

AGREEMENT

Between

BROWARD COUNTY

and

CITY OF FORT LAUDERDALE, FLORIDA

for

BROWARD CULTURAL COUNCIL
CULTURAL INCENTIVE PROGRAM

FY2018

<u>INCENTIVE PROGRAM</u>	<u>INCENTIVE NUMBER</u>	<u>AMOUNT</u>
Cultural Tourism Program	CTP01-2018	\$25,000

This Agreement ("Agreement") is entered into by and between Broward County, a political subdivision of the State of Florida ("County"), and City of Fort Lauderdale, Florida, a municipality in the state of Florida ("Recipient").

RECITALS

- A. The Broward Cultural Council recommends funding to assist Recipient with services and approved expenses as specifically set forth in Article 4 and Exhibit A.
- B. 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 October 1, 2017 (the "Effective Date"), and shall end on September 30, 2018 ("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 Twenty-five Thousand Dollars (\$25,000). Payment shall be made only for services actually performed and completed pursuant to 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:

City of Fort Lauderdale, Florida
Attn: Gina Rivera, CPRP, Grants & Special Projects Coordinator
701 S. Andrews Avenue
Fort Lauderdale, Florida 33315

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 within thirty (30) calendar days after conclusion of the Project Period stated on Exhibit A. 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. The terms and conditions of this Agreement shall survive the termination or expiration of this Agreement.

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

7.1 Recipient is a state agency or other public entity covered under 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. 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.

- 7.2 Recipient shall furnish County with written verification of liability protection in accordance with the laws of the State of Florida prior to final execution of this Agreement.
- 7.3 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, at the Subcontractor's sole cost and expense and during the Term (as stated in Section 3.1) of the Agreement, insurance at least as broad as the insurance listed in "Exhibit C." Said Exhibit containing the Insurance Requirements Form are incorporated as if fully set forth herein (*Insurance Requirements Form attached hereto as "Exhibit C"*). Recipient shall ensure that County is listed as an additional insured on insurance policies required from the Subcontractor. Recipient shall ensure that all Subcontractors comply with these insurance requirements and any applicable state and federal laws.
- 7.4 County reserves the right to review and revise any insurance requirements, including, but not limited to, insurance coverages, deductibles, limits and endorsements.

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, through its Board or County Administrator, may terminate this Agreement upon ten (10) days' written notice by Contract Administrator 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 implement corrective action for audit deficiencies after ten (10) days' written notice by its Contract Administrator. 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. The Recipient is also a public entity subject to such laws. 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.

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. Subject to Florida laws (including Section 768.28, Florida Statutes), the 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.

- 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:

City of Fort Lauderdale, Florida
Parks & Recreation Department
Attn: Phil Thornburg, Director of P&RD
701 S. Andrews Avenue
Fort Lauderdale, Florida 33315
Email address: pthornburg@fortlauderdale.gov

- 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 5 ("Financial Information"), Article 7 ("Insurance"), Section 9.3 ("Audit Rights and Retention of Records"), Exhibit A ("Scope of Services"), Exhibit B ("Project Evaluation Report"), and Exhibit C ("Insurance Requirements Form").

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 post-judgment 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.

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

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement, Incentive Number CTP01-2018: Broward County, signing by and through the County Administrator, authorized to execute same by Board action, and the Recipient, City of Fort Lauderdale, Florida, signing by and through its _____, duly authorized to execute same.

COUNTY

BROWARD COUNTY, through its
County Administrator

WITNESSES:

Signature above

Print Name: _____

Signature above

Print Name: _____

By _____
County Administrator

____ day of _____, 2018

Insurance requirements
reviewed and assigned
by Broward County
Risk Management Division

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

By _____
Signature (Date)

Print Name and Title above

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

ASF:dp
2018-05-29 CTP01-2018 City of Fort Lauderdale FL.A01
05-29/18
60110

AGREEMENT BETWEEN BROWARD COUNTY AND CITY OF FORT LAUDERDALE,
FLORIDA, FOR BROWARD CULTURAL COUNCIL, CTP01-2018

RECIPIENT

WITNESSES:

