



STANDARD GRANT AWARD TERMS AND CONDITIONS FOR BROWARD CULTURAL COUNCIL CULTURAL GRANT AWARD AGREEMENTS

These Standard Terms and Conditions (“Grant Program Terms”) govern all Cultural Division Grant Agreements entered into by Broward County (“County”) and the Recipient identified in the Broward County Cultural Division Grant Award 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 diverse 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, offer 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 approved 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

All capitalized terms used in the Grant Agreement shall have the same uses in these Grant Program Terms. The following additional definitions shall apply to the Grant Agreement and these Grant Program Terms.

1.1. **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.

1.2. **County Administrator** means the administrative head of County appointed by the Board.

1.3. **General Operating Support** means the Grant Program where Recipients must use the Grant Award during the Grant Period towards Recipient’s general operating expenses as described in the Recipient Application and Grant Agreement.

1.4. **Program Support** means is 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.

1.5. **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.

1.6. **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.

1.7. **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.

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 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 Term. 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 Term. Unless advance payments were expressly authorized in the Grant Award 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 an absolute discretion of the Contract Administrator.

3.4. Fiscal Year. The continuation of the Grant Award beyond the end of any County fiscal year is subject to both the appropriation and the availability of funds in accordance with Chapter 129, Florida Statutes. If the Grant Award Period extends beyond one County fiscal year (October 1 through September 30 of the next year), and funds are not appropriated or available to fund Recipient in accordance with the Grant Award Agreement, the Grant Award Agreement shall automatically terminate with County having no further obligation to Recipient in connection therewith.

ARTICLE 4. PROJECT EVALUATION REPORT

Recipient must submit a completed Project Evaluation Report (the template for which is available online at: <https://bit.ly/3Dj6Loy>) 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, 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 are not subject to interest, to provide the Contract Administrator thirty (30) days to review the Reporting Materials.

ARTICLE 5. ATTRIBUTION OF COUNTY

During the Term, Recipient will post the [artscalendar.com](http://www.artscalendar.com) banner web link (<http://www.artscalendar.com/>) on Recipient's website, if any. For instructions, please visit the following link: <http://www.broward.org/Arts/Funding/Pages/default.aspx>. 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. 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. 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 cured within ten (10) business days after 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.

6.2. County, through its County Administrator, may terminate the Grant Agreement upon ten (10) days' prior written notice by the Contract Administrator if Recipient is found to have submitted a false certification according to Section 287.135, Florida Statutes, if Recipient has been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or if Recipient has failed to promptly implement corrective action for audit deficiencies after ten (10) days' written notice by

the Contract Administrator. Notwithstanding anything contained in the Grant Agreement to the contrary, the rights and obligations of the Parties under this paragraph will be governed by Section 287.135, Florida Statutes, to the fullest extent applicable.

6.3. Recipient represents that neither it nor any of its affiliates have been placed on the discriminatory vendor list, as defined by Section 287.134, Florida Statutes, and is not otherwise ineligible to contract with County on any of the grounds stated in Section 287.135, Florida Statutes. County may terminate the Grant Agreement effective immediately, without any further obligation to Recipient, upon learning that such representation is false or if Recipient or any of its affiliates are placed on the discriminatory vendor list or are otherwise ineligible to contract with County on any of the grounds stated in Section 287.135, Florida Statutes.

6.4. 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.

6.5. 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.

6.6. Notice of termination must be provided in accordance with the "Notices" section of these Grant Program Terms.

ARTICLE 7. INDEMNIFICATION

As consideration for County signing the Grant Agreement, Recipient hereby indemnifies, holds harmless, and shall defend County and all of County's former, current, and future officers, agents, servants, 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 intentional, reckless, or negligent act or omission of Recipient, its officers, employees, agents, or servants, arising from, relating to, or in connection with the Grant Agreement and these Grant Program Terms (collectively, a "Claim"). If a Claim is brought against an Indemnified Party, Recipient must, upon written notice from County, defend each Indemnified Party against each such Claim by 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 survive the expiration or earlier termination of the Grant Agreement. To the extent considered necessary by the Contract Administrator and the County Attorney, County may retain any sums due to Recipient under the Grant Agreement until all Claims subject to this indemnification obligation have been settled or otherwise resolved. Any amount withheld is not subject to payment of interest by County.

