



Cultural Facilities Grant Agreement

This Cultural Facilities Grant Agreement (“Agreement”) is entered into this day, **March 4, 2020**, between «**Applicant**» with a principal place of business located in «Applicant_Address_1__City», Vermont (“Grantee”), and the Vermont Council on the Arts, Inc., d/b/a Vermont Arts Council (“Council”).

WHEREAS, the Council desires to engage the Grantee to render certain services, hereafter described, in connection with construction of capital improvements to cultural facilities, pursuant to Act 26, Section 7 of the Public Acts of the 2015 Vermont Legislature.

WHEREAS, Grantee has a DUNS number of «Applicant_DUNS».

NOW THEREFORE, in consideration of the mutual promises contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, both Grantee and the Council (collectively referred herein as the “Parties”), intending to be legally bound, agree as follows:

Article I, Scope of Work and Related Matters

- 1.1 **Work and Payments:** Grantee shall perform the following:
- This grant shall be used «**Purpose**». These services are referred herein as “Work” or “Services.”
 - The Work shall include the approved project description, plans and specifications submitted with the grant application and/or any conditions described in the award notice dated **8/1/___**. Such submitted description, plans, and specifications and conditions contained in the award notice are incorporated by reference and made part of this Agreement.
 - Grantee shall be eligible to receive up to «**Grant_Amount**» for the Work performed in accordance with this Agreement and payable in manner set forth in Article II.
- 1.2 **Schedule of Services:** Work shall be completed by «End_Date» or the Termination Date as set forth in Article III below. The parties agree that delivery of the Work by the above referenced completion date [or deadlines] set forth above is material to this agreement, and time is of the essence. Notwithstanding, Grantee may be entitled to suspend its performance of the Work due to any Force Majeure event as provided in section 1.10 below.
- 1.3 **Matching Funds:** Grantee shall provide at least a one-to-one (1:1) cash match with eligible, non-state funds for each dollar received from the Council. At least 50% of the match must be in cash. Up to 50% can be in well-documented in-kind materials and/or labor. If Grantee’s matching funds are from federal funds, such matching funds need to be pre-approved by the Council, which in its full discretion may accept or deny such matches. Proof of matching funds shall be required before disbursements are provided pursuant to Article II, Payment, below.
- 1.4 **Compliance with Laws:** Grantee shall comply with all Federal, State, and Local laws, ordinances, rules, regulations, and codes. This shall include, but not be limited to, the **United States Secretary of the Interior’s Standards for Historic Preservation Projects** (36 C.F.R. Part 67 *et seq.*), the **Native American**

For Office Use:
Request #: «Request_»

DEPT

FUND

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Date

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Graves Protection and Repatriation Act of 1990, the National Historic Preservation Act of 1966 as amended, the Drug Free Workplace Act of 1988, the National Environmental Policy Act of 1969 where applicable, the State of Vermont's Historic Preservation laws and regulations, and any State of Vermont, municipal or city building codes and guidelines (e.g., electrical, plumbing, fire and safety codes).

- 1.5 **Right of Inspection:** The Work may be inspected at any time by the Council to ensure compliance with this Agreement. The Council's right of inspection shall not relieve Grantee of any responsibilities hereunder.
- 1.6 **Reporting and Assessment:** The Grantee shall submit a final report to the Council for the completed Work within thirty (30) days of the Termination Date (set forth in Article III), including final expenditures, copies of bills and invoices from contractors, suppliers, and vendors, a descriptive report, and such other information and documentation requested by the Council, including but not limited to, use of the Council's final report form in good order by «Final_Report_Due». The Council, at its full discretion, may require a final project assessment after completion of the Work to insure compliance with this Agreement as a condition precedent to the payment due under Section 2.1.
- 1.7 **Title and Ownership:** Unless expressly provided herein, Grantee shall retain all title and ownership of the Work. Notwithstanding Grantee's right to title and ownership, the Council shall be given all right, copyright, and/or license to use, record, reproduce and/or depict the Work to reasonably further its mission including, but not limited to, publicizing and promoting the Council.
- 1.8 **Allowable Expenses and Use of Funds:** Grant/matching funds may only be used for materials ordered or purchased and labor related to the Work commenced and completed after notification of the grant term as described in Article III.
- 1.9 **Changes to Scope of Work:** Grantee shall inform the Council in writing of any material problems, delays, or adverse conditions, actual or anticipated, which will materially affect the Work objectives or prevent timely completion of the Work. Any material change to the scope of Work requires advance, written approval from the Council. Material change(s) shall include, but not be limited to, design changes, final report filing extension, project scope changes, and budget revisions.
- 1.10 **Force Majeure:** Grantee shall be entitled to suspend its performance of the Work after immediate written notice to the Council upon the occurrence and during the continuance of any *Force Majeure* event which causes suspension of the Work, but Grantee shall be required promptly to resume its performance of the Work upon the cessation of such event. If a *Force Majeure* event causes suspension of the Work or other delay not caused by or within the responsibility of Grantee, the completion date above shall be equitably adjusted by the Council and the Grantee taking into account (among other factors) the length of any suspension or delay of the Work caused by such *Force Majeure* event and the stage of the Work during which such *Force Majeure* event occurred. An event of *Force Majeure* shall mean winds; hurricanes; tornadoes; fires; epidemics; landslides; earthquakes; floods; other natural catastrophes; strikes; lock-outs or other industrial disturbances; acts of public enemies; acts, failures to act, or orders of any kind from any governmental authority acting in its regulatory or judicial capacity (and beyond the reasonable ability of a party to foresee or to contest or prevent such acts, failures to act or orders), provided, however, that any such discretionary acts or failures to act by a party may not be asserted as an event of *Force Majeure* by such party; insurrections; military action; war, whether or not it is declared; sabotage; terrorist acts; riots; civil disturbances; explosions; or any other cause or event, not reasonably within the control of the party (and its subcontractors and suppliers) claiming

