



## STANDARD GRANT PROGRAM TERMS AND CONDITIONS FOR BROWARD CULTURAL COUNCIL CULTURAL GRANT AGREEMENTS

These Standard Terms and Conditions ("Grant Program Terms") govern all Cultural Division Grant Agreements entered into by Broward County, a political subdivision of the State of Florida ("County") and the Recipient identified in the Broward County Cultural Division Grant Agreement ("Grant Agreement").

### RECITALS

A. The Broward County Board of County Commissioners ("Board") has a core value of cultivating community culture, arts, recreation, and life-long learning. The Board's goals include providing a broad range of artistic, cultural, educational, and historical amenities, and programs that contribute to a vibrant, multi-cultural, and economically viable community.

B. The Board, through the Broward County Cultural Council (the "Cultural Council") and Cultural Division, offers various grant programs (each a "Grant Program") to support artistic and cultural organizations and programs in Broward County, as more fully described in Sections 29.14 through 29.17 of the Broward County Administrative Code (the "Administrative Code").

C. The Board has determined that Recipients' use of grant funding under one or more Grant Programs towards qualifying expenditures serves a public purpose.

D. County desires to offer to Recipient, and Recipient desires to accept from County, certain monetary grant awards described in the Grant Agreement (the "Grant Award"), subject to the terms and conditions stated in the Grant Agreement, these Grant Program Terms, and other documents referenced and incorporated into the Grant Agreement and these Grant Program Terms.

### ARTICLE 1. DEFINITIONS

1.1. **Applicable Law** means all applicable laws, codes, advisory circulars, rules, regulations, and ordinances of any federal, state, county, municipal, or other governmental entity, as amended.

1.2. **Authorized Uses** means the Recipient's activities for which the Grant Award may be used, as set forth in the Recipient Application, and subject to the terms and provisions of the Grant Agreement, these Grant Program Terms, the Grant Guidelines, and any other documents referenced or incorporated into the Grant Agreement and/or these Grant Program Terms.

1.3. **Board** means the Board of County Commissioners of Broward County, Florida.

1.4. **Code** means the Broward County Code of Ordinances.

- 1.5. **Contract Administrator** means the Director of the Cultural Division, or other person designated in writing by the Director of the Cultural Division or the County Administrator.
- 1.6. **County Administrator** means the administrative head of County appointed by the Board.
- 1.7. **Cultural and Artistic Facilities (“C&A Facilities”) Capital Support** means the Grant Program where Recipient must use the Grant Award towards the capital project assistance (such as the acquisition, development, construction, renovation, expansion, or improvement of new or existing cultural or artistic facilities located in Broward County), as stated in the Recipient Application and the Grant Agreement.
- 1.8. **General Operating Support** means the Grant Program where Recipients must use the Grant Award during the Grant Award Period towards Recipient’s general operating expenses as described in the Recipient Application and Grant Agreement.
- 1.9. **Grant Award Period** means the period identified in the Grant Agreement during which the Recipient may utilize the Grant Award.
- 1.10. **Program Support** means the Grant Program where Recipients (whether individuals or entities) must use the Grant Award towards the Recipient’s general expenses associated with the specific cultural or artists programs, activities, events, or performances, as stated in the Recipient Application and the Grant Agreement.
- 1.11. **Recipient Application** means the application and all materials attached thereto submitted by Recipient to the Cultural Division, the Cultural Council, any Grant Panel associated with Recipient seeking a Grant Award, including any and all verbal representations made by Recipient in connection therewith.
- 1.12. **Subcontractor** means any entity or individual, including any subconsultant, that provides Services to County through Recipient, regardless of tier.

## **ARTICLE 2. GRANT AWARD**

- 2.1. Grant Award. County shall provide the Grant Award to Recipient for its use towards the Authorized Uses in connection with the applicable Grant Program identified in the Grant Agreement.
- 2.2. Grant Award Uses; Recipient Application Accuracy. Recipient shall only utilize the Grant Award (whether in whole or in part) for Authorized Uses, including those stated in the Recipient Application. Recipient represents and warrants that all information included in the Recipient Application is true and correct, and that except as expressly stated in the Grant Award Details section of the Grant Agreement, or as may be set forth in any amendment to the Grant Agreement as described in Section 9.20 of these Grant Program Terms, Recipient is expressly prohibited from using any portion of the Grant Award for any purpose other than the uses stated in the Recipient Application.

### **ARTICLE 3. PAYMENT OF GRANT AWARD**

3.1. Payment of Grant Award; Advance Payments. County will pay the Grant Award to Recipient in accordance with the Grant Award Details section of the Grant Agreement and these Grant Program Terms. If any portion of the Grant Award is paid to Recipient prior to the end of the Grant Award Period, such payment shall be deemed an advance, subject to Recipient fully performing all provisions of these Grant Program Terms and the Grant Agreement Terms (including as stated in any other documents incorporated therein).

