

## Article II / General Conditions

1. Parties: The parties to this Agreement are the Grantee listed in Article I, and the City of Miami Beach, a municipal corporation organized under the laws of the State of Florida (the "City"). The City has delegated the responsibility of administering this Grant to the City Manager or his authorized designee, who shall be the City's Cultural Affairs Program Manager.

2. Project Description: The Grantee may only use the Grant for the purposes that are specifically described in the Project Description, attached hereto as Exhibit 1.

3. Budget: All of the Grantee's expenditures shall be subject to the terms of this Agreement, as specified in the itemized *Total Project Budget* (attached hereto as Exhibit 2-A) and the *Grant Award Budget* (attached hereto as Exhibit 2-B).

A mandatory 1:1 match is required for all grants. Grant applicants must demonstrate that matching funds in the full amount of the grant award have been secured prior to receiving the first grant payment. The City will review and approve audited financial statements detailing the match through cash, grants, and/or in-kind contributions, of which in-kind contributions may not exceed 25% of the Total Project Budget, attached hereto as Exhibit 2-A.

Line item changes to the Grant Award Budget shall not exceed ten percent (10%) per category, and shall, in no event, exceed the total amount of Grant Funds. Notwithstanding the preceding sentence, amendments to the itemized Grant Award Budget shall not be permitted without the prior written consent of the Cultural Affairs Program Manager. Said requests shall be made in writing, detailing and justifying the need for such changes, in advance of the Project's commencement.

4. Reports: This Grant has been awarded with the understanding that the Project will enhance and develop the City's cultural community. To demonstrate that the Grant is fulfilling, or has fulfilled, its purpose, the Grantee must supply the Cultural Affairs Program Manager with a written Final Report, which shall document the Grantee's satisfaction of all requirements. This report must be received by the Cultural Affairs Program Manager no later than November 15, 2019. New Grant awards will not be released to the Grantee until all Final Reports for previously awarded grants are received. The City may withhold any future payments of the Grant, or the award of any subsequent Grant, if it has not received all reports required to be submitted by Grantee, or if such reports do not meet the City's reporting requirements. Any reports may be disseminated by the City without the prior written consent of the Grantee.

5. Amount of Grant and Payment Schedule: The total amount of the Grant is specified in Article I-2, and payment of any portion thereof shall be subject to and contingent upon Grantee's compliance with the terms and conditions set forth in this Agreement. In awarding this Grant, the City assumes no obligation to provide financial support of any type whatsoever in excess of the total Grant amount. Cost overruns are the sole responsibility of the Grantee. Grant Funds will only be remitted to the Grantee once the Mayor and City Commission have approved the Grant award, and once all parties have executed this Agreement, and provided that Grantee is otherwise in compliance with the terms and conditions herein.

6. No guarantee of future funding: The Grantee acknowledges that the receipt of this Grant does not imply a commitment on behalf of City to continue or provide funding beyond the terms specified in this Agreement.

7. Program Monitoring and Evaluation: The Cultural Affairs Program Manager may monitor and conduct an evaluation of the Project funded by this Grant, which may include, without

limitation, visits by City representatives to observe the Project, or Grantee's programs, procedures, and operations, or to discuss the Grantee's programs with Grantee's personnel. The Grantee agrees to utilize the standardized Audience Survey adopted by the City's Cultural Arts Council to obtain specific feedback from program participants.

8. Bank Accounts and Bonding: Grantee shall maintain all monies received pursuant to this Agreement in an account with a bank or savings and loan association that is located in Miami-Dade County. The Grantee shall provide the City with the name of the bank or savings and loan association, as well as the name and title of all individuals authorized to withdraw or write checks on Grant Funds.

9. Accounting and Financial Review: Any activities funded by this Grant must take place during the City's fiscal year for which the Grant is approved (October 1 - September 30). The Grantee shall keep accurate and complete books and records of all receipts and expenditures of Grant Funds, in accordance with reasonable accounting standards, and shall retain such books and records for at least four (4) years after completion of the Project. These books and records, as well as all documents pertaining to payments received and made in conjunction with this Grant, including, without limitation, vouchers, bills, invoices, receipts, and canceled checks, must be directly related to Grant-funded activities taking place within the fiscal year for which they are approved and retained in Miami-Dade County in a secure place and in an orderly fashion by the Grantee for at least two (2) years after the Expenditure Deadline specified in Article I-6. At the request of the City, Grantee shall provide the City (and/or its designated representatives) reasonable access to its files, records and personnel during regular business hours for the purpose of making financial audits, evaluations or verifications, program evaluations, or other verifications concerning this Grant, as the City deems necessary. Furthermore, the City may, at its expense, audit or have audited, all the financial records of the Grantee, whether or not purported to be related to this Grant.

10. Publicity and Credits: The Grantee must include the City of Miami Beach logo and the following credit line in all publications (where appropriate) that are related to this Grant: City of Miami Beach, Cultural Affairs Program, Cultural Arts Council. Grantee's failure to comply with this paragraph may preclude future grant funding from the City, in the same manner as if the Grantee defaulted under this Agreement, pursuant to Article II-13. Except as specified herein, Grantee shall not use the name, trademarks, or logos of the City without the City's advance written approval.

