



**AGREEMENT BETWEEN BROWARD COUNTY AND CITY OF FORT LAUDERDALE, FLORIDA FOR
BROWARDCULTURAL COUNCIL CULTURAL INCENTIVE PROGRAM FY 2021**

<u>INCENTIVE PROGRAM</u>	<u>INCENTIVE NUMBER</u>	<u>AMOUNT</u>
Cultural Tourism Program	CTP01-2021	\$27,600

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

2.3. Change of Scope Procedures. Recipient acknowledges that the Contract Administrator has no authority to make changes that would increase, decrease, or otherwise modify the scope of Services unless specifically authorized by 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 October 1, 2020 (the “Effective Date”) and ends on September 30, 2021 (“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 any extensions as provided in Article 3, County will pay Recipient up to a maximum of Twenty-Seven Thousand Six Hundred Dollars (\$27,600). 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:

City of Fort Lauderdale, Florida
Attn: Phil Thornburg, Director of P&RD
701 S. Andrews Ave.
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.

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 after the conclusion of the Project Period described in Exhibit A. 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 as further detailed in Exhibit A. The provisions of this article will survive the termination or expiration of this Agreement.

ARTICLE 6. 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 7. INSURANCE

7.1. 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.

7.2. 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.

7.3. 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.

7.4. 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.

7.5. 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 8. TERMINATION

8.1. 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.

8.2. 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 the 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.

8.3. 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.

8.4. If the County Administrator determines, in her or his sole discretion, that, during the Term of this Agreement, Recipient has failed to fully comply with the terms of any other agreement(s) between Recipient and County ("Other Agreement"), County may: (a) withhold any amounts due under this Agreement that has not yet been paid to Recipient until Recipient is deemed by County Administrator to be in compliance with the Other Agreement; (b) set off any unpaid amounts due under this Agreement against any amounts County claims that Recipient owes pursuant to the Other Agreement; or (c) immediately terminate this Agreement with no further amounts to be owed or paid to Recipient hereunder. The remedies provided for in this section are cumulative with any other remedies that County may have against Recipient under this Agreement or the Other Agreement.

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

8.6. Notice of termination must be provided in accordance with the "Notices" section.

8.7. 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 9. MISCELLANEOUS

9.1. 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 rights, 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.

9.2. 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.

9.3. 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 Subcontractors performing Services relating to this Agreement.

9.4. 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.

9.5. 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.

9.6. 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: pdunlap@broward.org

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

FOR RECIPIENT:

City of Fort Lauderdale, Florida
Parks & Recreation Department
Attn: Mr. Phil Thornburg, Director of P&RD
701 S. Andrews Ave.
Fort Lauderdale, Florida 33315
Email address: pthornburg@fortlauderdale.gov
With simultaneous e-mail to: LOsamor@fortlauderdale.gov

9.7. 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.

9.8. 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.

9.9. 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.

9.10. 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.

9.11. 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.

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

9.13. 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.

9.14. 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.

9.15. 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.**

9.16. 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.

9.17. 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.

9.18. Payable Interest.

9.18.1. 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.

9.18.2. 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).

9.19. 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.

9.20. 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.

9.21. 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.

9.22. 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.

9.23. 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.

9.24. 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.

9.25. 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.

9.26. 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.

9.27. 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.

9.28. 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.

9.29. 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.

9.30. 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.

9.31. 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.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the Parties have made and executed this Agreement, Incentive Number CTP01-2021: Broward County, signing by and through the County Administrator, authorized to execute same by Board action, and Recipient, City of Fort Lauderdale, Florida, signing by and through its City Manager, 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: _____
Sara F. Cohen (Date)
Assistant County Attorney

By: _____
Nathaniel A. Klitsberg (Date)
Senior Assistant County Attorney

SC
City of Ft Lauderdale FY 21
5/21/21

AGREEMENT BETWEEN BROWARD COUNTY AND CITY OF FORT LAUDERDALE, FLORIDA, FOR
BROWARD CULTURAL COUNCIL CULTURAL INCENTIVE PROGRAM FY 2021

RECIPIENT

WITNESS

City of Fort Lauderdale, Florida

Signature above

Dean J. Trantalis, Mayor

Print Name:_____

_____ day of _____, 2021

Signature above

Christopher J. Lagerbloom, ICMA-CM
City Manager

Print Name:_____

ATTEST:

Approved as to form:
Alain E. Boileau, City Attorney

Jeffery A. Modarelli, City Clerk

Tania M. Amar, Assistant City Attorney

(SEAL)

EXHIBIT A – SCOPE OF SERVICES

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

<u>Program:</u>	Cultural Tourism Program CTP01-2021	<u>Maximum Incentive Amount:</u>	\$27,600
<u>Project Period Start Date:</u>	October 1, 2020	<u>Project Period End Date:</u>	May 29, 2021

I. SERVICES.

Project Title: "Memorial Day Weekend - Great American Beach Party"

