

**CULTURAL FACILITIES FUND  
CAPITAL GRANT AGREEMENT**

**MASSACHUSETTS DEVELOPMENT  
FINANCE AGENCY**

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CULTURAL FACILITIES FUND  
CAPITAL GRANT AGREEMENT

This Cultural Facilities Fund Capital Grant Agreement is made as by and among Massachusetts Development Finance Agency, a Massachusetts body politic and corporate established and existing under Chapter 23G of the Massachusetts General Laws (“MassDevelopment”), and \_\_\_\_\_, a Massachusetts nonprofit organization with a principal place of business at \_\_\_\_\_ (the “Grantee”). **[If an affiliate of the Grantee owns the site being improved and the Grantee is a lessee, the affiliate will be required to be a signatory to the grant agreement as well.]**

**Recitals**

Pursuant to Massachusetts General Laws Chapter 23G sections 42 and 43 (the “Act”) the Commonwealth of Massachusetts has created the Massachusetts Cultural Facilities Fund (the “Fund”) for the purpose of providing grants and loans for the acquisition, design, construction, repair, renovation or deferred maintenance of Cultural Facilities, defined in the Act as buildings, structures or sites that are, or will be, owned, leased or otherwise used by one or more cultural organizations, exempt from income taxation pursuant to section 501(c)(3) of the Internal Revenue Code (individually each a “Cultural Facility” and collectively “Cultural Facilities”). Cultural Facilities may also include municipally owned buildings, structures or sites, or those buildings, structures or sites owned by public or private institutions of higher education meeting certain additional requirements of the Act.

MassDevelopment is authorized to make grants upon certain terms and conditions to fund Eligible Projects, as defined in the Act, upon MassDevelopment’s finding that: (i) the project is an Eligible Project; (ii) there is a demonstrated need for the project; (iii) the project will benefit tourism in the local area; (iv) there is a demonstrated financial need for the grant or loan; and (v) there is local support for the project (collectively the “Findings”).

MassDevelopment and the Mass Cultural Council (the “Council”) have entered into a Memorandum of Agreement dated as of December 15, 2006 whereby procedures for reviewing and evaluating and awarding grants have been established. MassDevelopment has adopted the “Fund Rules and Guidelines”, which were drafted by the Council with the advice of the Massachusetts Cultural Facilities Fund Advisory Committee established by the Act (the “Committee”).

The Grantee submitted a grant application to the Council for funds to provide for \_\_\_\_\_, **[insert description from commitment letter and include project location]** all as further described in the grant application (the “Project”). It is estimated that the total cost of the Project is [grant + match = total] \_\_\_\_\_ (\$\_\_\_\_\_) (the “Total Cost”).

In accordance with the Act, the Council and the Committee have made all of the Findings and determined that the Grantee is operating or planning to operate a Cultural Facility, the Project

is an Eligible Project, and that the Grantee satisfied all of the requirements of the Fund Rules and Guidelines.

The Grantee has represented it has received, pursuant to the requirements of the Act, Matching Funding for the Project in the amount of \_\_\_\_\_ (\$\_\_\_\_\_) (the “Required Amount”), as more specifically described in **Exhibit A**.

The Committee resolved at a meeting on \_\_\_\_\_ to recommend awarding a Grant in the amount of \_\_\_\_\_ (\$\_\_\_\_\_) to the Grantee for the Project. In accordance with the resolutions adopted by MassDevelopment at a subsequent meeting on \_\_\_\_\_, and, subject to the fulfillment of certain conditions, MassDevelopment has approved the award of a Grant in the amount of \_\_\_\_\_ (\$\_\_\_\_\_) for the Project.

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

### **Agreement**

MassDevelopment herein awards a Grant in the amount of \_\_\_\_\_ (\$\_\_\_\_\_) (the “Grant Amount”) to the Grantee for the Project. The Grantee shall undertake and complete the Project, in accordance with the budget attached as **Exhibit B**, (the “Budget”) which includes agreed costs, as defined below, (the “Agreed Costs”). The disbursements shall be made directly to the Grantee upon the Grantee’s submission of invoices for Agreed Costs in accordance with this Agreement. In no case is this Agreement intended to imply any indebtedness on the part of the Fund, the Council, MassDevelopment or the Commonwealth of Massachusetts.

The Grantee shall diligently prosecute construction and achieve substantial completion of the portion of the Project to be funded from the Grant Amount (“Project Completion”) no later than [\_\_\_\_\_] (the “Completion Date”). **[Criteria for selection included a focus on when project could be completed so should track what Grantee indicated in its application.]** In no event shall MassDevelopment have any obligation to pay an invoice for work performed after or invoices submitted more than sixty (60) days after the Completion Date.

## **ARTICLE I**

### **USE OF AWARD**

Section 1.1 Use of Money. The Grantee agrees that the Grant Amount and the Matching Funding shall be used exclusively to pay the Agreed Costs for the Project which are included in the Budget. Agreed Costs may include direct construction costs, costs associated with construction (such as demolition), architectural or other design fees, building permits, or engineering fees. In no case shall Agreed Costs include payment for any mortgage, loan or operational costs, ongoing staff position, fundraising or marketing activity or any other cost not related to the Project. To the extent that all such Agreed Costs for the Project exceed the Grant Amount and the Matching Funding in the Required Amount together, the Grantee agrees to be solely responsible for any

excess payments. MassDevelopment shall have no obligation hereunder to pay for costs of the Project which exceed the Grant Amount.

