



AGREEMENT BETWEEN BROWARD COUNTY AND [RECIPIENT] FOR BROWARD CULTURAL COUNCIL CULTURAL INCENTIVE PROGRAM FY [Year]

| <u>INCENTIVE PROGRAM</u> | <u>INCENTIVE NUMBER</u> | <u>AMOUNT</u> |
|------------------------------------|---------------------------|------------------------------|
| <i>[Name of Incentive Program]</i> | <i>[Incentive Docket]</i> | <i>[Amount of Incentive]</i> |

This Agreement (“Agreement”) is entered into between Broward County, a political subdivision of the State of Florida (“County”), and [Recipient’s Full Name], [insert nature of entity, e.g., an individual, a nonprofit (not-for-profit) Florida corporation, municipality, school board, an independent special district)] (“Recipient”) (collectively referred to as the “Parties”).

RECITALS

A. The Broward Cultural Council recommends funding to assist Recipient with services and approved expenses as more fully stated in Article 4 and Exhibit A.

B. The Broward County Board of County Commissioners 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

- 1.1. **Board** means the Board of County Commissioners of Broward County, Florida.
- 1.2. **Contract Administrator** means the Director of County’s Cultural Division, Acting Director of that division, or other person designated in writing by the Division Director or the County Administrator.
- 1.3. **County Administrator** means the administrative head of County appointed by the Board.
- 1.4. **Services** means all work required by Recipient under this Agreement, including as specified in Exhibit A.
- 1.5. **Subcontractor** means an entity or individual providing Services to County through Recipient for all or any portion of the Services under this Agreement. The term “Subcontractor” will include all subconsultants.

ARTICLE 2. SCOPE OF SERVICES

2.1. Scope of Services. Recipient will perform the Services stated in 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 described that exclusion would render Recipient’s performance impractical, illogical, or unconscionable.

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

2.2. Recipient must not subcontract any portion of the Services except as 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 by the County Administrator.

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 resolution, or any other Board-authorized action. If so authorized, upon written request by Recipient, the Contract Administrator may approve in writing changes in the categories of expenditures, if any, listed in Exhibit A; however, the total amount payable to Recipient may not be modified except by written amendment to this Agreement.

ARTICLE 3. TERM AND TIME OF PERFORMANCE

3.1. Term. The Agreement begins on _____, 20__ (the “Effective Date”) and ends on _____, 20__ (“Term”).

3.2. Extensions. The County Administrator is authorized to enter into written amendments to extend the Term for up to four (4) additional years. The approval of 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 is subject to both the appropriation and the availability of funds, in accordance with Chapter 129, Florida Statutes. County’s fiscal year begins on October 1 and ends on September 30 of the following year.

3.4. Time is of the essence for all obligations and performance required of Recipient in this Agreement.

ARTICLE 4. COMPENSATION

4.1. For the Term, including as may be extended as provided in Article 3, County will pay Recipient up to a maximum of _____ Dollars (\$_____). Payment will be made only for Services actually performed and completed in accordance with Exhibit A, which amount will 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 will provide matching funds, if any, 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 must 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 after the required documentation in Exhibit A has been submitted with proper invoice to County. There is no reimbursement for travel expenses or any other expenses that are not approved expenses as shown on Exhibit A. Invoices must be submitted on an approved invoice form provided by County. If Exhibit A contains a match requirement, County’s payment obligation is conditioned and contingent upon Recipient obtaining and providing that match.

4.2.2. County must 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 Code of Ordinances. To be deemed proper, an invoice must comply with all requirements and must be submitted according to any instructions prescribed by the Contract Administrator. County has the right to withhold payment of the invoice if Recipient fails to comply with any term, condition, or requirement. Any amounts withheld are not subject to payment of any interest by County.

4.3. Payment will 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.

ARTICLE 5. FINANCIAL INFORMATION

Recipient must submit to County all information required by the Agreement, including the Project Evaluation Report (Exhibit B) and any financial information required by Exhibit B within thirty (30) calendar days **<<<Insert any of the following>>> a) after the conclusion of the Project Period; b) after conclusion of the Term as defined in Section 3.1; c) after conclusion of the Project Period for the Construction Phase and after the conclusion of the Term as defined in Section 3.1 for**

TDTCGP>>>. Recipient is not subject to audited annual financial statement requirements. The Contract Administrator will 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. The provisions of this article will survive the termination or expiration of this Agreement.

