

1 RESOLUTION NO. 2017-

2 A RESOLUTION OF THE BOARD OF COUNTY
3 COMMISSIONERS OF BROWARD COUNTY, FLORIDA,
4 APPROVING A STANDARD FORM AGREEMENT FOR
5 CULTURAL INCENTIVE (GRANT) PROGRAMS SUBJECT
6 TO THE CONDITIONS STATED HEREIN; PROVIDING FOR
7 APPROVAL AND EXECUTION BY THE COUNTY
8 ADMINISTRATOR OF AGREEMENTS AND AMENDMENTS
9 AFTER APPROVAL AS TO FORM BY THE OFFICE OF THE
10 COUNTY ATTORNEY; AND PROVIDING FOR
11 SEVERABILITY AND AN EFFECTIVE DATE.

12 WHEREAS, the Cultural Division ("Division") requests that the Board of County
13 Commissioners ("Board") approve the cultural incentive (grant) standard form
14 agreement ("Form Agreement") for the cultural incentive (grant) programs for Fiscal
15 Year 2018, commencing on October 1, 2017, and for up to four (4) additional fiscal
16 years; and

17 WHEREAS, the Board finds that the services and projects that qualify for funding
18 under the cultural incentive (grant) programs will benefit the residents of Broward
19 County and will serve a public purpose; and

20 WHEREAS, the Board approves the funding amount for each of the recipients
21 (grantees) within the following eight (8) cultural incentive (grant) programs: Cultural
22 Investment Program; Cultural Tourism Program; Cultural Institution Program; Regional
23 Investment Program; Cultural Diversity Program; Community Arts Education
24 Partnerships; Cultural Planning and Facilities Program; and Tourist Development Tax
Capital Challenge Grant Program; and

WHEREAS, the Board approves the fiscal year's budgeted amounts for each of
the following three (3) cultural incentive (grant) programs: Creative Investment
Program, Creative Place Making Program, and Cultural Festival Program; and

1 WHEREAS, the Broward Cultural Council approves the recommended amount
2 for each of the recipients (grantees), subject to the budgeted amount for the three
3 respective programs; and

4 WHEREAS, the Board has reviewed and approved the Form Agreement for use
5 with recipients (grantees), including public entities, nonprofit organizations, or
6 individuals; and

7 WHEREAS, the Form Agreement is approved in substantially the form attached
8 to this Resolution as Exhibit "1," together with any subsequent necessary legal updates
9 approved by the Office of the County Attorney or minor changes as the Division's
10 Director determines appropriate, subject to approval of the Office of the County
11 Attorney; and

12 WHEREAS, the Board authorizes the Broward County Administrator ("County
13 Administrator") to approve and execute the individual agreements and amendments on
14 behalf of the Board, NOW, THEREFORE,

15
16 BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF
17 BROWARD COUNTY, FLORIDA:

18
19 Section 1. Approval of Form Agreement.

20 The Board approves the attached Form Agreement for use by the Division for
21 Fiscal Year 2018 commencing October 1, 2017, and for up to four (4) additional fiscal
22 years. The Form Agreement is approved in substantially the form attached to this
23 Resolution as Exhibit "1," together with any subsequent necessary legal updates
24 approved by the Office of the County Attorney or minor changes as the Division's

1 Director determines appropriate, subject to approval of the Office of the County
2 Attorney. Nothing in this Resolution shall be construed to alter the requirement that
3 each original agreement and any subsequent amendment be approved as to form by
4 the Office of the County Attorney prior to execution by the County Administrator. Except
5 as specifically provided herein, any material deviations from the approved Form
6 Agreement shall be presented to the Board for approval.

7

8 Section 2. Approval and Execution of Agreements and Amendments.

9 The County Administrator is authorized to approve and execute the individual
10 agreements and amendments on behalf of the Board in substantial compliance with the
11 Form Agreement and consistent with this Resolution and the Broward County
12 Administrative Code, including Sections 29.17, 33.30, and 33.31. The County
13 Administrator may take any necessary administrative actions to implement the
14 agreements and any subsequent amendments.

