



## Public Notice of Proposed Rule-Making

Pursuant to the provisions of Title 42, Chapter 75 and Rhode Island Public Law Chapter 145, Article 5 and In accordance with the Administrative Procedures Act Chapter 42 — 35 of the General Laws , The Rhode Island State Council on the Arts (RISCA) hereby gives notice of its intent to adopt Rules and Regulations for to establish the operating procedures for the State Cultural Facilities Grant Program and the State Cultural Facilities Grant Program review panel.

The purpose of this adoption is to authorize the Rhode Island State Council on the Arts to administer a matching grant program "for capital improvement, preservation and renovation projects for public and nonprofit artistic, performance centers, historic sites, museums and cultural centers located throughout the State of Rhode Island," in accordance with the passage of the Creative and Cultural Economy Bond passed by the voters on November 4, 2014.

The proposed regulations are available for public inspection at <http://www.arts.ri.gov/facilities>; in person at the RISCA offices at One Capitol Hill, 3rd floor, Providence, Rhode Island; via e-mail by request to [Randall.Rosenbaum@arts.ri.gov](mailto:Randall.Rosenbaum@arts.ri.gov); or by calling the RISCA office at 401-222-3880.

In the development of the proposed adoption consideration was given to: (1) alternative approaches; (2) overlap or duplication with other statutory and regulatory provisions; and (3) significant economic impact on small business. No alternative approach, duplication, or overlap was identified based on available information. RISCA has determined that small businesses will not be adversely impacted by the proposed regulations. However, the public notification process is being conducted to solicit comment on the proposal and to allow public input from small businesses or nonprofit arts organizations which may believe that they may be adversely affected.

All interested parties are invited to submit written or oral comments concerning the proposed regulations by March 23, 2015 to:

Randall Rosenbaum, Executive Director  
Rhode Island State Council on the Arts  
One Capitol Hill, 3rd Floor  
Providence, RI 02908  
Phone: 401-222-3880  
Email: [Randall.Rosenbaum@arts.ri.gov](mailto:Randall.Rosenbaum@arts.ri.gov)

A public hearing to consider the proposed adoption shall be held on Monday, March 23, 2015 at 2pm at One Capitol Hill, Providence, RI, at which time and place all persons interested therein will be heard. The place of the public hearing is accessible to the handicapped. If communications assistance (readers/interpreter/captioners) is needed, or any other accommodation to ensure equal participation, please call RISCA or RI Relay 711 at least three business days prior to the meeting arrangements can be made to provide such assistance at no cost to the person requesting.

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
RHODE ISLAND STATE COUNCIL ON THE ARTS



**STATE CULTURAL FACILITIES  
GRANT PROGRAM REGULATIONS**

Effective Date: April 20, 2015

**AUTHORITY:** These regulations are adopted pursuant to Title 42, Chapter 75 and Public Law Chapter 145, Article 5 and in accordance with Chapter 42-35, Administrative Procedures Act, of the Rhode Island General Laws of 1956, as amended

## FINAL VERSION FOR PUBLIC COMMENT

### Rule 1: Purpose

The purpose of these rules and regulations are to establish the operating procedures for the State Cultural Facilities Grant Program and the State Cultural Facilities Grant Program Review Panel.

### Rule 2: Authority

These rules and regulations are promulgated pursuant to Title 42, Chapter 75 and Public Law Chapter 145, Article 5 and in accordance with Chapter 42-35, Administrative Procedures Act, of the Rhode Island General Laws of 1956, as amended. This authorizes the Rhode Island State Council on the Arts to administer a matching grant program "for capital improvement, preservation and renovation projects for public and nonprofit artistic, performance centers, historic sites, museums and cultural art centers located throughout the State of Rhode Island."