11. Liability and Indemnification: The Grantee shall indemnify and hold harmless the City and its officers, employees, agents, and contractors, from and against any and all actions (whether at law or in equity), claims, liabilities, losses, expenses, or damages, including, without limitation, attorneys' fees and costs of defense, for personal, economic, or bodily injury, wrongful death, or loss of or damage to property, which the City or its officers, employees, agents, and contractors may incur as a result of claims, demands, suits, causes of action or proceedings of any kind or nature arising out of, relating to, or resulting from the performance of this Agreement by the Grantee or its officers, employees, agents, servants, partners, principals or contractors. Grantee shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits, or actions of any kind or nature in the name of the City, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorneys' fees which may issue thereon. Grantee expressly understands and agrees that any insurance protection required by this Agreement, or otherwise provided, shall in no way limit its obligation, as set forth herein, to indemnify, hold harmless, and defend the City or its officers, employees, agents, and contractors as herein provided.

If the Grantee is a government entity, this indemnification shall only be to the extent and within the limitations of Section 768.28, Florida Statutes, subject to the provisions of that Statute whereby the Grantee entity shall not be held liable to pay a personal injury or property damage claim or judgment by any one person which exceeds the sum of \$200,000, or any claim or judgment or portions thereof, which, when totaled with all other claims or judgments paid by the government entity arising out of the same incident or occurrence, exceed the sum of \$300,000 from any and all personal injury or property damage claims, liabilities, losses or causes of action which may arise as a result of the negligence of the Grantee entity.

12. Assignment: The Grantee shall not be permitted to assign this Grant to any other party. Any purported assignment will be void, and shall be treated as an event of default pursuant to Article II, Section 14 .

13. Compliance with Laws / Good Standing With the City: The Grantee agrees to abide by and be governed by all applicable Federal, State, County, and City laws, including but not limited to Miami-Dade County's Conflict of Interest and Code of Ethics Ordinance, as amended, which is incorporated herein by reference as if fully set forth herein, and Chapter 2, Article VII of the Miami Beach City Code, as amended, which is incorporated herein by reference as if fully set forth herein. Grantee shall maintain its good standing in accordance with the laws of the State of Florida and the City of Miami Beach Code of Ordinances ("City Code"), and shall comply with any City Code requirement applicable to Grantee or to the Grantee's operation its business or other activities in the City of Miami Beach, including, without limitation, obtaining any Certificate of Use or Business Tax Receipt(s) that may be required for any business activity, timely making payment of all taxes, fees or charges that may be due to the City of Miami Beach. Grantee shall promptly take corrective action to correct any City Code violation or notice of violation issued by any governmental agency with jurisdiction over Grantee. Further, Grantee agrees to comply with the terms and conditions of any lease, contract, or other grant agreement that Grantee may have separately entered into with the City of Miami Beach ("Other City Contracts"). Any failure by Grantee to comply with any provision of the City Code applicable to Grantee, or any breach or default by the Grantee of any covenant or other term or condition contained in any Other City Contracts (after the passage of any applicable notice and cure provision set forth therein), shall, at the option of the City, be considered a Default (as such term is defined more fully below in Article II, Section 14 of this Agreement), in which event the City shall be entitled (but in no event required) to apply all rights and remedies available to the City under the terms of this Agreement by reason of a Grantee's breach or failure to comply with said obligations.

14. Default/Termination Provisions: In the event the Grantee shall fail to comply with any of the covenants, terms or provisions of this Agreement, including, without limitation, any failure of Grantee to (i) secure 1:1 match funds in accordance with the requirements set forth herein; (ii) complete the Project, as expressly contemplated in the Project Description; (iii) timely submit any reports, when due, as required under this Agreement, or properly provide an accounting of Grant Funds, including, without limitation, in accordance with Article II, Section 9 herein; (iv) use the Grant Funds solely for the limited purposes described in the Project Description (and allowable grant expenditures as set forth herein); and (v) comply with any other term or condition of this Agreement, including, as set forth in Article II, Section 13, any failure to comply with any term or condition contained in any Other City Contracts, or any provision of the City Code applicable to Grantee (each, a "Default"), the Cultural Affairs Program Manager may terminate this Agreement and withhold or cancel all or any unpaid installments of the Grant upon giving five (5) calendar days written notice to the Grantee, and the City shall have no further obligation to the Grantee under this Agreement. Further, in the event of a Default, at the Cultural Affairs Program Manager's sole discretion, the Grantee shall be required to immediately repay to the City all or a portion of the Grant which has been received by the Grantee, as of the date that the written demand is received ("Demand for Recapture"). Grantee further acknowledges and agrees that any Default

may, at the City's sole discretion, render Grantee ineligible for any future grant funding, as provided below.