Force Majeure (other than the financial inability of such party), which precludes that party from carrying out, in whole or in part, its obligations under this Contract.

- 1.11 **Good Construction Practice:** Work shall be performed consistent with “Good Construction Practice.” “Good Construction Practice” shall mean any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known, or which in the exercise of due diligence, should have been known, at the time the decision was made, would have been expected to accomplish the desired result in a manner consistent with reliability, safety, environmental protection, expedition, project economics and applicable laws, ordinances, rules and regulations for similar facilities. Good Construction Practice is not intended to be limited to consideration of any one practice, method or act, to the exclusion of all others, but rather, is intended to require the consideration of a spectrum of possible practices, methods or acts.
- 1.12 **Archaeological Resources:** Grantee shall halt all Work and immediately inform the Council if buried archaeological resources are discovered, whereupon, Grantee shall preserve and protect these archaeological resources until the Council notifies the Grantee that Work may continue.
- 1.13 **Duty to Maintain Work:** Grantee shall assume the cost of continued maintenance and repair to the Work so as to preserve its functionality, materials, appearance, workmanship, and architectural and historic integrity for a period of five (5) years from the date of execution of this Agreement. This obligation shall survive the termination date.

Article II, Payment

- 2.1 **Payment:** Within 30 days following the Termination Date, the Grantee will submit a final report as set forth in section 1.6 above. This report is due no later than «Final_Report_Due». Upon the Council’s receipt of an acceptable final report and completion of an acceptable final project assessment, as provided in section 1.6 above, the Council will process payment of the Grant. Payment will not exceed one-half of the allowable expenses, pursuant to section 1.8 above, and reflected in the accepted final report, up to the face value of the Grant award.
- 2.2 **Payment Contingency:** No payment shall be made by the Council until it receives funds for this program from the State of Vermont. In the event the funds from the annual State of Vermont appropriation shall be at a lower level than budgeted by the Council, the Council reserves the right to reduce the grant/payment and/or change the payment schedule.
- 2.3 **Prohibited Uses:** Grantee shall not utilize payment for any use other than those identified in section 1.8 above.
- 2.4 **Default:** No payment shall be due while the Grantee is in Default with respect to any of the provisions of this Agreement.

Article III, Term

- 3.1 **Grant Term:** The grant period is «Begin_Date» [acceptance of the grant date] through «End_Date» [otherwise referred to as the “Termination Date”]. Requests to extend the time period must be submitted in writing at least two weeks before «End_Date». **Extensions of time for grant projects will generally not be approved beyond August 31, 20__.**