15

16 Section 3. SEVERABILITY.

17 If any portion of this Resolution is determined by any Court to be invalid, the
18 invalid portion shall be stricken, and such striking shall not affect the validity of the
19 remainder of this Resolution. If any Court determines that this Resolution, or any
20 portion hereof, cannot be legally applied to any individual(s), group(s), entity(ies),
21 property(ies), or circumstance(s), such determination shall not affect the applicability
22 hereof to any other individual, group, entity, property, or circumstance.

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Section 4. EFFECTIVE DATE.

This Resolution shall become effective upon adoption.

ADOPTED this _____ day of _____, 2017.

Approved as to form and legal sufficiency:
Joni Armstrong Coffey, County Attorney

By /s/Andrea S. Froome 08/31/17
Andrea S. Froome (Date)
Senior Assistant County Attorney

ASF/dp
08/31/17
Cultural Incentive Contract Form FY2018.R01
#17-008
#17-110

[FORM AGREEMENT]

AGREEMENT

Between

BROWARD COUNTY

and

RECIPIENT

for

BROWARD CULTURAL COUNCIL
CULTURAL INCENTIVE PROGRAM

FY [Year]

INCENTIVE PROGRAM INCENTIVE NUMBER AMOUNT

[Name of Incentive Program] [Incentive Docket] [Amount of Incentive]

This Agreement ("Agreement") is entered into by and between Broward County, a political subdivision of the State of Florida ("County"), and ***[Insert Recipient's Name], [insert nature of entity, e.g., an individual, a nonprofit (not-for-profit) Florida corporation, or a public entity (more specifically a municipality, school board, or an independent special district)]*** ("Recipient").

RECITALS

The Broward Cultural Council recommends funding to assist Recipient with services and approved expenses as specifically set forth in Article 4 and Exhibit A.

The Broward County Board of County Commissioners ("Board") has determined that qualifying expenditures through the cultural incentive program serve a public purpose.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

ARTICLE 1 - DEFINITIONS AND IDENTIFICATIONS

- 1.1 **Agreement.** Agreement shall mean this document, the exhibits attached hereto, and any documents expressly incorporated by reference.
- 1.2 **Board.** The Board of County Commissioners of Broward County, Florida.
- 1.3 **Contract Administrator.** The Director of County's Cultural Division, or Acting Director of such Division.
- 1.4 **County Administrator.** The administrative head of County appointed by the Board.
- 1.5 **Subcontractor.** A firm, partnership, corporation, independent contractor (including 1099 individuals), or combination thereof providing services to County through Recipient for all or any portion of the services.

ARTICLE 2 - SCOPE OF SERVICES

- 2.1 **Scope of Services.** Recipient shall perform services as set forth in the scope of services exhibit (Exhibit A). Unless otherwise stated, the work required of Recipient includes all labor, materials, and tasks, whether or not enumerated, that are such an inseparable part of the work expressly stated that exclusion would render Recipient's performance impractical, illogical, or unconscionable.

Recipient shall provide a Project Evaluation Report using the form attached as Exhibit B for each funded project. Recipient shall provide the completed form to the Contract Administrator within the time period stated in Article 5 ("Financial Information"). The completed form shall be submitted along with any and all other required documentation that has not previously been submitted. Failure of Recipient to timely submit a completed Project Evaluation Report shall disqualify Recipient from consideration for any future grants under County's cultural incentive program and shall entitle County to withhold payment of the final invoice without accrual of interest until Recipient has met all requirements, including the specific program guidelines under which Recipient qualified for the funding for the project described in Exhibit A.

- 2.2 Recipient shall not subcontract any portion of the required services except as may be expressly provided in Exhibit A or as approved in advance by the Contract Administrator, in his or her sole discretion, through a written Change Order or through a written contract amendment.

- 2.3 Change of Scope Procedures. Recipient acknowledges that Contract Administrator has no authority to make changes that would increase, decrease, or otherwise modify the scope of services unless specifically authorized by the County's Administrative Code, any authorizing Board resolutions, and any other Board-authorized actions.

Upon written request by Recipient, the Contract Administrator may, if authorized as stated in the preceding paragraph, approve in writing changes in the categories of expenditures listed in Exhibit A; however, the total amount payable to Recipient may not be modified except pursuant to a written amendment in accordance with the "Amendments" section in Article 9.