Section 1.2 Requirement of Matching Funding. Grantee supplied the Council with evidence of receipt of Matching Funding as set forth on Exhibit A hereto.

Section 1.3 MassDevelopment's Return of Funds. The Grantee agrees that if ownership of [insert address at which project will take place which should match address from the title or lease included with the application] (the "Property"), is transferred to a for-profit entity or to an unrelated nonprofit entity which stops operating the Property as a Cultural Facility, Grantee shall notify MassDevelopment of such transfer and the full amount of the Grant Amount disbursed to the Grantee shall be repaid immediately to the Fund.

Section 1.4 Not Indebtedness of the Commonwealth or MassDevelopment. It is expressly understood and agreed by the parties hereto that the obligations of MassDevelopment and the Council created by or arising from this Agreement shall not be, represent or constitute the indebtedness, bonded or otherwise, of the Commonwealth, MassDevelopment or the Council within the meaning of such term in the Constitution or the laws of the Commonwealth or a pledge of the faith or credit of the Commonwealth or grant to the owners or holders of the Project any right to have the Commonwealth levy any excises or taxes for the payment of any sums due hereunder.

Monies in the Fund are not segregated for specific grants and the Grant Amount is subject to availability of monies in the Fund at the time of each disbursement request. The Fund is supported by annual commitments in the Commonwealth's five year capital investment plan.

Section 1.5 Liability to Vendors. It is expressly understood and agreed by the Grantee that MassDevelopment, the Council and the Fund shall not be liable to any vendor for any expenses or liabilities incurred under a contract entered by the Grantee regardless of the purpose of the contract and that the Grantee shall be solely liable to vendors for all expenses and liabilities incurred under such contracts.

## **ARTICLE II REPRESENTATIONS AND WARRANTIES**

Section 2.1 Title and Condition. The Grantee represents that the Project is for the benefit of a Cultural Facility and is located at the Property where either (i) the Grantee has or will obtain good and clear, record and marketable title to the Property or (ii) the Grantee enjoys peaceful and undisturbed possession of the Property under all leases under which it is or will be operating, and all said leases are valid and in full force and effect.

Section 2.2 Status of Grantee. The Grantee represents that it is (i) a nonprofit Cultural Organization owning or operating a Cultural Facility within the meaning of the Act or (ii) a municipality owning a building, structure or site of at least fifty thousand (50,000) square feet in size, of which at least fifty percent (50%) is used as a Cultural Facility provided, however, that if such building, structure or site is 125 years old or older and is significant in the history, archeology,

architecture or culture of the nation, the Commonwealth or the community in which it is located, it may be of any size. If the Grantee is a public or private institution of higher education it represents that it meets the additional applicable qualifying requirements of the Act.

Section 2.3 Budget Inclusions. The Grantee represents that the Agreed Costs are included in the Budget and meet all of the requirements of the Act and the Fund Rules and Guidelines.

Section 2.4 Certification of Matching Funding. The Grantee represents that any amounts listed on **Exhibit A** constitute Matching Funding within the meaning of the Act and are not funds from state government, loan proceeds, or operating funds expended by the Grantee for mortgage interest, fundraising costs or other operating activities (provided however that public funds appropriated to a project do not constitute loan proceeds).

Section 2.5 Other Representations and Warranties. The Grantee makes the following additional representations and warranties:

(a) The Grantee is duly organized, legally existing and in good standing under the laws of The Commonwealth of Massachusetts and has the legal power and authority to enter into and perform this Agreement and any related documents in which it is named as a party, to fulfill its obligations set forth herein and therein and to carry out the transactions contemplated hereby and thereby. The Grantee has all requisite corporate power to own and operate its properties and to carry on its business as now conducted and as proposed to be conducted and is duly qualified and in good standing in each jurisdiction where the failure so to be qualified could have a material adverse effect on the Grantee and/or its operations. The person executing this Agreement on behalf of the Grantee is duly authorized to execute this Agreement. This Agreement and any other documents delivered to MassDevelopment by the Grantee pursuant hereto are the legal, valid and binding obligations of the Grantee, enforceable against the Grantee in accordance with their respective terms.

(b) All statements or information provided in Grantee's application, as supplemented by the Budget submitted as **Exhibit B** hereto, for a Grant from the Fund were and continue to be accurate in all material respects.

(c) When constructed, the Project will be fit for its intended use as part of a Cultural Facility and will comply with the Americans with Disabilities Act, to the extent applicable.

(d) The Grantee is not aware of any matter or circumstance, currently existing or with the passage of time or notice, which would prevent the construction and occupancy of the Project in a timely manner in accordance with the Completion Date.

(e) There are no actions, suits, proceedings, adverse findings or investigations pending or, to the knowledge of the Grantee or its Subsidiaries (as defined below), threatened, anticipated or contemplated (nor, to the knowledge of the Grantee or its Subsidiaries, is there any basis therefor) against or affecting the Grantee or its Subsidiaries before any court or governmental

department, commission, board, bureau, agency or instrumentality, domestic or foreign, which could prevent or hinder the consummation of the transactions contemplated hereby or call into question the validity of this Agreement, any of the related documents or any other instrument provided for or contemplated by this Agreement or any action taken or to be taken in connection with the transactions contemplated hereby or thereby. As used in this Agreement, the term “Subsidiary” means any corporation or other entity of which the Grantee and/or any of its Subsidiaries directly or indirectly owns, or has the right to control or direct the voting of, fifty percent (50%) or more of the outstanding capital stock or other ownership interest having general voting power (under ordinary circumstances) or any non-stock corporation or other entity without capital stock as to which the Grantee and/or any Subsidiary of the Grantee constitutes a majority of the members or holds a majority of the voting power.