### Rule 3: Definitions

For the Purposes of These Regulations, the Following Terms Shall Have the Following Meanings:

- (A) "APPLICANT" - A private non-profit organization that has non-profit 501(c)(3) status with the IRS. "COUNCIL" - The Governing Body of the Rhode Island State Council on the Arts, an agency of the state government as described in Chapter 42-75 of the General Laws of Rhode Island
- (B) "CREATIVE AND CULTURAL ECONOMY BONDS" – approved 2014 state ballot question that authorizes the State of Rhode Island to issue general obligation bonds, refunding bonds, and temporary notes in an amount not to exceed thirty-five million dollars (\$35,000,000) to fund capital improvement, preservation and renovation projects for public and nonprofit artistic, performance centers, historic sites, museums and cultural art centers located throughout the State of Rhode Island.
- (C) "CULTURAL FACILITY" - A building which shall be used primarily for the programming, production, presentation, exhibition of any of the arts and cultural disciplines. These disciplines include music, dance, theatre, creative writing, literature, architecture, painting, sculpture, folk arts, photography, crafts, media arts, visual arts, and programs of museums. Civic buildings and libraries are not considered cultural facilities, but identified areas within these structures specifically designated for the production, presentation and exhibition of the arts may be eligible for support.
- (D) "DIRECTOR" - The Executive Director of the Rhode Island State Council on the Arts as described in Section 42-75 of the General Laws of Rhode Island. "MATCHING DOLLAR" or "MATCHING FUNDS" - Actual cash contributions raised and designated for the purpose of matching a grant award from the Cultural Facilities Grant program. Match must be on a 1:1 cash basis and must be documented in a manner established by RISCA. In-kind contributions are not counted in this definition. Matching funds may include private funds donated or loaned to the Grantee by a financial institution or community-based lender and designated for the project, or federal or municipal appropriations. Funds appropriated by the State of Rhode Island or previously awarded through either

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the State Cultural Facilities Grant Program or State Preservation Grants may not be counted as part of the Match. Matching funds may NOT include operating funds.

- (E) "NAMED RECIPIENTS" - The nine Rhode Island non-profit arts and cultural organizations that are specifically identified in Chapter 145 of the 2014 Rhode Island Public Laws as being recipients of designated amounts of the Creative and Cultural Economy Bond funds: specifically, Trinity Repertory Company (\$4,647,750); Rhode Island Philharmonic (\$2,390,250); Newport Performing Arts Center (\$4,216,800); United Theatre/Westerly Land Trust (\$2,369,440); The Chorus of Westerly (\$1,054,200); The Stadium Theatre Conservatory in Woonsocket (\$2,108,400); 2nd Story Theater (\$1,054,200); AS220 (\$2,108,400); and Waterfire Providence (\$3,162,600).
- (F) "NON-PROFIT AGENCY" - A group or organization which has qualified as a tax exempt public charity under Section 501(c)(3) of the Internal Revenue Code formed for the purpose of developing and promoting the work of artists in various visual and performing art forms such as music, dance, theatre, film, sculpture, painting, photography and the visual arts, multimedia, poetry, and performance art.
- (G) "RENOVATION" - To restore a facility to a better state, through repairing or rebuilding
- (H) "RISCA" - The Rhode Island State Council on the Arts, an agency of the state government as described in Chapter 42-75 of the General Laws of Rhode Island that is authorized to administer the State Cultural Facilities Grant Program. This term shall also apply to any contractor engaged to manage any aspect of this program under the direct control of RISCA.
- (I) "STATE CULTURAL FACILITIES GRANTS" – Competitive grants awarded from the \$6,887,960 in funds identified in Chapter 145 of the 2014 Rhode Island General Laws under Article 5, Section 10 (a) "Other funds to be allocated by RISCA as, "For 1:1 matching grants to be allocated by the Rhode Island State Council on the Arts to 501(c)(3) nonprofit cultural organizations which lease or own their performance space, and for RISCA's expenses in administering the program. In awarding such grants RISCA shall take into account financial need, the availability or actual expenditure of matching funds for the projects, available gifts or grants for projects, the amount of square footage to be improved, the geographical location and characteristics of audiences benefitted."
- (J) "STATE PRESERVATION GRANTS" – Competitive grants administered by the Rhode Island Historical Preservation & Heritage Commission (RIHPHC) to "provide funds to cities, towns and non-profit organizations to preserve, renovate and improve public and nonprofit historic sites, museums, and cultural art centers located in historic structures in the State of Rhode Island.

### Rule 4: Application Procedures for State Cultural Facilities Grant Program

- (A) APPLICATION FORM: The form that shall qualify an applicant for consideration shall be the form designated "Application" and approved by the Council.
- (B) AVAILABILITY OF APPLICATION FORMS: Application forms shall be available to applicants upon request.