ARTICLE 3 - TERM AND TIME OF PERFORMANCE

- 3.1 Term. The Agreement shall become effective on _____, 20__ (the "Effective Date"), and shall end on _____, 20__ ("Term").
- 3.2 Extensions. The County Administrator is authorized to enter into written amendments to extend the Term up to four (4) years. The approval of any such extension is in the sole discretion of the County Administrator.
- 3.3 Fiscal Year. The continuation of this Agreement beyond the end of any County fiscal year shall be subject to both the appropriation and the availability of funds, in accordance with Chapter 129, Florida Statutes. County's fiscal year commences on October 1 and ends on September 30 of the following year.
- 3.4 Time is of the essence for all required services, subject to Section 3.2 and any deadline(s) in Exhibit A.

ARTICLE 4 - COMPENSATION

- 4.1 For the Term as defined in Article 3, County will pay Recipient up to a maximum of _____ Dollars (\$_____). Payment shall be made only for services actually performed and completed pursuant to this Article and Exhibit A, which amount shall be accepted by Recipient as full compensation for all such services. Recipient acknowledges that the compensation amounts are the maximum amounts payable and constitute a limitation on County's obligation to compensate Recipient for its services under this Agreement. These maximum amounts, however, do not constitute a limitation of any sort upon Recipient's obligation to perform all required services. Recipient shall provide matching funds as shown in Exhibit A.

4.2 METHOD OF BILLING AND PAYMENT

4.2.1 Invoices. Recipient may submit invoices only for services completed in accordance with Exhibit A. An original of each invoice shall be submitted no more than once monthly, except that the final invoice must be submitted no later than sixty (60) days after all services are completed. Payments will be made only on a reimbursement basis after expenses have been incurred for any required services performed, and the required documentation in Exhibit A has been submitted with proper invoice to County. There is no reimbursement for travel expenses or other expenses which are not approved expenses as shown on Exhibit A. Invoices shall be submitted on an approved invoice form provided by County. If Exhibit A contains a match requirement, County's obligation is conditioned upon Recipient obtaining and providing that match.

4.2.2 County shall pay Recipient within thirty (30) days after receipt of Recipient's proper invoice, as required under the "Broward County Prompt Payment Ordinance," Section 1-51.6, Broward County Ordinances. To be deemed proper, an invoice must comply with all requirements and must be submitted pursuant to any instructions prescribed by the Contract Administrator. County shall have the right to withhold payment of the invoice based on Recipient's failure to comply with any term, condition, or requirement. Any amounts withheld shall not be subject to payment of any interest by County.

4.3 Payment shall be made to Recipient at:

Insert - Recipient's Name
Insert - Attn: Name and/or Title
Insert Address

Recipient may change the information in this section by providing written notice of such change to the Contract Administrator in accordance with the "Notices" section in Article 9.

ARTICLE 5 - FINANCIAL INFORMATION

Recipient shall submit to County all information required by the Agreement, including the Project Evaluation Report, Exhibit B, and any financial information required by Exhibit B <<<***Insert any of the following: within thirty (30) calendar days; a) after completion of the project or program; b) after the conclusion of the project***

or program period; c) after conclusion of the Term as defined in Section 3.1; d) after conclusion of the program or project period and after the conclusion of the Term as defined in Section 3.1.>>> Recipient is not subject to audited annual financial statement requirements. The Contract Administrator shall be responsible for verifying that services are provided in accordance with any required documentation and the requirements of the Agreement prior to the issuance of any payment to Recipient.

ARTICLE 6 - INDEMNIFICATION

******NOTE: Use below for nonprofit (not-for-profit)***

Recipient 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 Recipient, 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, Recipient 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 Recipient 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.

******NOTE: Remove above and use below for an individual:***

Recipient 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 Recipient, its current or former 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, Recipient 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 Recipient 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.

*****NOTE: Remove all of Article 6 above and use below for public entity:**

ARTICLE 6 - GOVERNMENTAL IMMUNITY

Nothing herein is intended to serve as a waiver of sovereign immunity by any party nor shall anything included herein be construed as consent to be sued by third parties in any matter arising out of this Agreement or any other contract. Recipient is a state agency or political subdivision as defined in Section 768.28, Florida Statutes, and shall be fully responsible for the acts and omissions of its agents or employees to the extent permitted by law.

