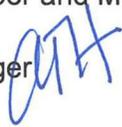


# MIAMI BEACH

City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139, www.miamibeachfl.gov

## COMMISSION MEMORANDUM

TO: Honorable Mayor Dan Gelber and Members of the City Commission

FROM: Alina T. Hudak, City Manager 

DATE: March 27, 2023

**SUBJECT: A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, APPROVING FORM OF GRANT AGREEMENT TO BE EXECUTED BY ORGANIZATIONS RECEIVING GRANT AWARDS FUNDED FROM THE PROCEEDS OF THE CONTEMPLATED GENERAL OBLIGATION BOND FOR ARTS & CULTURE ISSUANCE; AND FURTHER AUTHORIZING THE CITY MANAGER AND CITY CLERK TO EXECUTE A GRANT AGREEMENT WITH EACH OF THE G.O. BOND GRANTEEES WITH THE AMOUNT OF GRANT AWARD AND ADDITIONAL PUBLIC BENEFIT FOR EACH GRANTEE TO BE APPROVED BY THE CITY COMMISSION.**

### BACKGROUND

At the July 20, 2022 Commission meeting, the Mayor and Commission approved Resolution No. 2022-32261, authorizing a special election, submitting to the electorate of the City of Miami Beach the question asking whether the City shall be authorized to issue general obligation bonds, not exceeding \$159,000,000, to improve facilities for resiliency of arts and cultural institutions throughout the City (the "G.O. Bonds for Arts & Culture"), including museums, performance venues, artistic playgrounds, senior/cultural centers, botanical garden, aquatic sculpture park, and related artist/workforce housing.

On November 8, 2022, the voters of the City of Miami Beach approved the issuance of \$159 million in Arts and Culture Bonds as follows:

For Bonds	15,142	64.80%
Against Bonds	8,226	35.20%

### ANALYSIS

Some of the projects that will be funded by the G.O. Bonds for Arts & Culture will require the City to enter into grant agreements with the recipient cultural institutions, and at the November 16, 2022 Commission meeting, the Mayor and Commission approved Resolution No. 2022-32405 directing the Administration and City Attorney's Office to negotiate and secure public benefits for residents of the City as part of the grant agreements. By way of example, the public benefits to be secured by the City in the grant agreements could include public access requirements, discounted tickets to residents and free performances or other activations.

The City Attorney's office, working with City staff that will be involved in the deployment of the G.O. Bond for Arts & Culture, prepared a form of grant agreement (the "Grant Agreement Template") to be executed by the cultural arts institutions that will receive grants funded by the G.O. Bond for Arts & Culture. The Grant Agreement Template, a copy of which is attached as **Exhibit A** to this Resolution, was reviewed and approved by bond counsel and tax counsel. The Office of the Inspector General was afforded the opportunity to provide comments to the Grant Agreement Template.

Key provisions in the Grant Agreement Template include the following:

- Agreement will establish amount of grant to be funded to the Grantee on a reimbursement basis (amount of each grant will be subject to Commission approval) (Section 1.2)
- Grantee is required to provide an additional public benefit in accordance with Resolution No. 2022-32405 (Section 1.3)
- City's obligation to fund contingent upon (a) actual issuance of bonds and (b) continuing permissibility of funding under applicable law (Section 1.4)
- Grantee may use grant award solely to pay for capital expenditures; funds may not be used for any other purpose including to pay for operating expenses, ordinary maintenance and repairs (Section 1.5)
- For 25 years from completion, Grantee must (a) maintain the Project, (b) keep the Project open to all Miami Beach residents and members of the general public, (c) use the facility improved and/or equipment acquired for the benefit of the Public and (d) allow all Miami Beach residents and visitors equal access and use of the Project (Section 1.5)
- Agreement will establish a timeframe for the Grantee to achieve Substantial Completion (Section 1.6)
- Agreement will include an exhibit reflecting the Grantee's total budget, funding sources (including the grant award) and cash flow schedule (Section 2.1)
- Grantee solely responsible for cost overruns (Section 2.2)
- Grantee must submit reimbursement requests in accordance with a form to be attached as an exhibit, along with supporting documentation (Sections 2.5(a) and (b))
- Grantee must submit monthly and annual status reports throughout the course of the Project (Section 2.5(d) and 2.9)
- City Manager may monitor and evaluate Grantee's operations and the Project (Section 3.1)
- City Manager may request return of funds if used for non-Project costs (Section 3.1)
- The City Manager has customary audit rights (Section 3.2)
- The Office of the Inspector General has customary audit rights (Section 3.3)
- The Agreement includes standard insurance and indemnification provisions (Article 4)
- The Agreement includes customary legal compliance provisions, including anti-discrimination and public records act requirements (Article 5)
- The Agreement includes customary default provisions (Article 6); if Grantee improperly uses Grant funding, the City may require the Grantee to reimburse the City for all grant funding provided, in addition to other remedies