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- (C) **FILING OF APPLICATIONS:** Applications shall be filed electronically with RISCA through a form established by the Council and designated in the application form instructions. Applications shall be accepted by the Council up through the close of business on a date or dates established by the Council.
- (D) **APPLICATION CONTENTS:** The application shall contain, at minimum, the following:
- (1) **APPLICATION SUMMARY:** a concise identification of the applicant and a summary of the project.
  - (2) **PROPERTY INFORMATION:** information about of the property and its contribution to the cultural work of the applicant organization. Information shall also be provided on the general condition of the property.
  - (3) **PROJECT INFORMATION:** information about the project including a timeline schedule and budget.
  - (4) **APPLICANT INFORMATION/PROJECT IMPACT:** information about the work, finances and governance of the applicant organization, and details on how the project will impact the applicant organization and its work in and for the community, including the economic benefits of supporting the proposed project.
  - (5) **ASSURANCES:** consent forms signed by the property owner and applicant
  - (6) **ADDITIONAL INFORMATION:** any additional information that the Council may require.
- (E) **APPLICATION SUBMISSION:** Applications for the Cultural Facilities Grant Program must be filed within the prescribed period established by RISCA.

### Rule 5: Allocation of Funds

- (A) **GRANT ALLOCATIONS:** The Council shall by majority vote of the full Council, schedule the number, frequency and duration of local grant funding rounds. The Council may establish a maximum per project funding level for any given grant round. This amount may be increased or decreased during each year by a majority vote of the Council.
- (B) **UNEXPENDED FUNDS:** Any unexpended or returned funds from supported projects in the Cultural Facilities Grant Program fund shall be reallocated to the Cultural Facilities Grant Program for distribution.

### Rule 6: Cultural Facilities Grant Review Panel

- (A) **APPOINTMENT OF REVIEW PANEL:** the Council shall appoint a seven-member panel of experts to review applications. Members of the Review Panel may be selected from among artists, arts administrators, managers of cultural facilities, individuals with experience in construction and capital projects or other experts. In making appointments to the Review Panel, the Council shall endeavor to include an architect or design professional and an economic development professional. In addition, a representative of the Rhode Island

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Historical and Preservation Commission staff will serve to promote inter-agency cooperation and participation. The Council will ensure that members come from different parts of the state, represent diverse communities and have knowledge or experience with organizations of different sizes. RISCA will ensure that no panel member shall have a conflict of interest with any application under review. In order to represent the evaluations of the Council's professional staff, the RISCA Executive Director shall be a voting member of the Review Panel.

- (B) REGULAR MEETINGS: the Review Panel shall establish the schedule for regular meetings.
- (C) CHAIRPERSON: The RISCA Executive Director shall serve as Chairperson of the Review Panel.
- (D) SPECIAL MEETINGS: The chairperson may call special meetings or cancel regular meetings at any time upon forty-eight (48) hours public notice.
- (E) NOTICE OF MEETINGS: Notices of meetings and agendas will be posted electronically on the Secretary of State's website, in accordance with the Open Meetings Law (Chapter 42-46 of the Rhode Island General Laws of 1956, as amended), not less than forty-eight (48) hours prior to each meeting.
- (F) OPEN MEETINGS: All Review Panel meetings and records shall be consistent with the Open Meetings Law (Chapter 42-46 of the Rhode Island General Laws of 1956, as amended) and the Public Records Act (Chapter 36-1 of the Rhode Island General Laws of 1956, as amended).

### Rule 7: Application Review and Project Selection

- (A) PRELIMINARY REVIEW: After the closing date, the applications will be reviewed by RISCA staff or its designee, and incomplete applications will be returned to the applicant within thirty (30) days of receipt. Applicant will have up to five (5) business days to revise and return an incomplete application before it is deemed ineligible. The Review Panel will evaluate all of the timely and complete applications according to the scoring criteria. Staff may request additional information about any application.
- (B) MINIMUM ELIGIBILITY REQUIREMENTS: An application shall be deemed eligible for evaluation only if it satisfies all of the following criteria:
  - (1) The applicant is a 501 (c)(3) nonprofit agency. Applicants must demonstrate the capacity to successfully carry out the project. Applications will not be accepted from private individuals, for-profit organizations or corporations. RISCA shall be responsible for determining eligibility status to participate in the Cultural Facilities Grants program.
  - (2) The applicant owns or leases the property for which the grant is sought. Applicants who have a lease or written agreement of at least 10 years from the date of the application are eligible. With the understanding that the applicant is required to provide evidence that State investment in private property is clearly for the long-term public good, applicants with less than a 10-year lease will be required to provide a document signed by lessor and lessee committing to enter into a 10-year lease or a 5-year lease with options that comprise a full 10-year period in the event a grant is awarded.

