CULTURAL PROJECT COOPERATIVE USE AGREEMENT

[Insert Project Name]

This Cooperative Use Agreement (Agreement) is entered into by and between [Insert Legal Name], as the Project Sponsor (Project Sponsor), and the State of Ohio (State), acting by and through the Ohio Facilities Construction Commission (Commission), a state agency organized and operating under Ohio Revised Code (ORC) Chapter 123 (the Commission and the Project Sponsor, collectively, the Parties). This Agreement becomes effective upon the date it is signed by all of the Parties (Effective Date).

RECITALS

1. Pursuant to ORC Chapter 154, Article VIII Section 2i of the Ohio Constitution, and pursuant to a General Bond Order issued by the Ohio Treasurer of State (Treasurer) on August 31, 2005, bonds (Facility 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 ORC Section 123.28(J).

2. The Ohio Public Facilities Commission (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 ORC Chapter 123.

4. In accordance with ORC Section 123.21, 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.

5. The Commission has determined that the Cultural Project defined herein meets all requirements of the ORC and, subject to the fulfillment of certain conditions, has approved the expenditure for the project.

6. The Commission, by action of the executive director, authorized the execution of this Agreement and determined that the cooperative use of the Facility, as provided in this Agreement, contributes to the development, performance, and presentation of culture, or making the same available, to the public of this State.

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

1. Identification

1.1 Project Sponsor Information
Organization Name
Organization Address
Organization City, State, Zip Code
Contact Name
Contact Title
Contact address (if different than above)
Contact e-mail
Contact phone

The Project Sponsor identified above represents and warrants that **[insert language for non-profit**:**]** it is and will continue to be:

(a) a 501(c)(3) organization exempt from taxation under 501(a) of the Internal Revenue Code of 1986, as amended;
(b) duly organized and validly existing as a non-profit organization established under the laws of the State;
(c) in good standing with the Ohio Secretary of State; and
(d) in compliance with the laws enforced by, and has made all required filings with, the Charitable Law Section of the Attorney General's Office of the State of Ohio.

[or insert language for governmental agency:**]** it is and will continue to be a governmental agency as defined in ORC Section 123.28(F).

1.2 Notices for Official Correspondence
All communications required or permitted to be given pursuant to the terms of this 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 Facilities Construction Commission
30 West Spring Street, 4th Floor
Columbus, Ohio 43215
Attention: Executive Director

(b) with respect to the Project Sponsor:

«LegalName»
«SponsorAddress»
«SponsorCity», «SponsorState» «SponsorZipCode»

Attention: Title not name of person

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

2. Project Information

2.1 Project Location
Insert location of facility to be renovated/constructed (the Facility)

2.2 Project Description
The Project Sponsor plans to use the grant [Insert project name and description of construction project to be completed. The construction project will be known herein as the Cultural Project for the purposes of this agreement. This project supports culture by [insert description]

3. Financial Considerations

3.1 Grant Amount
The [GA#] General Assembly of the State of Ohio (General Assembly) in [insert bill#] appropriated [Appropriation line item number] totaling [Appropriation amount] to the Commission to finance all or a portion of the capital facilities costs associated with the Cultural Project. The Commission agrees to provide a grant of insert Grant Amount (Grant Amount) to the Project Sponsor.

3.2 Appropriation Intent
The funds under this Agreement shall be used by the Project Sponsor for capital improvements that meet the intent and purpose of the appropriation and the limitations on use set forth in the bill appropriating the funds. To the extent such costs exceed the funds appropriated, the Project Sponsor will be required to pay the difference. Additionally, the funds shall be used only for construction, as defined in ORC Section 123.28(K).

3.3 Fiscal Management of Project
The Project Sponsor is responsible for the financial management of the Cultural Project. The Project Sponsor will comply with, or cause compliance with, all appropriate accounting and budgeting procedures in accordance with generally accepted accounting principles, consistently applied.

3.4 Project Budget
The total cost of the project described above is estimated to be [Insert total cost of project] (Project Budget), including but 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.

3.5 Local Match
In accordance with ORC Section 123.281(B)(2), the Project Sponsor shall have local contributions amounting to not less than fifty (50) percent of the Grant Amount for the Cultural Project (Local Match).

3.6 Local Share
The Local Share shall be an amount equal to the total costs of the Project Budget less the Grant Amount.

3.7 Full Funding
The Project Sponsor acknowledges that full funding occurs when it can demonstrate, to the satisfaction of the Commission, that funds have been raised to cover the Project Budget set forth in Section 3.4 of this Agreement (Full Funding).