ARTICLE 7 - INSURANCE

*****NOTE: Article 7 - Insurance language for Grants (Not-for-Profit Organizations and Individuals).**

Note: Each contract will be reviewed by the Risk Management Division for insurance requirements, and such requirements may be modified for any contract by the Risk Management Division in its sole discretion subject to review by the Office of the County Attorney as to legal form.

- 7.1 Recipient shall, at a minimum, provide, and maintain in force at its sole expense at all times during the <<< **insert Term or project period**>>> of the Agreement (including any extension), insurance coverage against claims for injuries to persons or damage to property that may arise from or in connection with the performance of the work hereunder and the results of that work by Recipient, its agents, representatives, employees, or Subcontractors in accordance with the terms and conditions stated herein.
- 7.2 Minimum Scope and Limit of Insurances. Recipient shall have insurance coverage at least as broad as the required insurance below:
- 7.2.1 Commercial General Liability: Insurance on an "occurrence" basis, including products and completed operations, property damage, bodily injury, personal and advertising injury with limits of no less

than \$_____ per occurrence. The general aggregate limit shall be at least \$_____.

- 7.2.2 Automobile Liability: Insurance covering all owned, nonowned, and hired vehicles used in connection with the work, with a limit of no less than \$_____ per accident for bodily injury and property damage.
- 7.2.3 Workers' Compensation: Insurance for all employees of Recipient as required by the State of Florida with Statutory Limits, and Employer's Liability Insurance with a limit of no less than \$_____ per accident for bodily injury or disease.
- 7.2.4 ***(INSERT ANY ADDITIONAL INSURANCE COVERAGE REQUIRED BASED ON RISK FACTORS OF THE GRANT ACTIVITY, IF ANY)***

- 7.3 County, its officers, officials, employees, and volunteers are to be covered as additional insureds on Recipient's insurance policies with respect to liability arising out of work operations performed by or on behalf of Recipient including materials, parts, or equipment furnished in connection with such work or operations. Broward County whose address is 115 South Andrews Avenue, Fort Lauderdale, Florida 33301, shall 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 or restriction, including, but not limited to, cancellation for nonpayment. *(Insurance Requirements Form attached hereto as Exhibit C.)*
- 7.4 Within fifteen (15) days after the execution of this Agreement or prior to commencement of the work (or services) described in Exhibit A, whichever is earlier, Recipient shall provide to County a copy of all required insurance policies' Certificates of Insurance as satisfactory evidence of the insurance required in this Agreement. At the option of County, County may request and Recipient shall provide a copy of all endorsements required by this Agreement.
- 7.5 Insurance coverage shall not cease and shall remain in force and effect ***<<<insert, for example, until the term of the project is completed>>>*** and County determines all performance required of Recipient has been satisfied. Recipient shall provide written notice to County of any cancellation of insurance, including, but not limited to, cancellation for nonpayment at least thirty (30) days prior to the date of expiration, and shall concurrently provide County with a copy of its updated certificate of insurance. Recipient shall ensure that there is no lapse of coverage at any time ***<<<insert, for example, during the term of the project>>>***.

- 7.6 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.
- 7.7 If Recipient maintains broader coverage or higher limits than the minimums shown above, County requires, and shall be entitled to, the broader coverage or the higher limits maintained by Recipient. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to County.
- 7.8 Recipient 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.
- 7.9 Recipient's insurance shall provide primary coverage and shall not require contribution or be called upon to contribute to a loss from County's insurance or self-insurance program maintained by County, or its members, officials, officers, or employees. Self-insured retentions must be declared in writing and approved by County.
- 7.10 If Recipient hires a Subcontractor to perform services relating to this Agreement, Recipient shall require its Subcontractor to meet the same insurance requirements as Recipient and as outlined above. Recipient shall ensure that all insurance requirements are satisfied in accordance with the Agreement.

ARTICLE 7 - INSURANCE

*****NOTE: Article 7 - Insurance language for Grants (Self-Insured Public Entities)**

Note: Each contract will be reviewed by the Risk Management Division for insurance requirements, and such requirements may be modified for any contract by the Risk Management Division in its sole discretion subject to review by the Office of the County Attorney as to legal form.

- 7.1 Recipient is a state agency or other public entity covered under Section 768.28, Florida Statutes, and shall furnish County with written verification of liability protection in accordance with state law prior to final execution of this Agreement. In the event Recipient elects to purchase excess liability coverage, County shall be named as an additional insured and as the certificate holder under said policy, and County shall be notified of said coverage and provided evidence of same.