**CONCLUSION**

The Administration recommends that the Mayor and City Commission approve the Grant Agreement Template and authorize the City Manager to execute agreements in the form of the Grant Agreement Template with each of the G.O. Bond for Arts & Culture grantees, with the amount of grant award and additional public benefit for each grantee to be approved by the City Commission.

**Applicable Area**

**Is this a “Residents Right To Know” item, pursuant to City Code Section 2-17?**

**Does this item Utilize G.O. Bond Funds?**

No

Yes

**Attachment:**

**Exhibit A – Form of G.O. Bond for Arts and Culture Grant Agreement**

**EXHIBIT A**  
**FORM OF GRANT AGREEMENT FOR G.O. BOND FOR ARTS & CULTURE GRANTEEES**

**G.O. BOND FOR ARTS & CULTURE**  
**GRANT AGREEMENT**

This **GRANT AGREEMENT** (this "Agreement") is made as of this \_\_\_\_ day of \_\_\_\_\_, 2023 (the "Effective Date"), by and between the City of Miami Beach, Florida, a municipal corporation duly organized and existing under the laws of the State of Florida (the "City"), and \_\_\_\_\_, a Florida not-for-profit corporation ("Grantee") (the City and Grantee each, a "Party" and collectively, the "Parties").

**RECITALS**

**WHEREAS**, [Describe Grantee, its existing facilities and public benefits], as more particularly described in Exhibit A; and

**WHEREAS**, [Describe any pre-existing agreements between the City and Grantee, if relevant]; and

**WHEREAS**, on July 20, 2022, the Mayor and City Commission of the City of Miami Beach approved Resolution No. 2022-32261 calling for a November 8, 2022 special election for the purpose of submitting to the electorate of the City of Miami Beach a question asking whether the City should be authorized to issue general obligation bonds, from time to time, not exceeding \$159,000,000 in aggregate principal amount (the "Bonds"), payable from unlimited ad valorem taxes, to improve facilities for resiliency of arts and cultural institutions throughout the City, including museums, performance venues, artistic playgrounds, senior/cultural centers, botanical garden, aquatic sculpture park and related artist/workforce housing (the "GO Bond for Arts and Culture Program" or the "GOBAC Program"); and

**WHEREAS**, a majority of the City's residents who voted in the November 8, 2022 special election approved the GO Bond for Arts and Culture Program; and

**WHEREAS**, Resolution 2022-32261 contemplated that if approved in the referendum, the GO Bond for Arts and Culture Program would provide funding for specific projects; and

**WHEREAS**, the Grantee is undertaking [INSERT PROJECT DESCRIPTION] (the "Project"), as more specifically described in Exhibit B, which was specifically approved as part of the GOBAC Program or is otherwise eligible for funding through the GOBAC Program; and

**WHEREAS**, the Project is estimated to cost \$ \_\_\_\_\_ and will be funded from the sources listed in Exhibit C, including funding from the GOBAC Program, subject to and contingent upon the availability of GOBAC Program proceeds; and

