

EXHIBIT A  
16-333

COOPERATIVE AGREEMENT  
(AKRON CIVIC THEATER PHASE II RENOVATION PROJECT)

THIS COOPERATIVE AGREEMENT (this "Agreement") is made and entered into as of \_\_\_\_\_, 2016 by and among the DEVELOPMENT FINANCE AUTHORITY OF SUMMIT COUNTY, a port authority and political subdivision and body corporate and politic duly organized and validly existing under the laws of the State (the "Authority"), the COUNTY OF SUMMIT, OHIO, a county and political subdivision duly organized and validly existing under the laws of the State (the "County"), and COMMUNITY HALL FOUNDATION, INC. DBA AKRON CIVIC THEATER, an Ohio non-profit corporation (the "Civic," and together with the Authority and the County, collectively, the "Cooperative Parties") (capitalized terms not defined in the recitals being used therein as defined in Article I hereof):

- A. The Civic desires to undertake the Project.
- B. In connection with the Project, the Civic is seeking funding from various sources, including from the Ohio Facilities Construction Commission (the "OFCC") and the Summit County Land Reutilization Corporation (the "SCLRC") (collectively the "Funding"). The Civic, with assistance and participation of the Authority, has applied and heretofore been awarded Funding from OFCC and SCLRC.
- C. The Authority is the fee simple owner of the Project Facility and currently leases it to the Civic pursuant to the Lease entered into as part of the Authority's issuance of the \$15,295,000 Development Finance Authority of Summit County Port Facilities Revenue Refunding Bonds, Series 2012 (Civic Theater Project).
- D. The Authority and the County desire to provide assistance to the Civic (i) in its efforts to secure Funding for the Project and (ii) construction management of the Project.
- E. The Cooperative Parties previously entered into a non-binding Memorandum of Understanding dated as of March 7, 2016.

NOW THEREFORE, in consideration of the premises and the mutual representations and agreements hereinafter contained, and subject to the terms and limitation of this Agreement, the Cooperative Parties agree as follows:

ARTICLE I.

Definitions

Section 1.1 Use of Defined Terms. In addition to the words and terms defined elsewhere in this Agreement, the Lease or another document, the words and terms set forth in Section 1.2 hereof shall have the meanings set forth therein unless the context or use clearly indicates another meaning or intent. Such definitions shall be equally applicable to both the singular and plural forms of any of the words and terms defined therein.

Section 1.2 Definitions. As used herein:

“Grant Funds” means collectively the monies awarded by (a) the OFCC pursuant to the terms of the OFCC Cooperative Use Agreement, and (b) the SCLRC pursuant to the SCLRC Resolution.

“Lease” means the Lease between the Authority, as lessor, and the Civic, as lessee, dated September 17, 2001, as the same may be amended or supplemented from time to time in accordance with its terms.

“Notice Address” means:

(a) as to the Authority:                      Development Finance Authority  
of Summit County  
47 North Main Street  
Suite 407  
Akron, Ohio 44308  
Attention: President

(b) as to the County:                      County of Summit, Ohio  
175 South Main Street, 8<sup>th</sup> Floor  
Akron, Ohio 44308  
Attention: County Executive

(c) as to the Civic:                      Community Hall Foundation, Inc.  
182 South Main Street  
Akron, Ohio 44308  
Attention: Executive Director

or such additional or different address, notice of which is given under Section 5.2 hereof.

“OFCC Cooperative Use Agreement” means the Cultural Project Cooperative Use Agreement dated July 14, 2016, attached hereto as Exhibit “A”.

“Plans and Specifications” means the architectural and engineering plan and specification documents attached hereto as Exhibit “C”.

“Project” means the Civic’s Phase II Renovation Project which includes roof replacement, electrical and heating upgrades, and restoration of the grand lobby and entry arcade at the Project Facility, and further delineated in the Plans and Specifications attached hereto as Exhibit “B”.

“Project Facility” means the real estate located at 182 South Main Street, Akron, Ohio 44308, and as described in the Lease.

“Provision” means, as applicable, acquiring, constructing, developing, installing, improving, equipping, operating, repairing, altering, replacing, maintaining or furnishing.

“SCLRC Resolution” means SCLRC Resolution No. 2016-10 dated March 24, 2016, attached hereto as Exhibit “B”.

“State” means the State of Ohio.

Section 1.3 Interpretation. Any reference herein to the Authority or the County, or to any member or officer of either, includes entities or officials succeeding to their respective functions, duties or responsibilities pursuant to or by operation of law or lawfully performing their functions.

