

**AGREEMENT BETWEEN BROWARD COUNTY AND ARTSERVE, INC.
FOR COOPERATIVE MARKETING PROGRAM SERVICES
RFI PROJECT # W2115153A1**

This is an Agreement ("Agreement"), made and entered into by and between Broward County, a political subdivision of the State of Florida ("County") and ArtServe, Inc., a nonprofit corporation organized and registered to do business in the State of Florida ("ArtServe") (collectively referred to as the "Parties").

RECITALS

The County's Board of County Commissioners ("Board") and ArtServe, Inc., wish to promote cultural events in Broward County.

Through the Cultural Division's coordination, contributions from eligible Broward-based, nonprofit or not-for-profit cultural organizations are matched by the County in order for these organizations to supplement their advertising budgets through this subsidized cooperative marketing and advertising services program; and

The Board hereby determines that the services and expenditure of public funds under this Agreement will serve a public purpose.

IN CONSIDERATION of the mutual terms, conditions, promises, covenants, and payments hereinafter set forth, the Parties agree as follows:

ARTICLE 1. DEFINITIONS

- 1.1 **Board.** The Board of County Commissioners of Broward County, Florida.
- 1.2 **Contract Administrator.** The Director of the Cultural Division or the person authorized by the Director to act in such capacity on behalf of the Director.
- 1.3 **County Administrator.** The administrative head of County appointed by the Board.
- 1.4 **County Attorney.** The chief legal counsel for County appointed by the Board.
- 1.5 **County Business Enterprise or "CBE."** A small business certified as meeting the requirements of Broward County's CBE Program pursuant to Section 1-81, Broward County Code of Ordinances.
- 1.6 **Notice To Proceed.** A written authorization to proceed with the project, phase, or task thereof, issued by the Contract Administrator.

1.7 **Services or services.** All work required of ArtServe under this Agreement, including without limitation all deliverables, consulting, training, project management, or other services specified in Exhibit A.

1.8 **Subconsultant** or **Subcontractor.** A firm, partnership, corporation, independent contractor (including 1099 individuals), or combination thereof providing services to County through ArtServe for all or any portion of the advertised work. The term "Subconsultant" shall include all "Subcontractors" and the term "Subcontractor" shall include all "Subconsultants."

ARTICLE 2. SCOPE OF SERVICES

2.1 ArtServe shall perform all work identified in this Agreement including without limitation the obligations set forth in Exhibit A. The Scope of Services stated in this Agreement is a description of ArtServe's obligations and responsibilities and is deemed to include preliminary considerations and prerequisites, and all labor, materials, equipment, and tasks which are such an inseparable part of the work described that exclusion would render performance by ArtServe impractical, illogical, or unconscionable.

2.2 ArtServe acknowledges that the Contract Administrator has no authority to make changes that would increase, decrease, or otherwise modify the Scope of Services to be provided under this Agreement except as expressly set forth in this Agreement or, to the extent applicable, the Broward County Procurement Code (Chapter 21 of the Broward County Administrative Code). To the extent any goods or Services under this Agreement, or the quantity thereof, are optional ("Optional Services"), County may select the type, amount, and timing of such goods or Services pursuant to a Work Authorization (Exhibit E hereto) executed by ArtServe and County pursuant to this section, provided that no such selection, when combined with those goods or Services required under this Agreement, would result in a payment obligation exceeding the applicable maximum amount stated in Section 4.1.

2.3 Notwithstanding anything to the contrary in this Agreement, Work Authorizations for Optional Services shall be executed on behalf of County as follows: (a) the Contract Administrator may execute Work Authorizations for which the total cost to County in the aggregate is less than \$30,000.00; (b) the County's Purchasing Director may execute Work Authorizations for which the total cost to County in the aggregate is within the Purchasing Director's delegated authority; and (c) any Work Authorizations above the County's Purchasing Director's delegated authority shall require Board approval. Subsequent to the full execution of any Work Authorization, the Contract Administrator will issue a Notice to Proceed for those authorized Optional Services. ArtServe shall not commence work on any Work Authorization until after receipt of a Notice to Proceed.

ARTICLE 3. TERM AND TIME OF PERFORMANCE

3.1 The term of this Agreement shall begin on October 1, 2017, and shall end on September 30, 2020 ("Term"). The continuation of this Agreement 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.

3.2 Unless otherwise agreed by the Parties in writing, all duties, obligations, and responsibilities of ArtServe required by this Agreement shall be completed no later than at the end of the Term. Time is of the essence in performing the duties, obligations, and responsibilities required by this Agreement.

3.3 In the event County elects to extend the Term of this Agreement, ArtServe agrees that it shall continue to provide the Services upon the same terms and conditions as set forth in this Agreement for such extended period, which shall not be more than three (3) months beyond the Term. ArtServe shall be compensated for the Services at the rate in effect when the extension was invoked by County. This option, if elected by County, shall be exercised by County's Purchasing Director upon by written notice stating the duration of the extended period which notice shall be provided to ArtServe at least thirty (30) days prior to the end of the Term.

ARTICLE 4. COMPENSATION

4.1 County will pay ArtServe up to a maximum not-to-exceed amount for each year of the three-year Term as follows:

| Services/Goods | Not-To-Exceed Amount |
|------------------------------|-------------------------------|
| Cultural Advertising | \$197,000.00 |
| Administration | \$ 23,750.00 |
| Placement | \$ 48,000.00 |
| Production | \$ 36,000.00 |
| Optional Services | \$ 19,300.00 |
| Reimbursables | \$ 0.00 |
| MAXIMUM NOT-TO-EXCEED | \$324,050.00 each year |

Payment shall be made only for work actually performed and completed pursuant to this Agreement, as set forth in Exhibit B (Payment Schedule), which amount shall be accepted by ArtServe as full compensation for all such work. ArtServe acknowledges that the amounts set forth herein are the maximum amounts payable and constitute a limitation upon County's obligation to compensate ArtServe for its work under this Agreement. These maximum amounts, however, do not constitute a limitation of any sort upon ArtServe's obligation to perform all items of work required under this Agreement. Unless otherwise expressly stated in this Agreement, ArtServe shall not be reimbursed for any expenses it incurs under this Agreement.

4.2 METHOD OF BILLING AND PAYMENT

4.2.1 ArtServe may submit invoices for compensation no more often than on a monthly basis, but only after the Services for which the invoices are submitted have been completed. An original invoice plus one copy are due within twenty-five (25) days of the

end of the month except the final invoice which must be received no later than sixty (60) days after expiration or earlier termination of this Agreement. Invoices shall designate the nature of the Services performed and, as applicable, the personnel, hours, tasks, or other detail as requested by the Contract Administrator. ArtServe shall submit with each invoice a Certification of Payments to Subcontractors and Suppliers (Exhibit C). The certification shall be accompanied by a copy of the notification sent to each Subcontractor and supplier listed on the form, explaining the good cause why payment has not been made.