ARTICLE 6. INDEMNIFICATION

(Note: For all entities other than state agencies or political subdivisions as defined in Section 768.28, Florida Statutes)

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

6.2. Sovereign Immunity. Except to the extent sovereign immunity may be deemed waived by entering into this Agreement, nothing in this Agreement is intended to serve as a waiver of sovereign immunity by any party, nor will anything included in the Agreement be construed as consent to be sued by third parties in any matter arising out of this Agreement or any other contract. County is a state agency or political subdivision as defined in Section 768.28, Florida Statutes, and will be fully responsible for the acts and omissions of its agents or employees to the extent permitted by law.

[Note: Use the article below and delete Article 6 above when Recipient is also a state agency or political subdivision as defined in Section 768.28, Florida Statutes.]

ARTICLE 7. SOVEREIGN IMMUNITY

Except to the extent sovereign immunity may be deemed waived by entering into this Agreement, nothing in this Agreement is intended to serve as a waiver of sovereign immunity by any party, nor should anything included in the Agreement be construed as consent to be sued by third parties in any matter arising out of this Agreement or any other contract. County and Recipient are state agencies or political subdivisions as defined in Section 768.28, Florida

Statutes, and will be responsible for the acts and omissions of its agents or employees to the extent required by applicable law.

ARTICLE 8. INSURANCE

[All Standard Grants/Agreements, Not-for-Profit Organizations, Individuals, Corporations, etc.]

8.1. During the Project Period defined in Exhibit A and as provided in this article, Recipient must, at its sole expense, maintain the minimum insurance coverages stated in Exhibit C in accordance with the terms and conditions of this article. Recipient must maintain insurance coverage against claims relating to any act or omission by Recipient, its agents, representatives, employees, or Subcontractors in connection with this Agreement. County reserves the right at any time to review and adjust the limits and types of coverage required under this article.

8.2. Recipient must ensure that "Broward County" is listed and endorsed as an additional insured as stated in Exhibit C on all policies required under this article, and that Broward County, 115 South Andrews Avenue, Fort Lauderdale, Florida 33301, is listed as the Certificate Holder on said policies.

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

8.4. Recipient must ensure that all insurance coverages required by this article do not cease and remain in full force and effect until the Project Period is completed, and County determines all performance required of Recipient has been satisfied. Recipient must provide at least thirty (30) days' written notice to County of cancellation and at least ten (10) days' notice of cancellation due to nonpayment and must concurrently provide County with a copy of its updated Certificates of Insurance evidencing continuation of any required coverages. Recipient shall ensure that there is no lapse of coverage at any time during the applicable project period(s) for which coverage is required by this article. Unless prohibited by the applicable policy, Recipient waives any right to subrogation that any of Recipient's insurers may acquire against County.

8.5. If Recipient maintains broader coverage or higher limits than the minimum insurance requirements stated in Exhibit C, County is entitled to any such broader coverage and higher limits maintained by Recipient. All required insurance coverages under this article must provide primary coverage and shall not require contribution from any County insurance, self-insurance or otherwise, which shall be in excess of and shall not contribute to the insurance required and provided by Recipient. Recipient must declare in writing any self-insured retentions or deductibles over one or more of the limits prescribed in Exhibit C and submit to County for approval at least fifteen (15) days prior to the Effective Date or commencement of Services.

Recipient is solely responsible for, and must pay, any deductible or self-insured retention applicable to any claim against County.

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

8.7. If any of the policies required under this article provide claims-made coverage: (1) any retroactive date must be prior to the Effective Date or at least fifteen (15) days prior to commencement of Services; (2) the required coverage must be maintained after termination or expiration of the Agreement for at least the duration stated in Exhibit C, and (3) if coverage is cancelled or nonrenewed and is not replaced with another claims-made policy form with a retroactive date prior to the Effective Date or at least fifteen (15) days prior to commencement of Services, Recipient must obtain and maintain "extended reporting" coverage that applies after termination or expiration of the Agreement for at least the duration stated in Exhibit C.