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- (3) The property for which the grant is sought is used as a cultural facility.
- (4) The grant is sought for capital improvements to the property.
- (5) The applicant certifies that any property renovated or improved with funds made available by RISCA will remain under the ownership or lease of the applicant for a minimum term of ten years unless approved by RISCA and agreed to by the applicant and owner in writing. If the property passes from the applicant to another lessee before this minimum period from date of award has expired, the owner of the facility may be required to return funds to the Cultural Facilities Grant Program, as negotiated at the time of application with both parties. Such conditions and negotiations are subject to approval by the Council.
- (6) The application contains all information and supporting documentation specified or requested in the application package.
- (7) An eligible applicant may only submit one application in each grant application round.
- (8) The following activities are not eligible for grant funding:
- Projects whose entire scope of work consists solely of general maintenance.
  - Projects that consist only of landscaping or site work as part of improvements such as parking lots, sidewalks, etc.
  - Projects that consist only of predevelopment or planning, such as historic structure reports, master plans, and architectural studies.
  - Acquisition of collections.
  - General Operating Expenses (GOS). Administrative costs for running the organization (including but not limited to salaries, travel, personnel, office supplies, mortgage or rent, operating overhead or indirect costs, etc.)
  - Costs associated with representation, proposal, or grant application preparation
  - Costs for lobbying or attempting to influence federal, state or local legislation, the judicial branch, or any state agency
  - Costs associated with bad debts, contingencies (money set aside for possible expenses), fines and penalties, taxes (of any kind), and other financial costs including bank fees and charges and credit card debts, except costs related to debt service for the designated project.
  - Costs for travel, private entertainment, food, beverages, plaques, awards, or scholarships
  - Projects restricted to private or exclusive participation, including restriction of access to programs on the basis of sex, race, creed, national origin, disability, age, or marital status

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- Re-granting, contributions, and donations

(C) **EVALUATION:** Each eligible application will be evaluated on the following competitive criteria (100 points total):

(1) **NEED FOR PROJECT (30 points):** 1-30 points will rate the need for the proposed capital improvement, preservation or renovation based on a review of the scope of work, the project narrative and supporting documents.

(2) **PROJECT IMPACT (40 points):** 1-40 points will rate the completed project's ability to contribute to the local and/or state economy, to the cultural vitality of the applicant's community as well as the ability to engage current and potential audiences. The geographic location of the project will be a consideration. Impact on underserved parts of the applicant's community will also be a consideration (for example, projects that deal with accessibility issues to engage audiences with disabilities, or the ability to develop new programs to connect with culturally diverse communities). Applicants will be rated based on a review of the project narrative and supporting materials.

(3) **CAPACITY TO SUCCEED (30 points):** 1-30 points will rate the applicant's ability to raise matching funds, plan and carry out a project within a 12 to 24 month period. The panel will also take into account the long-term viability of the applicant organization. Projects that can demonstrate an ability to begin construction earlier than 12-months from the approval date will receive greater scores in the selection process. Applicants will be rated based on a review of project plans, budget details, income and matching funds statements.

(D) **SELECTION OF GRANTS:** The Review Panel shall submit its recommendations to the Council within forty-five (45) days of its application review meeting. The Council will review the recommendations of the Review Panel within forty-five (45) days of receiving the recommendations. The Commission shall vote to accept or not accept the recommendations. The date of the Council's vote shall be the date of grant award.

### Rule 8: Grant terms

(A) **GRANT AMOUNT:** Grants available through the Cultural Facilities Grant Program will generally be available in amounts up to \$250,000 per application. In keeping with the intention of the Program to broaden economic development through the arts, the Council will consider larger projects on a case-by-case basis. A request for permission to apply for support above the \$250,000 per application limit must be received by RISCA no later than two months prior to the application deadline. The request will address the economic benefits of the project along with other information as required by RISCA to justify exceeding the \$250,000 per application limit. Applicants will receive a response no later than thirty (30) days following receipt of the request.