3.2. Recipient Invoicing; Required Match. Prior to payment by County, Recipient shall submit an invoice to County (no more frequently than once during each calendar month) for the portion of the Grant Award that may be due. Recipient's final invoice to County must be submitted no later than sixty (60) days after the end of the Grant Award Period. Failure to timely submit the final invoice will act as a waiver by Recipient of any portion of the Grant Award not paid to Recipient as of sixty (60) days after the end of the Grant Award Period. Unless advance payments are expressly authorized in the Grant Agreement, Grant Award payments will be made only on a reimbursement basis after expenses have been incurred and after any documentation requested by the Contract Administrator has been provided by the Recipient. Invoices must be submitted on an approved invoice form provided by County. If the Grant Agreement contains a match requirement, County's payment obligation is conditioned and contingent upon Recipient obtaining and providing that match.

3.3. Refund of Grant Award. If Recipient receives any portion of the Grant Award before the end of the Grant Award Period, and, for any reason, all or any portion of the programming (for Program Support), Recipient operations (for General Operating Support), or the capital program (for C&A Facilities Support), is delayed, canceled, or does not proceed in accordance with the Recipient Application, the Grant Agreement (including any documents incorporated therein), or these Grant Program Terms, Recipient shall refund to County the entire amount of the Grant Award advanced to Recipient within thirty (30) days after written demand by the Contract Administrator. If the Contract Administrator determines that Recipient has substantially performed the obligations in (and incorporated into) the Grant Agreement, the Contract Administrator shall have the discretion to reduce Recipient's refund obligations based on the "pro rata share" of Recipient's performance, with Recipient agreeing that the Contract Administrator's determinations regarding the "pro rata share" are final and subject to the sole and absolute discretion of the Contract Administrator.

3.4. Funding. The continuation of the Grant Agreement beyond the end of any County fiscal year (October 1 through September 30) is subject to both the appropriation and the availability of funds pursuant to Chapter 129 and, if applicable, Chapter 212, Florida Statutes. If amounts to be paid by County under the Grant Agreement are budgeted to be funded with transportation surtax proceeds pursuant to Section 212.055(1), Florida Statutes, and such proceeds are not appropriated or available for any reason, County shall have no obligation to use ad valorem funds or any other funding source to make any payment(s) required under the

Grant Agreement and County may terminate the Grant Agreement for convenience pursuant to Article 6.

#### **ARTICLE 4. PROJECT EVALUATION REPORT**

Recipient must submit a completed Project Evaluation Report via the Grant Management System ("Submittable") to the Contract Administrator, along with all other documentation referenced in the Project Evaluation Report, within thirty (30) calendar days after the end of the Grant Award Period (the Project Evaluation Report, all required documentation referenced in the Project Evaluation Report, and the financial information referenced in this section are collectively referred to as the "Reporting Materials"). Notwithstanding the Grant Award Payment Schedule as described in the Grant Agreement, Recipient's failure to timely submit the Reporting Materials may disqualify Recipient from consideration for any future grants under any of County's Cultural Division Grant Programs and will entitle County to withhold payment of the Grant Award. Withheld amounts of the Grant Award will not accrue interest and will not be payable to Recipient until Recipient has met all requirements, including the requirements in the Grant Guidelines described or incorporated in the Grant Agreement. The provisions of this article will survive the termination or expiration of the Grant Agreement.

After Recipient provides the Reporting Materials to the Contract Administrator via Submittable, the Reporting Materials will be reviewed to determine whether Recipient has complied with the obligations contained in the Grant Agreement, these Grant Program Terms, and any documents incorporated into either. Notwithstanding anything in the Grant Award Payment Schedule, final payment of the Grant Award may be delayed, and is not subject to interest, to provide the Contract Administrator with thirty (30) days to review the Reporting Materials.

#### **ARTICLE 5. ATTRIBUTION OF COUNTY**

During the Grant Award Period, Recipient will post the artscalendar.com banner web link (<http://www.artscalendar.com/>) on Recipient's website, if any Recipient must also acknowledge County's funding with the correct attribution statement and County logo, as specifically outlined at <https://www.broward.org/Arts/Funding/Pages/Logos.aspx>.

#### **ARTICLE 6. TERMINATION**

6.1. The Grant Agreement may be terminated by County for convenience, by written notice by the County Administrator to the Recipient, which termination shall be effective on the date stated in such notice provided the termination date is not less than thirty (30) days after the date of such written notice. Recipient acknowledges that it has received good, valuable, and sufficient consideration from County, the receipt and adequacy of which are acknowledged by Recipient, for County's right to terminate the Grant Agreement for convenience. Recipient hereby waives, to the fullest extent permissible under applicable law, any and all rights to challenge the adequacy of such consideration or the validity of County's right to terminate for convenience. The Grant Agreement may also be terminated by the County Administrator upon

such notice as the County Administrator deems appropriate under the circumstances in the event the County Administrator determines that termination is necessary to protect the public health, safety, or welfare.

6.2. The Grant Agreement may also be terminated by County for cause for any breach of the Grant Agreement or these Grant Program Terms by Recipient that is not corrected within ten (10) days after receipt of written notice of such breach by the Contract Administrator. Upon termination of the Grant Agreement by County for any reason, Recipient shall have no right to receive or otherwise direct the receipt of the Grant Award (or any portion thereof) not already paid to Recipient. In addition, if County terminates the Grant Agreement, Recipient shall, within twenty (20) calendar days after such termination, return to County any portion of the Grant Award already paid. Recipient hereby waives and releases any and all claims it may have for breach of contract or otherwise arising out of County's exercise of its right to terminate the Grant Agreement pursuant to this section.