3.8 Disbursement of Grant Funds
The funds to be disbursed under this 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 this 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 Agreement may be amended to reflect any such additional amounts.

Notwithstanding anything set forth above, the state appropriation disbursed under this 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.

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.

The Project Sponsor shall submit invoices to the Commission in compliance with Exhibit A, attached hereto and made a part hereof.

3.9 Tax Obligations
The Project Sponsor shall be solely responsible for and shall pay all applicable federal, state, and local tax obligations.

The Project Sponsor affirms that it will take, or cause to be taken, all actions that may be required of the Project Sponsor for the interest on the Facility 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 Internal Revenue Code, and will not take, or permit to be taken, any actions which would adversely affect such exclusion and such treatment.

4. Real Estate and Construction

4.1 Commencement
The Project Sponsor shall provide all construction services for the Cultural Project. The Project Sponsor shall be responsible for the construction administration of the Cultural Project. By [Insert Commencement Date], the Project Sponsor shall commence or cause commencement of construction of the Cultural Project.

4.2 Contracts and Permits
The Project Sponsor shall have the full authority to contract with appropriate persons for the design and construction of the Cultural Project. The Project Sponsor shall secure all necessary permits and/or licenses related to the Cultural Project.

4.3 Completion
The Project Sponsor represents and warrants that it will cause the Cultural Project to be constructed with reasonable speed and dispatch and reasonably adhere to the submitted construction schedule. The expected completion date of the Project is Insert Completion Date (Completion Date).

4.4 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 [Insert either fee simple owner] or [owner of a leasehold interest] of the premises on which the Facility is located, as described in Section 2.1 of this Agreement.

5. Operations and Maintenance

5.1 Operations and Maintenance
The Project Sponsor shall be solely responsible for and shall pay all operating and maintenance costs of the Facility over the term of the Facility Bonds.

The Project Sponsor shall maintain and keep the Facility in good order and repair, shall use the Facility for the intended purpose, and shall take all actions reasonably necessary to ensure that the Facility is available for the presentation of culture to the public over the term of the Facility Bonds.

5.2 Schedule of Operation/Control of Content
During the term of this Agreement, the Project Sponsor shall have the exclusive authority to schedule events and functions at the Facility.

5.3 Ownership
Any part of the Cultural Project paid for with proceeds of the Facility Bonds shall be owned by the Project Sponsor.

5.4 Conveyance of Right to Use and Occupy
As security for the performance of the Project Sponsor's obligations under this Agreement, the Project Sponsor hereby conveys to the Commission the right to use and occupy the Facility upon an Event of Default, as described in Section 9.1 of this 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 Facility 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 Facility.

6. Risk Management

6.1 Indemnification
The Project Sponsor shall hold harmless and indemnify the Commission, the OPFC, the Treasurer, and the State from any and all obligations, costs, fees, penalties, expenses (including attorney fees), damages, liabilities, claims, actions or causes of action arising from the Cultural Project or out of the construction, use, operation, repair and maintenance of the Facility.

Project Sponsor shall immediately notify the Commission in writing of Project Sponsor's receipt of notification of a claim by any third party which would be subject to indemnification hereunder and shall cooperate with the Commission and/or its legal representative in defending such claim.

Notwithstanding any other provision of this Agreement to the contrary, the terms of this Section 6.1 shall survive the expiration or earlier termination of this Agreement.

6.2 Property and Liability Insurance
Unless otherwise stated, the Project Sponsor shall maintain, or cause to be maintained, at no cost to the Commission, commercial general liability insurance and property insurance to insure the OPFC, the Commission, the Treasurer and the State in an amount and type determined by a qualified risk assessor to be sufficient to cover the full replacement costs of improvements funded, in whole or in part, by the State, and the bodily injury, property damage, personal injury, advertising injury and employer's liability exposures of the Project Sponsor. Unless otherwise stated, such insurance shall remain in force at all times from the date hereof through the term of this Agreement.

[Insert if self-insured – otherwise delete section]
6.3 Self-Insurance
Instead of providing the general liability and property insurance above, the Project Sponsor may name the OPFC, the Commission, the Treasurer and the State as additional insured and/or loss payees, as the coverage requires, under a self-insurance

program or joint self-insurance pool created under ORC Sections 2744.08 or 2744.081, respectively, and operated by or on behalf of the Project Sponsor, in order to meet the insurance requirements set forth herein.