ARTICLE 8. INSURANCE; SOVEREIGN IMMUNITY

Sections 8.1-8.8: 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 must, 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 must ensure that "Broward County" is listed and endorsed as an additional insured on all policies required under this article, and that Broward County, 115 South Andrews Avenue, Fort Lauderdale, Florida 33301, is be listed as the Certificate Holder on all policies required by 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 must 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 must ensure that all required insurance coverages do not cease and remain in full force and effect until the Grant Award Period is completed and County determines all performance required of Recipient has been satisfied. Recipient must provide at least thirty (30) days' written notice to County of cancellation and at least ten (10) days' notice of cancellation due to nonpayment and must concurrently provide County with a copy of its updated Certificates of Insurance evidencing continuation of any required coverages. Recipient must ensure that there is no lapse of coverage at any time during the applicable period for which coverage is required by this Article. Unless prohibited by the applicable policy, Recipient waives any right to subrogation that any of Recipient's insurers may acquire against County.

8.5. 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 must provide primary coverage and shall not require contribution from any County insurance, self-insurance or otherwise, which are in excess of and will not contribute to the insurance required and provided by Recipient. 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 Effective Date or commencement of Grant Award Period. Recipient is solely responsible for and must pay any deductible or self-insured retention applicable to any claim against County.

8.6. Recipient must ensure that all required insurance policies are issued by insurers that are: (1) assigned an A. M. Best rating of at least "A-" with a Financial Size Category of at least Class VII; (2) authorized to transact insurance in the State of Florida; or (3) a qualified eligible surplus lines insurer in accordance with Section 626.917 or 626.918, Florida Statutes, with approval by County.

8.7. If any of the policies required provide claims-made coverage: (1) any retroactive date must be prior to the Effective Date or at least fifteen (15) days prior to commencement of the Grant Award Period; (2) the required coverage must be maintained after termination or expiration of the Grant Agreement for at least the duration provided by County, and (3) if coverage is cancelled or nonrenewed and is not replaced with another claims-made policy form with a retroactive date prior to the Effective Date or at least fifteen (15) days prior to commencement of the Grant Award Period, 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.

8.8. Recipient shall require that any subcontractor maintains insurance coverage that adequately covers the services provided by that subcontractor on substantially the same insurance terms and conditions required of Recipient. Recipient must 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.

Sections 8.9–8.13: When Recipient is a Governmental Entity

8.9. 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.

8.10. 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.

8.11. 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.

8.12. 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.

8.13. 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 Term.

For C&A Facilities Capital Support

In addition to any insurance requirements as described in sections 8.1 to 8.13 above, Recipient shall comply with all additional insurance obligations provided in Exhibit B to the Grant Agreement.

ARTICLE 9. MISCELLANEOUS

9.1. Contract Administrator Authority. Recipient acknowledges that the Contract Administrator has no authority to make changes that would increase, decrease, or otherwise modify the amount of the Grant Award or adjust the Authorized Uses unless specifically authorized in the Administrative Code, any authorizing Board resolution, or any other Board-authorized action. If so authorized, upon written request by Recipient, changes in the Authorized Activities or modifications to the categories of expenditures, if any, listed in the Grant Agreement, must be documented via an amendment to the Grant Agreement. The maximum Grant Award amount may only be modified with Board approval and subsequently documented via a written amendment to the Grant Agreement. If Recipient desires to change the proposed allocation of Grant Award funds and the proposed change will result in a reallocation of more than 25% of the total Grant Award, the Recipient must provide advanced written notice to the Cultural Division.

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 Incentive 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 Award Agreement.

9.3. Rights in Documents and Work; Perpetual Non-Exclusive License. Recipient hereby grants to County the perpetual non-exclusive license and right to record, reprint, republish, or otherwise reuse the creative elements generated as part of the Grant Agreement for County's benefit. The license granted to County pursuant to this section allows County, in its sole discretion, and for no additional compensation to Recipient other than the Grant Award, the right to publicly distribute, exploit, market, perform, broadcast, transmit, and exhibit the creative elements generated as part of the Grant Agreement, in all media means or methods, including but not limited to: print, internet, TV shows, videos, websites, podcasts, multimedia presentations, and films. County will make a good faith effort to credit Recipient as part of the republication stated in this section.