**WHEREAS**, the Project is eligible for funding from the GO Bond for Arts and Culture Program in a total amount not to exceed \$ \_\_\_\_\_; and

**WHEREAS**, the Project will result in physical improvements to an area, facility, resource or site to increase its ability or capacity to serve the public; and

**WHEREAS**, on November 16, 2022, the Mayor and City Commission of the City of Miami Beach approved Resolution No. 2022-32405 requiring the City Administration and the Office of the City Attorney to negotiate and secure public benefits in the grant agreements with each cultural arts organization that receives GOBAC Program proceeds; and

**WHEREAS**, the Mayor and City Commission of the City of Miami Beach and the governing board of the Grantee have authorized, by resolution, their respective representatives to enter into this Agreement describing their respective rights and obligations in the funding for, and construction of, the Project; and

**NOW, THEREFORE**, pursuant to Resolution No. 2023-\_\_\_\_\_, which specifically authorizes the City Manager to execute grant agreements and other required contracts and documents to expend the GOBAC Program bonds proceeds for the purposes described in such resolution, and in consideration of the premises and the mutual covenants and conditions herein contained and the mutual benefits to be derived from this Agreement, it is agreed by the Parties hereto as follows:

## **ARTICLE 1 GRANT**

- 1.1 Recitals. The Recitals above are true and correct and are incorporated herein by reference.
- 1.2 Award of Grant. The City hereby awards a grant to Grantee in the aggregate sum of \$ \_\_\_\_\_ (the "Grant Award"), to be funded by the City solely from the Bonds proceeds on a reimbursement basis, to design and construct the Project and/or to acquire equipment. The City shall have no obligation to disburse to Grantee any portion of the Grant Award which remains unused at the completion of the Project and Grantee shall have no claim to such unused portion of the Grant Award.
- 1.3 Public Purpose. The Grant Award is awarded to this Grantee based on the understanding that the Grantee is performing a public purpose through the programs, projects, and services. Use of these funds for any program component not meeting this condition will be considered a material breach of the terms of this Agreement and will allow the City to seek all available remedies including, but not limited to those outlined in Section 6.2. In consideration of the Grant Award, in addition to Grantee's obligations pursuant to Sections 1.5 and 1.6 and other provisions of this Agreement, to comply with Resolution No. 2022-32405, Grantee shall provide the additional public benefit described in Exhibit D. **[DRAFTING NOTE: INCLUDE DESCRIPTION OF ADDITIONAL PUBLIC BENEFIT IN EXHIBIT D.]**
- 1.4 Funding Contingencies. The City's obligation to fund all or any portion of the Grant is subject to and contingent upon (a) issuance of the Bonds and (b) such

funding continuing to be allowed and permissible pursuant to applicable law, as same may be amended from time to time. If (x) the Bonds are not issued for any reason or (y) the City's performance and obligation to Grantee with respect to the Grant Award is disallowed or rendered impermissible by applicable law, then City's obligation to fund the Grant Award shall be extinguished, and neither Party shall have any further liability or obligation to the other with respect to the Grant Award or this Agreement, except for any liability or obligation which expressly survives the term of this Agreement.

1.5 Use of Grant Award. Grantee may use the Grant Award disbursed to Grantee by the City pursuant to the terms of this Agreement solely to pay for capital expenditures as defined in Treas. Reg. Section 1.150-1<sup>1</sup> and may not be for any other purpose including to pay for operating expenses, ordinary maintenance and repairs, or to acquire equipment having a useful life of less than one year. Not more than fifteen percent (15%) of the Grant Award may be used to pay for design costs. It is expressly understood and agreed, that any building, structure or other site into which the Project (including equipment acquired) is incorporated and, in whole or in part, with the Grant Award must be open and accessible to the public (as applicable), provide public exposure and benefit the public unless otherwise noted in this Agreement. For at least twenty-five (25) years from the completion of the Project, the Grantee shall (a) maintain, repair, upgrade and/or replace the Project (or portion thereof) and, if applicable, the facility into which the Project is incorporated; (b) keep the Project and, if applicable, the facility into which the Project is incorporated, open to all Miami Beach residents and members of the general public; (c) use the facility and/or equipment acquired and/or improved under the Project for the benefit of the public; and (d) allow all Miami Beach residents and visitors equal access and use of the Project.