Article IV, Termination and Limitation of Liability

- 4.1 **Termination for Convenience:** Notwithstanding any other provision of this Agreement, the Council may terminate this Agreement without cause by giving thirty (30) days advance written notice thereof to Grantee. Upon termination of this Agreement pursuant to this section, Grantee shall have no further obligation to provide Services or Work as described in section 1.1.
- 4.2 **Termination for Default:** Either party may terminate this Agreement in the event that the other party fails to materially adhere to any of the terms and conditions of this Agreement (“Default” or “Event of Default”). An Event of Default shall also constitute Grantee’s instituting or has instituted against it a proceeding for insolvency or bankruptcy, or other similar relief. In the event the Council provides notice of termination under this section due to Grantee’s default, the Council shall have no obligation to make payments under Article II in addition to any other remedies available to it under equity or law.
- 4.3. **Limitation of Liability:** The parties confirm and agree that under this agreement, no party is required to pay or will be liable for special, consequential, incidental, punitive, exemplary, or indirect damages, lost profit or business interruption damages, by statute, in tort, contract or otherwise, unless expressly provided for in this agreement.
- 4.4 **Arbitration:** Any disputes or differences arising out of this Agreement that cannot be amicably settled between the parties shall be finally settled under the Rules of Conciliation and Arbitration of the American Arbitration Association by one or more arbitrators appointed in accordance with said Rules. The arbitration shall take place in Montpelier, Vermont. The substantially prevailing party shall be entitled to its reasonable attorneys’ fees and costs.

Article V, Insurance and Indemnification.

- 5.1 **Insurance:** Before commencing the Services or Work under this Agreement Grantee shall provide certificates of insurance upon request by the Council to show the following minimum coverages are in effect. The certificates of insurance shall name the Council as an additional insured party. Such policies shall be non-cancellable without thirty (30) days prior written notice from the insurance carrier to the Council. Types of insurance shall include:
- **Workers’ Compensation:** *Workers' compensation and employers' liability insurance, as required by law, covering all its employees who perform any services under this Agreement. If any employer or employee is not subject to the workers' compensation laws, then insurance shall be obtained voluntarily to extend to the employer and employee coverage to the same extent as though the employer or employee were subject to the workers' compensation laws.*
 - **General Liability Insurance:** *Public liability and commercial general liability insurance covering all operations under this Agreement shall have limits for bodily injury or death of not less than \$1 million each*

occurrence, limits for property damage of not less than \$1 million each occurrence, and \$1 million aggregate for accidents during the policy period. A single limit of \$1 million for bodily injury and property damage is acceptable. This required insurance may be in a policy or policies of insurance, primary and excess including the umbrella or catastrophe form.

- *Automotive: Automobile liability insurance on all motor vehicles used in connection with this Agreement, whether owned, non-owned, or hired, shall have limits for bodily injury or death of not less than \$1 million per person and \$1 million each occurrence, and property damage limits of \$1 million for each occurrence. A single limit of \$1 million for bodily injury and property damage is acceptable. This required insurance may be in a policy or policies of insurance, primary and excess including the umbrella or catastrophe form.*

- 5.2 **Indemnification and hold harmless:** Grantee, its successor and assigns, shall defend, indemnify, save and hold harmless the Council, its board members, employees, and representatives from and against all lawsuits including arbitration and mediation proceedings, causes of action, judgments, claims, debts, demands, damages, losses, penalties, fines and expenses (including expenses and attorneys' fees) of whatever kind in law or in equity, relating to any injury, death, property damage, infringement of any intellectual property, loss, suit or claim, known or unknown, foreseen or unforeseen, arising from or out of this Agreement and/or any subsequent acts related thereto, including but not limited to the Work, actions or omissions by the Grantee or any of Grantee's employees, representatives, sub-contractors or successors or assigns, in connection with this Contract. **The provisions of this section shall survive completion or termination of this Agreement.**

Article VI, Representations and Warranties

- 6.1 Grantee represents and warrants at the time of the execution of this agreement and during the fulfillment of this agreement, the following:

It has the authority and power to execute, deliver, and perform the services as described in section 1.1 of this agreement and enter into any transaction contemplated hereby.

- a. It has both the financial resources and technical ability to fulfill the terms of the Agreement.
- b. It is neither disbarred, suspended, declared ineligible nor voluntarily excluded from participating or entering into contracts or receiving other monies from either the Federal Government or State of Vermont.
- c. It has not been found by a court of competent jurisdiction to be in arrears of any child support obligation.
- d. It has received and maintained the necessary Endorsement by the Council.
- e. The Grantee is not delinquent in the repayment of any Federal or State debt. Examples of relevant debt include delinquent payroll, income or other taxes, audit disallowances, and benefit overpayments.
- f. The Grantee has not been convicted of charges involving fraud, bribery, or gratuity violations.
- g. Neither Grantee nor its employee(s) or members of their immediate family are employed by the Council.

- h. Grantee is not a contractor for purposes of Vermont's Prompt Payment Act (9 V.S.A. § 4001 *et seq.*) and Grantee agrees that the Council is not an owner under Vermont's Prompt Payment Act.