(f) The Grantee and its Subsidiaries are not in violation of any material term of their Charters, bylaws or other organizational documents as now in effect. The Grantee and its Subsidiaries are not in violation of any material term of any mortgage, indenture, judgment, decree or order, or any other material instrument, contract or agreement applicable to the Grantee or its Subsidiaries the violation of which would be reasonably likely to have a material adverse effect on the Grantee.

(g) The Grantee and its Subsidiaries have filed proper and accurate federal, state and local tax returns, reports and estimates for all years and periods for which any such returns, reports or estimates were required to be filed and has paid all taxes, assessments, impositions, fees and other governmental charges required to be paid in respect of the periods covered by any such returns, reports or estimates. The Grantee and its Subsidiaries are not delinquent in the payment of any tax, assessment or governmental charge, and no deficiencies for any tax, assessment or governmental charge have been asserted or assessed, and the Grantee and its Subsidiaries know of no material liability or basis therefor.

(h) To the best of the Grantee’s and its Subsidiaries’ knowledge, the Grantee and its Subsidiaries are in compliance with all requirements of law, federal, state and local, and all requirements of all governmental bodies or agencies having or claiming jurisdiction over them, the conduct of their business and the use of their properties and assets, as presently conducted and used, and all premises occupied by them, all to the extent that failure to comply with any of such requirements could (singly or in the aggregate) have a material adverse effect on the business, prospects or financial condition of the Grantee.

(i) The Grantee has obtained or will obtain all necessary licenses, permits and approvals for the construction, use and occupancy of the Project and such construction, use and occupancy will not violate any building, zoning, subdivision, land use, fire code, health, historic preservation, licensing, lead paint, tenant relocation, planning, sanitation, handicapped access, environmental protection or any other federal, state, or local ordinance, regulation or law applicable to the Property. Grantee has filed its Project Notification Form with the Massachusetts Historical Commission (“MHC”).

(j) To the best of Grantee’s knowledge, the Grantee and each portion of the Property are in compliance in all material respects with all Environmental Laws. “Environmental

Laws” refers to any and all federal, state and local statutes, laws, regulations, ordinances, rules, judgments, orders, decrees, permits, licenses or other governmental restrictions relating to the environment or the release of any materials into the environment, including, without limitation, Massachusetts General Laws Chapter 21E (“Chapter 21E”), the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. Section 9601 et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499, 100 Stat. 1613 (“CERCLA”), the Resource Conservation and Recovery Act of 1976, 42 U.S.C. Sections 6901-6987; Title V of the State Environmental Code and state and local statutes, regulations and other governmental restrictions governing private wells and the water supply.

(k) There are no easements, restrictions or encumbrances across or affecting any of the Property which will have a material adverse effect upon the operation of any of the improvements at the Property for their intended purpose, nor which will in any way materially interfere with the construction of any such improvements.

(l) [Either no part of the improvements at the Property is or will be located in a designated flood hazard area (as defined in the Flood Disaster Protection Act of 1973) or if part of the improvements at the Property will be located in a designated flood hazard area, Grantee must obtain flood insurance for the maximum amount insurable under the National Flood Insurance Program.] **[This covenant will be required for acquisition and expansion projects but not for deferred maintenance or rehabilitation projects.]**

Section 2.6 Survival. Each of the representations and warranties of this Article II shall survive the advance of the Grant Amount pursuant to this Agreement and the termination of this Agreement, and the Grantee shall indemnify and hold harmless MassDevelopment, the Council, the Fund, the Committee or the Commonwealth (the “Indemnitees”) from and against all loss, expense or liability directly or indirectly resulting from the breach thereof, including, without limitation, the cost of defending or settling any claim arising therefrom against the Indemnitees. This provision shall survive the termination of this Agreement.

### **ARTICLE III GRANTEE’S COVENANTS**

Section 3.1 Compliance with Law. The Grantee hereby covenants and agrees that for so long as this Agreement is in effect, it will continuously comply and shall require all parties providing design or construction services for any portion of the Project to comply with all statutes, ordinances, laws, rules, regulations, orders or notices (collectively, the “Laws”), of any governmental authority, including without limitation, any political subdivision, department, division, commission, agency or branch thereof, having jurisdiction over the Cultural Facility (collectively, the “Governmental Authorities”), including without limitation, the smoke free and drug free workplace laws and all environmental laws and regulations and that the Grantee will obtain and keep in effect any and all approvals, permits and authorizations required by all Governmental Authorities to construct the Project.



Section 3.2 Compliance with the Rules, Act and Agreement. The Grantee hereby agrees to perform and comply with all of the requirements of the Fund Rules and Guidelines, the Act and this Agreement, including, but not limited to, the obligations set forth in Articles IV through X.