- 7.2 In the event Recipient contracts with a Subcontractor to provide any of the work or activities relating to this Agreement, Recipient shall require the Subcontractor, at a minimum, to maintain in full force and effect, at the Subcontractor's sole cost and expense, **<<<insert, for example, during the Term of the Agreement>>>**, insurance of the types and amounts as provided in Exhibit C, Insurance Requirements Form, attached hereto, and shall require that the Subcontractor name County as an additional insured on said policy.
- 7.3 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. County's insurance requirements shall apply to Recipient's self-insurance.

ARTICLE 7 - INSURANCE

*****NOTE: Article 7 Insurance language for Grants (Waived)**

Note: Each contract will be reviewed by the Risk Management Division for insurance requirements, and such requirements may be modified for any contract by the Risk Management Division in its sole discretion subject to review by the Office of the County Attorney as to legal form.

7.1 In the event insurance is required, coverage must reflect the following:

- 7.1.1 Broward County, its officers, officials, employees, and volunteers are to be covered as additional insureds on Recipient's insurance policies with respect to liability arising out of work operations performed by or on behalf of Recipient including materials, parts, or equipment furnished in connection with such work or operations. Broward County, whose address is 115 South Andrews Avenue, Fort Lauderdale, Florida 33301, shall 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 or restriction, including, but not limited to, cancellation for nonpayment.
- 7.1.2 Insurance coverage is not to cease and is to remain in force and effect **<<<insert, for example, until the term of the project is completed _____>>>** and County determines all performance required of Recipient has been satisfied. Recipient shall provide written notice to County of any cancellation of insurance, including, but not limited to, cancellation for nonpayment at least thirty (30) days prior to the date of expiration, and shall concurrently provide County with a copy of its updated certificate of insurance. Recipient shall ensure that there is no

lapse of coverage at any time **<<<insert during the term of the project _____>>>**.

- 7.1.3 If Recipient maintains broader coverage or higher limits than the minimums shown above, County requires, and shall be entitled to, the broader coverage or the higher limits maintained by Recipient. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to County.
- 7.1.4 Recipient shall utilize an insurer with a current A.M. Best Company Rating of "A-" and a minimum Financial Size Category of VII which shall also be an insurer that holds a valid Florida Certificate of Authority authorized to transact insurance in the State of Florida.
- 7.1.5 Recipient's insurance shall provide primary coverage and shall not require contribution or be called upon to contribute to a loss from County's insurance or self-insurance program maintained by County, or its members, officials, officers, or employees. Self-insured retentions must be declared in writing and approved by County.
- 7.1.6 Recipient shall maintain at all times **<<<insert, for example, during the term of the project>>>** the insurance coverages listed as set forth in the Insurance Requirements Form attached hereto as Exhibit C.
- 7.2 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 amendments, such as extensions to this Agreement.
- 7.3 If Recipient hires a Subcontractor to perform services, Recipient shall require its Subcontractor to meet the same insurance requirements as Recipient and as outlined above. Recipient shall ensure that all insurance requirements are satisfied in accordance with the Agreement.

ARTICLE 8 - TERMINATION

- 8.1 This Agreement may be terminated for cause based on any breach that is not cured within ten (10) days after written notice from the aggrieved party identifying the breach. This Agreement may also be terminated for convenience by the Board or County Administrator upon providing written notice to Recipient of the termination date, which shall not be less than thirty (30) days after the date such written notice is provided. If County erroneously, improperly, or unjustifiably terminates for cause, such termination shall, to the full extent permissible under

applicable law, be deemed a termination for convenience, which shall be effective thirty (30) days after such notice of termination for cause is provided.