Article VII, Miscellaneous

7.1 **Document Retention and Cooperation:** Grantee shall retain all records, including those in electronic format, related to the Work for three years after the completion of this Agreement. Without limitation these records shall include financial, accounting, payroll, invoices, etc. In the event Council provides notice, Grantee's obligation to retain records can be extended in the event of an audit, litigation, or other claim. Grantee shall be further obligated to cooperate with any additional, reasonable request for record keeping, record retention, and/or assessment of the Work for contract compliance by the Council, or the State of Vermont.

7.2 **Non Discrimination and Accessibility:**

a. Grantee warrants, represents, and otherwise agrees that it will not discriminate:

- On the grounds of race, color, religion, gender identity, sex, national origin, sexual orientation, age or disability in accordance with Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d *et seq.*), the Age Discrimination in Employment Act of 1975, Title IX of the Education Amendments of 1972; Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, Vermont's Fair Employment Practices Act (9 V.S.A. § 495 *et seq.*);
- On the grounds of disability, in accordance with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), and the Americans with Disabilities Act of 1990 (42 U.S.C. 12101-12213) known as ADA, and the ADA Amendment Act of 2008.

Grantee further agrees to require any subcontractors to abide by these terms and conditions.

b. **Individuals and Corporate Grantees:** Agree to make its Work, programs, Services, and facilities accessible to individuals with disabilities in providing the above assurance of compliance.

- Grantee understands and agrees that the project and its Work shall comply with the requirements of Section 504 of the Rehabilitation Act of 1973; the Americans with Disabilities Act of 1990 (ADA), the ADA Amendment Act of 2008, and the 2010 ADA Standards for Accessible Design along with the 2010 ADA Title III regulations for nondiscrimination as applicable. The Grantee understands that failure to adhere to the above referenced requirements shall be considered an Event of Default.
- Finally, the Grantee agrees to inform the Council immediately of any and all formal access complaints or grievances filed against it so that the Council may better assist the applicant in achieving a timely and meaningful resolution of the complaint. The Grantee agrees to provide documentation of its access compliance efforts if requested by the Council.

For copies of the nondiscrimination laws identified above, and for any question relating to compliance, contact the Council's 504/ADA Coordinator:

Michele Bailey
Vermont Arts Council
136 State Street
Montpelier, VT 05633-6001 (802)828-3294 - voice or relay calls welcome.

Information about making facilities and programs accessible to individuals with disabilities is also available from the National Endowment for the Arts:

Office for AccessAbility
National Endowment for the Arts
400 7th Street SW
Washington, DC 20506
202.682-5532 (voice) or 202.682-5496 (TTY)

OR

Office for Civil Rights
National Endowment for the Arts
400 7th Street SW
Washington, DC 20506
202.682.5794

- 7.3 **Labor Laws:** The Grantee shall comply with the Fair Labor Standard Act (29 U.S.C. § 201 *et seq.*), Vermont's Wage and Hour laws (21 V.S.A. § 301 *et seq.*), the Davis-Bacon Act (40 U.S.C. § 3141 *et seq.*), and the Copeland Anti-Kickback Act (40 U.S.C. § 3145 *et seq.*). Grantee shall comply and assure that personnel, performers, mechanics, and laborers, who are to be employed under this grant, will be compensated at or above the prevailing community rate for similar services, and will be provided a safe and healthy working environment. In addition, Grantee warrants, represents, and agrees that it shall be prohibited from inducing, by any means, any person employed by it (or its independent contractors, or subcontractors) from giving up any part of the compensation for which he or she is otherwise entitled. Grantee shall also endeavor to utilize labor or contractors local to the State of Vermont.
- 7.4 **General Management:** When managing the Work, the Grantee will adhere to the project budget described in the grant application or an amended budget approved by the Council. The Grantee's fiscal control and accounting procedures will insure proper accounting for both grant and matching funds. Fiscal records will be utilized and maintained pursuant to Adequate Standards to permit an accurate audit, and will be open to review by the Council, Federal, or State government(s). Adequate Standards require that the Grantee: (a) maintain a bookkeeping system for recording receipts and disbursements; (b) distinguish Council grant transactions from other, unrelated transactions; (c) retain supporting documentation of transactions (including, but not limited to, invoices, bills, cash reconciliations, records documenting in-kind matching contributions and the basis for determining their value, time sheets and other pertinent data) in conformity with the document retention requirements set forth in section 7.1; and (d) prepare financial reports to be submitted to the Council.
- 7.5 **Publicity:** The Grantee is responsible for making sure that all announcements, posters, news releases, and other publicity for the project include the following statement: "**This project (or the name of your organization or project) is supported in part by the Vermont Arts Council and the State of Vermont.**"
- There are additional requirements for television and radio broadcast. Information about those requirements and logos can be found in the grants section of the [Council's website](#). The Grantee agrees to credit additional funding sources if requested in writing by the Council.