4.2.2 Any invoice submitted by ArtServe shall be in the amount set forth in Exhibit B for the applicable Services, minus any agreed upon retainage as stated in Exhibit B. Retainage amounts shall only be invoiced to County upon completion of all Services under this Agreement, unless otherwise stated in Exhibit B.

4.2.3 County shall pay ArtServe within thirty (30) calendar days of receipt of ArtServe's proper invoice, as required under the "Broward County Prompt Payment Ordinance," Section 1-51.6, Broward County Code of Ordinances. To be deemed proper, all invoices must comply with the requirements set forth in this Agreement and must be submitted on the form and pursuant to instructions prescribed by the Contract Administrator. Payment may be withheld for failure of ArtServe to comply with a term, condition, or requirement of this Agreement.

4.2.4 ArtServe shall pay its Subcontractors and suppliers within fifteen (15) days following receipt of payment from County for such subcontracted work or supplies. ArtServe agrees that if it withholds an amount as retainage from Subcontractors or suppliers, it will release such retainage and pay same within fifteen (15) days following receipt of payment of retained amounts from County. Failure to pay a Subcontractor or supplier in accordance with this subsection shall be a material breach of this Agreement, unless ArtServe demonstrates that such failure to pay results from a bona fide dispute with the Subcontractor or supplier.

4.3 Reimbursables. For reimbursement of any travel costs or travel-related expenses permitted under this Agreement, ArtServe agrees to comply with Section 112.061, Florida Statutes, except to the extent, if any, that Exhibit B expressly provides to the contrary. County shall not be liable for any such expenses that have not been approved in advance, in writing, by the Contract Administrator.

4.4 Subcontractors. ArtServe shall invoice all Subcontractor fees, whether paid from a "lump sum" or other basis, to County with no markup. All Subcontractor fees shall be billed in the actual amount paid by ArtServe.

4.5 Notwithstanding any provision of this Agreement to the contrary, County may withhold, in whole or in part, payment to the extent necessary to protect itself from loss on account of inadequate or defective work which has not been remedied or resolved in a manner satisfactory

to the Contract Administrator or failure to comply with any provision of this Agreement. The amount withheld shall not be subject to payment of interest by County.

4.6 Payment shall be made to ArtServe at the address designated in the Notices section.

ARTICLE 5. INDEMNIFICATION

ArtServe shall at all times hereafter indemnify, hold harmless and defend County and all of County's current and former 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 (collectively, a "Claim"), raised or asserted by any person or entity not a party to this Agreement, which Claim is caused or alleged to be caused, in whole or in part, by any intentional, reckless or negligent act or omission of ArtServe, its current or former officers, employees, agents, or servants, arising from, relating to, or in connection with this Agreement. In the event any Claim is brought against an Indemnified Party, ArtServe shall, 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 shall survive the expiration or earlier termination of this Agreement. To the extent considered necessary by the Contract Administrator and the County Attorney, any sums due ArtServe under this Agreement may be retained by County until all of County's claims for indemnification pursuant to this Agreement have been settled or otherwise resolved. Any amount withheld shall not be subject to payment of interest by County.

ARTICLE 6. INSURANCE

6.1 ArtServe shall, at a minimum, provide, and maintain in force at its sole expense at all times during the duration of the Agreement insurance coverage against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by ArtServe, its agents, representatives, employees, or subcontractors in accordance with the terms and conditions stated herein.

6.2 Minimum Scope and Limit of Insurances. ArtServe shall have insurance coverage at least as broad as the required insurance below:

6.2.1 Commercial General Liability: Insurance on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal and advertising injury with limits of no less than One Million Dollars (\$1,000,000) per occurrence. The general aggregate limit shall be Two Million Dollars (\$2,000,000).

6.2.2 Automobile Liability: Insurance covering all owned, non-owned, and hired vehicles used in connection with the work, with limit of no less than One Million Dollars (\$1,000,000) per accident for bodily injury and property damage.

6.2.3 Workers' Compensation: Insurance for all employees of ArtServe as required by the State of Florida with Statutory Limits, and Employer's Liability Insurance with limit of no less than One Million Dollars (\$1,000,000) per accident for bodily injury or disease.

6.2.4 Professional Liability Insurance with minimum limits for each claim of One Million Dollars (\$1,000,000) and Two Million Dollars (\$2,000,000), subject to a maximum deductible per claim of \$100,000. Such policy shall remain in force for the Term and for a two-year period thereafter. ArtServe shall notify County in writing within thirty (30) days of any claim filed or made against its Professional Liability Insurance policy. ArtServe shall be responsible for all deductibles in the event of a claim. The deductible shall be indicated on ArtServe's Certificate of Insurance.

6.3 Broward County, its officers, officials, employees and volunteers are to be covered as additional insureds on ArtServe's insurance policies with respect to liability arising out of work operations performed by or on behalf of ArtServe including materials, parts, or equipment furnished in connection with such work or operations. Broward County, 115 South Andrews Avenue, Fort Lauderdale, Florida 33301, is to be listed as the Certificate Holder on said policies. All policies must be endorsed to provide County with at least thirty (30) days' notice of cancellation and/or restriction, including but not limited to cancellation for non-payment. *(Insurance Requirements Form attached hereto as "Exhibit D.")*

6.4 Within fifteen (15) days after the execution of this Agreement, ArtServe shall provide to the County a copy of all required insurance policies and Certificates of Insurance as satisfactory evidence of the insurance required in this Agreement. At the option of the County, the County may request and ArtServe shall provide a copy of all endorsements required by this Agreement within the time requested by the County.

6.5 Insurance coverage is not to cease and is to remain in force and effect until the Term of the project is completed and the County determines all performance required of ArtServe have been satisfied. ArtServe shall provide notice to the County of any cancellation of insurance, including, but not limited to, cancellation for non-payment at least thirty (30) days prior to the date of expiration, and shall concurrently provide the County with a copy of its updated certificate of insurance. ArtServe shall ensure that there is no lapse of coverage at any time during the Term of the project.

6.6 The County reserves the right to review and revise any insurance requirements, including, but not limited to, deductibles, limits, coverage, and endorsements at the time of any written amendments, such as extensions to this Agreement.

6.7 If ArtServe maintains broader coverage or higher limits than the minimums shown above, the County requires, and shall be entitled to, the broader coverage or the higher limits maintained by ArtServe. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the County.