City of Fort Lauderdale, Florida

Signature

LEE R. FELDMAN, City Manager

Print Name:_____

Signature

____ day of _____, 2018

Print Name:_____

ATTEST:

Approved as to form:
ALAIN E. BOILEAU, Interim City Attorney

JEFFREY A. MODARELLI

By: _____
KIMBERLY CUNNINGHAM MOSLEY
Assistant City Attorney

EXHIBIT "A"
SCOPE OF SERVICES

SCOPE OF SERVICES FOR AGREEMENT BETWEEN BROWARD COUNTY AND CITY OF FORT LAUDERDALE, FLORIDA, FOR BROWARD CULTURAL COUNCIL, CTP01-2018

Recipient has been awarded incentives under the following incentive program and in the amount specified:

Cultural Tourism Program CTP01-2018	\$25,000
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Funding for the program shall be paid to Recipient by County in accordance with the following:

Project Period ("Project Period"): Project Start Date: October 1, 2017	Project End Date: May 28, 2018
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- I. Project Title: "Memorial Day Weekend Beach - Great American Beach Party" (*"Project" or "project"*)
- II. SCOPE OF SERVICES: During the Project Period stated above and subject to Article 5, the Recipient shall provide:

Part (A): Project events

A Memorial Day Weekend Beach program consisting of arts and cultural events on May 26, 27, and 28, 2018, at the event site with the following boundaries: the Intracoastal Waterway on the west, the ocean on the east, Las Olas Boulevard on the south, and Cortez St. on the north. The Recipient shall obtain any necessary permits to ensure that State Road A1A, in the stated boundaries, will be closed during these activities. The Project shall reflect the full range of rich, diverse, historical, and contemporary cultural activity in Broward County, Florida, that will enhance the region as a cultural tourism destination, encouraging cultural tourism patronage. As described below in Part (B), the Recipient shall provide, promote, and advertise a local, regional, state, and national marketing campaign as part of the implementation of the Project and perform market research.

The Recipient, including its Parks and Recreation Department, shall collaborate with agencies such as the Greater Fort Lauderdale Convention & Visitors Bureau ("GFLCVB"), the Fort Lauderdale Beach Community Redevelopment Area ("Beach CRA"), and ArtServe, Inc. ("Artserve"), to produce a sustainable event on Fort Lauderdale Beach ("Beach") during Memorial Day Weekend by attracting tourists to the Beach. In partnership with ArtServe, the Recipient shall coordinate the selection of artists, placement and display of exhibits, for an art show in the community to be held on the Beach between North SR-A1A and East Las Olas Boulevard or within one-half (½) mile of the Beach. Artists shall also be allowed to

display and sell their sculptures, paintings, photography, and hand-made jewelry. The Recipient shall also promote and hold participatory Street Art or Chalk Art, and a sand sculpting competition.

Recipient shall coordinate a variety of music programming. In addition, the Recipient shall contract with different musical acts to perform during the 2018 Great American Beach Party project. The bands or musical performers that have been booked by Recipient include, but are not limited to: Lee Greenwood, Swahili Band, Shane Duncan, and Pocket Change. The event will occur during the Project Period which is within the County's fiscal year 2018.

Part (B) - Marketing:

The Recipient shall also provide a marketing and advertising campaign to support and promote Part (A), including the attraction of tourists for the Project. The Recipient's marketing and advertising campaign shall include the following: Creation of marketing publications including, but not limited to, rack cards or similar visitor communication tools; market locally (within Broward County, Florida), regionally (meaning at a minimum Broward, Miami-Dade and Palm Beach Counties), state of Florida, nationally (within the United States of America), and internationally (outside the United States of America), with the use of internet/web-based vehicles (such as e-blasts, press releases, blog posts, and annual guide distribution); internet international advertising; mailings; public relations; and signage advertising.