Section 3.3 Compliance with Reporting Requirements. The Grantee hereby agrees to meet all of the reporting requirements set forth in Article VII and the requirement of notification and approval, if applicable, of changes to the Project scope, and Budget as set forth in Section 5.4.

Section 3.4 Other Affirmative Covenants. Without limiting any other covenants and provisions hereof or of any of the related documents, the Grantee covenants and agrees that for so long as this Agreement is in effect:

(a) The Grantee will pay and discharge (and the Grantee will cause each of its Subsidiaries to pay and discharge) all taxes, assessments and governmental charges or levies imposed upon it, or upon its income or profits or upon any properties belonging to it prior to the date on which penalties or interest would attach thereto, and all lawful claims which, if unpaid, might become a lien or charge upon any properties of the Grantee or any of such Subsidiaries; provided that neither the Grantee nor any of such Subsidiaries shall be required to pay any such tax, assessment, charge, levy or claim which is being contested in good faith and by proper proceedings which serve as a matter of law to stay the enforcement of any remedy of the taxing authority or claimant and as to which the Grantee or the Subsidiary concerned has set aside on its books and maintains in effect adequate reserves. The Grantee will pay (and the Grantee will cause each of its Subsidiaries to pay) in a timely manner all material trade debt, material purchase money obligations, material equipment lease obligations and all of its other material indebtedness as and when such indebtedness becomes due; provided, however, that neither the Grantee nor any of its Subsidiaries shall be required by this sentence to pay any such trade debt, obligations or other indebtedness which is being contested in good faith and as to which no lien has been asserted. The Grantee and each such Subsidiary will fully, faithfully and punctually perform and fulfill all covenants and agreements under any material leases of real estate, material agreements relating to purchase money debt, material equipment leases and other material contracts, including, without limitation, as to the Grantee, all covenants and agreements of the Grantee under this Agreement.

(b) The Grantee will preserve and maintain its corporate existence, rights, franchises and privileges and remain in good standing in The Commonwealth of Massachusetts. Grantee will maintain the status of its Cultural Facility, and, if it is a tax-exempt organization (rather than a municipality), the Grantee covenants that it will not perform any acts or enter into any agreements which could cause any revocation or adverse modification of its Federal income tax-exempt status or which would cause it to be a private foundation as defined in the Internal Revenue Code of 1986, as amended.

(c) At any reasonable time and from time to time upon reasonable notice (and at any time, with or without notice, following the occurrence of an Event of Default, as such is defined in Section 9.1), the Grantee will permit MassDevelopment, and any agents or representatives thereof, to examine and make copies of and take abstracts from the records and books of account of, and visit the properties of the Grantee or any of its Subsidiaries, and to discuss the affairs, finances and accounts of the Grantee or any such Subsidiary with any of their respective

officers, trustees and independent accountants, all of whom are hereby authorized and directed to co-operate with MassDevelopment in carrying out the intent of this subsection (c).

(d) The Grantee will execute and deliver, or cause to be executed and delivered, to MassDevelopment from time to time, promptly upon request therefor, any and all other and further instruments that may be requested by MassDevelopment or the Council to cure any deficiency in the execution and delivery of this Agreement or any related document in which it is named as a party or more fully to describe or give effect to particular aspects of any of the Grantee's agreements and undertakings provided in this Agreement or intended to be so provided.

(e) The Grantee will comply with Section 8.3 regarding all publicity relating to the Project.

(f) The Grantee will inform MassDevelopment and the Council of any significant changes in its programs, services or personnel.

(g) The Grantee agrees that for Agreed Costs of the Project consistent with the Budget which are to be financed by MassDevelopment, Grantee and/or its affiliates have not and will not enter into a contract with any vendor listed as debarred or suspended on the debarment lists maintained by the Commonwealth of Massachusetts' Division of Capital Asset Management and Maintenance, the Department of Transportation, the Department of Industrial Accidents, the Office of the Attorney General and the Federal Government (the "Debarment Lists").

The Grantee is required to provide the name of its general contractor or manager (if one is engaged) to MassDevelopment at least ten (10) business days prior to the execution of this Agreement.

The Grantee certifies that it has checked the Debarment Lists and that for Agreed Costs of the Project consistent with the Budget financed by MassDevelopment it has not and will not contract with any general contractor, construction manager or other vendor listed on the Debarment Lists. Grantee will also require that its general contractor or construction manager (if one is engaged) certify in the contract with applicant for MassDevelopment financed work that the general contractor or construction manager: (i) will check the Debarment Lists before directly engaging a subcontractor or other vendor and (ii) has not and will not contract directly with a subcontractor or other vendor listed on a Debarment List. The certification in the general contractor or construction manager contract shall further provide that the general contractor or construction manager understands and acknowledges that noncompliance may result in debarment from future MassDevelopment funded projects for a period of one year from the date of written notification of noncompliance.

The Commonwealth's Executive Office of Administration and Finance has a webpage with a link to the lists, <http://www.mass.gov/anf/property-mgmt-and-construction/design-and-construction-of-public-bldgs/vendor-debarment.html>.

(h) During the disbursement period of the Grant, the Grantee shall provide MassDevelopment written notice of any event, occurrence, fact, condition or change that is, or could reasonably be expected to become, individually or in the aggregate, materially adverse to the operations, financial condition, or assets of the Grantee (a "Materially Adverse Event"). The

occurrence of a Materially Adverse Event may be cause (in MassDevelopment's sole discretion) for MassDevelopment to suspend disbursement of the Grant.

