this CU Agreement, hiring or discharging employees, or otherwise conducting the business of the Project Sponsor. Each contract entered into or executed by the Project Sponsor shall contain substantially the following provision:

"Each party hereto recognizes and agrees that the Ohio Cultural Facilities Commission, the Ohio Public Facilities Commission, the Treasurer of State of the State of Ohio and the State of Ohio are not bound by or liable under this contract or license, as applicable, and are not responsible for the acts or omissions of the City of Columbus, which is acting solely as an independent contractor."

The Project Sponsor shall not bind the Commission, the OPFC, the Treasurer or the State to any other person or entity. The Project Sponsor shall not commit any act or permit anything to be done inconsistent with the respective interests of the Commission, the OPFC, the Treasurer or the State.

Section 3. Prevailing Wage. The Project Sponsor agrees that no moneys shall be used for the construction of any portion of the Cultural Project, including the Commission Improvements, constituting Public Improvements (as defined in O.R.C. Section 4115.03) unless the laborers and workers engaged therein are paid prevailing wages pursuant to O.R.C. Section 4115.04. Any contractor performing work is also required to comply with the provisions, duties, obligations, and is subject to the remedies and penalties of O.R.C. Chapter 4115 entitled "Wages and Hours on Public Works."

Nothing in this Section shall affect the wages and salaries established for State employees under the provisions of O.R.C. Chapter 124 or collective bargaining agreements entered into by the State pursuant to O.R.C. Chapter 4117.

Section 4. Equal Opportunity. The Project Sponsor shall ensure that every contract for work on the Commission Improvements or the Cultural Project contain provisions by which each Contractor agrees as follows:

- (a) that in the hiring of employees, no Contractor shall, by reason of race, color, religion, creed, sex, sexual orientation, handicap or national origin, discriminate against any person who is qualified and available to perform the work described in this CU Agreement; and
- (b) that no Contractor shall in any manner discriminate against or intimidate any employee hired for the performance of the work described in this CU Agreement on account of race, color, religion, creed, sex, sexual orientation, handicap or national origin.

The Project Sponsor shall use its best efforts to cooperate with the State's equal employment opportunity coordinator, with any other official or agency of the State or federal government, which seeks to eliminate unlawful employment discrimination, and with all other State and federal efforts to assure equal employment practices under this CU Agreement.

Section 5. Steel. If the Cultural Project is, in whole or in part, supported by state capital funds, including moneys from the Education Facilities Trust Fund, then, with respect to the award of any contract relating to the Cultural Project, if any steel products are to be used or supplied in connection with all or any part of the Cultural Project, only steel products made in the United States as defined in O.R.C. Section 153.011, as amended, shall be used or supplied.

Section 6. Americans with Disabilities Act. All contracts entered into by the Project Sponsor or any Contractor thereto and all work resulting therefrom shall comply fully with all applicable requirements of the Americans with Disabilities Act.

Section 7. Competitive Bidding. To the extent reasonably possible as determined by the Project Sponsor, the Project Sponsor shall employ an open competitive bidding process in the selection of its contractors.

Section 8. Standardized Forms. The Project Sponsor will organize the project employing standardized forms for use by all consultants and contractors, including but not limited to Requests for Information (RFI's), professional services and contractor pay requests and change orders.

Section 9. Mechanics Liens. The Project Sponsor will establish a retainage/escrow system to ensure that no mechanics liens can be placed on the real property or the Cultural Project. All prime contracts and subcontracts must be required to include language in which the prime and subcontractors acknowledge and agree that liens can only be made against the retainage/escrow and not the property or the project.

ARTICLE XIV DISBURSEMENTS OF STATE APPROPRIATIONS

Section 1. Amount of State Appropriations. The parties acknowledge that, to date, the General Assembly has appropriated State Appropriations in an aggregate amount of \$1,000,000 to pay the costs of the Commission Improvements. The funds to be disbursed under this CU Agreement shall not exceed the lesser of (A) the amount of the State Appropriations or (B) the amount of funds (i) approved by the Commission and (ii) which comply with the conditions set forth in the Commission's resolution and this CU Agreement. If further appropriations are made by the General Assembly and the expenditure of all or a portion of such funds is approved by the Commission, this CU Agreement may be amended to reflect any such additional amounts.

Notwithstanding anything set forth above, the State Appropriation disbursed under this CU Agreement shall not exceed the lesser of (i) the aggregate appropriations by the General Assembly for the Cultural Project or (ii) twice the Local Match.