1.6 Substantial Completion of the Project. Grantee shall use commercially reasonable best efforts to ensure the Project achieves Substantial Completion (as defined below) on or before \_\_\_\_\_. For purposes of this Agreement, "Substantial Completion" means

- (a) If the Project (or portion thereof) entails construction, the date when the work constituting the Project, as certified in writing by the Grantee and the lead Consultant (i.e., the "architect of record" or the "engineer of record," as the case may be), if any, has been developed, designed, engineered and constructed in accordance with the applicable contract documents such that all conditions of permits and regulatory agencies have been satisfied and the Project is ready for occupancy, utilization and continuous commercial operation for the uses and purposes intended by the Grantee, without material interference from incomplete or improperly completed work and with only minor punch list items remaining to be completed, all as reasonably determined by the

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<sup>1</sup> Treas. Reg. Section 1.150-1(b) defines "capital expenditure" as: any cost of a type that is properly chargeable to capital account . . . under general Federal income tax principles. For example, costs incurred to acquire, construct, or improve land, buildings, and equipment generally are capital expenditures.

Consultant, and evidenced by (1) the issuance of a Certificate of Occupancy or Certificate of Completion by the authority having jurisdiction (if applicable); (2) the issuance of a Certificate of Substantial Completion by the lead Consultant for any portion of the Project for which a Consultant was engaged; and/or (3) such other documentation as the City Manager may reasonably request as evidence that the Project has achieved Substantial Completion.

- (b) if the Project (or portion thereof) entails the purchase of equipment, the date that such equipment has been installed in accordance with all applicable manufacturer instructions and building codes such that the Grantee will be able to use such equipment for its intended purpose(s).

On or before the Substantial Completion date of the Project, Grantee shall submit to the City:

- i. applicable contract documents relating to the Project (or portion thereof);
- ii. copies of all agreements, permits, and licenses, and all insurance policies or certificates, if any, pertaining to the Project (or portion thereof);
- iii. all manufacturers, suppliers' and subcontractors' warranties duly assigned to Grantee (the "Warranties), and all maintenance and operating instructions pertaining to the completed work; including the standard manufacturer's warranty for all fixtures and equipment purchased in relation to the Project (or portion thereof) and a minimum one (1) year warranty for all work contracted or associated with the Project;
- iv. bills of sale, purchase documentation, or assignments evidencing title for the Project (or portion thereof) vesting in Grantee; and
- v. any other documents or information which the City Manager may reasonably request in connection with the Project.

- 1.7 Contractors and Design Consultants. The contractors hired by Grantee in connection with the construction of the Project may be individually referred to as a "Contractor" or collectively referred to herein as "Contractors". The lead architect or lead engineer, as applicable, retained by Grantee in connection with the design of the Project is referred to herein as the "Consultant". The Contractors and Consultant shall hold all required licenses to perform the services under the contract and shall not be a Contractor or Consultant who is currently debarred or otherwise not in good standing with the City.