6.8 ArtServe shall utilize an insurer with a current A. M. Best Company Rating of "A-" and a minimum Financial Size Category of VII, or an insurer that holds a valid Florida Certificate of Authority authorized to transact insurance in the State of Florida.

6.9 ArtServe's insurance shall provide primary coverage and shall not require contribution or be called upon to contribute to a loss from the County's insurance or self-insurance program maintained by the County, or its members officials, officers, or employees. Self-insured retentions must be declared in writing and approved by the County.

6.10 If ArtServe hires subcontractor(s) to perform Services, ArtServe shall require its Subcontractors to meet the same insurance requirements as ArtServe and as outlined above. ArtServe shall ensure all insurance requirements are satisfied in accordance with the Agreement.

ARTICLE 7. TERMINATION

7.1 This Agreement may be terminated for cause by the aggrieved party if the party in breach has not corrected the breach within ten (10) days after receipt of written notice from the aggrieved party identifying the breach. This Agreement may also be terminated for convenience by the Board. Termination for convenience by the Board shall be effective on the termination date stated in written notice provided by County, which termination date shall be not less than thirty (30) days after the date of such written notice. This 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. If County erroneously, improperly, or unjustifiably terminates for cause, such termination shall, at County's sole election, be deemed a termination for convenience, which shall be effective thirty (30) days after such notice of termination for cause is provided.

7.2 This Agreement may be terminated for cause for reasons including, but not limited to, ArtServe's repeated (whether negligent or intentional) submission for payment of false or incorrect bills or invoices, failure to suitably perform the work, or failure to continuously perform the work in a manner calculated to meet or accomplish the objectives as set forth in this Agreement. This Agreement may also be terminated for cause if ArtServe is placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List created pursuant to Section 215.473, Florida Statutes, or if ArtServe provides a false certification submitted pursuant to Section 287.135, Florida Statutes.

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

7.4 In the event this Agreement is terminated for convenience by County, ArtServe shall be paid for any Services properly performed under this Agreement through the termination date specified in the written notice of termination. ArtServe acknowledges that it has received good, valuable and sufficient consideration from County, the receipt and adequacy of which are, hereby acknowledged by ArtServe, for County's right to terminate this Agreement for convenience.

7.5 In the event this Agreement is terminated for any reason, any amounts due ArtServe shall be withheld by County until all documents are provided to County pursuant to Section 9.1.

7.6 This Agreement may also be terminated as provided in Sections 8.1 and 8.3 "Equal Employment Opportunity and CBE Compliance," Section 9.9 "Assignment and Performance," Section 9.26 "Contingency Fee," and Section 9.29, "Force Majeure."

ARTICLE 8. EQUAL EMPLOYMENT OPPORTUNITY AND CBE

8.1 No party to this Agreement may 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 this Agreement. If applicable at the time of any amendment following execution of the initial Agreement, ArtServe shall comply with all applicable requirements of County's CBE Program, as established by Broward County Business Opportunity Act of 2012, Section 1-81, Broward County Code of Ordinances (the "Act"), in the award and administration of this Agreement.

ArtServe shall 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 shall comply with the non-discrimination requirements in 49 C.F.R. Parts 23 and 26.

Failure by ArtServe to carry out any of the requirements of this section shall constitute a material breach of this Agreement, which shall permit County to terminate this Agreement or to exercise any other remedy provided under this Agreement, Broward County Code of Ordinances, Broward County Administrative Code, or under other applicable law, all such remedies being cumulative.

8.2 Although no CBE goal has been set for this Agreement, County encourages ArtServe to give full consideration to the use of CBE firms to perform work under this Agreement.

8.3 By execution of this Agreement, ArtServe represents that it has not been placed on the discriminatory vendor list as provided in Section 287.134, Florida Statutes. County hereby materially relies on such representation in entering into this Agreement. An untrue representation of the foregoing shall entitle County to terminate this Agreement and recover from ArtServe all monies paid by County pursuant to this Agreement, and may result in debarment from County's competitive procurement activities.

ARTICLE 9. MISCELLANEOUS

9.1 Rights in Documents and Work. Any and all reports, photographs, surveys, and other data and documents provided or created in connection with this Agreement are and shall remain the property of County, and, if a copyright is claimed, ArtServe grants to County a non-exclusive license to use the copyrighted item(s) indefinitely, to prepare derivative works, and to make and distribute copies to the public. In the event of termination of this Agreement, any reports, photographs, surveys, and other data and documents prepared by ArtServe, whether finished or unfinished, shall become the property of County and shall be delivered by ArtServe to the Contract Administrator within seven (7) days of termination of this Agreement. Any compensation due to ArtServe shall be withheld until all documents are received as provided herein. ArtServe shall ensure that the requirements of this section are included in all agreements with its Subcontractor(s).

9.2 Public Records. To the extent ArtServe is acting on behalf of County as stated in Section 119.0701, Florida Statutes, ArtServe shall:

- a. Keep and maintain public records required by County to perform the services under this 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 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 record requirements are not disclosed except as authorized by law for the duration of this Agreement and following completion or termination of this Agreement if the records are not transferred to County; and
- d. Upon completion or termination of this Agreement, transfer to County, at no cost, all public records in possession of ArtServe or keep and maintain public records required by County to perform the services. If ArtServe transfers the records to County, ArtServe shall destroy any duplicate public records that are exempt or confidential and exempt. If ArtServe keeps and maintains public records, ArtServe shall 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.

The failure of ArtServe to comply with the provisions of this section shall constitute a material breach of this Agreement entitling County to exercise any remedy provided in this Agreement or under applicable law.

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

Any material submitted to County that ArtServe 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 PRODUCT – TRADE SECRET." In addition, ArtServe 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. In the event that a third party submits a request to County for records designated by ArtServe as Trade Secret Materials, County shall refrain from disclosing the Trade Secret Materials, unless otherwise ordered by a court of competent jurisdiction or authorized in writing by ArtServe. ArtServe shall 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 non-disclosure of any Trade Secret Materials in response to a records request by a third party.

IF ARTSERVE HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO ARTSERVE'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (954) 357-7019, CULTURALDIV@BROWARD.ORG WITH A SIMULTANEOUS COPY TO EBOSWORTH@BROWARD.ORG AND CSEAMORE@BROWARD.ORG, 115 S. ANDREWS AVE., 6TH FLOOR, FORT LAUDERDALE, FLORIDA 33301.

9.3 Audit Rights, and Retention of Records. County shall have the right to audit the books, records, and accounts of ArtServe and its Subcontractors that are related to this Agreement. ArtServe and its Subcontractors shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to this Agreement and performance thereunder. All books, records, and accounts of ArtServe and its Subcontractors shall 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, ArtServe or its Subcontractor, as applicable, shall make same available at no cost to County in written form.