6.3. The Grant Agreement may also be terminated for any other basis and by any other means expressly permitted in the Grant Agreement or these Grant Program Terms.

6.4. Notice of termination shall be provided in accordance with the "Notices" section of this Agreement except that notice of termination by the County Administrator to protect the public health, safety, or welfare may be oral notice that shall be promptly confirmed in writing.

## **ARTICLE 7. INDEMNIFICATION**

Recipient shall indemnify, hold harmless, and defend County and all of County's current, past, and future officers, agents, and employees (collectively, "Indemnified Party") from and against any and all causes of action, demands, claims, losses, liabilities, and expenditures of any kind, including attorneys' fees, court costs, and expenses, including through the conclusion of any appellate proceedings, raised or asserted by any person or entity not a party to the Grant Agreement, and caused or alleged to be caused, in whole or in part, by any breach of the Grant Agreement by Recipient, or any intentional, reckless, or negligent act or omission of Recipient, its officers, employees, or agents, arising from, relating to, or in connection with the Grant Agreement (collectively, a "Claim"). If any Claim is brought against an Indemnified Party, Recipient shall, upon written notice from County, defend each Indemnified Party with counsel satisfactory to County or, at County's option, pay for an attorney selected by the County Attorney to defend the Indemnified Party. The obligations of this section shall survive the expiration or earlier termination of the Grant Agreement. If considered necessary by the Contract Administrator and the County Attorney, any sums due Recipient under the Grant Agreement may be retained by County until all Claims subject to this indemnification obligation have been settled or otherwise resolved. Any amount withheld shall not be subject to payment of interest by County.

## **ARTICLE 8. INSURANCE; SOVEREIGN IMMUNITY**

### **Sections 8.1-8.11: Insurance when Recipient is an Individual or Non-Governmental**

**Entity:**

8.1. If County requires Recipient to maintain insurance, coverage must reflect the following: during the Grant Award Period, Recipient shall, at its sole expense, maintain the minimum insurance coverages identified in the Grant Agreement in accordance with the terms and conditions of sections 8.1-8.8 of this article. Recipient must maintain insurance coverage against claims relating to any act or omission by Recipient, its agents, representatives, employees, or subcontractors in connection with the Grant Agreement. County reserves the right at any time to review and adjust the limits and types of coverage required.

8.2. Recipient shall ensure that "Broward County" is listed and endorsed as an additional insured as stated in the Grant Agreement, for all policies required under this article.

8.3. Prior to the commencement of the Grant Award Period described in the Grant Agreement, but in no event later than fifteen (15) days after execution of the Grant Agreement, Recipient shall provide to County a copy of all Certificates of Insurance or other documentation sufficient to demonstrate the required insurance coverage. If and to the extent requested by County, Recipient must provide complete, certified copies of all required insurance policies and all required endorsements within thirty (30) days after County's request.

8.4. Recipient shall ensure that all insurance coverages required by this article remain in full force and effect without any lapse in coverage until the Grant Award Period is completed and County determines all performance required of Recipient has been satisfied. Recipient or its insurer shall provide notice to County of any Cancellation or modification of any required policy at least thirty (30) days prior to the effective date of cancellation or modification, and at least ten (10) days prior to the effective date of any cancellation due to nonpayment, and shall concurrently provide County with a copy of its updated Certificates of Insurance evidencing continuation of the required coverage(s).

8.5. All required insurance policies must be placed with insurers or surplus line carriers authorized to conduct business in the State of Florida with an A.M. Best rating of A- or better and a financial size category class VII or greater, unless otherwise approved by County's Risk Management Division in writing.

8.6. If Recipient maintains broader coverage or higher limits than the minimum insurance requirements required by County, County is entitled to any such broader coverage and higher limits maintained by Recipient. All required insurance coverages shall provide primary coverage and not require contribution from any County insurance, self-insurance, or otherwise, which shall be in excess of and shall not contribute to the required insurance provided by Recipient.

8.7. Recipient shall declare in writing any self-insured retentions or deductibles over the limits prescribed and submit to County for approval at least fifteen (15) days prior to the commencement of Grant Award Period. Recipient shall be solely responsible for and shall pay any deductible or self-insured retention applicable to any claim against County. County may, at any time, require Recipient to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses

within the retention. Any deductible or self-insured retention may be satisfied by either the named insured or County, if so elected by County, and Contractor shall obtain same in endorsements to the required policies.

8.8. Unless prohibited by the applicable policy, Recipient waives any right to subrogation that any of Recipient's insurers may acquire against County, and shall obtain same in an endorsement of Recipient's insurance policies.

8.9. Recipient shall require that each Subcontractor maintains insurance coverage that adequately covers the services provided by that Subcontractor on substantially the same insurance terms and conditions required of Recipient under this article. Recipient shall ensure that all such Subcontractors comply with these requirements and that "Broward County" is named as an additional insured under the Subcontractors' applicable insurance policies. Recipient shall not permit any Subcontractor to provide Services unless and until all applicable requirements of this article are satisfied.

8.10. If Recipient or any Subcontractor fails to maintain the insurance required by the Grant Agreement, County may pay any costs of premiums necessary to maintain the required coverage and deduct such costs from any payment otherwise due to Recipient. If requested by County, Recipient shall provide, within one (1) business day, evidence of each Subcontractor's compliance with this article.