Section 3.5 Negative Covenants. Without limiting any other covenants and provisions hereof or of any of the related documents, the Grantee covenants and agrees that for so long as this Agreement is in effect:

(a) The Grantee will not request any disbursement that would not comply with Article IV and would involve payment of anything other than an Agreed Cost.

(b) Except as provided below, the Grantee will not dispose of or suffer or permit to exist any "hazardous material" or "oil", as defined in Chapter 21E, "Hazardous Materials" as defined in CERCLA, or any similar definitions in any of the Environmental Laws, as well as asbestos and materials containing asbestos (collectively "Hazardous Substances") on any site or vessel owned, occupied or operated by the Grantee or by any Subsidiary of the Grantee. Notwithstanding the foregoing, the Grantee and its Subsidiaries may use, store and transport (x) oil in reasonable quantities, as fuel for heating of their respective facilities or for vehicles or machinery used in the ordinary course of their respective businesses and (y) Hazardous Substances that are solvents, cleaning agents or other materials used in the ordinary course of the respective business operations of the Grantee and its Subsidiaries, in reasonable quantities, as long as in any case the Grantee or the Subsidiary concerned (as the case may be) has obtained and maintains in effect any necessary governmental permits, licenses and approvals, complies with all requirements of applicable federal, state and local law relating to such use, storage or transportation, follows the protective and safety procedures that a prudent businessperson conducting a business the same as or similar to that of the Grantee or such Subsidiary (as the case may be) would follow, and disposes of such materials (not consumed in the ordinary course) only through licensed providers of hazardous waste removal services.

(c) The Grantee will not attempt, in any manner, to assign, pledge, hypothecate, or transfer its rights under this Agreement.

#### **ARTICLE IV DISBURSEMENTS OF GRANT FUNDS**

Section 4.1 Payment of Invoices. MassDevelopment shall pay one hundred percent (100%) of each invoice consistent with the Budget submitted by the Grantee in accordance with the requirements of this Article IV. In no event shall MassDevelopment have any obligation to pay an invoice for work performed after or invoices submitted more than sixty (60) days after the Completion Date. MassDevelopment has no obligation to disburse funds until the Grantee has provided a "No Adverse Effect" letter from MHC, entered into a Memorandum of Agreement with MHC or otherwise satisfied MassDevelopment (in its sole discretion) that the Project is compliant with the requirements of M.G.L. Ch. 9, §§ 26-27 and 950 CMR 7.

Section 4.2 Submission of Invoices. MassDevelopment shall pay the Grantee for Agreed Costs only upon receipt of invoices consistent with the Budget. Such invoices shall be submitted with the form attached hereto as Exhibit C and any other appropriate back-up documentation requested by MassDevelopment in its sole discretion. MassDevelopment will

request evidence of payment for “past due” amounts of 30 days or more. No invoice submitted shall be dated earlier than **September 1, 2021**.

Section 4.3 Supporting Documentation. Notwithstanding anything in section 4.1 to the contrary, 10% of the grant amount will be held back. In order to access the final 10% of the grant, Grantee must provide MassDevelopment with the Cultural Facilities Fund Final Certification attached as **Exhibit D**.

Section 4.4 Processing of Invoices. Upon receipt of invoices and supporting documentation (if requested) in the form approved by MassDevelopment, MassDevelopment or its representative shall ascertain that the sums requested are consistent with the Budget. MassDevelopment shall use its best efforts to pay the Grantee within thirty (30) days thereafter. At the written direction of the Grantee, MassDevelopment shall either wire payment pursuant to the wire transfer instructions provided on **Exhibit E** hereto, or mail a check to the address listed for Grantee in Section 10.8 hereof.

Section 4.5 Inspector. MassDevelopment shall have the right to require the Grantee to bear the reasonable cost of engaging an independent consultant, chosen at its sole discretion, or, if acceptable to the Grantee, an engineer of MassDevelopment (the “Inspector”) to perform site inspections and review the Grantee’s submissions, reports, and records and to compare same against all other sources of information to determine accuracy and adherence to the Budget and the requirements of this Agreement.

## **ARTICLE V CONSTRUCTION OF CULTURAL PROJECT**

Section 5.1 Construction Standards. The construction of the Project shall be made in accordance with all applicable Laws of all Governmental Authorities (consistent with requirements of Section 3.1) including, without limitation, the Massachusetts Building Code, all easements, rights and restrictions of record affecting the Project.

Section 5.2 Completion; Delays. The portion of the Project funded by the Grant Amount shall be substantially completed on or before the Completion Date. The Grantee shall not be liable for any delay in the commencement of, or completion of, the Project, nor be deemed to be in default of this Section 5.2 if commencement or completion of the Project shall be delayed by (i) the Grantee’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 MassDevelopment, the Council, or any other state board, commission or agency which delays commencement or completion of the Project, or otherwise impacts the Grantee’s ability to perform its obligations hereunder, except such acts or failure to act resulting from the acts or failure to act by the Grantee.