The Recipient's regional, local, and State of Florida marketing may be drawn from advertising in the following, including, but not limited to: advertising purchases with AAA Going Places; state travel bureaus (Travel Host, Great Locations; Florida Vacation Guide; and Florida Travel); and internet and web-based vehicles. Marketing may also be drawn from advertising in internet and web-based vehicles. International and national marketing may be performed through the Recipient's website, the internet, and the ArtsCalendar.com referenced in Section V. below.

Part (C) - Marketing Research for Parts (A) and (B) of the Project:

The Recipient shall perform marketing research, evaluation, and development services, including, but not limited to, surveys of patrons, tourists (including, but not limited to, the number of hotels nights (bed nights) and how Parts (A) and (B) promotion, advertisement, and events impact tourists and tourism), and the local general public; research studies; and reporting and evaluation with relation to the Recipient's Project. The goal of the marketing research is to strengthen the Project's ability to work with Broward's county-wide cultural community, hospitality interests, tourism industry, and commercial establishments.

The Recipient shall be responsible for overall management and operation of its Project and shall be responsible for maintaining documentation and for providing the required matching funds for the Project, as required.

Recipient's promotion and advertisement of tourism may be performed through the Recipient's website, the internet, and ArtsCalendar.com as stated below in Section V, other electronic medium, or other advertising medium. If Recipient uses any of the awarded funds for any activity, service, venue, or event as specifically approved by the County in this Agreement, then the Recipient shall ensure that such activity, service, venue, or event must have, as one of its main purposes, the attraction of tourists as evidenced by the promotion of the activity, service, venue, or event to tourists.

The award of the funds by County and the expenditures by the Recipient of the awarded funds (consisting of tourist development tax funds) shall comply with the express authorized use(s) of such funds pursuant to Section 125.0104, Florida Statutes. The Recipient shall ensure that the awarded funds are used solely for the expenditures approved by the County under this Agreement as expressly permitted by Section 125.0104, Florida Statutes. The Recipient shall provide documentation sufficient to substantiate same to County within sixty (60) day after County's request.

- III. a. County's not-to-exceed funds: \$25,000.
- b. Recipient's total funds: \$25,000.
- c. Match requirements: Dollar for dollar (cash one-to-one).

IV. DEFINITION OF UNIT(S) OF SERVICE(S):

Subject to the Recipient's compliance with all requirements and the provisions of required documentation, the County will purchase reimbursable project expenses associated with the following:

The County will purchase reimbursable project expenses associated with the following: Part (A): Seventeen Thousand Five Hundred (17,500) units at a cost of one (\$1.00) dollar per unit, for outside professional artistic fees for music programming and production, as described above in Section II, Part (A) above, but only after the Recipient has satisfied its cash funds match obligation, and provided written documentation as proof of same to the County.

The County will purchase reimbursable project expenses associated with the following: Part (B): Five Thousand (5,000) units at a cost of one (\$1.00) dollar per unit, for the creation of a regional and state marketing and advertising campaign, as described above in Section II, Part (B) above, but only after the Recipient has satisfied its cash funds match obligation, and provided written documentation as proof of same to the County.

The County will purchase reimbursable project expenses associated with the following: Part (C): Two Thousand Five Hundred (2,500) units at a cost of one (\$1.00) dollar per unit, for marketing research and evaluation services, as described above in Section II, Part (C) above, but only after the Recipient has

satisfied its cash funds match obligation, and provided written documentation as proof of same to the County.

During the Project's scheduled implementation time period which shall occur within the Project Period, the amount to be purchased by the County shall not exceed \$25,000 and shall only be payable to Recipient after the Recipient has satisfied its cash funds match obligation and provided written documentation of same as proof of such satisfaction to County.

V. REQUIRED DOCUMENTATION OF SERVICES RENDERED:

The Recipient shall provide, as an attachment to each unit of service invoice, a brief narrative description of services provided during the billing period and copies of program books (playbills) or similar documentation for any cultural activities presented by the Recipient.

Additionally, the Recipient shall document the expenditure of the incentive (grant) funds and the equivalent Recipient's cash funds match in the qualifying funding categories for each unit of service expended by the Recipient.