8.11. If any of the policies required under this article provide claims-made coverage: (1) any retroactive date must be prior to the Effective Date; (2) the required coverage must be maintained after termination or expiration of the Grant Agreement for at least the duration stated in the Grant Agreement; and (3) if coverage is canceled or nonrenewed and is not replaced with another claims-made policy form with a retroactive date prior to the Effective Date, Recipient must obtain and maintain "extended reporting" coverage that applies after termination or expiration of the Grant Agreement for at least the duration provided by County.

#### **Sections 8.12-8.16: When Recipient is a Government Entity**

8.12. Recipient is a governmental entity and is fully responsible for the acts and omissions of its agents or employees, subject to any applicable limitations of Section 768.28, Florida Statutes.

8.13. Upon request by County, Recipient must provide County with written verification of liability protection that meets or exceeds any requirements of Florida law. If Recipient holds any excess liability coverage, Recipient must ensure that Broward County is named as an additional insured and certificate holder under such excess liability policy and provide evidence to County.

8.14. If Recipient maintains broader coverage or higher limits than the minimum coverage required under Florida law, County shall be entitled to such broader coverage and higher limits on a primary and noncontributory basis. County's insurance requirements shall apply to Recipient's self-insurance.

8.15. If Recipient contracts with a subcontractor in connection with any matter described in the Grant Agreement, Recipient shall require that each Subcontractor procure and maintain insurance coverage that adequately covers each subcontractor's exposure based on the services provided by that Subcontractor. Recipient must ensure that all such subcontractors name "Broward County" as an additional insured and certificate holder under the applicable insurance policies. Recipient shall not permit any Subcontractor to perform activities that are part of the Grant Agreement until the insurance requirements of the Subcontractor under this section are met. If requested by County, Recipient shall furnish evidence of insurance of all such Subcontractors.

8.16. County reserves the right, but not the responsibility, to periodically review any and all insurance policies and to reasonably adjust the limits and/or types of coverage required by the Grant Agreement, from time to time throughout the Grant Award Period.

#### **For C&A Facilities Capital Support**

In addition to any insurance requirements as described in sections 8.1 to 8.16 above, Recipient shall comply with all additional insurance obligations provided in the Grant Agreement.

### **ARTICLE 9. MISCELLANEOUS**

9.1. Contract Administrator Authority. The Contract Administrator is authorized to coordinate and communicate with Recipient to manage and supervise the performance of the Grant Agreement. Recipient acknowledges that the Contract Administrator has no authority to make changes that would increase, decrease, or otherwise materially modify the Scope of Services except as expressly set forth in the Grant Agreement or, to the extent applicable, in the Broward County Procurement Code. Unless expressly stated otherwise in the Grant Agreement or otherwise set forth in the Code or the Broward County Administrative Code, the Contract Administrator may exercise ministerial authority in connection with the day-to-day management of the Grant Agreement. The Contract Administrator may also approve in writing minor modifications to the Scope of Services that do not increase the total cost to County or waive any rights of County.

9.2. Tax Withholding. If any federal, state, or local taxes, tariffs, or governmental charges may be due or imposed in connection with the Grant Award, if and to the extent deemed necessary by the Contract Administrator or required under Applicable Law, County may withhold any such amount from the Grant Award otherwise due Recipient and remit only the remainder to Recipient. Upon request by the Contract Administrator, Recipient must provide any tax-related forms or documentation as a condition precedent to providing any portion of the Grant Award to Recipient. County makes no representation regarding the taxability or any other tax implications regarding the Grant Award, and Recipient is solely responsible for obtaining appropriate advice and guidance regarding these issues. All tax-related forms or documentation must be in the name of the Recipient as shown in the Grant Agreement.

9.3. Rights in Documents and Work. Any and all reports, photographs, surveys, documents, materials, or other work created by Recipient specifically for County as part of the Grant Agreement, whether finished or unfinished (“Documents and Work”), shall be owned by County, and Recipient hereby transfers to County all right, title, and interest, including any copyright or other intellectual property rights, in or to the Documents and Work, and shall provide any documentation necessary to effectuate such transfer. Unless otherwise expressly stated herein, County has the right to use, reproduce, modify, distribute, and publicly display the Documents and Work, in whole or in part, in any medium and for any purpose, in perpetuity and without restriction. Recipient represents and warrants that it has all necessary legal rights to provide the Documents and Work and to grant County the rights stated in these Grant Program Terms. Recipient must deliver the Documents and Work to the Contract Administrator within ten (10) business days after expiration or termination of the Grant Agreement. Any compensation due to Recipient may be withheld until all Documents and Work are provided as set forth herein. Recipient shall ensure that the requirements of this section are included in all of Recipient’s agreements with Subcontractor(s).