8.8. Recipient must require that any Subcontractor maintains insurance coverage that adequately covers the Services provided by that Subcontractor on substantially the same insurance terms and conditions required of Recipient under this article. Recipient must ensure that all such Subcontractors comply with these requirements and that "Broward County" is named as an additional insured under the Subcontractors' applicable insurance policies.

OPTIONAL PARAGRAPH BELOW TO ADD FOR EVENT INSURANCE:

8.9. Recipient is required to obtain the insurance coverage shown on Exhibit C solely for the Project Period. Nothing in this Agreement prevents Recipient from obtaining insurance coverage over and above the amount stated in Exhibit C or for a longer period of time than the stated Project Period. Recipient has sole discretion concerning the dollar amount and length of its insurance coverage (which may be greater than required by this article). If insurance is initially waived or not required as shown on Exhibit C at the time of execution of this Agreement but is subsequently required of Recipient in the sole discretion of County, Recipient is responsible for ensuring that it obtains the required insurance coverage for the entire length (or remainder) of the Project Period, as applicable.

LANGUAGE FOR: Grants/Agreements with waivers, etc.

INSTRUCTIONS: ONLY IF INSURANCE IS WAIVED – ADD THIS SENTENCE AT BEGINNING: "In the event insurance is required, coverage must reflect the following:"
(All other provisions shall remain the same)

8.10. During the Project Period and as provided in this article, Recipient must, at its sole expense, maintain the minimum insurance coverages stated in Exhibit C in accordance with the terms and conditions of this article. Recipient must maintain insurance coverage against claims relating to any act or omission by Recipient, its agents, representatives, employees, or

Subcontractors in connection with this Agreement. County reserves the right at any time to review and adjust the limits and types of coverage required under this article.

8.11. Recipient must ensure that "Broward County" is listed and endorsed as an additional insured on all policies required under this article, and that Broward County, 115 South Andrews Avenue, Fort Lauderdale, Florida 33301, is be listed as the Certificate Holder on all policies required by this article.

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

8.13. Recipient must ensure that all insurance coverages required by this article do not cease and remain in full force and effect until the Project Period is completed and County determines all performance required of Recipient has been satisfied. Recipient must provide at least thirty (30) days' written notice to County of cancellation and at least ten (10) days' notice of cancellation due to nonpayment and must concurrently provide County with a copy of its updated Certificates of Insurance evidencing continuation of any required coverages. Recipient must ensure that there is no lapse of coverage at any time during the applicable project period(s) for which coverage is required by this Article. Unless prohibited by the applicable policy, Recipient waives any right to subrogation that any of Recipient's insurers may acquire against County.

8.14. If Recipient maintains broader coverage or higher limits than the minimum insurance requirements stated in Exhibit C, County is entitled to any such broader coverage and higher limits maintained by Recipient. All required insurance coverages under this article must provide primary coverage and shall not require contribution from any County insurance, self-insurance or otherwise, which are in excess of and will not contribute to the insurance required and provided by Recipient. Recipient shall declare in writing any self-insured retentions or deductibles over the limits prescribed in Exhibit C and submit to County for approval at least fifteen (15) days prior to the Effective Date or commencement of Services. Recipient is solely responsible for and must pay any deductible or self-insured retention applicable to any claim against County.

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

8.16. If any of the policies required under this article provide claims-made coverage: (1) any retroactive date must be prior to the Effective Date or at least fifteen (15) days prior to commencement of Services; (2) the required coverage must be maintained after termination or

expiration of the Agreement for at least the duration stated in Exhibit C, and (3) if coverage is cancelled or nonrenewed and is not replaced with another claims-made policy form with a retroactive date prior to the Effective Date or at least fifteen (15) days prior to commencement of Services, Recipient must obtain and maintain “extended reporting” coverage that applies after termination or expiration of the Agreement for at least the duration stated in Exhibit C.

8.17. Recipient shall require that any Subcontractor maintains insurance coverage that adequately covers the Services provided by that Subcontractor on substantially the same insurance terms and conditions required of Recipient under this article. Recipient must ensure that all such Subcontractors comply with these requirements and that “Broward County” is named as an additional insured under the Subcontractors’ applicable insurance policies.