The Recipient shall provide a detailed outline of marketing activities tied to each market segment, copies of paid marketing invoices, and corresponding marketing materials provided during the period covered in the units of service invoice. Activities listed shall be grouped by the same categories as those appearing in the Scope of Services section in Section II above.

The final invoice shall include documentation of the completion of all items not previously submitted, as required.

If a program or event was provided by the Recipient during the invoiced period, a list of the funded programs, or events, that were added into the ArtsCalendar.com event schedule, or other documentation that the event took place, must be attached to the invoice.

Attribution of the Funder:

During the Term, the Recipient shall post the ArtsCalendar.com banner web link (<http://www.artscalendar.com/>) on Recipient's website, if any. For instructions, the Recipient can go to:

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

There is no need for the Recipient to upload any images to the Recipient's website since the Recipient can simply copy the arts calendar code from the County's Cultural Division's website or the applicable grant program guidelines into the body of the Recipient's webpage at its designated location. The logo will appear in the location linked to ArtsCalendar.com which is the leading online resource for arts and cultural information for the Broward County community. The Recipient shall acknowledge the County's funding with the correct attribution statement and

County logo, as specifically outlined in the incentive program's guidelines. For instructions, the Recipient can go to:

[http://www.broward.org/ARTS/MARKETING:](http://www.broward.org/ARTS/MARKETING)
[http://www.broward.org/Arts/Funding/Pages/Logos.aspx.](http://www.broward.org/Arts/Funding/Pages/Logos.aspx)

Invoicing:

The Recipient shall send the following to central Accounts Payable via email: (AccountsPayable@Broward.org):

- Typewritten invoice using County prepared invoice format – Do not handwrite invoices.
- Purchase Order (P.O.) Number must be on the invoice.
Note – P.O. number will be provided by the County.
- Invoice must be certified by Chief Executive or authorized officer.
- Invoices must be signed in blue ink, scanned and sent in color (not black and white).
- No invoices will be accepted after 60 days beyond the end of the Term (as described in Section 3.1) and as provided in Article 4 of the Agreement.
- Do not send supporting documents.

Recipient shall send the following to the Cultural Division via email (only electronic copies are accepted) to staff members:

Chantel Seamore (CSeamore@Broward.org) and Michelle Oplesch (MOplesch@Broward.org):

- A copy of the invoice that was 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, and/or brochures (with Broward Cultural Division logo and attribution statement) from the events.
 - Documentation of grant fund expenditures (County's CAEP, TDT, and CTP Grants only).
 - Documentation of matching funds (County's TDT and CTP Grants only).
 - Signed attendance logs/reports (County's CDP and CAEP Grants only).
 - Other information as required by the grant agreement.

Exhibit B - The Project Evaluation Report is due in as provided in Articles 2 and 5.

VI. Funding Categories for which County and Recipient matching funds shall be used:

(As shown on the following table)

FUNDING CATEGORIES	
Cultural Incentive Program Funds	Recipient's Funds or Match
Outside Professional Services - Artistic - "Memorial Day Weekend Beach - Great American Beach Party"	Outside Professional Services - Artistic - "Memorial Day Weekend Beach - Great American Beach Party"
Marketing - "Memorial Day Weekend Beach - Great American Beach Party"	Marketing - "Memorial Day Weekend Beach - Great American Beach Party"
Research and Evaluation - "Memorial Day Weekend Beach - Great American Beach Party"	Research and Evaluation - "Memorial Day Weekend Beach - Great American Beach Party"
	Personnel - Administrative
	Personnel - Artistic
	Personnel - Technical/Production
Remaining Operating Expenses - "Memorial Day Weekend Beach - Great American Beach Party"	Remaining Operating Expenses - "Memorial Day Weekend Beach - Great American Beach Party"
TOTAL: \$25,000	TOTAL: \$25,000

VII. Funded activities.

All funded activities shall occur in Broward County solely during the Project Period stated above. Notwithstanding the date that this Agreement is fully executed, the Agreement shall commence on the Effective Date stated in Section 3.1. Upon execution, the County's obligations will commence subject to the Recipient's compliance with all requirements, including Article 5, "Financial Information." The County represents that the Recipient cannot rely upon the funding provided in this Agreement until the Recipient is in receipt of a fully executed Agreement signed by the County.