ArtServe and its Subcontractors shall preserve and make available, at reasonable times within Broward County for examination and audit by County, all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for a minimum period of three (3) years after expiration or termination of this Agreement or until resolution of any audit findings, whichever is longer. County audits and inspections pursuant to this section may be performed by any County representative (including any outside representative engaged by County). County reserves the right to conduct such audit or review at ArtServe's place of business, if deemed appropriate by County, with seventy-two (72) hours' advance notice.

Any incomplete or incorrect entry in such books, records, and accounts shall 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 the ArtServe in excess of five percent (5%) of the total contract billings reviewed by County, the reasonable actual cost of County's audit shall be reimbursed to the County by the ArtServe in addition to making adjustments for the overcharges. Any adjustments or payments due as a result of such audit or inspection shall be made within thirty (30) days from presentation of County's findings to ArtServe.

ArtServe shall ensure that the requirements of this section are included in all agreements with its Subcontractors.

9.4 Truth-In-Negotiation Representation. ArtServe's compensation under this Agreement is based upon representations supplied to County by ArtServe, and ArtServe certifies that the wage rates, factual unit costs, and other information supplied to substantiate ArtServe's compensation, including without limitation in the negotiation of this Agreement, are accurate, complete, and current at the time of contracting. County shall be entitled to recover any damages it incurs to the extent any such representation is untrue.

9.5 Public Entity Crime Act. ArtServe 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 Act. In addition to the foregoing, ArtServe 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 ArtServe has been placed on the convicted vendor list. Notwithstanding any provision in this Agreement to the contrary, if any representation stated in this section is false, County shall have the right to immediately terminate this Agreement and recover all sums paid to ArtServe under this Agreement.

9.6 Independent Contractor. ArtServe is an independent contractor under this Agreement. In providing Services under this Agreement, neither ArtServe nor its agents shall act as officers, employees, or agents of County. ArtServe shall not have the right to bind County to any obligation not expressly undertaken by County under this Agreement.

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

9.8 Notices. In order for a notice to a party to be effective under this Agreement, notice must be sent via U.S. first-class mail with a contemporaneous copy via e-mail to the addresses listed below and shall be effective upon mailing. The addresses for notice shall remain as set forth

herein unless and until changed by providing notice of such change in accordance with the provisions of this section.

FOR COUNTY:

Broward County, Cultural Division
Attn: Director of Cultural Division
100 S. Andrews Ave., 6th Floor
Fort Lauderdale, Florida 33301
E-mail address: ebosworth@broward.org
With simultaneous copy of e-mail to: cseamore@broward.org

FOR ARTSERVE:

ArtServe, Inc.
Attn: Jaye Abbate, President & CEO
1350 East Sunrise Blvd.
Fort Lauderdale, Florida 33304-2815
Email address: jayea@ArtServe.org
With simultaneous copy of e-mail to: sbradshaw2002@yahoo.com

9.9 Assignment and Performance. Except for subcontracting approved in writing by County at the time of its execution of this Agreement, pursuant to Paragraph 6 of Exhibit A or any written amendment hereto, neither this Agreement nor any right or interest herein may be assigned, transferred, subcontracted, or encumbered by ArtServe without the prior written consent of County. If ArtServe violates this provision, County shall have the right to immediately terminate this Agreement. ArtServe represents that each person and entity that will provide services under this Agreement is duly qualified to perform such services by all appropriate governmental authorities, where required, and is sufficiently experienced and skilled in the area(s) for which such person or entity will render services. ArtServe agrees that all services under this Agreement shall be performed in a skillful and respectful manner, and that the quality of all such services shall equal or exceed prevailing industry standards for the provision of such services.

9.10 Conflicts. Neither ArtServe nor its employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with ArtServe's loyal and conscientious exercise of judgment and care related to its performance under this Agreement. None of ArtServe's officers or employees shall, during the term of this Agreement, serve as an expert witness against County in any legal or administrative proceeding in which he, she, or ArtServe is not a party, unless compelled by court process. Further, such persons shall not give sworn testimony or issue a report or writing, as an expression of his or her expert opinion, which 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 shall not preclude ArtServe or any persons in any way from representing themselves, including giving expert testimony in support thereof, in any action or in any administrative or legal proceeding. In the event ArtServe is

permitted pursuant to this Agreement to utilize Subcontractors to perform any services required by this Agreement, ArtServe shall require such Subcontractors, by written contract, to comply with the provisions of this section to the same extent as ArtServe.

9.11 Materiality and Waiver of Breach. Each requirement, duty, and obligation set forth herein was bargained for at arm's-length and is agreed to by the Parties. Each requirement, duty, and obligation set forth herein is substantial and important to the formation of this Agreement, and each is, therefore, a material term hereof. County's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

9.12 Compliance with Laws. ArtServe shall comply with all applicable federal, state, and local laws, codes, ordinances, rules, and regulations in performing its duties, responsibilities, and obligations pursuant to this Agreement.

9.13 Severability. In the event any part of this Agreement is found to be unenforceable by any court of competent jurisdiction, that part shall be deemed severed from this Agreement and the balance of this Agreement shall remain in full force and effect.

9.14 Joint Preparation. This Agreement has been jointly prepared by the Parties hereto, and shall not be construed more strictly against either Party.

9.15 Interpretation. The headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement. All personal pronouns used in this Agreement shall include the other gender, and the singular shall include the plural, and vice versa, unless the context otherwise requires. Terms such as "herein," "hereof," "hereunder," and "hereinafter" refer to this 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 this 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.

9.16 Priority of Provisions. If there is a conflict or inconsistency between any term, statement, requirement, or provision of any document or exhibit attached hereto or referenced or incorporated herein and any provision of Articles 1 through 9 of this Agreement, the provisions contained in Articles 1 through 9 shall prevail and be given effect.

9.17 Law, Jurisdiction, Venue, Waiver of Jury Trial. This 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 this Agreement shall be 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 this Agreement must be litigated in federal

court, the exclusive venue for any such lawsuit shall be in the United States District Court or United States Bankruptcy Court for the Southern District of Florida. **BY ENTERING INTO THIS AGREEMENT, ARTSERVE AND COUNTY HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT. IF A PARTY FAILS TO WITHDRAW A REQUEST FOR A JURY TRIAL IN A LAWSUIT ARISING OUT OF THIS AGREEMENT AFTER WRITTEN NOTICE BY THE OTHER PARTY OF VIOLATION OF THIS SECTION, THE PARTY MAKING THE REQUEST FOR JURY TRIAL SHALL BE LIABLE FOR THE REASONABLE ATTORNEYS' FEES AND COSTS OF THE OTHER PARTY IN CONTESTING THE REQUEST FOR JURY TRIAL, AND SUCH AMOUNTS SHALL BE AWARDED BY THE COURT IN ADJUDICATING THE MOTION.**

9.18 Amendments. No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by the Board and ArtServe or others delegated authority or otherwise authorized to execute same on their behalf.