OPTIONAL PARAGRAPH BELOW TO ADD FOR EVENT INSURANCE:

8.18. Recipient is required to obtain the insurance coverage shown on Exhibit C solely for the Project Period. Nothing in this Agreement prevents Recipient from obtaining insurance coverage over and above the amount stated on Exhibit C or for a longer period of time than the stated Project Period. Recipient has sole discretion concerning the dollar amount and length of its insurance coverage (which may be greater than required by this article). If insurance is initially waived or not required as shown on Exhibit C at the time of execution of this Agreement but is subsequently required of Recipient in the sole discretion of County, Recipient is responsible for ensuring that it obtains the required insurance coverage for the entire length (or remainder) of the Project Period, as applicable.

LANGUAGE FOR USE:

Grants/Agreements with Public Entities, State/Governmental Agencies, Cities/Districts, etc., with Sovereign Immunity under Section 768.28

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

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

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

8.22. If Recipient contracts with a Subcontractor to provide any of the Services stated in this Agreement, Recipient shall require that each Subcontractor procure and maintain insurance coverage that adequately covers each Subcontractor’s exposure based on the Services provided by that Subcontractor. Recipient must ensure that all such Subcontractors name “Broward

County” as an additional insured and certificate holder under the applicable insurance policies. Recipient shall not permit any Subcontractor to provide Services until the insurance requirements of the Subcontractor under this section are met. If requested by County, Recipient shall furnish evidence of insurance of all such Subcontractors.

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

ARTICLE 9. TERMINATION

9.1. This Agreement may be terminated for cause by the aggrieved party based on any breach that the breaching party has not corrected 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 or County Administrator by providing written notice to Recipient of the termination date, which must 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 will, to the fullest extent permissible under applicable law, be deemed a termination for convenience, which will be effective thirty (30) days after such written notice of termination for cause is provided.

9.2. County, through its County Administrator, may terminate this Agreement upon ten (10) days’ prior written notice by the Contract Administrator if Recipient is found to have submitted a false certification according to Section 287.135, Florida Statutes, if Recipient has been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or if Recipient has failed to promptly implement corrective action for audit deficiencies after ten (10) days’ written notice by Contract Administrator. Notwithstanding anything contained in this Agreement to the contrary, the rights and obligations of the Parties under this paragraph will be governed by Section 287.135, Florida Statutes, to the fullest extent applicable.

9.3. Recipient represents that neither it nor any of its affiliates have been placed on the discriminatory vendor list, as defined by Section 287.134, Florida Statutes. 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 are placed on the discriminatory vendor list.

9.4. This Agreement may also be terminated for any other basis and by any other means expressly permitted in this Agreement.

9.5. Notice of termination must be provided in accordance with the “Notices” section.

9.6. If this Agreement is terminated for convenience by County, Recipient will be paid for any Services properly performed under this Agreement through the termination date specified in the written notice of termination, subject to any right of County to retain any sums otherwise due

and payable. Recipient acknowledges that it has received good, valuable, and sufficient consideration from County, the receipt and adequacy of which are acknowledged by Recipient, for County's right to terminate this Agreement for convenience. Recipient hereby waives, to the fullest extent permissible under applicable law, any and all rights to challenge the adequacy of such consideration or the validity of County's right to terminate for convenience.

ARTICLE 10. MISCELLANEOUS

10.1. Rights in Documents and Work. Any and all reports, photographs, surveys, and documents provided or created by Recipient in connection with performing Services under this Agreement are owned by County and will be deemed works for hire by Recipient and its agents; if the Services are determined not to be a work for hire, Recipient hereby assigns all right, title, and interest, including any copyright or other intellectual property rights in or to the work, to County. If this Agreement is terminated, any reports, photographs, surveys, and other data and documents prepared by Recipient, whether finished or unfinished, will become the property of County and will be delivered by Recipient to the Contract Administrator within seven (7) days after termination of this Agreement. Any compensation due to Recipient may be withheld until all documents are received as provided for in this Agreement. Recipient must ensure that the requirements of this section are included in all agreements with any of its Subcontractors.