(B) **MATCHING FUND REQUIREMENTS:** In both the Cultural Facilities Grant Program and for the Named Recipients, all funds are to be matched on a dollar-for-dollar basis. No "in-kind"

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- matches will be accepted. No grant funds may be used to pay a member of the grantee organization to manage the project, and grantee staff time devoted to the project is not considered match. Matching funds must be in cash or documented and binding pledges or contributions.
- (C) **NUMBER OF APPLICATIONS:** Organizations that have previously received a State Cultural Facility Grant are eligible to apply for one additional grant once their first project has been completed and closed out.
  - (D) **GRANT AWARD AGREEMENTS:** Named Recipients and Cultural Facilities Grant Program Awardees will enter into agreements with RISCA that outline in detail the scope of work of their approved project(s); the projected timeline; the documentation of all matching dollars; information on the impact of the project to the applicant organization, the work they do and the communit(ies) they serve; the projected and actual economic impact of the project, including individuals employed prior, during and after the completion of the project. All awardees will continue to provide updates to this information for a ten year period following the completion of the project. The Agreement will set forth when and upon what conditions funds will be released. It is the intention of RISCA that matching funds are either collected or pledged and construction underway before funds are released.
  - (E) **TIMING:** For Cultural Facilities Grant Program grants, the beginning date of a project period will normally be the date on which the Council votes to approve a grant for the project (date of approval). For Cultural Facilities Grant Program grants, funds spent on the project after the date of approval shall be eligible for reimbursement or eligible to be considered matching funds, if the project is approved by the Council. Project construction must begin within one year of the date of the signed grant agreement and must be completed within two years of the date of the signed grant agreement. At its discretion, the Council may grant an extension of no more than one additional year.
  - (F) **NOTICE:** Notice of an award shall be by mail via the United States Postal Service.
  - (G) **TERMS AND CONDITIONS:** The grant agreement will set forth all grant terms, schedules, timelines, and conditions, including most particularly those relating to record keeping, procurement of goods and services, verification of expenditures, and disbursement of grant funds.
  - (H) **PUBLIC ACCESS:** Any property assisted with funds from this grant program shall be open and accessible to the public.
  - (I) **PREVAILING WAGE:** Contracts for construction entered into on or after November 6, 2014 shall be in compliance with § 37-13-1 et 3 seq. (prevailing wage); however, contracts entered into prior to November 6, 2014 shall not be subject to this requirement.

### RULE 9. ADDITIONAL ADMINISTRATION OR FISCAL REQUIREMENTS

RISCA, the Department of Administration, or other authorized representatives of the State of Rhode Island may establish from time to time additional administrative or fiscal requirements, not inconsistent with these regulations, in order to assure the effective operation of the State Cultural Facilities Grants. Additional administrative or fiscal requirements may include procedures to encourage an open and competitive process of awarding contracts for

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rehabilitation work. Information about all requirements of the Grants shall be available through the Commission.

**RULE 10. COMMISSION'S AUTHORIZED REPRESENTATIVE**

The executive director of the RISCA is authorized by these regulations to act on behalf of the Council to implement and carry out a grants program in accordance with these regulations. Decisions of the executive director may be appealed to the Council in accordance with the Council’s procedures.

**RULE 11. SEVERABILITY**

If any provision of these Rules and Regulations, or the application thereof to any person or circumstances, is held invalid by a court of competent jurisdiction, the validity of the remainder of the Rules and Regulations shall not be affected thereby.

**RULE 12. EFFECTIVE DATE**

The foregoing rules and regulations for the State Cultural Facilities Grant Program and the State Cultural Facilities Grant Review Panel, after due notice and hearing, are hereby adopted and filed with the Secretary of State this \_\_\_\_ day of \_\_\_\_\_, 2015, to become effective twenty (20) days thereafter.

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Randall Rosenbaum, Executive Director Date

Notice Given: 02/20/2015  
 Public Hearing: 03/23/2015

Filing Date: 03/31/2015  
 Effective Date: 04/20/2015

ERLID #: XXXXX