Section 2. Certification of Funds. The Project Sponsor expressly acknowledges that no payment of State Appropriation funds shall be made until such funds are released by the State Controlling Board. Each request for release of funds by the State Controlling Board must have the certification of the State Director of Budget and Management that sufficient moneys will be available to fund the anticipated expenditures associated with each request.

Section 3. Submission of Invoices. The Project Sponsor shall submit invoices to the Commission on a quarterly basis. Invoices shall be in compliance with Exhibit D, attached hereto and made a part hereof, including, but not limited to the certification contained in paragraph 5(a) of Exhibit D, or such other form as is approved by the Commission staff in its reasonable discretion. The invoices shall identify the total amount then due and payable, the State's share of the total amount due and payable, the Application and Certificate for Payment (AIA Document G702) or similar Commission approved form thereto, and any appropriate back-up documentation requested by the Commission staff in its sole discretion.

Upon receipt of invoices and all appropriate supporting information in the form approved by the Commission, the Commission shall use its best efforts to pay the Project Sponsor within thirty (30) days thereafter. If the invoice(s) submitted by Project Sponsor fail to meet all of the requirements set forth in Exhibit D, then the Commission shall have the right to withhold disbursement of funds for such invoice(s) until Project Sponsor has complied with all such requirements. Moreover, if Project Sponsor is in breach of this CU Agreement at the time of the submission of an invoice hereunder, and such breach is curable by the payment of money, the Commission may, but shall not be required to, withhold funds from any disbursement hereunder which is sufficient to cure such breach.

Section 4. Investment of State Funds. State Appropriations to the credit of the Cultural Project shall be held in the Commission's Cultural Facilities Building Fund and shall accrue interest in accordance with State law. Interest in the Cultural Facilities Building Fund shall accrue to the credit of the Commission and not the Project Sponsor.

ARTICLE XV TAX COVENANTS

Section 1. Arbitrage. The Project Sponsor shall not invest or use the proceeds of the grant described in Section 2 of Article III of this CU Agreement in any manner that would cause the Bonds to be "arbitrage bonds," within the meaning of Section 148 of the Code, and will perform all acts, including the payment of "rebate," within the meaning of Section 148(f) of the Code, necessary for the interest on the Bonds to be and to remain excluded from gross income for federal income tax purposes under the Code.

Section 2. Actions Taken. The Project Sponsor covenants that it will take, or cause to be taken, all actions that may be required of the Project Sponsor for the interest on the Bonds to be and remain excluded from gross income for federal income tax purposes and from treatment as an item of tax preference for purposes of the alternative minimum tax imposed on individuals and corporations under the Code, and will not take, or permit to be taken, any actions which would adversely affect such exclusion and such treatment.

Section 3. Tax Credits. The Project Sponsor covenants that it has received advice from qualified legal counsel (which may include counsel to the owner of the Facility) regarding the structuring of any tax credit transactions employed in regard to the Facility, that the nature of the bond financing and existence of this CU Agreement have been disclosed to the owner of the Facility and its counsel, and that such counsel has advised Project Sponsor that utilizing a grant funded from the proceeds of state issued tax exempt bonds and entering into this CU Agreement do not adversely affect the owner of the Facility's or Project Sponsor's ability to utilize such tax credits. Project Sponsor further covenants that it has provided the Commission with copies of the legal opinion(s) from qualified legal counsel which constitute the legal advice described herein.

ARTICLE XVI EMINENT DOMAIN

Section 1. Substantial Taking. If all, or substantially all, of the Facility is taken under the exercise of power of eminent domain by any governmental body or by any person, firm or corporation acting under governmental authority, this CU Agreement shall terminate on the date of such taking, except with respect to the obligations of the Project Sponsor arising prior to the termination date and any obligations that survive the termination of this CU Agreement.

For purposes of this Article XVI, the Project Sponsor shall determine in its sole discretion, after consultation with the Commission, if substantially all of the Facility is taken. The Project Sponsor agrees for purposes of this CU Agreement that "substantially all" of the Facility is taken if it is impractical or undesirable for the Project Sponsor to continue to use the remaining portion of the Facility as an Ohio cultural facility.

Section 2. Temporary Taking. If all, or substantially all, of the Facility is taken for a temporary time or in the event that less than substantially all of the Facility is taken, this CU Agreement shall continue in full force and effect and the obligations of the Project Sponsor hereunder shall continue as to the portion not affected.