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

- a) Keep and maintain public records required by County 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 for in Chapter 119, Florida Statutes, or as otherwise provided by law;
- c) Ensure that public records that are exempt or confidential and exempt from public records requirements are not disclosed except as authorized by law for the duration of 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 must destroy any duplicate public records that are exempt or confidential and exempt. If Recipient keeps and maintains the public records, Recipient must meet all applicable requirements for retaining public records. All records stored electronically must be provided to County upon request in a format that is compatible with the information technology systems of County.

A request for public records regarding 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 RECORD PRODUCTION – TRADE SECRET.” In addition, Recipient must, simultaneous with the submission of any Trade Secret Materials, provide a sworn affidavit from a person with personal knowledge attesting that the Trade Secret Materials constitute trade secrets under Section 812.081, Florida Statutes, and stating the factual basis for same. If a third party submits a request to County for records designated by Recipient as Trade Secret Materials, County must refrain from disclosing the Trade Secret Materials, unless otherwise ordered by a court of competent jurisdiction or authorized in writing by Recipient. Recipient must indemnify and defend County and its employees and agents from any and all claims, causes of action, losses, fines, penalties, damages, judgments, and liabilities of any kind, including attorneys’ fees, litigation expenses, and court costs, relating to the nondisclosure of any Trade Secret Materials in response to a records request by a third party.

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

10.3. Audit Rights and Retention of Records. County has the right to audit the books, records, and accounts of Recipient and its Subcontractors that are related to this Agreement. Recipient and its Subcontractors must keep books, records, and accounts as may be necessary in order to record complete and correct entries related to this Agreement and performance under this Agreement. All books, records, and accounts must be kept in written form, or in a form capable of conversion into written form within a reasonable time, and upon request to do so, Recipient or its Subcontractor must make all books, records, and accounts available in written form at no cost to County.

Recipient and its Subcontractors must preserve and make available, at reasonable times within Broward County, Florida, for examination and audit, all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for at least three (3) years after expiration or termination of this Agreement or until resolution of any audit findings, whichever is longer. Any audit or inspection in accordance with this section may be performed by any County representative (including any outside representative engaged by County). County has the right to conduct the audit or review at Recipient’s place of business, if deemed appropriate by County, with seventy-two (72) hours’ advance notice.

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

Recipient must ensure that the requirements of this section are included in all agreements with its Subcontractor(s) performing services relating to this Agreement.

10.4. Independent Contractor. Recipient is an independent contractor under this Agreement, and nothing in this Agreement constitutes or creates a partnership, joint venture, or any other relationship between the Parties. In providing Services under this Agreement, neither Recipient nor its agents will act as officers, employees, or agents of County. Recipient does not have the right to bind County to any obligation not expressly undertaken by County under this Agreement.

10.5. 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 will be entitled to assert a right or claim against either Party based upon this Agreement.

10.6. Notices. For a notice to a party to be effective under this Agreement, notice must be sent via U.S. first-class mail, hand delivery, or commercial overnight delivery, each with a contemporaneous copy via e-mail, to the addresses listed below and is effective upon mailing or hand delivery (provided the contemporaneous e-mail is also sent). The addresses for notice remain as stated in this section 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

100 South Andrews Avenue, 6th Floor

Fort Lauderdale, Florida 33301

E-mail address: lfordham@broward.org

With simultaneous copy of e-mail to: jsheermer@broward.org

FOR RECIPIENT:

Insert - Recipient's Name

Insert - Attn: Name and/or Title

Insert Address

E-mail address: _____

With simultaneous e-mail to: _____

10.7. Assignment. All Subcontractors must be expressly identified in this Agreement or otherwise approved in advance and in writing by the Contract Administrator. Except for subcontracting approved by County in advance, neither this Agreement nor any right or interest in it may be assigned, transferred, subcontracted, or encumbered by Recipient without the prior written consent of County, and any such prohibited action shall be deemed null and void. If Recipient violates this provision, County will have the right to immediately terminate this Agreement.

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

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

10.10. Compliance with Laws. Recipient must comply with all applicable federal, state, and local laws, codes, ordinances, rules, and regulations including, without limitation, the American with

Disabilities Act, 42 U.S.C. § 12101, Section 504 of the Rehabilitation Act of 1973, and any related federal, state, or local laws, rules, and regulations.

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

10.12. Joint Preparation. This Agreement has been jointly prepared by the Parties and will not be construed more strictly against either party.