9.4. Public Records. To the extent Recipient is acting on behalf of County as stated in Section 119.0701, Florida Statutes, Recipient must:

- a) Keep and maintain public records required by County in connection with the Authorized Activities and the Grant Agreement;
- b) 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 for in Chapter 119, Florida Statutes, or as otherwise provided by law;
- c) Ensure that public records that are exempt or confidential and exempt from public records requirements are not disclosed except as authorized by law for the duration of the Grant Agreement and following completion or termination of the Grant Agreement, if the records are not transferred to County; and
- d) Upon completion 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 associated with the Grant Agreement. If Recipient transfers the records to County, Recipient must destroy any duplicate public records that are exempt or confidential and exempt. If Recipient keeps and maintains the public records, Recipient must meet all applicable requirements 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.

A request for public records regarding the Grant Agreement must be made directly to County, who will be responsible for responding to any such public records requests. Recipient will provide any requested records to County to enable County to respond to the public records request.

Any material submitted to County that Recipient contends constitutes or contains trade secrets or is otherwise exempt from production under Florida public records laws (including Chapter 119, Florida Statutes) (“Trade Secret Materials”) must be separately submitted and conspicuously labeled “EXEMPT FROM PUBLIC RECORD PRODUCTION – TRADE SECRET.” In addition, Recipient must, simultaneous with the submission of any Trade Secret Materials, provide a sworn affidavit from a person with personal knowledge attesting that the Trade Secret Materials constitute trade secrets under Section 812.081, Florida Statutes, and stating the factual basis for same. If a third party submits a request to County for records designated by Recipient as Trade Secret Materials, County must refrain from disclosing the Trade Secret Materials, unless otherwise ordered by a court of competent jurisdiction or authorized in writing by Recipient. 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 the nondisclosure of any Trade Secret Materials in response to a records request by a third party.

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, 115 SOUTH ANDREWS AVENUE, 6TH FLOOR, FORT LAUDERDALE, FLORIDA 33301.

9.5. Audit Rights and Retention of Records. If Recipient has an independent audit performed of its activities that encompasses all or any portion of the Grant Award Period, Recipient shall provide a copy thereof to County within thirty (30) days of receipt thereof. In addition to receipt of Recipient's independent audit (if any) of its activities, County has the right to audit the books, records, and accounts of Recipient and its Subcontractors that are related to the Grant Agreement. Recipient and its Subcontractors must keep books, records, and accounts as may be necessary in order to record complete and correct entries related to the Grant Agreement and performance under the Grant Agreement. All books, records, and accounts must be kept in written form, or in a form capable of conversion into written form within a reasonable time, and upon request to do so, Recipient or its Subcontractor must make all books, records, and accounts available in written form at no cost to County.

Recipient and its Subcontractors must 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. Any audit or inspection in accordance with this section may be performed by any County representative (including any outside representative engaged by County). County has the right to conduct the audit or review at Recipient's place of business, if deemed appropriate by County, with seventy-two (72) hours' advance notice.

Any incomplete or incorrect entry in the books, records, and accounts will be a basis for County's disallowance and recovery of any payment upon such entry. If an audit or inspection in accordance with this section discloses overpricing or overcharges to County of any nature by Recipient in excess of five percent (5%) of the total contract billings reviewed by County, the reasonable actual cost of County's audit will be reimbursed to County by Recipient in addition to making adjustments for the overcharges. Any adjustments or payments due as a result of the audit or inspection must be made within thirty (30) days after presentation of County's findings to Recipient.

Recipient must ensure that the requirements of this section are included in all agreements with any subcontractors engaged in activities subject to the Grant Agreement.

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 directly or substantially 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 will be entitled to assert a right or claim against either Party based upon the Grant Agreement.

9.8. Notices. For a 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 e-mail, to the addresses listed below and is effective upon mailing or hand delivery (provided the contemporaneous e-mail is also sent). Recipient and County may change the addresses for notice by providing written notice of such change in accordance with the provisions on this section. Notice to Recipient shall be made to the address shown in the Grant Agreement.