9.4. Public Records. Notwithstanding any other provision in the Grant Agreement, any action taken by County in compliance with, or in a good faith attempt to comply with, the requirements of Chapter 119, Florida Statutes, shall not constitute a breach of the Grant Agreement. If Recipient is acting on behalf of County as stated in Section 119.0701, Florida Statutes, Recipient shall:

9.4.1. Keep and maintain public records required by County related to the Grant Award;

9.4.2. Upon request from County, provide County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time and at a cost that does not exceed that provided in Chapter 119, Florida Statutes, or as otherwise provided by Applicable Law;

9.4.3. Ensure that public records that are exempt or confidential and exempt from public record requirements are not disclosed except as authorized by Applicable Law throughout the Grant Agreement and after completion or termination of the Grant Agreement if the records are not transferred to County; and

9.4.4. Upon expiration or termination of the Grant Agreement, transfer to County, at no cost, all public records in possession of Recipient or keep and maintain public records required by County related to the Grant Award. If Recipient transfers the records to County, Recipient shall destroy any duplicate public records that are exempt or confidential and exempt. If Recipient keeps and maintains the public records, Recipient shall meet all requirements of Applicable Law for retaining public records. All records stored electronically must be provided to County upon request in a format that is compatible with the information technology systems of County.

If Recipient receives a request for public records regarding the Grant Agreement or the Grant Award, Recipient must immediately notify the Contract Administrator in writing and provide all

requested records to County to enable County to timely respond to the public records request. County will respond to all such public records requests.

Recipient must separately submit and conspicuously label as “RESTRICTED MATERIAL – DO NOT PRODUCE” any material (a) that Recipient contends constitutes or contains its trade secrets under Chapter 688, Florida Statutes, or (b) for which Recipient asserts a right to withhold from public disclosure as confidential or otherwise exempt from production under Florida public records laws (including Chapter 119, Florida Statutes) (collectively, “Restricted Material”). In addition, Recipient must, simultaneous with the submission of any Restricted Material, provide a sworn declaration or affidavit in a form acceptable to County from a person with personal knowledge attesting that the Restricted Material constitutes trade secrets or is otherwise exempt or confidential under Florida public records laws, including citing the applicable Florida statute and specifying the factual basis for each such claim. Upon request by County, Recipient must promptly identify the specific applicable statutory section that protects any particular document. If a third party submits a request to County for records designated by Recipient as Restricted Material, County shall refrain from disclosing such material unless otherwise ordered by a court of competent jurisdiction, authorized in writing by Recipient, or the claimed exemption is waived. Any failure by Recipient to strictly comply with the requirements of this section shall constitute Recipient’s waiver of County’s obligation to treat the records as Restricted Material. Recipient must indemnify and defend County and its employees and agents from any and all claims, causes of action, losses, fines, penalties, damages, judgments, and liabilities of any kind, including attorneys’ fees, litigation expenses, and court costs, relating to nondisclosure of Restricted Material in response to a third-party request.

**IF RECIPIENT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO RECIPIENT’S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THE GRANT AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (954) 357-7457, [CULTURALDIV@BROWARD.ORG](mailto:CULTURALDIV@BROWARD.ORG), 115 SOUTH ANDREWS AVENUE, 6TH FLOOR, FORT LAUDERDALE, FLORIDA 33301.**

9.5. Audit Rights and Retention of Records. County shall have the right to audit the books, records, and accounts of Recipient and all Subcontractors that are related to the Grant Agreement. Recipient and all Subcontractors shall keep such books, records, and accounts as may be necessary to record complete and correct entries related to the Grant Agreement and performance under the Grant Agreement. All such books, records, and accounts shall be kept in written form or in a form capable of conversion into written form within a reasonable time; upon request by County, Recipient and all Subcontractors shall make same available to County in written form at no cost and allow County to make copies. Recipient shall provide County with reasonable access to Recipient’s facilities, and County shall be allowed to interview all employees to discuss matters pertinent to the performance of the Grant Agreement.

Recipient and all Subcontractors shall preserve and make available, at reasonable times within Broward County, Florida, for examination and audit, all financial records, supporting documents, statistical records, and any other documents pertinent to the Grant Agreement for at least

three (3) years after expiration or termination of the Grant Agreement or until resolution of any audit findings, whichever is longer. This section shall survive any dispute or litigation between the Parties, and Recipient expressly acknowledges and agrees to be bound by this section throughout the course of any dispute or litigation with County. Any audit or inspection pursuant to this section may be performed by any County representative (including any outside representative engaged by County). Recipient hereby grants County the right to conduct such audit or review at Recipient's place of business, if deemed appropriate by County, with seventy-two (72) hours' advance notice. Recipient shall make all such records and documents available electronically, in common file formats, and/or via remote access, if and to the extent requested by County.

Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for County's disallowance and recovery of any payment based upon such entry. Recipient shall refund to County any Recipient overcharged amount identified as a result of an audit, regardless of the amount of the overcharge. If the overcharge exceeds five percent (5%) of the total contract charges audited by County, Recipient shall, in addition to refunding the overcharged amount, pay liquidated damages in the amount of fifteen percent (15%) of the overcharged amount as just compensation for damages incurred by County due to the overcharge, including, but not limited to, County's administrative costs and loss of potential investment returns (including interest). Any adjustments or payments due as a result of such audit must be made within thirty (30) days after presentation of County's findings to Recipient.

Recipient shall ensure that the requirements of this section are included in all agreements with all Subcontractor(s).

9.6. Funding Agreement Only; No Employment Relationship. The Grant Agreement is purely a funding agreement between County and Recipient. To the extent there is any relationship between County and Recipient pursuant to the Grant Agreement, Recipient is an independent contractor under the Grant Agreement, and nothing in the Grant Agreement constitutes or creates a partnership, joint venture, or any other relationship between the Parties. Neither Recipient nor its agents will act as officers, employees, or agents of County. Recipient does not have the right to bind County to any obligation not expressly undertaken by County under the Grant Agreement.