Section 3. Notice. Each of the parties agree to immediately notify the other party hereto of any eminent domain proceedings commenced or threatened to be commenced against all or a portion of the Facility. Within sixty (60) days after a final determination by the governing authority is made and time for appeal of such determination has passed, or the time the "taking" actually affects the operation of the Facility, as determined by the Project Sponsor, whichever occurs first, the Project Sponsor shall provide written notice to the Commission that (a) substantially all of the Facility is to be taken, that this CU Agreement is to be terminated, and the date of such termination, which will be no less than thirty (30) nor more than sixty (60) days from the date of such notice, or (b) substantially all of the Facility is not taken and this CU Agreement shall remain in full force and effect.

Section 4. Proceeds. Any proceeds received from an award made in such eminent domain proceedings, including any amounts payable pursuant to any agreement with the governing authority which has been made in settlement of, or under threat of such taking, or pursuant to a sale in lieu of such taking, shall be paid as follows:

- (a) first, the depreciated value of the Facility Bonds as calculated pursuant to Article IX (Termination) hereof shall be paid to the Commission; and
- (b) second, the balance shall be paid to the Project Sponsor.

Notwithstanding the foregoing, if the amount the Commission receives pursuant to Section 4(a) above is less than the value of the Facility Bonds, as of the termination date, the Project Sponsor agrees to pay the Commission the difference between the depreciated value of Facility Bonds and the amount received pursuant to Section 4(a) above. The Project Sponsor shall only be liable to pay the difference from proceeds it receives pursuant to Section 4(b) above.

Should the condemning authority fail to expressly allocate the proceeds between the interests of the Commission and the interests of the Project Sponsor, as set forth above, the allocation shall be as follows:

- (a) first, an amount equal to the depreciated value of the Facility Bonds shall be paid to the Commission; and
- (b) second, the balance shall be paid to the Project Sponsor.

Section 5. Provisions Survive. The provisions of this Article XVI shall survive the expiration or termination of this CU Agreement.

ARTICLE XVII DAMAGE

Section 1. Damage. For purposes of this Section, the Project Sponsor shall determine in its sole discretion, after consultation with the Commission, if all or any part of the Facility is damaged, as described below. If all or any part of the Facility shall be damaged by fire, flood, windstorm or other casualty covered by insurance, the Project Sponsor, in its sole discretion, may repair or restore the Facility as an Ohio cultural facility, with such changes as may be necessary or desirable in the judgment of the Project Sponsor.

Within sixty (60) days of the date of such casualty, the Project Sponsor shall notify the Commission whether (a) it elects to repair or restore the Facility, provided it shall first provide evidence satisfactory to the Commission that sufficient funds are available for the contemplated restoration, or (b) it elects to terminate this CU Agreement, and the date of termination, which shall be no less than thirty (30) nor more than sixty (60) days from the date of the notice.

Section 2. Repair Schedule. If the Project Sponsor elects to repair or restore the Facility, the Project Sponsor shall commence to repair the Facility no later than six (6) months after notice thereof to the Commission, or within such longer period of time as the Commission shall consent, which consent shall not be unreasonably withheld. The Project Sponsor shall proceed with all dispatch to complete the repair and restoration.

Section 3. Proceeds. All insurance proceeds resulting from claims with respect to an insured casualty shall be applied as follows:

- (a) if the Project Sponsor elects to repair or restore the Facility, first to the repair or restoration of the Facility to the same quality and condition as existed prior to the casualty, or with such modifications as Project Sponsor deems appropriate and, second, in the event any proceeds remain after payment of such costs, the remaining proceeds shall be distributed to the Project Sponsor; or
- (b) if the Project Sponsor does not elect to repair or restore the Facility, first, to pay the Commission the depreciated value of the Facility Bonds, as of the date of termination, and second, in the event any proceeds of insurance

remain after payment of such costs, the remaining proceeds shall be distributed to the Project Sponsor.

Section 4. Repairs. If capital repairs or improvements to the Facility shall be required as a result of ordinary wear or tear, the Project Sponsor shall promptly repair the same at the Project Sponsor's own costs.