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EXHIBIT B
 BROWARD CULTURAL COUNCIL
CULTURAL TOURISM PROGRAM PROJECT EVALUATION REPORT

This Cultural Tourism Program ("CTP") project evaluation report must be filed with the Cultural Division no later than 30 day after completion of the project period. "Your" shall meant the "Organization" named below.

Organization:	
Mailing address:	
Project Director: Title:	Telephone: _____ Ext. _____ Fax: _____
Project Title:	BCC # CTP _____.
Project began:	Total Cost of Project: \$ _____
Project ended:	Award: \$ _____
FESTIVAL PROJECTS - COMPLETE THIS SECTION. - >	Net revenue derived from the festival: \$ _____

1. PROGRAM INFORMATION

A. For all of the organization's CTP-funded activities, list dates, locations, titles, and participating artists.

<u>Event</u>	<u>Date(s)</u>	<u>Location</u>	<u>Artists</u>
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B. Provide information on the personnel involved in the project.

Number	Artists	Administrative Staff	Other Staff	Board	TOTALS
Full-time					
Part-time					
Volunteers					
TOTALS					

2. AUDIENCE TOURISM IMPACT INFORMATION

A. How many individuals attended the organization's CTP project activities? What percentage of these attendees were tourists? _____% How did you determine each of these statistics?

B. Provide numbers for all applicable categories:

Category	Participants/ Performers	Number of Hotel/Motel Room Nights	Audience	Number of Hotel/Motel room nights
Broward County Residents				
Dade County Residents				
Palm Beach County Residents				
Other Florida (non-Broward)				
Out-of -state				
Foreign				
TOTAL				

What percentage of the tourists rented or leased transient accommodations? _____%

- C. Describe your organization's marketing activities specifically designed to attract tourists. Please be inclusive. Indicate whether your organization, the Greater Fort Lauderdale Convention and Visitors Bureau office, or another agency was responsible for each activity.
- | <u>Marketing Activity</u> | <u>Responsible Party</u> |
|---------------------------|--------------------------|
|---------------------------|--------------------------|

- D. What were the most effective elements of your marketing plan? Did you find that particular media placements generated better response? Identify.

- E. As a result of your experience with this CTP project, do you plan to employ some different marketing/publicity tactics with future tourism projects? Explain.

3. FINANCIAL INFORMATION

- A. Was admission charged to your CTP project events? Yes No.

If Yes, range of admission (ticket) charges: \$_____ to \$_____.

- B. Total organization budget for year in which the CTP project took place:

Revenues: \$_____ Expenditures: \$_____.

4. REQUIRED ATTACHMENTS:

- _____ Detailed explanation of how you worked with key partners on your CTP project: A) With Cultural Tourism Director. B) With hoteliers, travel agents, or other travel industry representatives. C) With other cultural organizations.
- _____ Enclose EITHER two (2) quality black and white, OR two (2) color first generation (an original, not a copy) photographs. Electronic/digitized images that clearly document the organization's funded activity are preferred.
- _____ Copies of all promotional materials utilized for the funded project, including Broward County logo and funding statement and CVB logo.
- _____ Copies of media buys, including print ads and recordings of electronic media ads.
- _____ Copy of sample tourism survey form, and a copy of the survey with the tabulated results of survey questions and the tabulated zip code results.
- _____ Attach the geographic location template (excel).

CERTIFICATION: The undersigned certify that the information provided in this Project Evaluation Report is true and correct, and Broward County funds were expended solely for the purpose of the approved funded activity.