Section 5.3 Ownership of the Cultural Facility Improvements. All right, title and interest in the improvements constituting the Project, and any substitutions, modifications or

improvements made thereto in accordance with this Article V, shall vest in the Grantee. **[If the Grantee leases the Property, omit and indicate Intentionally Omitted.]**

Section 5.4 Amendment of Project Scope. No material amendment to the scope of the Project shall be permitted without the prior written approval of MassDevelopment in its sole discretion. MassDevelopment shall be notified of any material changes in the Budget of which it has not previously been advised. In no event will MassDevelopment approve changes to the scope of the Project which require any increase in the Grant Amount.

## **ARTICLE VI INDEMNIFICATION**

The Grantee shall fully indemnify, defend and save MassDevelopment, the Council, the Fund and the Commonwealth, and their employees and agents, harmless from all third-party claims, demands, actions, expenses or damages of any nature to any person or property resulting from any event or occurrence related to the Project. Notwithstanding anything herein to the contrary, the provisions of this Section shall survive the expiration or termination of this Agreement.

## **ARTICLE VII REPORTING AND INSPECTIONS**

Section 7.1 Site Visits, Books and Records. The Grantee shall allow reasonable access to MassDevelopment and its representatives to inspect the Project during construction (if applicable). The Grantee shall cooperate fully in said inspections and shall use its best efforts to ensure that MassDevelopment, the Inspector or their representatives are accompanied by a representative of the general contractor, if any, or the Grantee on the inspection tour. During the term of this Agreement and for seven (7) years thereafter, the Grantee shall keep and maintain, and shall give access to MassDevelopment and its representatives at all reasonable times upon reasonable advance notice to inspect, copy, audit and examine accurate books, records, accounts and other documents relating to the Project, including without limitation those relating to the receipt and disbursement of the Grant Amount.

Section 7.2 Reports. The Grantee shall provide the Council with a pipeline report on its anticipated capital needs when requested by the Council and not later than November 30<sup>th</sup> of each year. The Grantee also agrees to provide information about the Project and the Grantee when and if requested by MassDevelopment or the Council in order to assess the economic impact of the Cultural Facilities Fund grants, as well as any information MassDevelopment or the Council may require for the Fund's annual report to the Legislature.

Section 7.3 **INTENTIONALLY OMITTED**

Section 7.4 Method of Accounting. The Grantee shall keep all financial records in a manner consistent with generally accepted accounting principles.

Section 7.5 The Council's Rights. All rights of information or to inspection covered under this Article VII may also be exercised by the Council on any particular occasion to the extent permitted by the Act and at the request of MassDevelopment.

## **ARTICLE VIII COOPERATIVE RELATIONSHIP**

Section 8.1 Relationship between Parties. The Grantee agrees to cooperate with the Council and MassDevelopment in connection with the Project and the resolution of any issues, questions or concerns which either the Council or MassDevelopment may have in connection with the Project and compliance with the Act, the Fund Rules and Guidelines and this Agreement.

Section 8.2 Meetings. The Grantee agrees to have its representative, or another authorized agent thereof, attend and make such presentations as may be appropriate at any meeting of the Council or MassDevelopment upon request.

Section 8.3 Publicity. The Grantee agrees that any public announcement or similar publicity with respect to this Agreement or the Project during the term of this Agreement and for seven (7) years thereafter will be issued only with the advance approval of MassDevelopment. Grantee further agrees to credit MassDevelopment and the Council in all print, audio, video and internet materials, and all publicity materials (such as press releases, brochures, posters, advertisements, program materials and web sites). Such credit will indicate that funding for the Grantee "has been provided by the Massachusetts Cultural Facilities Fund, a program of the Commonwealth of Massachusetts, administered through a collaborative arrangement between MassDevelopment and the Mass Cultural Council." Upon request, the Grantee will permit a sign acceptable to Grantee in its reasonable discretion to be erected on the Property indicating that the Project is being financed in part by a Grant from the Fund (subject to compliance with the zoning ordinances of the city or town where the Property is located).

## **ARTICLE IX DEFAULT AND TERMINATION**

### **Section 9.1 Defaults**

(a) A material failure by Grantee in the performance of its obligations under this Agreement, including any failure to perform the covenants outlined in Article III, or failure to complete construction of the portion of the Project funded by the Grant by the Completion Date shall be an event of default (an "Event of Default") under this Agreement.

(b) MassDevelopment shall give written notice to Grantee of any Event of Default under this Agreement. If any Event of Default shall not have been cured within thirty (30) days after receipt of such notice, or such longer period as may be given by MassDevelopment, then MassDevelopment shall have the remedies provided in Section 9.2 of this Agreement.

Section 9.2 Remedies; Event of Default.

(a) Upon the occurrence of any Event of Default as defined in Section 9.1 of this Agreement, and subject to the provisions of said Section 9.1(b) for notice and cure periods, MassDevelopment may:

- (i) Terminate this Agreement in its entirety;
- (ii) Suspend or terminate disbursement of the Grant Amount in whole or in part;
- (iii) Require Grantee to repay any portion of the Grant Amount not obtained in substantial compliance with this Agreement; or
- (iv) Exercise any other right or remedy available to MassDevelopment under any other instrument, or at law, or in equity.

Grantee shall pay to MassDevelopment all reasonable costs and expenses, including attorneys' fees, which may be incurred by MassDevelopment in any proceedings brought to enforce the obligations of Grantee set forth in this Agreement.