10.13. Interpretation. The titles and headings contained in this Agreement are for reference purposes only and do not in any way affect the meaning or interpretation of this Agreement. All personal pronouns used in this Agreement include the other gender, and the singular includes 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. Any reference to “days” means calendar days, unless otherwise expressly stated.

10.14. Priority of Provisions. If there is a conflict or inconsistency between any term, statement, requirement, or provision of any document or exhibit attached to, referenced by, or incorporated in this Agreement and any provision of the Articles of this Agreement, the provisions contained the Articles prevail and will be given effect.

10.15. Law, Jurisdiction, Venue, Waiver of Jury Trial. This Agreement will be interpreted and construed in accordance with and governed by the laws of the State of Florida. The exclusive venue for any lawsuit arising from, related to, or in connection with this Agreement is in the state courts of the Seventeenth Judicial Circuit in and for Broward County, Florida. If any claim arising from, related to, or in connection with this Agreement must be litigated in federal court, the exclusive venue for any such lawsuit is in the United States District Court or United States Bankruptcy Court for the Southern District of Florida. **BY ENTERING INTO THIS AGREEMENT, RECIPIENT AND COUNTY HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO 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 WILL BE LIABLE FOR THE REASONABLE ATTORNEYS’ FEES AND COSTS OF THE OTHER PARTY IN CONTESTING THE REQUEST FOR JURY TRIAL, AND SUCH AMOUNTS WILL BE AWARDED BY THE COURT IN ADJUDICATING THE MOTION.**

10.16. Amendments. No modification, amendment, or alteration in the terms or conditions contained in this Agreement is 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 this Agreement on their behalf. The County Administrator is authorized to execute amendments to this Agreement.

10.17. Prior Agreements. This Agreement represents the final and complete understanding of the Parties regarding the subject matter contained in this Agreement and supersedes all prior and contemporaneous negotiations and discussions regarding that subject matter. There is no commitment, agreement, or understanding concerning the subject matter of this Agreement that is not contained in this written document.

10.18. Payable Interest.

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

10.18.2. 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, will be, to the full extent permissible under applicable law, one quarter of one percent (0.25%) simple interest (uncompounded).

10.19. Incorporation by Reference. Any and all Recital clauses stated above are correct and are incorporated in this Agreement by reference. The attached exhibits are incorporated into and made a part of this Agreement.

10.20. Representation of Authority. Recipient represents and warrants that this Agreement constitutes the legal, valid, binding, and enforceable obligation of Recipient, and that neither the execution nor performance of this Agreement constitutes a breach of any agreement that Recipient has with any third party or violates any law, rule, regulation, or duty arising in law or equity applicable to Recipient. Recipient further represents and warrants that execution of this Agreement is within Recipient's legal powers, and each individual executing this Agreement on behalf of Recipient is duly authorized by all necessary and appropriate action to do so on behalf of Recipient and does so with full legal authority.

10.21. 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.

10.22. Nondiscrimination. Recipient may not discriminate on the basis of race, color, sex, religion, national origin, disability, age, marital status, political affiliation, sexual orientation,

pregnancy, or gender identity and expression in the performance of this Agreement. Recipient will include the foregoing or similar language in its contracts with any Subcontractors, except that any project assisted by the U.S. Department of Transportation funds must comply with the nondiscrimination requirements in 49 C.F.R. Parts 23 and 26.

Failure by Recipient to carry out any of the requirements of this section will constitute a material breach of this Agreement, which will 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 including the Cultural Council's Incentives (Grants) Programs Guidelines, or under applicable law, all such remedies being cumulative.

10.23. Force Majeure. If the performance of this Agreement or any obligation under this Agreement 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, will be excused from such performance to the extent of such prevention, if the party so affected has first taken reasonable steps to avoid and remove the cause of nonperformance and continues to take reasonable steps to avoid and remove such cause, and promptly notify the other party in writing and resume performance in accordance with this Agreement whenever such causes are removed; if such nonperformance exceeds sixty (60) days, the party that is not prevented from performance by the force majeure event has the right to terminate this Agreement upon written notice to the party so affected. If prompt notice was initially provided orally (preferably with e-mail notification) due to the circumstances, it must be provided with written notice in accordance with the "Notices" section as soon as practicable after the force majeure period ends. This section does 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 that were incurred by Recipient up to and including the date of the event resulting in the nonperformance by Recipient.