Unless the context indicates otherwise, words importing the singular number include the plural number and vice versa; the terms “hereof,” “hereby,” “herein,” “hereto,” “hereunder” and similar terms refer to this Agreement; and the term “hereafter” means after, and the term “heretofore” means before, the date of this Agreement. Words of any gender include the correlative words of the other genders, unless the sense indicates otherwise.

Section 1.4 Captions and Headings. The captions and headings in this Agreement are solely for convenience of reference and in no way define, limit or describe the scope or intent of any Articles, Sections, subsections, paragraphs, subparagraphs or clauses hereof.

## ARTICLE II.

### Representations

Section 2.1 Representations of the Authority. The Authority represents: (a) it is duly organized and validly existing as a port authority under the laws of the State; (b) it is not in violation of or in conflict with any provisions of the laws of the State or of the United States applicable to it that would impair its ability to carry out its obligations contained in this Agreement; (c) it is legally empowered to enter into and carry out the transactions contemplated by this Agreement; and (d) it has duly authorized the execution, delivery and performance of this Agreement and any ancillary agreements or documents.

Section 2.2 Representations of the County. The County represents: (a) it is duly organized and validly existing as a county and political subdivision under the laws of the State; (b) it is not in violation of or in conflict with any provisions of the laws of the State or of the United States applicable to it that would impair its ability to enter into this Agreement; (c) it is legally empowered to enter into this Agreement; and (d) it has duly authorized the execution, delivery and performance of this Agreement and any ancillary agreements or documents.

Section 2.3 Representations and Covenants of the Civic. The Civic represents and covenants that: (a) it is a non-profit corporation duly organized and validly existing under the laws of the State and is authorized to transact business under the laws of the State; (b) it has duly authorized the execution, delivery and performance of this Agreement and it has full power and authority to execute, deliver and perform this Agreement and any ancillary agreements, and to enter into and perform the transactions contemplated by those documents; and (c) the assistance made or to be made available to the Civic under this Agreement has induced the Civic to undertake such Project.

## ARTICLE III.

### Grant Funding Assistance; Provision of Project

Section 3.1 Grant Funding Assistance. To the extent necessary, the Authority and County has and/or shall provide the Civic with reasonable assistance in its application for and administration of the Grant Funds from the OFCC and SCLRC.

Section 3.2 Provision of the Project. The Civic, the Authority, and the County agree to undertake the Provision of the Project with all reasonable dispatch and in accordance with Sections 3.3 through 3.7.

Section 3.3 Undertakings of the Authority. The Civic hereby designates and appoints the Authority as the Civic's agent (as necessary) for purposes of the Project, and the Authority accepts appoint as agent, and agrees to assist with the Provision of the Project on behalf of the Civic, pursuant to and in accordance with the Plans and Specifications, and for the performance and satisfaction of any and all of its or of the Civic's obligations under any construction contract for the Project approved by the Cooperative Parties (whether in the name of the Civic, the Authority, or as agent for the Civic), including without limitation:

- (a) all design and supervisory functions relating to the Provision of the Project;
- (b) bidding (as necessary or desired), negotiation, execution and performance of all obligations under all contracts and arrangements for site preparation and for Provision of the Project (including, without limitation, the removal of all waste and rubbish and the enforcement of all construction warranties) on such terms and conditions as are customary and reasonable in light of local and national standards and practices;
- (c) negotiation, execution and performance of all obligations under all contracts and arrangements to procure all labor, materials and equipment necessary to or desirable for any of the foregoing;
- (d) obtaining all necessary permits, licenses, consents, approvals, entitlements and other authorizations, required under applicable laws, in connection with the Provision of the Project in accordance with the Plans and Specifications;
- (e) maintaining all books and records with respect to the foregoing and operation and management of the Project; and
- (f) payment of all costs and expenses and performance of all other acts necessary in connection with the foregoing.
- (g) Any contracts made with respect to the Provision of the Project shall provide that the Authority shall have no obligation to pay any costs under such contracts except from the Grant Funds.

Section 3.4 Undertakings of the County. The County is hereby designated and appointed as the owner's representative to provide such services standard and customary in that role in connection with the Authority's undertakings as delineated in Section 3.3.

Section 3.5 No Remuneration Payable to Authority or the County. Except with respect to enforcing the Civic's obligations under this Agreement, including Sections 3.6 and 4.1, neither the Authority, nor the County shall receive remuneration from the Civic or any third party for their assistance related to the Project.