Section 9.3 Termination. If not earlier terminated for an Event of Default, this Agreement shall terminate upon the later of (i) submission to MassDevelopment of a completed **Exhibit D** as evidence of Project Completion or (ii) disbursement of the entire Grant Amount for the Agreed Costs of the Project. In the event that this Agreement terminates for any reason and the Grant Amount has not been fully disbursed, the remaining Grant Amount shall be returned to the Fund. Notwithstanding the foregoing, Sections 7.1, 7.2, 8.3 and 1.3 shall survive termination of this Agreement.

**ARTICLE X  
MISCELLANEOUS PROVISIONS**

Section 10.1 Rights and Remedies Cumulative. The respective rights and remedies of the parties whether provided by this Agreement or any other instrument given to secure this Agreement, or by law, shall be cumulative, and the exercise of any one or more of such rights and remedies shall not preclude the exercise, at the same or different times, of any other such rights or remedies.

Section 10.2 Dispute Resolution. In the event that the parties are unable to agree on any material decision affecting the affairs contemplated in this Agreement, any party may notify the other party that unless the issue is resolved within ten (10) business days from sending such notice, the matter will be referred to arbitration. Within forty five (45) days following the date on which the dispute was first identified, the parties shall propose and agree upon a neutral and otherwise qualified mediator. In the event that the parties fail to agree upon a mediator, the parties shall request the American Arbitration Association to appoint a mediator. The parties shall be responsible for equal share of the costs associated with locating and obtaining the services of a mediator (the "Mediation Costs"). The period for mediation shall commence upon the appointment of the mediator and shall not exceed thirty (30) days unless such time period is

modified by mutual agreement. In the event that: (i) actual Mediation Costs exceed \$5,000, or (ii) the period for mediation exceeds the thirty (30) day period specified above, then either party shall have the option to withdraw from all mediation proceedings without penalty, and the parties may seek redress in whatever forum may be available to them under applicable law. Notwithstanding the foregoing, in the event that the nature of the parties' dispute is such that one or both parties are likely to suffer irreparable harm, such party or parties may seek immediate judicial relief without resorting to the mediation process described above.

Section 10.3 Individual Liability. No member, officer, or employee of the Cultural Council or MassDevelopment shall be charged personally or held liable, contractually or otherwise, by the other party to this Agreement under any term or provision of this Agreement, for any actions or inactions related to this Agreement or because of any breach hereof.

Section 10.4 Non-Waiver. Any party's failure to insist on compliance or enforcement of any provision of this Agreement shall not affect its validity or enforceability or constitute a waiver of future enforcements of that provision or of any other provision of this Agreement.

Section 10.5 Amendment. This Agreement may not be amended, modified, altered or changed in any respect, except by formal agreement in writing, fully executed by all parties.

Section 10.6 Severability. Each provision hereof shall be separate and independent and the breach of any provision by any 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 thereby, and said provisions shall be valid and enforceable to the fullest extent permitted by law.

Section 10.7 Binding Agreement. This Agreement is binding on and enforceable by and against the parties, their successors, legal representatives and assigns.

Section 10.8 Notices. All notices, demands, requests, consents, approvals and other communications required or permitted to be given pursuant to the terms of this Agreement shall be in writing and addressed as follows:

(a) with respect to MassDevelopment: Massachusetts Development Finance Agency  
99 High Street, 11<sup>th</sup> Floor  
Boston, MA 02110  
**Attn:** Executive Vice President, Community  
Development

with additional copies sent to: Massachusetts Development Finance Agency  
99 High Street, 11<sup>th</sup> Floor  
Boston, MA 02110  
**Attn:** General Counsel



Massachusetts Development Finance Agency  
33 Andrews Parkway  
Devens, MA 01434  
**Attn:** Chief Financial Officer

Massachusetts Development Finance Agency  
99 High Street, 11<sup>th</sup> Floor  
Boston, MA 02110  
**Attn:** Lillian J. Muñoz, Portfolio Manager,  
Community Investment

(b) with respect to the Grantee:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
**Attn:** \_\_\_\_\_

with additional copy sent to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
**Attn:** \_\_\_\_\_

Section 10.9 Public Records Law. Grantee acknowledges that MassDevelopment and the Council are subject to the Public Records Law, M.G.L. c. 66.

Section 10.10 Deemed Delivered. Notices shall be deemed to have been given when hand delivered or sent by U.S. registered or certified mail, postage prepaid. The parties designated above shall each have the right from time to time to specify as their respective addresses for purposes of this Agreement any other address upon the giving of fifteen (15) days' written notice thereof, as provided herein, to all the other parties listed above.

Section 10.11 Execution in Counterparts / Facsimile Copies. This Agreement may be executed in two or more counterparts, each of which together shall be deemed an original, but all of which together shall constitute one and the same instrument. In the event that any signature is delivered by facsimile transmission or by e-mail delivery of a “.pdf” format data file, such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or “.pdf” signature page were an original thereof.

Section 10.12 Titles and Headings. The headings of the sections, subsections and paragraphs set forth herein are for convenience of reference only and are not a part of this Agreement and shall be disregarded in construing or interpreting any of the provisions of this Agreement.

Section 10.13 Governing Law; Jurisdiction. This Agreement shall be governed and construed in accordance with the laws of the Commonwealth of Massachusetts. The parties agree that the courts of the Commonwealth of Massachusetts in Suffolk County shall have exclusive

jurisdiction over any dispute or claims arising out of this Agreement and hereby submit to such jurisdiction.