- 8.2 County may terminate this Agreement if Recipient is found to have submitted a false certification pursuant 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 upon reasonable notice by County. Notwithstanding anything contained in this Agreement to the contrary, the rights and obligations of the parties under this paragraph shall be governed by Section 287.135, Florida Statutes, to the full extent applicable.
- 8.3 Recipient represents that neither it nor any of its affiliates has been placed on the discriminatory vendor list, as defined by Section 287.134, Florida Statutes. County may terminate this Agreement effective immediately, without any further obligation to Recipient, upon learning that such representation is false or if Recipient or any of its affiliates is placed on the discriminatory vendor list.
- 8.4 This Agreement may also be terminated as provided in Sections 9.5 ("Public Entity Crime Act"), 9.9 ("Assignment and Performance"), 9.23 ("Contingency Fee"), and 9.25 ("Force Majeure").
- 8.5 Notice of termination shall be provided in accordance with the "Notices" section of this Agreement.
- 8.6 In the event this Agreement is terminated for convenience by County, Recipient shall be paid for any services properly performed through the termination date specified in the written notice of termination. Recipient acknowledges that it has received good, valuable, and sufficient consideration from County, the receipt and adequacy of which are hereby acknowledged by Recipient, for County's right to terminate this Agreement for convenience. Recipient hereby waives, to the full 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.

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, Recipient grants to County a

nonexclusive 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 Recipient, whether finished or unfinished, shall become the property of County and shall be delivered by Recipient to the Contract Administrator within seven (7) days after termination of this Agreement. Any compensation due to Recipient shall be withheld until all documents are received as provided herein. Recipient shall ensure that the requirements of this section are included in all agreements with its Subcontractor(s).

9.2 Public Records. County is a public entity subject to the public records laws in Chapter 119, Florida Statutes. To the extent that Recipient is acting on behalf of County as stated in Section 119.0701, Florida Statutes, Recipient 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 Recipient or keep and maintain public records required by County to perform the services. If Recipient transfers the records to County, Recipient shall destroy any duplicate public records that are exempt or confidential and exempt. If Recipient keeps and maintains public records, Recipient 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 Recipient 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, 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 RECORDS PRODUCT – 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. In the event that a third party submits a request to County for records designated by Recipient 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 Recipient. Recipient 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 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 THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (954) 357-7457, CULTURALDIV@BROWARD.ORG, 115 S. ANDREWS AVE., 6TH FLOOR, FORT LAUDERDALE, FLORIDA 33301.

******NOTE: If Recipient is a public entity, the above may be modified with approval of the Office of the County Attorney and all or some of the following language may be added:***

The Recipient is a public entity. Recipient is responsible for complying with its public records requests and the public records laws in Chapter 119, Florida Statutes, including Section 119.0701.

In addition to any responsibility of Recipient (as a separate public entity) to directly respond to each request it receives for records made or received by Recipient in conjunction with this Agreement and to provide the applicable public records in response to such request, Recipient shall notify County of the receipt and content of such request by sending an e-mail to

CULTURALDIV@broward.org (with a copy to jshermer@broward.org) within one (1) business day after receipt of such request.

- 9.3 Audit Rights and Retention of Records. County shall have the right to audit the books, records, and accounts of Recipient and its Subcontractors that are related to this Agreement. Recipient 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 Recipient 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, Recipient or its Subcontractor, as applicable, shall make same available at no cost to County in written form.

Recipient 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 Recipient'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 Recipient 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 County by Recipient 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 after presentation of County's findings to Recipient.

Recipient shall ensure that the requirements of this section are included in all agreements with its Subcontractors, when performing services relating to this Agreement.

- 9.4 Truth-In-Negotiation Representation. Recipient's compensation under this Agreement is based upon representations supplied to County by Recipient, and Recipient certifies that the wage rates, factual unit costs, and other information supplied to substantiate Recipient'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. Recipient further 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, there has been no determination that it committed a "public entity crime" as defined by Section 287.133, Florida Statutes, and that it has not been formally charged with committing an act defined as a "public entity crime" regardless of the amount of money involved or whether Recipient has been placed on the convicted vendor list. 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 Recipient under this Agreement.
- 9.6 Independent Contractor. Recipient is an independent contractor under this Agreement. In providing services under this Agreement, neither Recipient nor its agents shall act as officers, employees, or agents of County. Recipient 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 Recipient 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.