(a) If the Project Sponsor has a self-insurance program created under ORC Section 2744.08, by signing this Agreement, the Project Sponsor hereby insures the OPFC, the Commission, the Treasurer and the State as additional insureds under its self-insurance program to cover the full replacement costs of improvements funded, in whole or in part, by the State, and the bodily injury, property damage, personal injury, advertising injury and employer's liability exposure of the Project Sponsor related to the Cultural Project or the operation of the Facility.

(b) If the Project Sponsor is part of a joint self-insurance pool created under ORC Section 2744.08, the Project Sponsor shall provide certification from the pool's qualified risk assessor that such self-insurance program will insure the OPFC, the Commission, the Treasurer of State and the State as additional insured and/or loss payees in an amount sufficient to cover the full replacement costs of improvements funded, in whole or in part, by the State and the bodily injury, property damage, personal injury, advertising injury and employer's liability exposures of the Project Sponsor.

(c) The Project Sponsor certifies that its self-insurance program or joint self-insurance pool complies with ORC Sections 2744.08 and 2744.081.

7. Term

7.1 Term
This Agreement commences on the Effective Date and, unless otherwise terminated as provided in this Agreement, expires on the later of (a) ten (10) 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 3.1 of this Agreement, and all obligations of the Treasurer or other issuing authority to financial institutions related to the Facility Bonds have been paid in full (the Term).

8. Legal Compliance

8.1 General
This Agreement or any actions taken under it are not subject to Chapters 123 or 153 of the ORC, except for section 153.011 of the ORC.

The Project Sponsor affirmatively represents and warrants that it shall comply with this Agreement and with all applicable federal, state, and local laws and regulations, including, but not limited to:

(a) ORC Chapter 4115 (prevailing wage)

(b) Worker's Compensation laws
(c) Equal Opportunity laws
(d) ORC Section 153.011 (domestic steel)
(e) The Americans with Disabilities Act
(f) Environmental laws and regulations
(g) Historical preservation laws and regulations
(h) Drug-free Workplace
(i) ORC Section 9.24 (findings for recovery)
(j) Executive Order 2011-12K, Governing the Expenditure of Public Funds for Offshore Services

8.2 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 of the Cultural Project provided for herein, without the prior written consent of the Commission, which consent shall not be unreasonably withheld.

8.3 Reports and Records
The Project Sponsor shall keep and make all reports and records associated with the Cultural Project and the Facility available to the Commission upon request for a period of not less than thirteen (13) years after the Completion Date. These reports and records shall include a description of the Cultural Project, a detailed overview of the scope of work, and disbursement detail (including amount, date, nature/object of expenditure, and vendor information).

8.4 Reviews and Inspections
The Commission may 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.

9. Default and Termination

9.1 Events of Default
Each of the following is considered an Event of Default and the Commission may, upon ten (10) days' prior written notice to the Project Sponsor, terminate this Agreement:

(a) if the Project Sponsor fails to maintain its status as a [insert either: 501(c)(3) organization exempt from taxation under 501(a) of the Internal Revenue Code of 1986, as amended, and an Ohio nonprofit corporation, or a governmental agency as defined in ORC Section 123.28(F)]

(b) if the Project Sponsor fails to complete the Cultural Project, abandons the Cultural Project or the Facility, or does not provide culture as defined in ORC 123.28;

(c) 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 laws and not cause such proceeding to be terminated within thirty (30) days following the commencement thereof;

(d) if the Project Sponsor is found to be in default under any other agreement or commitment secured by an interest in the real or personal property comprising the Cultural Project or the Facility and fails to cure such default within any cure period provided for in such agreement or commitment;

(e) if there is any change in use of the Facility that significantly reduces or eliminates the public purpose;

(f) if any act of the Project Sponsor adversely affects the federal tax exemption of the Facility Bonds; or

(g) if the Project Sponsor fails to remedy any covenant, condition or agreement, except as provided in subsections (a) – (f), within a period of thirty (30) days after receipt of written notice that the Project Sponsor is not in compliance.

9.2 Remedies Upon Default

Whenever an Event of Default has occurred, the Commission may:

(a) terminate this 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 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 Amount described in Section 3.1 of this 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 over (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 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 9.2 shall survive the termination of this Agreement.