9.19 Prior Agreements. This Agreement represents the final and complete understanding of the Parties regarding the subject matter hereof 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 this Agreement that is not contained in this written document.

9.20 Payable Interest.

9.21.1 Payment of Interest. County shall not be liable to pay any interest to ArtServe for any reason, whether as prejudgment interest or for any other purpose, and in furtherance thereof ArtServe 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 this Agreement. This section shall not apply to any claim for interest, including for post-judgment interest, if such application would be contrary to applicable law.

9.21.2 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 this Agreement, whether as prejudgment interest or for any other purpose, shall be, to the full extent permissible under applicable law, 0.25% (one quarter of one percent) simple interest (uncompounded).

9.21 Incorporation by Reference. Any and all Recital clauses stated above are true and correct and are incorporated herein by reference. The attached Exhibits are incorporated into and made a part of this Agreement.

9.22 Representation of Authority. Each individual executing this Agreement on behalf of a party hereto hereby represents and warrants that he or she is, on the date he or she signs this

Agreement, duly authorized by all necessary and appropriate action to execute this Agreement on behalf of such party and does so with full legal authority.

9.23 Counterparts and Multiple Originals. This Agreement may be executed in multiple originals, and may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

9.24 Domestic Partnership Requirement. Unless this Agreement is exempt from the provisions of Section 16½-157 of the Broward County Code of Ordinances, which requires County contractors to provide benefits to domestic partners of their employees, ArtServe agrees to fully comply with Section 16½-157 during the entire Term of this Agreement. If ArtServe fails to fully comply with that section, such failure shall constitute a material breach which shall allow County to exercise any remedy available under this Agreement, under applicable law, or under Section 16½-157. For that purpose, the contract language referenced in Section 16½-157 is incorporated herein as though fully set forth in this section.

9.25 Drug-Free Workplace. It is a requirement of County that it enter into contracts only with firms that certify the establishment of a drug-free workplace in accordance with Section 21.31(a)(2) of the Broward County Code of Ordinances. Execution of this Agreement by ArtServe shall serve as ArtServe's required certification that it has a drug-free workplace program in accordance with Section 287.087, Florida Statutes, and Section 21.31(a)(2) of the Broward County Code of Ordinances, and that it will maintain such drug-free workplace program for the full Term of this Agreement.

9.26 Contingency Fee. ArtServe represents that it has not paid or agreed to pay any person or entity, other than a bona fide employee working solely for ArtServe, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. If County learns that this representation is false, County shall have the right to terminate this Agreement without any further liability to ArtServe. Alternatively, if such representation is false, County, at its sole discretion, may deduct from the compensation due ArtServe under this Agreement the full amount of such fee, commission, percentage, gift, or consideration.

9.27 Living Wage Requirement. If ArtServe is a "covered employer" within the meaning of the Broward County Living Wage Ordinance, Sections 26-100 et seq. of the Broward County Code of Ordinances, ArtServe agrees to and shall pay to all of its employees providing "covered services," as defined therein, a living wage as required by such ordinance, and ArtServe shall fully comply with the requirements of such ordinance. ArtServe shall be responsible for and shall ensure that all of its Subcontractors that qualify as "covered employers" fully comply with the requirements of such ordinance.

9.28 Use of County Logo. ArtServe shall not use County's name, logo, or otherwise refer to this Agreement in any marketing or publicity materials without the prior written consent of County.

9.29 Force Majeure. If the performance of this Agreement, or any obligation hereunder is prevented by reason of hurricane, earthquake, or other casualty caused by nature, or by labor strike, war, or by a law, order, proclamation, regulation, ordinance of any governmental agency, the party so affected, upon giving prompt notice to the other party, shall be excused from such performance to the extent of such prevention, provided that the party so affected shall first have taken reasonable steps to avoid and remove such cause of non-performance and shall continue to take reasonable steps to avoid and remove such cause, and shall promptly notify the other party in writing and resume performance hereunder whenever such causes are removed; provided, however, that if such non-performance exceeds sixty (60) days, the party that is not prevented from performance by the force majeure event shall have the right to terminate this Agreement upon written notice to the party so affected. This section shall not supersede or prevent the exercise of any right the Parties may otherwise have to terminate this Agreement.

9.30 Financial Statements and Management Letters. ArtServe shall provide to the Contract Administrator annual financial statements prepared by an independent certified public accountant in accordance with generally accepted accounting principles for the fiscal year County funds are received and for each subsequent fiscal year until such time as all of County funds are expended and any management letters thereby generated. Said annual financial statement shall account for all monies received from County via explicit, discrete disclosures and/or accompanying notes to the financial statements.

Said financial statements for this Agreement shall be submitted to the Contract Administrator within one hundred twenty (120) days after the close of each of ArtServe's fiscal years in which ArtServe accounts for funds under this Agreement. Late submission of the financial statements or absence of discrete disclosure shall entitle County to recover any payment made under this Agreement.

ArtServe shall provide the Contract Administrator any and all management letters arising from audited financial statements within ninety (90) days of the date of said management letter. ArtServe shall provide to the Contract Administrator the schedule of correction developed in response to said management letters within thirty (30) days of its development. ArtServe shall provide to the Contract Administrator any compliance audits required by law within ninety (90) days after the close of each of ArtServe's fiscal years in which ArtServe accounts for funds under this Agreement.

ArtServe acknowledges submission of required documents to any other Broward County office, agency, or division does not constitute compliance with the requirement to submit that material to the Contract Administrator for this Agreement.

(The remainder of this page is intentionally left blank.)

IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement for Cooperative Marketing Program Services, RFI Project# W2115153A1: BROWARD COUNTY, through its BOARD OF COUNTY COMMISSIONERS, signing by and through its Mayor or Vice-Mayor, authorized to execute same by Board action on the _____ day of _____, 20____, and ArtServe, Inc., signing by and through its _____, duly authorized to execute same.