## ARTICLE 2 BUDGET AND FUNDING

- 2.1 Project Cost. As referenced in this Agreement, the "Project Cost" shall mean the hard and soft capital costs necessary for the construction of the Project and/or the acquisition of equipment necessary to implement the Project. Grantee has estimated that the total Project Cost shall be \$\_\_\_\_\_ **[DRAFTING NOTE: INSERT SAME AMOUNT HERE AS INCLUDED IN THE RECITALS]** (the "Budget"), as more particularly set forth in Exhibit C hereto. Exhibit C reflects all sources of funding for the Project, and the sum of such sources must equal or exceed the Budget. Exhibit C also includes a cash flow schedule detailing anticipated dates and amounts to be received from other Project funding sources, if any, and estimated dates and amounts of payments due to the Consultant, Contractors and other third parties (the "Cash Flow Schedule"). If at any time the Grantee anticipates that the actual Project Cost will exceed the Budget, Grantee shall provide immediate written notice to the City which shall include: (a) a revised, detailed cost estimate for the Project Cost and (b) documentary evidence reasonably satisfactory to the City regarding Grantee's sources of funding for all costs in excess of the Budget. Grantee shall be permitted to modify the Budget to increase any line item(s) by decreasing other line item(s) to account for changes in actual costs so long as such modifications do not alter the scope of the original Project or reduce the useful life of assets acquired with the Grant Award. If Grantee wishes to revise the scope of the Project to enable it to complete the Project within the Budget, the Grantee must obtain the approval of the City Commission.
- 2.2 Grantee Solely Responsible for Project Expenses and Cost Overruns. The Grantee agrees to be responsible for all work performed and all expenses incurred in connection with the Project. The Grantee may contract as necessary to complete the Project, including entering into contracts with vendors for services and commodities, provided that it is understood by the Grantee that the City shall not be liable to any such vendors for any expenses or liabilities incurred pursuant to any contracts or agreements the Grantee may enter into with such vendors, and that the Grantee shall be solely liable to all such vendors for all expenses and liabilities incurred under such contracts or agreements. Without limiting the generality of the foregoing, the City shall have no obligation to fund any Project Cost in excess of the Grant Award and Grantee shall be solely responsible for any Project Cost in excess of the Budget as required and necessary to complete the Project.
- 2.3 Grant Managers. Each of the City and the Grantee shall designate an individual to serve as grant manager (the "City Grant Manager" and "Grantee Grant Manager," respectively). The initial City Grant Manager shall be the Director of the Facilities and Fleet Management Department and the initial Grantee Grant Manager shall be \_\_\_\_\_ **[INSERT NAME]**. If a different grant manager is designated by either Party after execution of this Agreement, notice of the name and contact information of the new grant manager will be submitted in writing to the other Party and maintained in the respective parties' records. A change of

grant manager does not require a formal amendment or change order to the Agreement.

2.4 Administration of Grant Award by Grantee. The Grantee shall administer the Grant Award responsibly and in accordance with standard accounting practices, including by developing and adhering to a Project budget based upon reasonable estimates of expenditures necessary to complete the Project within the Budget. All expenditures will be subject to the terms of this Agreement.

2.5 Reimbursement Requests, Monthly Progress Reports and Payments. Subject to the terms and conditions of this Agreement, the Grant Award shall be paid by the City to Grantee as follows:

a. The Grant Award shall be paid to Grantee in installments on a reimbursement basis (each such installment, a "Grant Disbursement"). In order to request a Grant Disbursement, Grantee shall submit to the City a completed, signed and notarized Reimbursement Request, in the form attached as Exhibit E hereto (or such other form as the City may require), along with (i) the monthly status report described in subsection (d), below and (ii) all appropriate supporting documentation, including, without limitation, the applicable contract (including the schedule of values), licensing and insurance information for Contractors, estimate(s), invoice(s), evidence of payment (receipts), warranty information and any other documentation with respect to the Project which may be requested by the City Grant Manager (collectively, the items identified in (i) and (ii), the "Supporting Materials"). Any Reimbursement Request for purchases of equipment, materials or personal property shall require (A) that the purchase of such equipment, materials or personal property qualify as a capital expenditure pursuant to Treas. Reg. Section 1.150-1(b) and related I.R.S. guidance, as determined by the City in its sole discretion, and (B) documentation that such equipment, materials and/or personal property have been delivered to Grantee, and are in Grantee's possession, in Miami Beach, Florida, as conditions precedent to payment. The Grantee shall be solely responsible for submitting all documentation required by this Agreement.