Section 3.6 Civic Required to Pay Project Costs to the Extent the Grant Funds are Insufficient. To the extent the Grant Funds are insufficient to pay all the Project costs, the Civic will, nonetheless, be solely liable for and pay all costs to complete the Project in accordance with the Plans and Specifications.

Section 3.7 Limitation of Liability. Notwithstanding any implication to the contrary herein, the duties, obligations requirements and liabilities of the Authority or the County under this Agreement are payable solely from the Grant Funds, and neither the Authority nor the County is obligated to use any money or assets, other than the Grant Funds, in connection with the Project or to satisfy such duties, obligations, requirements and liabilities, including the failure to perform any duty, obligation or requirement and any liability resulting therefrom.

#### ARTICLE IV.

##### Indemnification Covenants by the Civic

###### Section 4.1 Indemnification by the Civic.

(a) The Civic releases the Authority, the County, and their respective officials, officers, directors and employees, from, and agrees that the Authority, the County, and their respective officials, officers, directors and employees (collectively, the "Indemnified Parties"), shall not be liable for and indemnifies the Indemnified Parties against, all liabilities, claims, costs and expenses, imposed upon, incurred or asserted against an Indemnified Party on account of (the "Losses") : (i) any loss or damage to property or injury to or death of or loss by any person that may be occasioned by any cause whatsoever pertaining to the acquisition, construction, equipment, installation, improvement, maintenance, operation, or use of the Project; (ii) any breach or default on the part of the Civic in the performance of any covenant or agreement of the Civic under this Agreement, any contract for the construction of the Project, or any other document related thereto, or arising from any act or failure to act by the Civic or any of its agents, contractors, servants, employees or licensees in connection with the Project; (iii) the authorization, issuance, or administration of the Grant Funds, and the provision of any information or certification furnished by the Civic in connection therewith concerning the Project; (iv) any action taken or omitted to be taken by the Authority or the County pursuant to the terms of this Agreement, any contract for the construction of the Project, the Grant Funds, or any other related instrument or document, or any action taken or omitted to be taken by the Authority or the County acting on instruction from or at the request of or with the consent of the Civic; and (v) any claim, action or proceeding brought with respect to any matter set forth in

clause (i), (ii), (iii) or (iv) above; provided, that such Losses did not result from the willful misconduct of the Indemnified Party seeking indemnification.

(b) In case any claim or demand is at any time made, or action or proceeding is brought, against or otherwise involving an Indemnified Party in respect of which indemnity may be sought hereunder, the Indemnified Party seeking indemnity promptly shall give notice of that action or proceeding to the Civic, upon receipt of that notice shall have the obligation and the right to assume the defense of the action or proceeding; provided, that failure of the Indemnified Party to give that notice shall not relieve the Civic from any of its obligations under this Section unless, and only to the extent, that failure prejudices the defense of the action or proceeding by the Civic. An Indemnified Party may employ separate counsel and participate in the defense, but the fees and expenses of such counsel shall be paid by the Indemnified Party unless (a) the employment of such counsel has been specifically authorized by the Civic in writing, or (b) the Civic has failed to assume the defense and to employ counsel or (c) the named parties to any such action (including any impleaded parties) include both an Indemnified Party and the Civic and such Indemnified Party shall have been advised by its counsel that there may one or more legal defenses available to it which are different from or additional to those available to the Civic, in which case, if the Indemnified Party notifies the Civic in writing that it elects to employ separate counsel at the Civic's expense, the Civic shall not have the right to assume the defense of such action on behalf of such Indemnified Party and the Civic shall be responsible for payment of the fees and expenses of such separate counsel. An Indemnified Party seeking indemnity agrees to fully cooperate with the Civic, to the extent such cooperation does not prejudice the position of such Indemnified Party, and lend the Civic such assistance as the Civic shall reasonably request in defense of any claim, demand, action or proceeding. The Civic shall not, nor shall any Indemnified Party, be liable for any settlement made without its consent.

(c) The indemnification set forth above is intended to and shall include the indemnification of all affected officials, directors, officers, agents and employees of each Indemnified Party, respectively, and their successors and assigns. That indemnification is intended to and shall be enforceable thereby to the full extent permitted by law and shall survive the expiration or termination of this Agreement.