CEO

COUNTY

ATTEST:

BROWARD COUNTY, by and through
its Board of County Commissioners

Broward County Administrator, as
Ex-officio Clerk of the Broward County
Board of County Commissioners

By: _____
Mayor

_____ day of _____, 2017

Insurance requirements approved by
Broward County
Risk Management Division:

Approved as to form by
Joni Armstrong Coffey
Broward County Attorney
Governmental Center, Suite 423
115 South Andrews Avenue
Fort Lauderdale, Florida 33301
Telephone: (954) 357-7600
Telecopier: (954) 357-7641

By: [Signature]

Name: WAYNE FLETCHER

Title: RISK MANAGER

By: [Signature] (8-15-17)
Andrea S. Froome (Date)
Senior Assistant County Attorney

By: [Signature] 8/15/17
Mark A. Journey (Date)
Assistant County Attorney

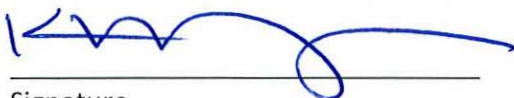
ASF:dp
8/15/17
2017--08-15 ArtServe Coop Market.A01
#17-110

AGREEMENT BETWEEN BROWARD COUNTY AND ARTSERVE, INC., FOR COOPERATIVE
MARKETING PROGRAM SERVICES, RFI PROJECT #W2115153A1

ARTSERVE

WITNESSES:

ArtServe, Inc.



Signature

EDWIN T. KING

Print Name of Witness above

Signature

Print Name of Witness above

By: 
Authorized Signor

Jaye Abbate
Print Name and Title

15 day of August, 2017

ATTEST: 
Corporate Secretary or other person
authorized to attest

(CORPORATE SEAL OR NOTARY)

EXHIBIT A
SCOPE OF SERVICES

ATTACHMENT TO AGREEMENT BETWEEN BROWARD COUNTY AND ARTSERVE, INC., FOR COOPERATIVE MARKETING PROGRAM SERVICES

I. A. BACKGROUND:

The Broward Cultural Division's Cooperative Marketing Program ("Cooperative Marketing Program," or "Program") was launched in April 1991. This Program was designed for Broward-based, nonprofit or not-for-profit (collectively "Non-Profit") cultural organizations to assist in developing and marketing media plans, educate them on the benefits and procedures of advertising programs and services, and to assist in supplementing their advertising budgets.

Contributions from Non-Profit cultural organizations are matched by the County in order for such organizations to purchase advertising at a discounted rate. Advertising includes, but is not limited to, placement on radio, television ("TV"), movie theater screens, daily and weekly newspapers, magazines, community and minority publications, internet and specialty publications, social media, and other digital platforms.

Advertising placement is offered as an incentive to eligible organizations and artists that qualify through an application process. The Broward-based, non-Profit cultural organizations and individual artists must attend an orientation meeting as well as complete the participation guidelines and eligibility forms. New organizations must submit written proof of non-Profit status including copies of State of Florida articles of incorporation, bylaws, certification of filing with the Secretary of State as well as a list of performances, exhibits, or events presented by the organizations for the upcoming season for the period commencing at the beginning of each fiscal year of the County through the end of such fiscal year. The County fiscal year ("fiscal year") commences on October 1 of each year and ends on September 30 of the following year.

ArtServe shall submit a business plan which will outline how the Scope of Services will be implemented including a list of eligible organizations or clients and prospective participants and the number and types of educational marketing workshops that will be coordinated for attendance by the Program's participants. ArtServe shall also include in this plan a list of meetings that ArtServe will be attending to promote the Program to potential participants. The Broward Cultural Division ("Cultural Division") shall have final written approval of the plan, and ArtServe shall receive a written Notice to Proceed prior to ArtServe commencing to provide any services under this Agreement.

ArtServe will purchase from third parties on behalf of the Non-Profits and artists: advertising, related media, and promotional services. ArtServe will process payments, and provide such bookkeeping and clerical services, all as necessary to originate and maintain advertising to promote and advertise Broward County and some regional cultural events in accordance with the approved plan for placement and production services. Such plan shall be approved in writing by both the County's Cultural Division and ArtServe in its sole discretion respectively.

B. SERVICES

1. ADVERTISING

Specific Services to be provided by ArtServe include, but are not limited to:

- a. Ordering space, time or other means of media to be used; checking and verifying such media use to the degree usually performed by agencies; and reviewing, approving, auditing, and paying invoices to media; and
- b. Furnishing clerical, telephone, and postage services customary or usual to the administration of the project.
- c. ArtServe will invoice the Cultural Division on a monthly basis for the actual cost of the advertisements purchased. In the Notice to Proceed for the Term under Article 3, ArtServe will be notified of the amount budgeted for the purchase of the advertising.
- d. ArtServe will invoice the Cultural Division on a monthly basis for the overhead costs of bookkeeping and invoicing under the category of Administration.

2. PLACEMENT

Specific Services to be provided by ArtServe include, but are not limited to:

- a. All placements are to be streamlined through an online intake system.
- b. ArtServe will coordinate the schedules of various groups that initiate requests on an online insertion order form for advertising. Such online insertion order form shall be supplied by ArtServe to the groups, using the form approved for use by the Cultural Division. The completed insertion order form shall be approved electronically by both the Cultural Division and ArtServe in its sole discretion respectively.
- c. Locate cooperative "match" partners.
- d. Coordinate placement of ads with various media representatives:
 1. Negotiate with media representatives for public service announcements, prime time or lower costs; and
 2. Sign all contracts with media on behalf of the cultural groups.

- e. Prepare online Advertising information form for cultural groups:
 - 1. Calculate each cultural organization cost, and cost of total ads; and
 - 2. Cultural groups must approve the online form electronically and submit payment to ArtServe for the organization's portion within the time established by ArtServe.
- f. Coordinate production of the ads with the cultural organizations, graphic artists or radio, television or cable television stations:
 - 1. Establish artwork and copy deadlines; and
 - 2. Organize artwork copy; and
 - 3. Coordinate approval of artwork by the organization and then deliver to graphic artist; and
 - 4. Approve all copy, graphics, and design for radio and TV spots and ads prior to delivery to media with prior written authorization from the Contract Administrator.
- g. Obtain final written approval from Contract Administrator on all ads, attend meetings with the Contract Administrator as necessary, but no less than once every other week.
- h. Monitor the disbursement of funds:
 - 1. Check accuracy of invoices;
 - 2. Keep a record of groups at or near "cap" of available funding as determined in marketing plan and review quarterly with Contract Administrator.
- i. Maintain records of all cooperative advertising:
 - 1. Keep individual ad records for each participant;
 - 2. Maintain written summaries of total advertising purchased;

3. Keep media and agency contract files;
- j. Submit year-to-date expenses with invoice and original tear sheets to Contract Administrator with each monthly invoice.
- k. Share information on special placement opportunities with potential advertisers:
 1. Provide aggressive sales promotion to cultural organizations; and
 2. Phone, fax, and communicate via e-mailings apprising Program's participant of routine and specialty annual advertising opportunities, including cost, details, and deadlines on a quarterly basis with additional mailings as necessary;
 3. Communicate all upcoming advertising opportunities to the Program's participants.
- l. Meet with media representatives as necessary.
- m. ArtServe will invoice the Cultural Division on a monthly basis for reimbursement of actual costs incurred for the prior months' services (as noted in Exhibit B)

3. PRODUCTION

Specific Services to be provided by ArtServe include, but are not limited to:

Provide all graphic production as needed for advertising placed through the Program. All graphic production will take place at the Cultural Division's offices or at ArtServe's facility in Fort Lauderdale or shall be made available for review by the Contract Administrator for written approval of each and every advertisement. ArtServe will invoice the Cultural Division on a monthly basis (as noted in Exhibit B).