During the Project Period stated above and subject to Article 5, the Recipient shall provide: Memorial Day Weekend - Great American Beach Party program ("Project") an arts and cultural events on May 29, 2021, from 11:30 AM to 6:30 PM, at the event site: Las Olas Oceanside Park, 3000 East Las Olas Blvd., Fort Lauderdale, FL 33316. The Project will reflect the full range of rich, diverse, historical, and contemporary cultural activity in Broward County, Florida, and will enhance the region as a cultural destination, encouraging cultural tourism patronage. As described below in Part B, a local, regional, state, and national marketing campaign will be provided to promote and advertise the implementation of the Project and perform market research. Recipient shall use funds provided by the County to support the following:

Part A – Artistic Programming: The Recipient, including its Parks & Recreation Department, will collaborate with agencies such as the Greater Fort Lauderdale Convention & Visitors Bureau, the Fort Lauderdale Beach Community Redevelopment Area (Beach CRA), and ArtServe, Inc., to produce a sustainable event during Memorial Day Weekend by attracting tourists to Broward County, FL. In partnership with ArtServe, Inc., the Recipient will coordinate the selection of artists, placement, and display of exhibitory for an art show in the community. Artists will also be allowed to display and sell their sculptures, paintings, photography, and hand-made jewelry. Participatory sand sculpting competition will also be promoted and provided by the Recipient. Recipient will coordinate and provide a variety of music programming, and the Recipient will contract different musical ensembles to perform during the Project. The professional artistic services engaged by Recipient to perform may include but are not limited to: national recording artist: "Lonestar," local blues artists: "Pitbull of Blues," and local reggae artists: "Big Harvest."

Part B - Marketing: A marketing and advertising campaign will be provided 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; local, regional, state of Florida, national, and internationally, with internet/web-based vehicles (such as e-blasts, press releases, blog posts, annual guide distribution); internet international advertising; mailings; public relations; signage.

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

Part C - Marketing Research for Parts A and B of the Project includes: The Recipient will 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 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 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 this Project and shall be responsible for maintaining documentation and providing the required matching funds for the Project, as described above.

Such promotion and advertisement of tourism may be performed through the Recipient's website and internet, the 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 upon request.

Venue: This project will take place at Las Olas Oceanside Park, 3000 East Las Olas Blvd., Fort Lauderdale, FL 33316, 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 and must comply with all applicable laws.

II. Unit of Service.

- a. County's total maximum not-to-exceed funds: \$27,600.

- b. Recipient's total funds: \$27,600.
- c. Match requirements: Dollar for dollar (cash one-to-one).

	FUNDING CATEGORIES	CTP Funds	Recipient Cash Match 1:1	Total Project
Part A.	Artistic Programming	\$20,100	\$20,100	\$40,200
Part B.	Marketing	\$5,000	\$5,000	\$10,000
Part C.	Research and Evaluation	\$2,500	\$2,500	\$5,000
Total		\$27,600	\$27,600	\$55,200

The Recipient shall first expend the required awarded funds and an equivalent amount of the Recipient's matching funds before invoicing for the portion of the County's reimbursement share.

The County shall not make advance payments to Recipient. No County grant may be used as matching funds for another County grant. Recipient must show proof of spending on qualified expenses described above.

The Recipient shall be responsible for overall management and operation of this Project and shall be responsible for maintaining documentation and providing the required matching funds for the Project, as described above. County's funds shall not be used for; salaries of regular full-time administrative staff, or supplements for the salaries of existing full-time or part-time administrative staff.

A unit of service is defined as follows:

Part A: One dollar (\$1.00) of expenditure used for outside professional artistic fees for music programming and production, as described above in Section I.

Part B: One dollar (\$1.00) of expenditure used for a marketing, promotional and advertising campaign to support and promote Part A, as described above in Section I.

Part C: One dollar (\$1.00) of expenditure used for marketing research and evaluation services, as described above in Section I., as described above in Section I.

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 agrees to purchase reimbursable Project expenses associated with the following:

Part A: Twenty thousand one hundred (20,100) 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 I.

Part B: Five thousand (5,000) units at a cost of one (\$1.00) dollar per unit, for the creation of a regional, state, national marketing, and advertising campaign, as described above in Section I.

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 I.

During the Project's scheduled implementation time period during the Project Period, the amount to be purchased by the County shall not exceed Twenty-seven Thousand Six Hundred Dollars (\$27,600) and shall only be payable to Recipient after the Recipient has satisfied its funds (cash) match obligation and provided written documentation of same as proof of such satisfaction to County.

Note: For the Cultural Tourism Program (CTP award), funded programming must be for events that involve engagement with in-person audiences and tourists, on-site in Broward County, FL, will be permitted. Virtual and streaming content cannot be funded with the funds from the Cultural Tourism Program (CTP) award.

Method of Billing and Payment: 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 ninety (90) 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.

III. FUNDED ACTIVITIES.

All funded activities must occur solely during the Project Period.

PROJECT FUNDING CATEGORIES	
Cultural Incentive Program Funds For Cultural Tourism Program	RECIPIENT's Funds or Match
Outside Professional Services	Outside Professional Services
Marketing Campaign	Marketing Campaign
Research and Evaluation	Research and Evaluation
MAXIMUM NOT-TO-EXCEED TOTAL: \$27,600.	MAXIMUM NOT-TO-EXCEED TOTAL: \$27,600.