## ARTICLE V.

### Miscellaneous

Section 5.1 Term of Agreement. This Agreement shall be and remain in full force and effect from the date of execution of this Agreement until the Provision of the Project is complete, and all other amounts due from the Civic hereunder have been paid in full (except for the obligations of the Civic under Sections 4.1 hereof) in accordance with this Agreement or any contract for the construction of the Project, or any other related instrument or document.

Section 5.2 Notices. All notices, certificates, requests or other communications hereunder shall be in writing and shall be deemed to be sufficiently given when mailed by registered or certified mail, postage prepaid, and addressed to the appropriate Notice Address. A duplicate copy of each notice, certificate, request or other communication given hereunder to any Cooperative Party shall also be given to the other Cooperative Parties. The Cooperative Parties,

by notice given hereunder, may designate any further or different addresses to which subsequent notices, certificates, requests or other communications shall be sent. If, because of the suspension of delivery of certified or registered mail or for any other reason, notice, certificates or requests or other communications are unable to be given by the required class of mail, any notice required to be mailed by the provisions of this Agreement shall be given in such other manner as shall most effectively approximate mailing thereof, and the giving of that notice in that manner for all purposes of this Agreement shall be deemed to be in compliance with the requirement for the mailing thereof except as otherwise provided herein, the mailing of any notice shall be deemed complete upon deposit of that notice in the mail and the giving of any notice by any other means of delivery shall be deemed complete upon receipt of the notice by the delivery service.

Section 5.3 Extent of Covenants; No Personal Liability. All covenants, obligations and agreements of the Cooperative Parties contained in this Agreement shall be effective to the extent authorized and permitted by applicable law. No such covenant, obligation or agreement shall be deemed to be a covenant, obligation or agreement of any present or future member, director, official, officer, agent or employee of the Authority, the County, or the Civic in other than his or her official capacity.

The obligations of the Authority and the County under this Agreement are not and shall not be secured by an obligation or pledge of any moneys raised by taxation. The obligations of the Authority and the County under this Agreement do not and shall not represent or constitute a debt or pledge of the faith and credit or taxing power of the Authority or the County, and neither the Company, nor any other party shall have any right to have taxes levied by the Authority or the County for the payment of its obligations under this Agreement.

Section 5.4 Binding Effect. This Agreement shall inure to the benefit of and shall be binding in accordance with its terms upon the Cooperative Parties and their respective permitted successors and assigns; provided that no right or obligation arising on this Agreement may be assigned by any of the Cooperative Parties, except to the extent permitted herein. This Agreement may be enforced only by the Cooperative Parties, their assignees and others who may, by law, stand in their respective places.

Section 5.5 Amendments and Supplements. This Agreement may not be amended, changed, modified, altered or terminated except as set forth in a writing signed by all of the Cooperative Parties.

Section 5.6 Execution Counterparts. This Agreement may be executed in counterpart and in any number of counterparts, each of which shall be regarded as an original and all of which shall constitute but one and the same instrument.

Section 5.7 Severability. If any provision of this Agreement, or any covenant, obligation or agreement contained herein is determined by a court to be invalid or unenforceable, that determination shall not affect any other provision, covenant, obligation or agreement, each of which shall be construed and enforced as if the invalid or unenforceable portion were not contained herein. That invalidity or unenforceability shall not affect any valid and enforceable application thereof, and each such provision, covenant, obligation or agreement shall be deemed

to be effective, operative, made, entered into or taken in the manner and to the full extent permitted by law.

Section 5.8 Governing Law. This Agreement shall be deemed to be a contract made under the laws of the State and for all purposes shall be governed by and construed in accordance with the laws of the State.

IN WITNESS WHEREOF, the Cooperative Parties have caused this Agreement to be duly executed in their respective names, all as of the date first hereinbefore written.

DEVELOPMENT FINANCE AUTHORITY  
OF SUMMIT COUNTY

By: \_\_\_\_\_  
Christopher J. Burnham, President

COUNTY OF SUMMIT, OHIO

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

COMMUNITY HALL FOUNDATION, INC. DBA  
AKRON CIVIC THEATER

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

Approved as to form:

By: \_\_\_\_\_  
Deborah S. Matz, Director  
Department of Law, Insurance and  
Risk Management



**EXHIBIT A**

*OFCC Cooperative Use Agreement*

(See Attached)

**EXHIBIT B**

*SCLRC Resolution No. 2016-10*

(See Attached)

**EXHIBIT A**

**EXHIBIT C**

*Plans and Specifications*

(See Attached)

**EXHIBIT A**