Section 10.14 Entire Agreement. This Agreement contains the entire understanding among the parties hereto with respect to the subject matter hereof, and supersedes all prior and contemporaneous agreements and understandings, express or implied, oral or written, except as herein contained.

*[Remainder of this page intentionally left blank; signature(s) on next page]*

SAMPLE

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be signed, sealed and delivered by their respective duly authorized representatives, as of the \_\_\_\_\_ day of \_\_\_\_\_, 2022.

MASSACHUSETTS DEVELOPMENT  
FINANCE AGENCY

Approved as to form:

\_\_\_\_\_  
Agency Counsel

By: \_\_\_\_\_  
Name: Sean C. Calnan  
Title: Senior Vice President,  
Community Investment

GRANTEE: \_\_\_\_\_

By: \_\_\_\_\_  
Name:  
Title:

*[Signature page of [Grantee] Cultural Facilities Fund Capital Grant Agreement]*

**EXHIBIT A**

**MASS CULTURAL COUNCIL MATCHING FUNDING CERTIFICATION**

SAMPLE

**EXHIBIT B**  
**UPDATED BUDGET**

**Sources**

MCC Certified Grantee Match	\$200,000
CFF Grant	<u>\$200,000</u>
<b>Total</b>	<b>\$400,000</b>

**Uses**

Architect – Theatre	\$100,000
General Contractor – Theatre	\$200,000
Electrical work – Fire Safety	\$50,000
HVAC	<u>\$50,000</u>
<b>Total</b>	<b>\$400,000</b>

Please note that when reviewing invoices and disbursement requests against the Updated Budget line items, MassDevelopment reserves the right to consider and apply a variance of up to 15% per item. In no event shall total disbursements exceed the Grant Amount.

Project Completion Date: \_\_\_\_\_

**EXHIBIT C**  
**INVOICE SUBMISSION FORM**

SAMPLE

**Cultural Facilities Fund Invoice Submission Form for Capital Grants**

Instructions: Submit a separate Invoice Submission Form for each individual Budget Item. Attach invoice(s), and, if applicable, evidence of payment for “past due” amounts of 30 days or more. Invoices should provide sufficient detail to allow MassDevelopment to determine the nature, location, and date of the work for which the invoice was issued.

Name of Grantee/Cultural Facility \_\_\_\_\_

Dollar Amount of Grant \_\_\_\_\_

Budget Line Item \_\_\_\_\_

Dollar Amount in Project Budget (Exhibit B) for **this** Budget Item  
\_\_\_\_\_

Dollar Amount previously disbursed by MassDevelopment against **this** Budget Line Item  
\_\_\_\_\_

Dollar Amount of invoices submitted for this disbursement from Grant against **this** Budget Line Item  
\_\_\_\_\_

By signing below, I certify that I have reason to know of the accuracy of these invoices and the status of completion of the work. I certify that the charges being invoiced in the invoice(s) attached hereto are for actual work completed on the Project (insert Project name on this line) \_\_\_\_\_ for the period from \_\_\_\_\_ to \_\_\_\_\_, the charges are accurate and constitute “Agreed Costs,” as such are defined in the Cultural Facilities Fund Capital Grant Agreement, the information provided on this Form is accurate, and this work was not the basis of any prior invoice submission.

Dated: \_\_\_\_\_ Grantee/Cultural Facility: \_\_\_\_\_

Signature: \_\_\_\_\_

Name:

Its: Executive Director

Signature: \_\_\_\_\_

Name:

Its: [Chief Financial Officer or Treasurer]

Please note that when reviewing invoices and disbursement requests against the Updated Budget line items, MassDevelopment reserves the right to consider and apply a variance of up to 15% per item. In no event shall total disbursements exceed the Grant Amount.

Project Completion Date: \_\_\_\_\_

**EXHIBIT D**

**Cultural Facilities Fund**  
**Final Certification**

I certify that I have reason to know of the accuracy of all previously submitted invoices and the status of completion of the work for the Project described in the Grant Agreement dated as of \_\_\_\_\_ 20\_\_ between Grantee and MassDevelopment and further certify that the Grant Amount of \$\_\_\_\_\_ and Matching Funds of \$\_\_\_\_\_ have been spent on the Project pursuant to the Budget for the Project attached as Exhibit B to the Grant Agreement.

I certify that final Invoices for the Project are attached hereto, the charges are accurate and constitute "Agreed Costs" as defined in the Grant Agreement, the information provided on this certificate is accurate and this work was not the basis of any prior invoice submission.

I certify that the Project identified in the Grant Agreement has been substantially completed.

**[In order to access the final 10% of the grant, Grantee must provide MassDevelopment with this certification.]**

Dated: \_\_\_\_\_

Grantee: \_\_\_\_\_

Signature: \_\_\_\_\_

Name:

Its: Executive Director

Signature: \_\_\_\_\_

Name:

Its: [Chief Financial Officer or Treasurer]



**EXHIBIT E**  
**GRANTEE'S WIRE INSTRUCTIONS**

**Bank Name:**

**Bank ABA Routing Number:**

**Beneficiary Account Number:**

**Beneficiary Account Name and Address:**

**If payment by check is preferred, please indicate here and provide payment instructions:**

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