9.7. Third-Party Beneficiaries. Neither Recipient nor County intends to primarily or directly benefit a third party by the Grant Agreement. Therefore, the Parties acknowledge that there are no third-party beneficiaries to the Grant Agreement and that no third party shall be entitled to assert a right or claim against either of them based upon the Grant Agreement.

9.8. Notices. Unless otherwise stated herein, for notice to a Party to be effective under the Grant Agreement, notice must be sent via U.S. first-class mail, hand delivery, or commercial overnight delivery, each with a contemporaneous copy via email, to the addresses listed below and shall be effective upon mailing or hand delivery (provided the contemporaneous email is also sent). Recipient and County may change its notice address by giving notice of such change in

accordance with this section. Notice to Recipient shall be made to the address shown in the Grant Agreement.

FOR COUNTY:

Broward County, Cultural Division Attn: Director

100 South Andrews Avenue, 6th Floor Fort Lauderdale, Florida 33301

E-mail address: pdunlap@broward.org

With simultaneous copy of e-mail to: pgrewal@broward.org; jmellison@broward.org;  
and slarkins@broward.org

9.9. Subcontracting; Assignment; Change of Control. All Subcontractors must be expressly identified in the Grant Agreement or otherwise approved in advance and in writing by County's Contract Administrator. Except for approved subcontracting, neither the Grant Agreement nor any right or interest in it may be assigned, transferred, subcontracted, or encumbered by Recipient without the prior written consent of County. Any change of control (as defined herein) shall be deemed an assignment. Any assignment, transfer, encumbrance, or subcontract in violation of this section shall be void and ineffective, constitute a breach of the Grant Agreement, and permit County to immediately terminate the Grant Agreement, in addition to any other remedies available to County at law or in equity. County reserves the right to condition its approval of any assignment, transfer, encumbrance, or subcontract upon further due diligence and an additional fee paid to County to reasonably compensate it for the performance of any such due diligence.

For purposes of this section, "change of control" means: (a) a transfer of more than fifty percent (50%) of the ownership interests in Recipient, whether in a single transaction or a series of related transactions; (b) a merger, consolidation, or other reorganization that results in a change in voting control in Recipient or in the entity that controls Recipient's business; or (c) the sale, lease, or transfer of all or substantially all of Recipient's assets. A change of control does not include (i) a transfer to an entity wholly owned, directly or indirectly, by Recipient or its parent, or (ii) a transfer between existing owners of Recipient that does not result in a change in majority ownership; provided, however, that any such transfer shall not relieve Recipient of its obligations under the Grant Agreement unless County expressly agrees otherwise in writing.

9.10. Confidential Information; Generative Artificial Intelligence. Unless expressly authorized in the Grant Agreement or in writing in advance by the Contract Administrator, Recipient is strictly prohibited from disclosing, uploading, or otherwise making available to third parties, directly or indirectly, including but not limited to through utilization of generative artificial intelligence tools, any exempt, confidential, sensitive security, or personal information of County. Recipient must ensure that any use of generative artificial intelligence tools by Recipient or its Subcontractors does not involve the disclosure of exempt, confidential, sensitive security, or personal information, including without limitation for large language model learning or training. Recipient must implement and maintain appropriate technological and operational safeguards to ensure compliance with the obligations of this section.

9.11. Tourist Development Tax. If all or any portion of the Grant Award is provided to Recipient from Tourist Development Tax revenues, Recipient represents and warrants that the Authorized Uses are limited to, and no portion of the Grant Award may be utilized for any purposes except those permitted under Section 125.0104, Florida Statutes. Recipient represents and warrants that if Tourist Development Tax revenue is used for all or a portion of the Grant Award, the Authorized Uses have as one of their main purposes the attraction of tourists to Broward County as evidenced by Recipient's promotion of the activity, service, venue, or event to tourists as defined in Section 125.0104.

9.12. Conflicts. Neither Recipient nor its employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with Recipient's loyal and conscientious exercise of judgment and care related to its performance under the Grant Agreement. During the Grant Award Period, none of Recipient's officers or employees shall serve as an expert witness against County in any legal or administrative proceeding in which they or Recipient is not a party, unless compelled by legal process. Further, such persons shall not give sworn testimony or issue a report or writing as an expression of such person's expert opinion that is adverse or prejudicial to the interests of County in connection with any such pending or threatened legal or administrative proceeding unless compelled by legal process. The limitations of this section shall not preclude Recipient or any persons in any way from representing themselves, including giving expert testimony in support of such representation, in any action or in any administrative or legal proceeding. If Recipient is permitted pursuant to the Grant Agreement to utilize Subcontractors related to services provided pursuant to the Grant Award, Recipient shall require such Subcontractors, by written contract, to comply with the provisions of this section to the same extent as Recipient.