At the time of entry into the Agreement, printing and reproduction services are not part of the services to be provided by ArtServe; therefore, the County's Living Wage Ordinance as outlined in Sections 26-101 through 26-104 of the Broward County Code of Ordinances does not apply to the services to be provided by ArtServe but may apply if the Agreement is subsequently amended to include any covered services or at the time of any written Work Authorization that includes any covered services.

4. EDUCATIONAL/COMMUNITY MARKETING OUTREACH

Specific Services to be provided by ArtServe include, but are not limited to:

a. Education:

1. Conduct creative brainstorming sessions. Invite creative public relations members to a brainstorming session annually to discuss the Program and seek new ideas;
2. Conduct annual orientation marketing meetings with all cultural executives reviewing the policies and procedures for participation in the Program;
3. Attend Broward Arts Connection Meetings and report on Program;
4. Attend at least one (1) Broward Cultural Council meeting annually as determined by the Contract Administrator with written confirmation to ArtServe.
5. Conduct annual marketing workshops in conjunction with the Cultural Division to provide training to cultural organizations on various marketing and public relations topics. These workshops may include a media trade show, open house, for cultural organizations to meet media representatives, and focus group interviews to gather feedback from the participants about the quality of the Program.

b. Community Outreach:

Attend a minimum of two (2) meetings annually from the following organizations or events:

1. Greater Fort Lauderdale Convention and Visitors Bureau Marketing Committee; or
2. Greater Fort Lauderdale Hospitality and Lodging Association;
3. Hospitality, Sales and Marketing Association International; and
4. Greater Fort Lauderdale Alliance Power Showcase Trade Show (one event).
5. Applicable media, marketing or technology trade shows with prior approval from Contract Administrator.

5. CONTRACT REPORTING

Specific Services to be provided by ArtServe include, but are not limited to:

All reports are to be streamlined through an online system in order to view via the internet. Reporting procedures are as follows:

a. Quarterly Reports and Meetings to include:

1. Number of ads placed during the quarter, media source and by type of media (print, radio, TV, billboard, etc.); and
2. Program effectiveness for advertising including, but not limited to, impressions, reach, demographics, analytics from social media and web traffic including duration of site visits, how pages are viewed, new users, shares, and other data such as data on increased ticket sales, memberships, website traffic, the percentage increase in the number of nonprofit or not-for-profit organizations participating in this subsidized cooperative marketing and advertising services program, and the attendance as a result of that participation; and
3. Written marketing plan progress reports; and
4. Schedule quarterly meetings with Directors of ArtServe, and Cultural Division, and marketing staff of both agencies.

b. Annual Reports to include:

1. Annual ad summary and number of ads placed during the contract period; and
2. Financial report, including the total contributions of cultural organizations and all expenditures; and
3. Narrative report on Marketing Plan which shall include participant campaign summaries, artscalendar activity, and any special campaign approved in writing by ArtServe and the Contract Administrator; and
4. Statistical report on advertising purchased and estimates of numbers of in-kind promotion, public service ads, and editorials.
5. Program effectiveness, including the services required in Paragraph 5.a.2 above.

6. SUBCONSULTANT AND SUBCONTRACTORS:

At the time of entry to the Agreement, ArtServe indicated to the County that there is no subconsultant or subcontractors. The Contract Administrator may subsequently approve in his or her sole discretion and in writing any such subconsultant or subcontractors requested by the Contract Administrator.

(The remainder of this page is intentionally left blank.)

**EXHIBIT B
PAYMENT SCHEDULE**

1. COMPENSATION DISTRIBUTION

The amount payable by the County annually (each year or County's "fiscal year") for the period commencing October 1 and ending September 30) under this Agreement shall also be distributed in the second and third years of the three-year Term as described below. This amount shall be pro-rated over the months of the Agreement in the first year of the three-year Term:

(a) Advertising Maximum Not-to-Exceed

Cultural Advertising

Actual advertising costs \$197,000.00

Administration \$23,750.00

(Twelve (12) months @ \$1,979.17)

Placement \$48,000.00

(Twelve (12) months @ \$4,000 per month)

Production \$36,000

(Twelve 12 months @ \$3,000 per month)

Optional Services \$19,300.00

As authorized by County Administrator

Maximum not-to-exceed \$324,050.00 each year of the three-year Term

(b) Compensation each year of the three-year Term:

Subject to the termination provisions herein, the compensation schedule for each year of the three-year Term (as defined in Section 3.1) shall be as followed:

- (1) Maximum not-to-exceed \$324,050.00 first year of the three-year Term.
- (2) Maximum not-to-exceed \$324,050.00 second year of the three-year Term.
- (3) Maximum not-to-exceed \$324,050.00 third year of the three-year Term.

Maximum not-to-exceed for the three-year Term provided in Section 3.1 shall be \$ 972,150.00.

2. COMPENSATION SCHEDULE

- a. For Services provided pursuant to Sections 1 through 5 of Exhibit "A," County will pay ArtServe in accordance with Section 4.2 of this Agreement.
- b. No separate compensation shall be payable by County to ArtServe for Education Community Marketing Outreach in Section 4 of Exhibit "A" or for Contract Reporting in Section 5 of Exhibit "A" which is included in Administration.
- c. ArtServe will charge the County the same invoice prices charged by advertisers. A copy of ArtServe's invoice(s) from its advertisers for such advertising costs shall be submitted with ArtServe's invoice for payment. In cases where ArtServe issues the actual advertisement itself, the County will be charged a price no higher than what is charged to ArtServe's most favored customer. The County reserves the right to request verification of the prices and costs from ArtServe.

(The remainder of this page is intentionally left blank).

EXHIBIT C
CERTIFICATION OF PAYMENTS TO SUBCONTRACTORS AND SUPPLIERS

Contract No. _____

Project Title _____

The undersigned ArtServe, Inc. ("ArtServe"), hereby swears under penalty of perjury that:

1. ArtServe has paid all subcontractors and suppliers all undisputed contract obligations for labor, services, or materials provided on this project in accordance with Section 4.2.1 of the Agreement, except as provided in paragraph 2 below.