ARTICLE XVIII REPORTS

Section 1. Construction Reports. The Project Sponsor shall provide the Commission with reports The Project Sponsor shall provide the Commission with reports upon request within a reasonable amount of time by the 15th day of the month following the quarter being reported, during construction of the Cultural Project. Such reports shall be signed by the authorized representative of the Project Sponsor and the general contractor, if any, and shall include such information as the Commission may reasonably request as of the end of the appropriate reporting period:

- a) Executive Summary - To contain a summary of relevant issues which occurred during the reporting period
- b) Design – New documents for bidding, description of work, dates schedule for release, the design status, any changes to the original design and any other issues regarding design.
- c) Financial – (i) originally estimated Cultural Project costs, (ii) budget modifications made to costs in (i), (iii) total Cultural Project costs to date, (iv) retainage, if any.
- d) Construction schedule – (i) task or activity description, (ii) original construction schedule start and completion dates by task, (iii) amended construction schedule start and completion dates by task, if any, (iv) percent of task completed to date.
- e) Photographs – A complete set of photographs documenting construction progress to date.
- f) Critical Issues – Any issues which would adversely affect the Cultural Project construction, including but not limited to, schedule, costs, permits, safety, contract performance, contractor or subcontractor, materials supply or governmental approvals.

Section 2. Contracts. The Project Sponsor shall provide the Commission with copies of all contracts within fifteen (15) days of being awarded. For prime contracts let during an earlier reporting period, but for which payment has been made during the reporting period, the Project Sponsor shall provide (a) identification of the contract, (b) the original contract amount, (c) the amount of change orders and contract modifications thereto, (d) the revised contract amount, (e) the amount expended thereon during the applicable

reporting period and to date and the amount expended from project inception to date, (f) the amount of retainage, if any, and (g) the contract amount remaining to be paid.

Section 3. Insurance Reports. The Project Sponsor shall provide the Commission with all certificates or documents required by Article XII (Insurance) hereof.

Section 4. Inspection of Cultural Project/Facility. Upon twenty-four (24) hours notice, representatives of the Commission shall be permitted to enter upon and inspect the construction site of the Cultural Project and the Facility. Such inspections shall occur as frequently as is determined appropriate in the Commission's sole discretion. The Project Sponsor shall cooperate fully in said inspections and shall use its best efforts to insure that the Commission's representative is accompanied by a representative of the general contractor, if any, or the Project Sponsor on the inspection tour.

Section 5. Cultural Project Meetings. If requested by the Commission, the Project Sponsor shall designate a person as its representative for the Cultural Project. The Project Sponsor's representative shall establish a schedule of project meetings to review and oversee the status of construction of the Cultural Project. Such meetings shall include representatives of the Project Sponsor and the individual contractors as determined appropriate by the Project Sponsor. The representative shall provide the Commission with a schedule of such meetings, no less than fifteen (15) days prior to such meeting, and a representative of the Commission shall be permitted to attend such meetings. Special meetings shall be held in the discretion of the Project Sponsor's representative for the Cultural Project. Notice of such special meetings shall also be given as soon as possible to the Commission with sufficient time for Commission staff to attend.

If the Commission does not request project meetings, the Project Sponsor shall designate a principal contact with whom the Commission can secure such information about the Cultural Project as the Commission requests. Minutes of any meetings shall be provided to the Commission within seven (7) days thereof.

Section 6. Annual Reports. The Project Sponsor's fiscal year end date is December 31. Unless otherwise indicated, within four (4) months of the Project Sponsor's fiscal year end date of each fiscal year during the term of this CU Agreement, the Project Sponsor shall provide to the Commission:

- (a) a written report, in such form and with such detail as the Commission may reasonably request, of the uses made of the Facility during the preceding fiscal year;
- (b) a projected schedule of events and functions for the current fiscal year;
- (c) a certification by an authorized officer of the Project Sponsor that the Project Sponsor during the preceding fiscal year has taken and caused to be taken all actions that may be required of it for the interest on the Bonds to be and to

remain excluded from gross income for federal income tax purposes under the I.R.C. and not to become an item of tax preference directly subject to the alternative minimum tax imposed by Section 55 of the I.R.C.;

- (d) documents required pursuant to Article XII (Insurance), Section 1 hereof;
- (e) audited financial statements of the Owner from the most recent fiscal year ended.