NOTICE TO COUNTY:

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

NOTICE TO RECIPIENT:

Insert - Recipient's Name
Insert - Attn: Name and/or Title
Insert Address

E-mail address: _____
With simultaneous e-mail to: _____

- 9.9 Assignment and Performance. Except for subcontracting approved in writing by County at the time of its execution of this Agreement or any written amendment hereto, neither this Agreement nor any right or interest herein may be assigned, transferred, subcontracted, or encumbered by Recipient without the prior written consent of County. If Recipient violates this provision, County shall have the right to immediately terminate this Agreement. Recipient 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. Recipient agrees that all services relating to 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 Recipient nor its employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with Recipient's loyal and conscientious exercise of judgment and care related to its performance under this Agreement. None of Recipient'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 Recipient 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 Recipient 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 Recipient is permitted pursuant to this Agreement to utilize Subcontractors to perform any services required by this Agreement, Recipient shall require such Subcontractors, by written contract, to comply with the provisions of this section to the same extent as Recipient.

- 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. Recipient 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, RECIPIENT 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 Recipient or others delegated authority or otherwise authorized to execute same on their behalf. The County Administrator is authorized to execute amendments including changes to Article 2 ("Scope of Services"), Article 3 ("Term and Time of Performance"), Article 4 ("Compensation"), Article 7 ("Insurance") and Exhibit C (Insurance Requirements Form), Article 5 ("Financial Information") and Section 9.3 ("Audit Rights and Retention of Records"), Exhibit A ("Scope of Services"), and Exhibit B ("Project Evaluation Report").

******Note: Prior to approving changes to Article 7 and Exhibit C, the Contract Administrator shall obtain the prior review and approval of the applicable staff in the Risk Management Division. Prior to approving changes to Article 5 and Section 9.3, the Contract Administrator shall obtain any prior review and approval of the applicable staff in the County Auditor's Office as necessary.***

- 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.

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

9.20.2 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 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 this Agreement. If County learns that this representation is false, County shall have the right to terminate this Agreement without any further liability to Recipient. Alternatively, if such representation is false, County, at its sole discretion, may deduct from the compensation due Recipient under this Agreement the full amount of such fee, commission, percentage, gift, or consideration.

9.24 Nondiscrimination. Recipient shall 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 this Agreement.

Recipient 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 nondiscrimination requirements in 49 C.F.R. Parts 23 and 26.

Failure by Recipient 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 (under Article 8) or to exercise any other remedy provided under this Agreement, Broward County Code of Ordinances, Broward County Administrative Code, Cultural Incentives (Grants) Guidelines of County's Cultural Division, or under applicable law, all such remedies being cumulative.

- 9.25 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, or 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 nonperformance 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 nonperformance 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.

The Contract Administrator, in his or her sole discretion, may approve in writing payment for reasonable and documented expenses on Exhibit A which were incurred by Recipient up to and including the date of the event resulting in the nonperformance by Recipient.

- 9.26 Use of County Logo. Recipient 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.
- 9.27 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.

AGREEMENT BETWEEN BROWARD COUNTY AND **NAME OF RECIPIENT** FOR
BROWARD CULTURAL COUNCIL, **Incentive Number**

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement: BROWARD COUNTY, signing by and through the County Administrator, authorized to execute same by Board action, and the Recipient, **Name of Recipient**, signing by and through its _____, duly authorized to execute same.

COUNTY

WITNESSES:

BROWARD COUNTY, through its
County Administrator

Signature above
Print Name: _____

By _____
County Administrator

Signature above
Print Name: _____

____ day of _____, 20____.

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 (Date)

By _____
Andrea S. Froome (Date)
Senior Assistant County Attorney

Print Name and Title above

AGREEMENT BETWEEN BROWARD COUNTY AND **NAME OF RECIPIENT** FOR
BROWARD CULTURAL COUNCIL, **Incentive Number**

[NOTE: Use below for individual]

RECIPIENT

WITNESSES:

<<Insert Name of Individual>>

Signature above

(Signature of Individual named above)

Print Name: _____

Signature above

____ day of _____, 20____.

Print Name: _____

NOTE: Delete above and use below if nonprofit.

RECIPIENT

WITNESSES:

<<Insert Recipient's name>>

Signature above

(Authorized Signor)

Print Name: _____

(Print name and title of
Authorized Signor for Recipient above)

Signature above

____ day of _____, 20____.

Print Name: _____

ATTEST:

Corporate Secretary or other
authorized person
(Corporate seal)

NOTE: Delete above for individual and nonprofit and use below if public entity.