2. The following subcontractors and suppliers have not been paid because of disputed contractual obligations; a copy of the notification sent to each, explaining in reasonably specific detail the good cause why payment has not been made, is attached to this form:

| Subcontractor's or supplier's name and address | Date of disputed invoice | Amount in dispute |
|--|--------------------------|-------------------|
| | | |
| | | |

3. The undersigned is authorized to execute this Certification on behalf of ArtServe.

Dated _____, 20__

ArtServe, Inc.

By _____
(Signature)

By _____
(Name and Title)

STATE OF)
) SS
COUNTY OF)

The foregoing instrument was acknowledged before me this ____ day of _____, _____, by _____ who is personally known to me or who has produced _____ as identification and who did/did not take an oath.

WITNESS my hand and official seal, this ____ day of _____, 20__.

(NOTARY SEAL)

(Signature of person taking acknowledgment)

(Name of officer taking acknowledgment; printed/typed/stamped)

My commission expires:

EXHIBIT D Minimum Insurance Requirements

Insurance Requirements Exhibit D

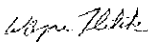
The following coverage is deemed the minimum insurance required for this project. The selected firm must be prepared to provide proof of insurance commensurate with or in excess of this requirement. Any deviation is subject to the approval of Risk Management.

| TYPE OF INSURANCE | Limits on Liability | | |
|---|---|---|------------------------|
| | | Each Occurrence | Aggregate |
| GENERAL LIABILITY - Broad form Policy <input checked="" type="checkbox"/> Commercial General Liability <input checked="" type="checkbox"/> Premises-Operations <input type="checkbox"/> XCU Explosion/Collapse/Underground <input checked="" type="checkbox"/> Products/Completed Operations Hazard <input checked="" type="checkbox"/> Contractual Insurance <input checked="" type="checkbox"/> Broad Form Property Damage <input checked="" type="checkbox"/> Independent Contractors <input checked="" type="checkbox"/> Personal Injury | Bodily Injury | | |
| | Property Damage | | |
| | Bodily Injury and Property Damage Combined | \$ 1 mil | \$ 2 mil |
| | Personal Injury | | |
| | | | |
| AUTO LIABILITY* Comprehensive Form Policy <input checked="" type="checkbox"/> Scheduled <input checked="" type="checkbox"/> Owned <input checked="" type="checkbox"/> Hired <input checked="" type="checkbox"/> Non-owned <input checked="" type="checkbox"/> Any Auto *IF NO DRIVING IN PERFORMANCE OF SERVICES, THIS REQUIREMENT IS WAIVED | Bodily Injury (each person) | | |
| | Bodily Injury (each accident) | | |
| | Property Damage | | |
| | Bodily Injury and Property Damage Combined | \$ 1 mil | |
| EXCESS LIABILITY <input type="checkbox"/> Umbrella Form <input type="checkbox"/> Other than Umbrella Form | Bodily Injury and Property Damage Combined | | |
| <input checked="" type="checkbox"/> WORKER'S COMPENSATION | (each accident) | STATUTORY | |
| <input checked="" type="checkbox"/> EMPLOYER'S LIABILITY | | \$ 1 mil / accident | |
| <input checked="" type="checkbox"/> PROFESSIONAL LIABILITY (E & O) | Claims-made form w/ Extended Reporting Period of Deductible not to exceed: | \$ 1 mil 2 yrs. \$ 100 k | \$ 2 mil |
| <input type="checkbox"/> PROPERTY COVERAGE /BUILDER'S RISK "ALL RISK" WITH WIND AND FLOOD Coverage must remain in force until written final acceptance by County. | Maximum Deductible: DED for WIND or WIND & FLOOD not to exceed 5% of completed value CONTRACTOR IS RESPONSIBLE FOR DEDUCTIBLE | \$10 k | Completed Value |
| | <input type="checkbox"/> Installation floater is required if Builder's Risk or Property are not carried. Coverage must be "All Risk", completed value. Coverage must remain in force until written final acceptance by County. | Maximum Deductible: CONTRACTOR IS RESPONSIBLE FOR DEDUCTIBLE | \$10 k |
| Description "Broward County" must be listed as an additional insured for general liability and business automobile liability policies. Waiver of subrogation in favor of Certificate Holder applies to general liability, automobile liability, and workers compensation. REFERENCE: Artserve Coop Advertising | | | |

NOTE: Workers' Compensation: U.S. Longshoremen & Harbor Workers' Act & Jones Act is required for any activities on or about navigable water.

CANCELLATION: Thirty (30) days written notice of cancellation is required to the Certificate Holder:

Certificate Holder:
 Broward County
 115 South Andrews Avenue
 Fort Lauderdale, FL 33301
 Attn: Artserve Coop Mkt.


 WAYNE A. FLETCHER
 dc=cy, dc=broward, dc=bc,
 ou=Organization, ou=BCC,
 ou=BC, ou=Users, cn=WAYNE A.
 FLETCHER
 201708.14.15:20:13 -0400
 Risk Management Division

Revised 2015

VALID FOR ONE YEAR FROM THE DATE OF SIGNATURE

EXHIBIT E WORK AUTHORIZATION FOR AGREEMENT _____

Contract Number: _____
Work Authorization No. _____

This Work Authorization is between Broward County and ArtServe, Inc. ("ArtServe"), pursuant to the Agreement, executed on _____. In the event of any inconsistency between this Work Authorization and the Agreement, the provisions of the Agreement shall govern and control.

Services to be provided: [DESCRIBE IN DETAIL]

Agreement at issue is ___ Lump Sum/ ___ Not-to-Exceed for amount: \$ _____

The time period for this Work Authorization will be from the date of complete execution until ____ (____) days after County's Notice to Proceed for the Services to be provided under this Work Authorization, unless otherwise extended or terminated by the Contract Administrator.

Fee Determination: Payment for services under this Work Authorization is as follows:

| | |
|---------------------------------------|----------|
| Professional Services | \$ _____ |
| General Services | \$ _____ |
| Goods/Equipment | \$ _____ |
| Total Cost of this Work Authorization | \$ _____ |

The foregoing amounts shall be invoiced by ArtServe upon written acceptance by County of all goods and services provided under this Work Authorization.

County

| | | |
|-----------------|------------------------|-----------------------|
| | Contract Administrator | Date |
| Project Manager | Date | Board and/or Designee |
| | | Date |

ArtServe

| | | |
|--------|------------|------|
| | Signed | Date |
| Attest | Typed Name | |
| | Title | |