Section 7. Recordkeeping. The Project Sponsor shall maintain current and accurate records and accounts of all transactions pertaining to the construction and management of the Facility, such records and accounts to be maintained on an accrual basis in accordance with generally accepted accounting principles consistently applied. The Project Sponsor shall retain all cancelled checks, employment records, and records of disbursements with respect to the management of the Facility for a minimum of seven (7) years. The Commission shall have the right to inspect, copy, at its own expense, and audit all such records, accounts and checks during all business hours. The Commission shall have the right, at the time of inspection or audit, to take temporary possession of all such records and accounts, including but not limited to, cancelled checks and all records relating to the compensation of the Project Sponsor's officers, employees, agents, and servants.

Section 8. Emergency Procedure Manual. Prior to the opening of the Facility to the general public, and no less than once every three (3) years thereafter, the Project Sponsor shall prepare and submit to the Commission for its approval an emergency procedures manual for use by the Project Sponsor's officers, employees, agents and servants in times of emergencies. Such manual shall include, among other things, a designation of the person or persons who shall be in charge of the Facility and the procedures to be followed under various listed emergencies identified by the Commission. If the Commission does not approve the emergency procedures manual, the Project Sponsor and the Commission shall collaborate in the preparation of a new manual.

Section 9. Additional Reviews. Pursuant to Section 3383.03(C) of the Act, the Commission may, upon reasonable request from time to time, conduct reviews or inspections of the Facility to determine whether the uses made thereof are consistent with the Commission's purposes, including the presentation of culture to the public.

Section 10. Inquiries. The Project Sponsor shall promptly respond to inquiries, complaints and requests from the Commission, the OPFC, the Treasurer, or the State relating to the construction or management of the Cultural Project and Facility.

ARTICLE XIX ASSIGNMENT

This CU Agreement and any rights, duties or obligations described in this CU Agreement shall not be assigned by the Project Sponsor without the prior written consent of the Commission.

ARTICLE XX RECOGNITION/NOTICES

Section 1. Recognition. The Project Sponsor shall provide, or cause to be provided, recognition of the State's participation and/or funding on any of the following that exists or is produced: (a) construction signage, (b) printed materials for groundbreaking and/or opening events, printed materials acknowledging the contributors to the creation, rehabilitation or expansion of the Cultural Project and Facility, and (c) a plaque on the Facility or any temporary or permanent donors acknowledgment.

Further, the Project Sponsor shall invite the Commission to any groundbreaking or opening events. Further, the Project Sponsor shall give verbal recognition to the Commission and at the Commission's discretion, provide a speaking opportunity to a representative of the Commission at any groundbreaking or opening events.

The format and wording of the recognition of the State's participation shall be approved in advance by the Executive Director of the Commission, in her sole discretion.

Section 2. Notices, Demands. All notices, demands, requests, consents, approvals and other communications required or permitted to be given pursuant to the terms of this CU Agreement shall be in writing and shall be deemed to have been properly given if hand delivered or sent by U.S. registered or certified mail, postage prepaid.

(a) with respect to the Commission:

Ohio Cultural Facilities Commission
20 East Broad Street, Suite 200
Columbus, Ohio 43215-3416
Attention: Executive Director
with additional copy sent to:

Attorney General State of Ohio
30 East Broad Street, 17th Floor
Columbus, Ohio 43215
Attention: Business Counsel Section

(b) with respect to the Project Sponsor:

Recreation and Parks

1111 East Broad Street
Columbus, OH 43205
Attention: Director of Recreation and Parks

The parties designated above shall each have the right from time to time to specify as their respective address for purposes of this CU Agreement any other address upon the giving of fifteen (15) days' prior written notice thereof, as provided herein, to the other parties listed above.

ARTICLE XXI INTERPRETATIVE PROVISIONS

Section 1. Compliance with Law. The Project Sponsor hereby agrees to comply with all applicable federal, state and local statutes, ordinances, codes, and regulations, including without limitation, the smoke free and drug free workplace laws and all environmental laws and regulations.

Section 2. Separability. Each provision hereof shall be separate and independent and the breach of any provision by either party hereto shall not discharge or relieve the other party from its obligations to perform each and every covenant to be performed by it hereunder. If any provisions hereof (or the application thereof to any person, firm or corporation or to any circumstances) shall be deemed invalid or unenforceable by any court of competent jurisdiction, the remaining provisions of this CU Agreement (or the application of such invalid provision to such persons, firms or corporations or circumstances other than those as to which it is invalid or unenforceable), shall not be affected thereby, and said provisions hereof shall be valid and enforceable to the fullest extent permitted by law.