- Most grantees will be required to share depictions of participants via photographs or video for publicity purposes. If Grantee seeks to utilize depictions of participants as part of the publicity associated with its Work, Grantee shall procure the necessary releases and authorizations for the use of such depictions. Grantee may utilize the sample release and authorization form contained on the Council's website.

7.6 **Notices:** Any notice required, permitted to be given, or made under this Agreement shall be in writing to the appropriate primary contact. Such notice shall be deemed to be duly given or made when it shall have been delivered by hand, mail, facsimile or electronic mail to the party to which it is required to be given or made, at such party's address specified below or at such other address as the party shall have specified in writing to the party giving such notice, or making such request.

For Council:
 Karen Mittelman
 Vermont Arts Council
 136 State Street
 Montpelier, VT 05633

For Grantee:
 «Grant_Contact_Name»
 «Applicant»
 «Applicant_Address_1_Street_1»
 «Applicant_Address_1_City», «Applicant_Address_1_State_Province»
 «Applicant_Address_1_ZIP_Postal_Code»

7.7 **Severability and Non-waiver:** If any term or provision of this Agreement shall be held to be invalid or unenforceable, the remaining terms and provisions of this Agreement shall be valid and enforceable to the fullest extent permitted by law. The failure of either party to enforce any one or more of the provisions of this Agreement shall not be construed to be a waiver thereof, nor shall such failure affect the validity of the Agreement, Grantee's obligations hereunder or the right of the Council to enforce any provision of the Agreement.

7.8 **Entire Agreement:** This Agreement, including any appendices and the grant application, constitutes the entire agreement between the Council and the Grantee and supersedes all prior communications, representations, agreements and understandings whether oral or written made by either of them concerning the subject hereof. This Contract may not be modified or amended except by written instrument duly executed by an authorized employee of the party to be bound.

7.9 **Governing Law:** The interpretation of the terms and conditions of this Agreement shall be governed by the laws of the State of Vermont.

7.10 **Relationship of the Parties:** Nothing in this Agreement shall be deemed to constitute either party a partner, agent or legal representative of the other party or to create any fiduciary relationship between the parties. Grantee shall remain an independent contractor in the performance of this Agreement, maintaining complete control of its personnel, workers, subcontractors and operations required for performance of the Work.

7.11. **Assignment and Third Party Beneficiary:** This Agreement shall not be assigned by Grantee without the written consent of the Council. Such consent will be at the Council's complete discretion. The State of

Vermont shall be considered a third party beneficiary under this Agreement, and it shall have the right to seeking enforcement of the Council's rights and to obtain compliance with Grantee's duties and obligations under this Agreement.

- 7.12 **Miscellaneous:** By signing this Agreement, the Parties agree to cooperate and acknowledge and agree to execute all other documents reasonably necessary to effectuate the intent of this Agreement. Both parties have had the ability to review and negotiate the terms of this Contract. Therefore the presumption against the drafter shall not apply to the construction of this Contract. This Agreement shall bind and inure to the benefit of the Parties of this Agreement and any success or assigns acquiring an interest hereunder.

SAMPLE

ACKNOWLEDGEMENT OF ARBITRATION

I understand that this Agreement between The Vermont Arts Council and «Applicant» contains an agreement to arbitrate. After signing this document, it is understood that neither party will be able to bring a lawsuit concerning any dispute that may arise which is covered by the arbitration agreement, unless it involves a question of constitutional or civil rights. Instead, we agree to submit any such dispute to an impartial arbitrator.

In witness thereof the Council and the Grantee have executed this as of the date first written above.

FOR VERMONT ARTS COUNCIL:



Karen Mittelman, Executive Director
136 State Street
Montpelier, VT. 05633

3/4/2020

Date

FOR GRANTEE:

I certify that I have read and understand the conditions set forth herein, and will comply with these conditions.

Signature of Grantee or Authorized Representative

Date

Printed or Typed Name of Grantee or Authorized Representative

«Applicant»

«Applicant_Address_1_Street_1»

«Applicant_Address_1_City», «Applicant_Address_1_State_Province»

«Applicant_Address_1_ZIP_Postal_Code»