9.13. Materiality and Waiver of Breach. Each requirement, duty, and obligation set forth in the Grant Agreement and these Grant Program Terms were bargained for at arm's-length and is agreed to by the Parties. Each requirement, duty, and obligation stated in the Grant Agreement and these Grant Program Terms are substantial and important to the formation of the Grant Agreement, and each is, therefore, a material term of the Grant Agreement. County's failure to enforce any provision of the Grant Agreement and/or these Grant Program Terms is not a waiver of such provision or modification of the Grant Agreement or Grant Program Terms. A waiver of any breach of a provision of the Grant Agreement and/or Grant Program Terms is not a waiver of any subsequent breach and is not to be constructed as a modification of the terms of the Grant Agreement and/or Grant Program Terms. To be effective, any waiver must be in writing signed by an authorized signatory of the party.

9.14. Compliance with Laws. Recipient and must comply with all Applicable Law, including, without limitation, the Americans with Disabilities Act, 42 U.S.C. § 12101, Section 504 of the Rehabilitation Act of 1973, and the requirements of any applicable grant agreements, and all deliverables provided for online utilization must meet or exceed the World Wide Web Consortium/Web Content Accessibility Guidelines (WCAG) 2.1 Level AA standard or any higher standard as required by Applicable Law.

9.15. Severability. If any part of the Grant Agreement is found to be unenforceable by any court of competent jurisdiction or contrary to Applicable Law, that part shall be deemed severed from the Grant Agreement and the balance of the Grant Agreement shall remain in full force and effect.

9.16. Joint Preparation. The Grant Agreement has been jointly prepared by the Parties and shall not be construed more strictly against either Party.

9.17. Interpretation. The titles and headings contained in the Grant Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of the Grant Agreement. All personal pronouns used in the Grant Agreement shall include any other gender, and the singular shall include the plural, and vice versa, unless the context otherwise requires. Terms such as “herein” refer to the Grant Agreement as a whole and not to any particular sentence, paragraph, or section where they appear, unless the context otherwise requires. Whenever reference is made to a section or article of the Grant Agreement, such reference is to the section or article as a whole, including all subsections thereof, unless the reference is made to a particular subsection or subparagraph of such section or article. Any reference to “days” means calendar days, unless otherwise expressly stated. Any reference to approval by County shall require approval in writing, unless otherwise expressly stated.

9.18. Priority of Provisions. If there is a conflict or inconsistency between any term, statement, requirement, or provision of any document or exhibit attached to, referenced by, or incorporated in the Grant Agreement and any provision within an article or section of the Grant Agreement, the article or section shall prevail and be given effect.

9.19. Law, Jurisdiction, Venue, Waiver of Jury Trial. The Grant Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. The exclusive venue for any lawsuit arising from, related to, or in connection with the Grant Agreement and/or Grant Program Terms is in the state courts of the Seventeenth Judicial Circuit in and for Broward County, Florida. If any claim arising from, related to, or in connection with the Grant Agreement and/or Grant Program Terms must be litigated in federal court, the exclusive venue for any such lawsuit is in the United States District Court or United States Bankruptcy Court for the Southern District of Florida. **BY ENTERING INTO THIS AGREEMENT, RECIPIENT AND COUNTY HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THE GRANT AGREEMENT AND/OR GRANT PROGRAM TERMS.**

9.20. Amendments. Unless expressly authorized herein, no modification, amendment, or alteration of any portion of the Grant Agreement or these Grant Program Terms shall be effective unless contained in a written document executed with the same or similar formality as the Grant Agreement and by duly authorized representatives of County and Recipient.

9.21. Prior Agreements. The Grant Agreement represents the final and complete understanding of the Parties regarding the subject matter of the Grant Agreement and supersedes all prior and contemporaneous negotiations and discussions regarding same. All commitments, Grant

Agreements, and understandings of the Parties concerning the subject matter of the Grant Agreement are contained herein.

9.22. Payable Interest.

9.22.1. Payment of Interest. Unless prohibited by Applicable Law, County shall not be liable for interest to Recipient for any reason, whether as prejudgment interest or for any other purpose, and Recipient waives, rejects, disclaims, and surrenders any and all entitlement to interest in connection with a dispute or claim arising from, related to, or in connection with the Grant Agreement.

9.22.2. Rate of Interest. If the preceding subsection is inapplicable or is determined to be invalid or unenforceable by a court of competent jurisdiction, the annual rate of interest payable by County under the Grant Agreement, whether as prejudgment interest or for any other purpose, shall be, to the full extent permissible under Applicable Law, one quarter of one percent (0.25%) simple interest (uncompounded).

9.23. Incorporation by Reference. Any and all Recital clauses stated above are true and correct and are incorporated in the Grant Agreement and these Grant Program Terms by reference.

9.24. Representation of Authority. Recipient represents and warrants that the Grant Agreement constitutes the legal, valid, binding, and enforceable obligation of Recipient, and that neither the execution nor performance of the Grant Agreement constitutes a breach of any agreement that Recipient has with any third party or violates Applicable Law. Recipient further represents and warrants that execution of the Grant Agreement is within Recipient's legal powers, and each individual executing the Grant Agreement on behalf of Recipient is duly authorized by all necessary and appropriate action to do so on behalf of Contractor and does so with full legal authority.

9.25. Contingency Fee. Recipient represents and warrants that it has not employed or retained any person or entity, other than a bona fide employee working solely for Recipient, to solicit or secure the Grant Agreement, and that it has not paid or agreed to pay any person or entity, other than a bona fide employee working solely for Recipient, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement.