Section 3. Rights Cumulative. All rights and remedies of the parties hereto shall be cumulative and, except as specifically contemplated otherwise by this CU Agreement, none shall exclude any other right or remedy allowed at law or in equity, and said rights or remedies may be exercised or enforced concurrently.

Section 4. Waiver. The waiver by any party hereto of, or the failure of such party to take action with respect to, any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of any other term, covenant or condition herein contained, or subsequent breach of the same, or any other term, covenant or condition herein contained.

Section 5. Binding Effect. All of the covenants, conditions and obligations contained in this CU Agreement shall be binding upon and inure to the benefit of the respective permitted successors and assigns of the Commission and the Project Sponsor to the same extent as if each such successor and assign were named as a party to this CU Agreement. This CU Agreement may not be changed or discharged except by a writing signed by the parties hereto.

Section 6. Execution in Counterparts. This CU Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 7. Governing Law. This CU Agreement shall be governed by and interpreted under the laws of the State of Ohio, and any action or proceeding arising from this CU Agreement shall be commenced in a court of competent jurisdiction located in Franklin County, Ohio.

Section 8. Captions. The captions of this CU Agreement are for convenience only and are not to be construed as part of this CU Agreement and shall not be construed as defining or limiting in any way the scope or intent of any provisions hereof.

Section 9. Time. Time is of the essence in this CU Agreement.

IN WITNESS WHEREOF, the Commission and the Project Sponsor have caused this CU Agreement to be executed by their duly authorized representatives as of the day and year first above written.

Signed in the presence of:

THE CITY OF COLUMBUS

Signature

Printed Name

By: _____
Alan McKnight,
Director of Recreation and Parks

Signature

Printed Name

Pursuant to City Ordinance # _____-2009

Signed in the presence of:

STATE OF OHIO, ACTING BY AND
THROUGH THE OHIO CULTURAL
FACILITIES COMMISSION

Signature

Printed Name

By: _____
Kathleen M. Fox, Executive Director

Signature

Printed Name

Approved as to form:

Richard Cordray, Ohio Attorney General
on attached approval form dated: _____

EXHIBIT A

LOCAL MATCH, LOCAL SHARE, STATE SHARE, TOTAL COST

Local Match	\$ 500,000
Local Share	\$ 507,298
State Share	\$1,000,000
Total Cost	\$ 1,507,298

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EXHIBIT B

NATURE OF LOCAL SHARE

County Government	\$ 507,298
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EXHIBIT C

**PROPERTY DESCRIPTION
RESTRICTIONS, ENCUMBRANCES AND LIENS**

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EXHIBIT D

ADDITIONAL REQUIREMENTS FOR REIMBURSEMENT OF COSTS RELATED TO CULTURAL FACILITY'S COMMISSION IMPROVEMENTS RIVER SOUTH PROJECT

1. Payment by the Commission to the Project Sponsor shall be on a pro rata basis (in amount equal to a fraction of the invoice with the numerator being the State Share of Total Costs of the Cultural Project and the denominator being the total cost of the Cultural Project) over the length of the construction of the Cultural Project unless otherwise approved by the Executive Director of the Commission in her sole discretion.
2. All invoices shall be submitted by the Project Sponsor to the Commission on a monthly basis, unless otherwise approved in writing by the Executive Director of the Commission, in her sole discretion.
3. Subject to Section 4 below, if the invoices to the Commission request a payment of funds in excess of the funds then appropriated by the General Assembly and available to the Commission, such invoices shall be marked "Draft" on the cover page. Within thirty (30) days of receipt of such draft invoice, the Commission will review such invoice and notify the Project Sponsor as to whether or not the invoice is acceptable. Acceptable invoices and their supporting documentation will be held by the Commission until (a) additional appropriations for the Cultural Project, if any, are effective, (b) State Funds are available to pay costs for such Cultural Project, (c) the additional expenditures are approved by the Commission and (d) such funds are released by the Controlling Board, all in accordance with State law. Thereafter, the Project Sponsor may submit a final invoice for payment of all previously accepted draft invoices. If no further appropriations are made, or if expenditures are not approved, the Commission shall not be required to pay such funds, and the requested payment shall be considered denied.
4. Except for draft invoices described above, invoices containing charges for work that is more than one (1) year old at the time the invoice is received by the Commission will not be accepted or approved, unless otherwise approved by the Executive Director of the Commission, in her sole discretion.
5. Invoices will be organized in the following manner:
 - (a) The cover letter is to be signed and dated by an appropriate representative of the Project Sponsor with his or her name and title printed thereon. The Invoice shall contain the following certification language signed and dated by the person or persons responsible for the accuracy of the invoices and familiar with the status of completion of the work:

"By signing below, I certify that the charges being invoiced for have been paid and are for actual work completed on the River South Project for the period from _____ to _____, and the charges are true, accurate and appropriate and that no liens have been filed on the Cultural Project or the Facility. I further certify that all work has been done in compliance with all applicable laws, including but not limited to prevailing wage law."