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

10.25. Truth-In-Negotiation Representation. Recipient's compensation under this Agreement is based upon its representations to County, and Recipient certifies that the information supplied to substantiate Recipient's compensation, including without limitation in the negotiation of this Agreement, are accurate, complete, and current as of the date Recipient executes this Agreement. Recipient's compensation will be reduced to exclude any significant sums by which the compensation was increased due to inaccurate and incomplete information.

10.26. Public Entity Crime Act. Recipient represents that Recipient 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. Recipient further represents that there has been no determination that it committed a “public entity crime” as defined by Section 287.133, Florida Statutes, and that it has not been formally charged with committing an act defined as a “public entity crime” regardless of the money involved or whether Recipient has been placed on the convicted vendor list.

10.27. Discriminatory Vendor and Scrutinized Companies Lists. Recipient represents that Recipient has not been placed on the discriminatory vendor list as provided in Section 287.134, Florida Statutes. Recipient further represents that it is not ineligible to contract with County on any of the grounds stated in Section 287.135, Florida Statutes.

10.28. Warranty of Performance. Recipient represents and warrants that it possesses the knowledge, skill, experience, and financial capability required to perform and provide all Services under this Agreement, and 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 any areas for which such person or entity will render Services. Recipient represents and warrants that the Services under this Agreement will be performed in a skillful and respectful manner, and that the quality of all such Services must equal or exceed prevailing industry standards for the provision of such Services.

10.29. Breach of Representations. In entering into this Agreement, Recipient acknowledges that County is materially relying on the representations and warranties of Recipient stated in this article. County is entitled to recover any damages it incurs to the extent any such representation or warranty is untrue. In addition, if any such representation or warranty is false, County has the right, at its sole discretion, to terminate this Agreement without any further liability to Recipient, to deduct from the compensation due to Recipient under this Agreement the full amount of any value paid in violation of a representation or warranty, or to recover all sums paid to Recipient under this Agreement. Furthermore, a false representation may result in debarment from County’s Cultural incentives (grants) programs.

10.30. Use of County Logo. Recipient may 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.

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

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

IN WITNESS WHEREOF, the Parties have made and executed this Agreement, Incentive Number _____: Broward County, signing by and through the County Administrator, authorized to execute same by Board action, and Recipient, **Name of Recipient**, signing by and through its _____, duly authorized to execute same.

COUNTY

WITNESS:

BROWARD COUNTY, by and through its County Administrator

(Signature)

By _____
County Administrator

(Print Name of Witness)

____ day of _____, 20__

(Signature)

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

(Print Name of Witness)

By _____
Mark A. Journey (Date)
Assistant County Attorney

RDH:dp
Cultural Incentive Grant Contract Form FY2019
01/14/19
381648.6

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

(Authorized Signature)

Print Name: _____

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

Signature above

___ day of _____, 20__.

Print Name: _____

ATTEST:

Reviewed and approved as to form:

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

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

(SEAL)

EXHIBIT A – SCOPE OF SERVICES

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.

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

| | |
|---|--|
| <u>Program:</u> _____ | <u>Maximum Incentive Amount:</u> _____ |
| <u>Project Period Start Date:</u> _____ | <u>Project Period End Date:</u> _____ |

I. SERVICES.

Project Title: _____

During the Project Period, Recipient will _____:

This project will take place on _____ at _____, Florida, or at a similar venue in Broward County, Florida, approved in writing in advance by the Contract Administrator. All venues used must be open to members of the public for any admission fee or any other required fees, and must comply with all applicable laws.

II. UNIT OF SERVICE.

A unit of service is defined as: _____

County will purchase _____ (____) units of service during the Term at a cost of \$ _____ per unit of service. The total cost of all units purchased shall not exceed \$ _____.