9.26. Discriminatory Vendor and Scrutinized Companies Lists; Countries of Concern. Recipient represents that it has not been placed on the "discriminatory vendor list" as provided in Section 287.134, Florida Statutes, and that it has not been identified as a company or other entity subject to scrutiny under Sections 215.473 or 215.4725, Florida Statutes. Recipient represents and certifies that it is not, and throughout the Grant Award Period will not be, ineligible to contract with County on any of the grounds stated in Section 287.135, Florida Statutes. Recipient represents that it is, and throughout the Grant Award Period will remain, in compliance with Section 286.101, Florida Statutes.

9.27. Nondiscrimination. Recipient and Subcontractors shall not discriminate on the basis of race, color, sex, religion, national origin, disability, age, marital status, political affiliation, pregnancy, or any other basis prohibited by Applicable Law in the performance of this Agreement. Recipient shall include the foregoing or similar language in its contracts with all Subcontractors, except that any project assisted by U.S. Department of Transportation funds shall comply with the nondiscrimination requirements in 49 C.F.R. Parts 23 and 26.

9.28. Force Majeure. If County's performance of any obligation under the Grant Agreement (or any document incorporated therein) is prevented or delayed by reason of hurricane, earthquake, epidemic, pandemic, or other casualty caused by nature, or by labor strike, war, or by a law, order, proclamation, regulation, or ordinance of any governmental agency (including, without limitation, by County), County, upon giving prompt notice to Recipient, will be excused from such performance to the extent of such prevention, if County has first taken reasonable steps to avoid and remove the cause of nonperformance and continues to take reasonable steps to avoid and remove such cause, and promptly notify Recipient in writing and resume performance in accordance with the Grant Agreement whenever such causes are removed; if such nonperformance exceeds sixty (60) days, County shall have the right to terminate the Grant Agreement upon written notice to Recipient, with Recipient waiving any and all rights or claims associated therewith. This section does not supersede or prevent the exercise of any right the parties may otherwise have to terminate the Grant Agreement.

9.29. Remedies Cumulative. Failure by Recipient to carry out any of the requirements of the Grant Agreement, these Grant Program Terms, the Grant Guidelines, or any documents incorporated into any of the aforementioned, constitutes a material breach of the Grant Agreement, which will permit County to terminate the Grant Agreement for cause or to exercise any other remedy provided under the Grant Agreement, these Grant Program Terms, or Applicable Law, all such remedies being cumulative.

9.30. Regulatory Capacity. Notwithstanding the fact that County is a political subdivision with certain regulatory authority, County's performance under the Grant Agreement is as a Party to this Agreement and not in its regulatory capacity. If County exercises its regulatory authority, the exercise of such authority and the enforcement of Applicable Law shall have occurred pursuant to County's regulatory authority as a governmental body separate and apart from this Agreement, and shall not be attributable in any manner to County as a Party to the Grant Agreement.

9.31. Truth-In-Negotiation Representation. Recipient's compensation under the Grant Agreement is based upon its representations to County, and Recipient certifies that the wage rates, factual unit costs, and other information supplied to substantiate Recipient's compensation, including without limitation those made by Recipient during the negotiation of the Grant Agreement, are accurate, complete, and current as of the date Recipient executes this Agreement. Recipient's compensation may be reduced by County, in its sole discretion, to correct any inaccurate, incomplete, or noncurrent information provided to County as the basis for Recipient's compensation in the Grant Agreement.

9.32. Public Entity Crime Act. Recipient represents that it is familiar with the requirements and prohibitions under the Public Entity Crime Act, Section 287.133, Florida Statutes, and represents that its entry into this Agreement will not violate that statute. Recipient further represents that there has been no determination that it committed a “public entity crime” as defined by Section 287.133, Florida Statutes, and that it has not been formally charged with committing an act defined as a “public entity crime” regardless of the amount of money involved or whether Recipient has been placed on the convicted vendor list.

9.33. Breach of Representations. Recipient acknowledges that County is materially relying on the representations, warranties, and certifications of Recipient stated in this article, and County shall be entitled to exercise any or all of the following remedies if any such representation, warranty, or certification is untrue: (a) recovery of damages incurred; (b) termination of the Grant Agreement without any further liability to Recipient; (c) set off from any amounts due Recipient the full amount of any damage incurred; and (d) debarment of Recipient. Furthermore, a false representation may result in debarment from future Cultural Division Grant Programs and other programs offered by County.

9.34. Time of the Essence. Time is of the essence for Recipient’s performance of the duties, obligations, and responsibilities as stated or incorporated into the Grant Agreement or these Grant Program Terms.

9.35. Multiple Originals and Counterparts. The Grant Agreement may be executed in multiple originals or in counterparts, whether signed physically or electronically; each of which shall be deemed to be an original, and all of which, taken together, shall constitute one and the same Grant Agreement.

9.36. Use of County Name or Logo. Recipient shall not use County’s name or logo in marketing or publicity materials without prior written consent from the Contract Administrator.

9.37. Anti-Human Trafficking. By execution of the Grant Agreement by an authorized representative of Recipient, Recipient hereby attests under penalty of perjury that Recipient does not use coercion for labor or services, as such terms are defined in Section 787.06, Florida Statutes. Under penalties of perjury, the undersigned authorized representative of Recipient declares that they have read the foregoing statement and that the facts stated in it are true.

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