Signature - Chief Executive Officer	Signature - Project Director
Typed name of CEO:	Typed name of Project Director:
Date:	Date:

To submit this Project Evaluation Report, Exhibit B, ONLINE

Go to your ACCOUNT profile page, and log on:

https://www.GrantRequest.com/SID_391?SA=AM

In your Account profile...Click on REQUIREMENTS tab (next to Applications tab) and click on the 'OPEN Requirement' link to launch the "Exhibit B Project Report" template published to your award. Complete the input fields with your data, and upload with the Attachment files, and submit. Some of the fields in the report are already pre-populated with data associated with this request.

If you have questions about the online **Requirement** process, please contact

**Broward Cultural Division
Incentives Section
100 South Andrews Avenue, 6th Floor
Fort Lauderdale, FL 33301-1829**

James Shermer, Grants Administrator 954-357-7502
jshermer@broward.org


Adriane Clarke, Grants Management Specialist 954-357-7530
aclarke@broward.org
<http://www.broward.org/arts/Pages/Default.aspx>

EXHIBIT C

INSURANCE REQUIREMENTS

ASSIGNED CATEGORY 3

Cultural Division Grants Program - Contract Manager: James Shermer

TYPE OF INSURANCE	ADDL INSD	SUBR WVD	MINIMUM LIABILITY LIMITS		
				Each Occurrence	Aggregate
GENERAL LIABILITY - Broad form <input checked="" type="checkbox"/> Commercial General Liability <input checked="" type="checkbox"/> Premises-Operations <input type="checkbox"/> XCU Explosion/Collapse/Underground <input type="checkbox"/> Products/Completed Operations Hazard <input checked="" type="checkbox"/> Contractual Insurance <input checked="" type="checkbox"/> Broad Form Property Damage <input type="checkbox"/> Independent Contractors <input checked="" type="checkbox"/> Personal Injury and Advertising <input type="checkbox"/> Liquor Liability coverage <input type="checkbox"/> Child Molestation coverage Per Occurrence or Claims-Made: <input checked="" type="checkbox"/> Per Occurrence <input type="checkbox"/> Claims-Made Gen'l Aggregate Limit Applies per: <input type="checkbox"/> Project <input type="checkbox"/> Policy <input type="checkbox"/> Loc. <input type="checkbox"/> Other _____	<input checked="" type="checkbox"/>		Bodily Injury		
			Property Damage		
			Combined Bodily Injury and Property Damage	\$300,000	\$300,000
			Personal Injury		
			Products & Completed Operations		
AUTO LIABILITY <input checked="" type="checkbox"/> Comprehensive Form <input checked="" type="checkbox"/> Owned <input checked="" type="checkbox"/> Hired <input checked="" type="checkbox"/> Non-owned <input checked="" type="checkbox"/> Any Auto, If applicable <i>Note: May be waived if no driving will be done in performance of services/project.</i>	<input checked="" type="checkbox"/>		Bodily Injury (each person)		
			Bodily Injury (each accident)		
			Property Damage		
			Combined Bodily Injury and Property Damage	\$300,000	
<input checked="" type="checkbox"/> WORKER'S COMPENSATION <i>as applicable in accordance with Chapter 440, Fla. Stat.</i>	N/A		Each Accident	STATUTORY LIMITS	
<input checked="" type="checkbox"/> EMPLOYER'S LIABILITY <i>as applicable in accordance with Chapter 440, Fla. Stat.</i>			Each Accident	\$ 100,000	
Description of Operations: "Broward County" shall be listed as Certificate Holder and endorsed as an additional insured for liability. Policies shall be endorsed to provide 30 days written notice of cancellation to Certificate Holder, 10 days' notice of cancellation for non-payment. Contractors insurance shall provide primary coverage and shall not require contribution from Certificate Holder. *Contractor is responsible for <u>all</u> Deductibles.					
CERTIFICATE HOLDER: Broward County 115 South Andrews Avenue Fort Lauderdale, Florida 33301 Attention: Cultural Division			 <small>dc=cty, dc=broward, dc=bc, ou=Organization, ou=BCC, ou=RM, ou=Users, cn=JACQUELINE LOVE 2017.11.02 10:48:53 -0400'</small> <hr/> Risk Management Division		