- (b) A summary sheet, in the form of Attachment 1 hereto, shall be included with the Cover Invoice. The summary sheet will include the following information for each contract: the contractor name and number, the type of work or bid package, the initial contract amount, the total change orders, the total contract amount, the last payment application date, the payment application number, the total work completed to date, the retainage, if any, the total work completed minus retainage, if any, all previous payments, the amount to be paid on the invoice with a sample format attached.
 - (c) Supporting documents will accompany all invoices. These documents include:
 - (i) copies of complete contractor pay requests including:
 - cost breakdown including unit/unit cost, amount per unit and total cost;
 - approval by the Project Sponsor or Project Sponsor's representative for payment;
 - approval by the architect or construction manager, if applicable;
 - current date;
 - invoice number; and
 - date of service.
 - (ii) copies of all approved change orders. Field work orders, construction change directives, or similar charges, shall not be paid until change orders are finalized and approved;
 - (iii) copy of check wire transfer or other proof of payment of the invoice; and
 - (iv) for professional services contracts, reimbursable expenses that will be paid by the Commission include only the following: copying costs, delivery charges, and travel expenses. All reimbursable expenses must be properly documented with receipts and must be reasonable charges as determined in the sole discretion of the Executive Director of the Commission. Travel expenses must be documented in accordance with relevant IRS guidelines regarding the substantiation of reimbursable work expenses.
6. In accordance with the current Capital Bill, appropriations made in the Act for buildings and structures including remodeling and renovations, are limited to the following:
- (a) acquisition of real property or interest in real property;

- (b) building and structure, which includes construction, demolition, lighting, and lighting fixtures, and all necessary utilities, heating and ventilating, plumbing, sprinkling, and sewer systems, when such systems are authorized or necessary;
- (c) architectural, engineering, and professional services expenses directly related to the projects, subject to prior approval by the Commission;
- (d) machinery that is a part of the structures at the time of initial acquisition or construction;
- (e) acquisition, development, and deployment of new computer systems, including the redevelopment or integration of existing and new computer systems, but excluding regular or ongoing maintenance or support agreements; and
- (f) equipment that meets all the following criteria:
 - (i) the equipment is essential in bringing the facility up to its intended use;
 - (ii) the unit cost of the equipment, and not the individual parts of a unit, is approximately \$100 or more;
 - (iii) the equipment has a useful life of five (5) years or more; and
 - (iv) the equipment is necessary for the functioning of the particular facility or project.

No equipment shall be paid for from these appropriations that is not an integral part of or directly related to the basic purpose or function of a facility or project for which moneys are appropriated. This does not apply to line items for equipment.

An inventory list shall be kept of all fixtures, furniture and equipment where the cost was reimbursed by the Commission. Items listed on the inventory shall be kept, and shall remain in good repair, for the entire Term of the CU Agreement. If an item cannot be repaired, it shall be replaced in kind.

**Attachment 1
Summary Sheet**

Project Sponsor: _____

Date: _____ **Drawdown Number:** _____

Work Category	Contractor Name & Number	Initial Contract Amount	Change Orders	Total Contract Amount	Last Application Date	Application Number	Total Work Completed to Date	Retainage	Amount Minus Retainage	Less Previous Payments	Amount Paid This Month
General											
General Conditions											
Demolition											
Site Work											
Structural Steel											
Roofing											
Masonry											
Misc. Metals											
Glass											
Plaster/ Drywall											
Plumbing											
HVAC											
Electrical											
Fire Protection											
TOTAL											
Initial Project cost per state approval											
Initial contingency per state approval											
Contingency less current Change Orders to date											
Total Invoice Amount											
Total Construction Cost											
Total State Appropriation											
Percent of Invoice to be Reimbursed = Total State Appropriation/Total Construction Cost											
Total Amount to be Reimbursed											

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