In the event of a Default, the following provisions will also apply:

a. For first-time violations – Grantee shall be required to submit a final report with documentation of expenditure of all Grant Funds already received up to the date of termination and/or the Demand for Recapture. Additionally, Grantee will be ineligible to apply for or receive a grant in the subsequent City fiscal year. However, Grantee will be allowed to apply for grants in fiscal years following the subsequent City fiscal year.

b. For more than first-time violations - Any compliance infractions beyond first-time violations will be addressed by the Cultural Affairs Program Manager, on a case-by-case basis. In connection therewith, the Cultural Affairs Program Manager shall obtain the recommendation of the Cultural Arts Council, but the final decision as to whether Grantee may be allowed to apply for future grants shall remain within the sole discretion of the City.

Any uncommitted Grant Funds which remain in the possession or under the control of the Grantee as of the date of the Expenditure Deadline specified in Article 1-6 must be returned to the City within fifteen (15) days after the Expenditure Deadline. If such funds have been committed but not expended, the Grantee must request in writing from the Cultural Affairs Program Manager an extension of the Expenditure Deadline which, if approved, shall be for a period not to exceed one (1) year.

Grant Funds which are to be repaid to the City pursuant to this Section are to be repaid upon demand by delivering to the Cultural Affairs Program Manager a certified check for the total amount due, payable to the City of Miami Beach, Florida.

These provisions shall not waive or preclude the City from pursuing any other remedies that may be available to it under the law.

c. Notwithstanding any provision of this Agreement to the contrary, and without regard to whether City has exercised the Default provisions thereof, the City reserves the right, at its sole and absolute discretion, to discontinue funding of the Grant if it is not satisfied with the progress of the Project or the content of any required written report. In the event of discontinuation of the Grant or at the close of the Project, any unexpended Grant Funds shall be immediately returned to the City, except where the City Manager has agreed in writing to alternative use of the unused/unexpended Grant Funds.

15. No Waiver: No waiver of any breach or failure to enforce any of the terms, covenants, conditions or other provisions of this Agreement by City at any time shall in any way affect, limit, modify or waive City's right thereafter to enforce or compel strict compliance with every term, covenant, condition or other provision hereof.

16. Written Notices: Any written notices required under this Agreement will be effective when delivered in person or upon receipt of a certified letter addressed to the Grantee at the address specified in Article I-1 of this Agreement, and to the City when addressed as follows: Brandi Reddick, Cultural Affairs Program Manager, City of Miami Beach Dept. of Tourism and Cultural Development, 1755 Meridian Avenue, Suite 500, Miami Beach, Florida 33139-1819.

17. Captions Used in this Agreement: Captions, as used in this Agreement, are for convenience of reference only and should not be deemed or construed as in any way limiting or extending the language or provisions to which such captions may refer.

18. Contract Represents Total Agreement: This contract, including its special conditions and exhibits, represents the whole and total agreement of the parties. No representations, except those contained within this Agreement and its attachments, are to be considered in construing its terms. No modifications or amendments may be made to this Agreement unless made in writing signed by both parties, and approved by appropriate action by the Mayor and City Commission.

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### **Article III / Miscellaneous Provisions**

19. The Grant awarded herein is the result of an extensive public review process, which found that the Grantee is performing a public purpose through the programs, projects, and/or services recommended for support. As such, use of Grant Funds for any program component not meeting this condition will be considered a breach of the terms of this Agreement and will allow the City to seek remedies including, but not limited to, those outlined in this Agreement.

20. The Grantee also accepts and agrees to comply with the following Special Conditions:

The Grantee hereby agrees that it will comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), which prohibits discrimination on the basis of race, color, national origin, handicap, or sex.

The Grantee hereby agrees that it will comply with City of Miami Beach Human Rights Ordinance as codified in Chapter 62 of the City Code, as may be amended from time to time, prohibiting discrimination in employment, housing and public accommodations on account of actual or perceived race, color, national origin, religion, sex, intersexuality, gender identity, sexual orientation, marital and familial status, age, disability, ancestry, height, weight, domestic partner status, labor organization membership, familial situation, or political affiliation.

The City endorses, and Grantee shall comply with, the clear mandate of the Americans with Disabilities Act of 1990 (ADA) to remove barriers that prevents qualified individuals with disabilities from enjoying the same employment opportunities that are available to persons without disabilities.

The City also endorses the mandate of the Rehabilitation Act of 1973 and Section 504 and prohibits discrimination on the basis of disability. Accordingly, the City requires that Grant recipients provide equal access and equal opportunity and services without discrimination on the basis of any disability.

#### **21. GOVERNING LAW AND EXCLUSIVE VENUE**

This Agreement shall be governed by, and construed in accordance with, the laws of the State of Florida, both substantive and remedial, without regard to principles of conflict of laws. The exclusive venue for any litigation arising out of this Agreement shall be Miami-Dade County, Florida, if in State court, and the U.S. District Court, Southern District of Florida, if in federal court. BY ENTERING INTO THIS AGREEMENT, GRANTOR AND GRANTEE EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO, OR ARISING OUT OF, THIS AGREEMENT.

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