Address for Notice to 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: jshermer@broward.org

9.9. Assignment. Except for subcontracting approved by County in advance, 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, and any such prohibited action shall be deemed null and void. If Recipient violates this provision, County will have the right to immediately terminate the Grant Agreement.

9.10. 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.

9.11. Conflicts. Neither Recipient nor its employees may 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 term of the Grant Agreement, none of Recipient's officers or employees will serve as an expert witness against County in any legal or

administrative proceeding in which he, she, or Recipient is not a party, unless compelled by court process. Further, such persons may not give sworn testimony or issue a report or writing as an expression of his or her 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 court process. The limitations of this section do 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 in accordance with the Grant Agreement to utilize subcontractors in connection with the Grant Agreement, Recipient must require the subcontractors, by written contract, to comply with the provisions of this section to the same extent as Recipient.

9.12. Materiality and Waiver of Breach. Each requirement, duty, and obligation stated in the Grant Agreement and these Grant Program Terms was 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 is 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 Award Terms is not a waiver of such provision or modification of the Grant Agreement or Grant Award Terms. A waiver of any breach of a provision of the Grant Award Agreement and/or Grant Award Terms is not a waiver of any subsequent breach and is not to be construed as a modification of the terms of the Grant Award Agreement and/or Grant Award Terms. To be effective, any waiver must be in writing signed by an authorized signatory of the party.

9.13. Compliance with Laws. Recipient and the Authorized Uses must comply with all applicable federal, state, and local laws, codes, ordinances, rules, and regulations including, without limitation, the Americans with Disabilities Act, 42 U.S.C. § 12101, Section 504 of the Rehabilitation Act of 1973, and any related federal, state, or local laws, rules, and regulations.

9.14. Joint Preparation. The Grant Award Agreement has been jointly prepared by the parties and will not be construed more strictly against either party.

9.15. Sovereign Immunity. Except to the extent sovereign immunity may be deemed to be waived by entering into the Grant Agreement, nothing in the Grant Award Agreement or these Grant Award Terms are intended to serve as a waiver of sovereign immunity by County nor shall anything included therein be construed as consent by County to be sued by third parties. County is a political subdivision as defined in Section 768.28, Florida Statutes, and shall be responsible for the negligent or wrongful acts or omissions of its employees pursuant to Section 768.28, Florida Statutes.

9.16. Voluntary Execution; Role of Legal Counsel. Recipient and County acknowledge that the Grant Award Agreement is freely and voluntarily executed after Recipient had an opportunity to review both the Grant Award Agreement and Grant Award Terms, and that Recipient had adequate opportunity to consult with and receive the advice of counsel before entering into the Grant Award Agreement.

9.17. Interpretation. The titles and headings contained in the Grant Award Terms and Grant Award Agreement are for reference purposes only and do not in any way affect the meaning or interpretation of the Grant Award Agreement. All personal pronouns used in the Grant Award Agreement and/or the Grant Award Terms include the other gender, and the singular includes the plural, and vice versa, unless the context otherwise requires. Terms such as “therein” and “thereof” refer to the Grant Award Agreement and/or Grant Program Terms 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 Award Terms and/or Grant Award Agreement, such reference is to the section or article as a whole, including all of the subsections of such section, 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.

9.18. Severability; Priority of Provisions. If any part of the Grant Award Agreement or Grant Award Terms is found to be unenforceable by any court of competent jurisdiction, that part shall be deemed severed and the balance shall remain in full force and effect. Unless expressly specified in these Grant Award Terms, 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 Award Agreement and any provision of the Articles of these Grant Program Terms, the provisions contained the Articles prevail and will be given effect.

9.19. Law, Jurisdiction, Venue, Waiver of Jury Trial. The Grant Award Agreement and these Grant Program Terms will 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 Award 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. No modification, amendment, or alteration in the terms or conditions contained in the Grant Award Agreement or these Grant Program Terms shall be effective unless contained in a written document prepared with the same or similar formality as the Grant Award Agreement and executed by the Board and Recipient or others delegated authority or otherwise authorized to execute the Grant Award Agreement on their behalf. The County Administrator is authorized to execute amendments to the Grant Agreement.