III. FUNDED ACTIVITIES.

All funded activities must occur solely during the Project Period.

| FUNDING CATEGORIES | |
|----------------------------------|----------------------------|
| Cultural Incentive Program Funds | Recipient's Funds or Match |
| | |
| | |

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

IV. REQUIRED DOCUMENTATION OF SERVICES RENDERED.

Recipient must provide, as an attachment to the units of service invoice, a brief description of activities, and list the hours Recipient's staff, if any, worked during the period covered by the invoice. Activities listed must be grouped by the same categories as those categories, if any, appearing in Section I of this exhibit. If a program or event was provided by Recipient during the invoiced period, Recipient must attach to its invoice the following: 1) A copy of the program showing dates and times of the event; 2) a list of the funded programs or events that were added into the event schedule at artscalendar.com; or 3) other documentation that the event took place.

The final invoice must include documentation of the completion of all items not previously submitted.

Attribution of the Funder: During the Term of this Agreement, Recipient will post the [artscalendar.com](http://www.artscalendar.com) banner web link (<http://www.artscalendar.com/>) on Recipient's website, if any. For instructions, please visit the following link:

<http://www.broward.org/Arts/Funding/Pages/default.aspx>.

Recipient is not required to upload any images to Recipient's website because Recipient can simply copy the arts calendar code into the body of Recipient's webpage at its designated location. The logo will appear in the location linked to artscalendar.com website, which is the leading online resource for arts and cultural information for the Broward County community. Recipient must acknowledge County's funding with the correct attribution statement and County logo, as specifically outlined in the incentive program's guidelines. For instructions, please visit the following links:

<http://www.broward.org/Arts/Pages/Opportunities.aspx>

<http://www.broward.org/Arts/Funding/Pages/default.aspx>.

Note: Attribution Statement for all programs except Cultural Tourism Program and the Tourist Development Tax Capital Challenge Grant Program

Table 1: Example

| |
|---|
|  <p>Funding for this organization is provided in part by the Board of County Commissioners of Broward County, Florida, as recommended by the Broward Cultural Council.</p> |
|---|

Attribution statement for Cultural Tourism Program and Tourist Development Program**Table 2: Example**

| |
|--|
|   <p>Funding for this project is provided in part by the Board of County Commissioners of Broward County, Florida, as recommended by the Broward Cultural Council and Greater Fort Lauderdale Convention & Visitors Bureau.</p> |
|--|

Project Report:

- Login at https://www.grantrequest.com/SID_391?SA=AM
 - Click on “Requirements” tab and the new report will start under “New Requirements.”

Invoicing: Recipient must send the following to central Accounts Payable via e-mail to AccountsPayable@Broward.org:

- Typewritten prepared invoice using County’s invoice form. Do not handwrite invoices.
- Purchase Order (“P.O.”) number must be on the invoice.
 - Note — P.O. number will be provided by County.
- Invoice must be certified by the Chief Executive Officer or other authorized officer.
- Invoices must be signed in blue ink, scanned, and sent in color (not black and white).
- No invoices will be accepted after sixty (60) days beyond the end of the Term and as required by ARTICLE 4.
- Do not send supporting documents.

Recipient must send to County’s Cultural Division via e-mail to County’s staff members: Chantel Seamore (CSeamore@Broward.org), and Michelle Oplesch (MOplesch@Broward.org) only electronic copies of the following:

- A copy of the invoice that it sent to central Accounts Payable.
- Supporting documents containing the following:
 - Brief narrative of Services. (See Exhibit A of the Agreement).
 - Include brief description of activities and list hours worked by staff.
 - The unit of service must correspond precisely to the information provided in Exhibit A of the Agreement.
 - Playbills, flyers, or brochures (with Broward Cultural Division's logo and attribution statement) from the events.
 - Documentation of grant fund expenditures (for County's Community Arts Education Partnerships ("CAEP"), Tourist Development Tax ("TDT"), and Cultural Tourism Program ("CTP") grants only).
 - Documentation of matching funds (for County's TDT and CTP grants only).
 - Signed attendance logs/reports (for County's Cultural Diversity Program (CDP) and CAEP grants only).
 - Other information as required by the grant Agreement.
- The Project Evaluation Report (Exhibit B) as provided in Articles 2 and 5.

EXHIBIT B - PROJECT EVALUATION REPORT

*****NOTE: Attach Broward Cultural Division's Project Evaluation Report that is applicable for any Incentive programs funded under this Agreement and that is due as provided in Section 2.1 and Article 5.**

EXHIBIT C – INSURANCE REQUIREMENTS

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