RECIPIENT

WITNESSES:

<<Insert: Recipient's Name>>

Signature above
Print Name: _____

(Authorized Signature)

(Print name and title of
Authorized Signature for Recipient
above)

Signature above
Print Name: _____

____ day of _____, 20____.

ATTEST:

Reviewed and approved as to form:

**e.g., City Clerk, if municipality
other applicable clerk**

**e.g., City Attorney, if municipality or
applicable attorney, if any**

(SEAL)

EXHIBIT A

NOTE: This sample Exhibit A may be changed on a project-by-project basis as approved by the County's Cultural Division's Incentives Section Administrator.

FOR AGREEMENT BETWEEN BROWARD COUNTY AND **NAME OF RECIPIENT**
FOR BROWARD CULTURAL COUNCIL, **Incentive Number**

Recipient has been awarded incentives under the following incentive programs and in the amounts specified:

<u>Name of Incentive Program</u>	<u>Amount of Incentive</u>
---	-----------------------------------

Funding for each program shall be paid to Recipient by County in accordance with the following:

Name of Program _____

Contract No. _____

Amount of Incentive: _____

Project/Program Period - Start date: _____ **End date:** _____

I. Project title: **Insert**

II. Scope of project: **Insert**

III. a. County's total funds: \$ _____

b. Recipient's total funds: \$ _____

c. MATCH requirements: _____

IV. Definition of unit(s) of service(s):

A unit of service is defined as _____.

County agrees to purchase _____ units of service at a cost of _____ per unit during the Term. The total costs of all units purchased shall not exceed \$ _____.

V. Required documentation of services rendered: _____

VI. Funding categories for which County funds may be used.

FUNDING CATEGORIES	
Cultural Incentive Program Funds	Recipient's Funds or Match
TOTAL: \$ _____	TOTAL: \$ _____

NOTE: For reimbursable support incentives with nonmatching requirements, use this format:

Name of Program _____

Amount of Incentive _____

Project Period - Start date: _____ End date: _____

I. Scope of Services: _____

II. Definition of unit(s) of service(s):

A unit of service is defined as _____.

County agrees to purchase _____ units of service at a cost of _____ per unit during the term of this Agreement. The total cost of all units purchased shall not exceed \$_____.

III. Required documentation of services rendered: _____

NOTE: For Creative Place Making Program (CPMP) Incentives, use the format below:

Creative Place Making Program (CPMP)

Amount of Incentive _____

Project/Program Period - Start date: _____ **End date:** _____

- I. Scope of Services: _____
- II. County will reimburse Recipient's costs for professional design services directly related to the project described in Section I, Scope of Services, up to a maximum of \$ _____ upon receipt of a proper invoice and the Contract Administrator's written acceptance of the documentation described in _____.
- III. Required documentation of services rendered: _____
- IV. Other Requirements:

NOTE: Add any additional requirements which are required by the Broward Cultural Council at the time of entry into this Agreement. If not already included above, Recipient is required to add to www.artscalendar.com all events or programs that are funded in part or in whole by this Agreement and that require Recipient to post artscalendar.com web banner link on their website(s).

NOTE: Insert any required provisions relating to incentive guidelines and approved expenses from the Administrative Code that were applicable at the time of the incentive application resulting in this Agreement.

NOTE: Insert any required provisions relating to event/performances evaluations subject to applicable policies, Ordinances, Administrative Code, laws, and regulations, as amended.

NOTE: For incentive programs agreement using funding provided in whole or in part by the National Endowment for the Arts ("NEA"), insert the NEA's requirements for subcontracts or subrecipients required to subgrant the NEA funds to Recipients and any required reporting requirements or acknowledgement of NEA and County funds.

NOTE: Insert provisions required by School Board (for example only) for background screening or other requirements. Such additional provisions might include responsibility for payment for background

screening, provisions which might allow the School Board to terminate the Agreement for certain reasons (for example, public safety or welfare), and other provisions that might also be required to be added which may even require County to indemnify the School Board to the extent permitted by, and subject to, Florida law.

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

EXHIBIT B

PROJECT EVALUATION REPORT

*****NOTE: Attach Broward Cultural Division's Project Evaluation Report which is applicable for the Incentive program(s) funded under this Agreement and which is due as provided in Section 2.1 and Article 5.**

EXHIBIT C

******NOTE: Insurance requirement exhibit will be provided by County's Risk Management Division for each project for attachment as Exhibit C.***