All funded activities shall occur in Broward County solely during the Project Period stated above. Notwithstanding the date that this Agreement is fully executed by the Parties, the Agreement shall commence on the Effective Date stated in Section 3.1. Upon execution, County's payment

obligation will commence subject to Recipient's compliance with all requirements, including Article 5, "Financial Information." Recipient shall not rely upon the funding provided in this Agreement unless and until the Agreement is fully executed.

IV. REQUIRED DOCUMENTATION OF SERVICES RENDERED.

- A. 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.

Additionally, the Recipient shall document the expenditure of the incentive funds and the Recipient's equivalent cash match in the qualifying funding categories for each unit of service expended. The Recipient shall provide a detailed outline of marketing activities tied to each market segment, copies of paid 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.

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

- B. Project Compliance: In accordance with Article 5 of this Agreement, Recipient (acknowledging that County staff is required to periodically attend events funded under this Program to verify that the Services provided comply with the terms of the Agreement) must provide to the Contract Administrator general public free admission tickets/admission to the Project. Entry to the Project by County staff for verification purposes will be at no additional cost to County. County has developed policies and procedures to determine which projects are subject to this provision, the number of staff members required to attend, and other criteria to verify compliance. County will be reasonable in its request for admission to the funded Project, and Recipient will provide all required admission documents no less than forty-eight (48) hours (2 days) before the start of the Project or event. Recipient must ensure that County is provided reasonable access to the Project in order to satisfy its obligations under this provision.

V. ATTRIBUTION OF THE FUNDER.

During the Term of this Agreement, Recipient will post the 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>.

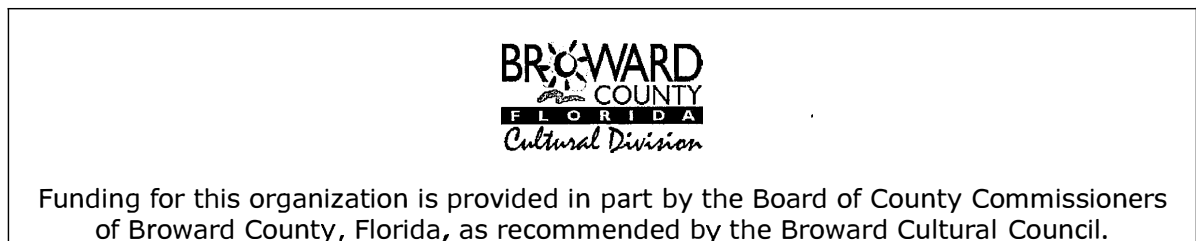
Recipient is not required to upload any images to Recipient’s website because Recipient can simply copy the arts calendar code into the body of Recipient’s webpage at its designated location. The logo will appear in the location linked to artscalendar.com website, which is the leading online resource 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



Attribution statement for Cultural Tourism Program and Tourist Development Program

Table 2: Example



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 to County’s Cultural Division via email to County’s staff members: Chantel Seamore (CSeamore@Broward.org) and Erica Mohan (EMohan@broward.org) only electronic copies of the following:

- **An electronic copy of the invoice containing:**
 - Typewritten prepared invoice using County’s invoice form (do not handwrite invoices)
 - Purchase Order (“P.O.”) number must be on the invoice (provided by the County)
 - Invoice must be certified by Chief Executive Officer or by an authorized officer
 - Invoices must be signed in blue ink, scanned, and sent in color (not black and white)
 - Final invoice must be submitted no later than 8/31/21.
- **An electronic copy of supporting documents containing:**
 - Brief narrative of Services
 - Include brief description of activities and list hours worked by staff
 - Unit of service must correspond precisely to the information provided in this Exhibit
 - 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”), Cultural Festival Program (“CFP”), Tourist Development Tax (“TDT”), and Cultural Tourism Program (“CTP”) grants only]
 - Documentation of matching funds (for County’s CFP, 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):**
 - Project Reports will be accepted after 30 days beyond the end of the Term or project period; or no later than 10/30/21, whichever occurs first and as required by Article 5.

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.

Event	Date (s)	Location	Artists
-------	----------	----------	---------

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 IM PACT INFORM ATION

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>
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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:
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](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

EXHIBIT C
CULTURAL INCENTIVE GRANT
PROGRAMS
Assignment of Insurance Requirements

Insurance Requirements Waived

General Considerations

- Event is not held on County property, and;
- Amount of grant does not exceed \$7,500 – insurance requirements waived.

For General Operating Support Grants...

- Grantee does not operate on County Property and;
- County is providing funding ONLY and is not an active participant in the management and operations of grantee and;
- Amount of grant does not exceed 25% of the grantee organization's annual operating expenses

For Program Support Grants...

- Event does not take place on county-owned property
- County is providing funding ONLY and is not an active participant in the execution of the program/project
- Amount of grant does not exceed 50% of the total program/project cost