9.21. Prior Agreements. The Grant Award Agreement represents the final and complete understanding of the parties regarding the subject matter contained in the Grant Award Agreement and supersedes all prior and contemporaneous negotiations and discussions

regarding that subject matter. There is no commitment, agreement, or understanding concerning the subject matter of the Grant Award Agreement that is not contained in the written document.

9.22. Payable Interest.

9.22.1. Payment of Interest. County is not liable to pay any interest to Recipient for any reason, whether as prejudgment interest or for any other purpose, and in furtherance of that purpose, Recipient waives, rejects, disclaims, and surrenders any and all entitlement it has or may have to receive interest in connection with a dispute or claim arising from, related to, or in connection with the Grant Agreement and/or Grant Program Terms. This section does not apply to any claim for interest, including for post judgment interest, if such application would be contrary to applicable law.

9.22.2. Rate of Interest. If the preceding section 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 and/or Grant Program Terms, whether as prejudgment interest or for any other purpose, will 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 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 Award Agreement constitutes a breach of any agreement that Recipient has with any third party or violates any law, rule, regulation, or duty arising in law or equity applicable to Recipient. 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 Recipient and does so with full legal authority.

9.25. Contingency Fee. Recipient represents 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 the Grant Agreement.

9.26. Nondiscrimination. Recipient may not discriminate on the basis of race, color, sex, religion, national origin, disability, age, marital status, political affiliation, sexual orientation, pregnancy, or gender identity and expression in the performance of the Grant Agreement. Recipient will include the foregoing or similar language in its contracts with any Subcontractors, except that any project assisted by the U.S. Department of Transportation funds must comply with the nondiscrimination requirements in 49 C.F.R. Parts 23 and 26.

9.27. 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 applicable law, the Broward County Code of Ordinances, Broward County Administrative Code, all such remedies being cumulative.

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. Regulatory Capacity. Notwithstanding that County is a political subdivision with certain regulatory authority, County's performance under the Grant Agreement is as a party to the Grant Agreement. If County exercises its regulatory authority, the exercise of the authority and the enforcement of any rules, regulation, laws, and ordinances will have occurred in accordance with County's regulatory authority as a governmental body separate and apart from the Grant Agreement and will not be attributable to County as a party to the Grant Agreement.

9.30. Truth-In-Negotiation Representation. The Grant Award awarded to Recipient is based upon its representations to County in, among other materials submitted to County, financial documents and reports provided to County as required by the Grant Agreement and these Grant Program Terms, as well as those contained in the Recipient Application and statements made by Recipient to County during the application process. Recipient certifies that all such information is accurate, complete, and current as of the same is submitted to County. Recipient will promptly provide County with written notice and details of any new information which renders any representations previously made by Recipient inaccurate, out of date, or incomplete. County reserves the right to reduce the Grant Award based on updated information provided by Recipient.

9.31. Use of County Logo. Except as noted in the Grant Agreement, Grant Guidelines, or these Grant Program Terms, Recipient may not use County's name, logo, or otherwise refer to the Grant Agreement in any marketing or publicity materials without the prior written consent of County.

9.32. Breach of Representations. In entering into the Grant Agreement, Recipient acknowledges that County is materially relying on the representations and warranties of Recipient made in connection with the Recipient Application, as stated in the Grant Agreement, and these Grant Program Terms. County is entitled to recover any damages it incurs to the extent any such representation or warranty is untrue. In addition, if any such representation or warranty is false, County has the right, at its sole discretion, to terminate the Grant Agreement without any further liability to Recipient, to deduct from the Grant Award the full amount of any value paid in violation of a representation or warranty, or to recover all sums paid to Recipient under the Grant Agreement. Furthermore, a false representation may result in debarment from future Cultural Division Grant Programs and other programs offered by County.

9.33. Counterparts and Multiple Originals. The Grant Agreement may be executed in multiple originals, and may be executed in counterparts, each of which is an original, but all of which, taken together, constitute one and the same agreement.

9.34. Time of the Essence. Time is of the essence as to all of Recipient' obligations as stated or incorporated into the Grant Agreement or these Grant Program Terms.