10. Interpretative Provisions

10.1 Binding Effect
All of the covenants, conditions and obligations contained in this 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 Agreement. This Agreement may not be changed or discharged except by written agreement signed by the Parties hereto. Amendments to the Agreement shall require the approval of the Commission.

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

10.3 Severability
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 shall be deemed invalid or unenforceable by any court of competent jurisdiction, the remaining provisions of this Agreement shall not be affected, and said provisions shall be valid and enforceable to the fullest extent permitted by law.

10.4 Waiver
The waiver by any party 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.

10.5 Time is of the Essence
Time is of the essence in this Agreement and all provisions herein relating thereto shall be strictly construed.

10.6 Inconsistent Provisions
The Commission and the Project Sponsor each acknowledge that, if any prior agreements exist between the Project Sponsor and the Commission ("Prior Agreements") for so long as the Prior Agreements remain in effect, the provisions of those Prior Agreements shall control and prevail over any inconsistent provisions in this Agreement. Notwithstanding the foregoing, nothing in the Prior Agreements shall be deemed to affect the provisions of the Term of this Agreement.

[If there are prior agreements between parties, if not, delete:
10.7 Prior Agreements
The Project Sponsor and Commission each acknowledge, without limiting the foregoing acknowledgment, the following Prior Agreements applicable to the Cultural Projects:

- _____, dated _____ ;
- _____, dated _____.**]**

11. Signatures

The Commission and the Project Sponsor have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date.

[LPS LEGAL NAME]	**STATE OF OHIO, ACTING BY AND THROUGH THE OHIO FACILITIES CONTRUCTION COMMISSION**
_____	_____
Signature	Signature
_____	David M. Williamson
Printed Name	Printed Name
_____	Executive Director
Title	Title
_____	_____
Date	Date

EXHIBIT A

ADDITIONAL REQUIREMENTS FOR REIMBURSEMENT OF COSTS RELATED TO FACILITY NAME'S CULTURAL PROJECT

The Project Sponsor shall submit invoices to the Commission no less frequently than quarterly. 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, and any appropriate back-up documentation requested by the Commission staff.

Upon receipt of invoices and all appropriate supporting information in the form acceptable to the Commission, the Commission shall use its best efforts to pay the Project Sponsor within thirty (30) days. If the invoice(s) submitted by the Project Sponsor fail to meet all of the requirements set forth in this exhibit, 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.

State Appropriations to the credit of the Cultural Project shall be held in the Commission's Cultural and Sports Facilities Building Fund and shall accrue interest in accordance with State law. Interest in the Cultural and Sports Facilities Building Fund shall accrue to the credit of the Commission.

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 Grant Amount and the denominator being the Project Budget) over the length of the construction of the Cultural Project unless otherwise approved by the Commission staff.

2. 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 Commission staff.

3. Invoices will be organized in the following manner:

   (a) A summary sheet, in the form of Exhibit B, shall be included with each invoice submittal. The summary sheet will include the following information for each contract: the contractor name, the type of work or bid package, the initial contract amount, the total change orders, the total contract amount, the total work completed to date, and the amount to be paid on the invoice.

   (b) 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;

- o approval by the Project Sponsor or Project Sponsor's representative for payment;
- o approval by the architect or construction manager, if applicable;
- o current date;
- o invoice number; and
- o 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.

(c) When construction is complete, the following documentation shall be submitted along with the summary sheet and supporting documentation:

(i) A cover letter signed and dated by an appropriate representative of the Project Sponsor with his or her name and title printed thereon, containing the following language:

"By signing below, I certify that the charges being invoiced are for actual work completed on the Facility Name Project, 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."

(ii) A copy of the Certificate of Occupancy (if available) and/or photographs of the completed project.

4. In accordance with the current capital bill, appropriations made for buildings and structures, including remodeling and renovations, are limited to the following:

(a) acquisition of real property or interest in real property;

(b) buildings and structures, which includes construction, demolition, complete heating and cooling, lighting, and lighting fixtures, and all necessary utilities, ventilating, plumbing, sprinkling, water and sewer systems, when such systems are authorized or necessary;

(c) architectural, engineering, and professional services expenses directly related to the project;

(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 about $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 appropriated specifically 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 Term of this Agreement. If an item cannot be repaired, it shall be replaced in kind.

EXHIBIT B: SUMMARY SHEET

Project Sponsor: _____

Date: _____ **Drawdown Number:** _____

Work Category	Contractor Name	Initial Contract Amount	Change Orders	Total Contract Amount	Total Work Completed to Date	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						