b. Project Costs shall be identified, tracked, accounted for, invoiced, and paid by Grantee in a manner that clearly distinguishes the Project Costs from other costs incurred by Grantee. The City shall make Grant Disbursement to the Grantee by check or wire transfer, as the City determines in its sole discretion. Grantee shall submit to the City Grant Manager a Reimbursement Request together with all Supporting Materials on or before the 15th of each month for any sums expended in connection with the Project for the preceding month. Provided that an uncured default does not exist, and that Grantee is otherwise in compliance with the terms of this Agreement, the City will make the Grant Disbursement within forty-five (45) calendar days of its receipt of an acceptable Reimbursement Request and all Supporting Materials. Grantee understands and agrees that reimbursements to the Grantee will be made solely in accordance with applicable state and federal laws. Any and all

reimbursement obligations of the City shall be fully subject to and contingent upon the availability of funding solely from the GOBAC Program funds.

c. Grantee shall also be responsible for reporting, on a continuous, on-going basis any contractual relationship established to perform work or services on the Project, including start date and project schedule, reflecting a target Substantial Completion date not later than \_\_\_\_\_ **[DRAFTING NOTE: INSERT SAME DATE AS USED IN SECTION 1.6.]**, in the Monthly Status Report. Additional reports may be required at the discretion of the City Manager or her designee.

d. To demonstrate that the Grant Award has been used in accordance with the description of the Project as reflected in Exhibit “B” and the Budget as outlined in Exhibit “C”, and that Grantee has met and fulfilled all requirements as outlined in this Agreement, Grantee shall submit a Monthly Status Report to the City on or before the 15<sup>th</sup> day of each month (whether or not a Reimbursement Request is Submitted), to include, at a minimum, (i) a brief narrative describing the Project status, (ii) a spreadsheet reflecting the actual expenditures as of the end of the preceding month compared against the Budget, (iii) an updated Project schedule, if applicable, and (iv) a certification by an officer of Grantee that Grantee is meeting or has fulfilled all Project and financial requirements.

2.6 Bank Accounts and Bonding. Monies received pursuant to this Agreement shall be kept in accounts in established Florida banks, credit unions or savings and loan associations whose identity shall be disclosed in writing, with the identity and title of individuals whom the Grantee authorizes to withdraw or write checks on Grant Award funds from the banking institution identified in the bank account disclosure. These accounts must be segregated from other accounts maintained by the Grantee. All persons authorized to withdraw funds from the Grant Award account must be bonded by a reputable licensed firm. The cost of obtaining a fidelity bond may not be paid out of the Grant Award unless these expenses constitute capital expenditures.

2.7 Expenditure Deadline. The Grantee shall spend or commit all of the Grant Award on or before three (3) years from the grant execution date (the “Expenditure Deadline”). Any Grant Award funds not spent or committed by the Expenditure Deadline or for which a Project extension has not been requested shall revert to the City and this Agreement shall be terminated in accordance with the provisions of this Agreement. A Project extension may be requested in writing from the City Manager at least thirty (30) business days prior to the Expenditure Deadline. The City Manager may, in her sole discretion, grant an extension of up to one (1) year from the Expenditure Deadline so long as such extension will not significantly alter the Project including its quality, impact, or benefit to the organization, the City or its residents. Additional extensions (not to exceed one (1) year in any event) may be authorized by the City Commission if the Grantee can document in a written request sufficient Project progress and good cause for such additional extension.

2.8 Payment Does Not Constitute Waiver of Claims or Warranties.

Notwithstanding anything contained in this Agreement, payment of the Grant Award shall not constitute a waiver of claims by the City for: (i) faulty or defective product; (ii) failure of the work to be in strict accordance with the approved final plans and specifications for the Project; or (iii) the terms of any warranties required by the applicable contract documents. The Grantee shall use best efforts to fully cooperate with and assist the City in resolution of any issues with regard to the City's claims for defects and/or warranty issues. All warranties shall commence on the date of Substantial Completion of the Project (or portion thereof), unless otherwise provided.

- 2.9 Annual Report. In addition to the monthly reports required pursuant to Section 2.4(d), above, Grantee shall submit on or prior to September 30th of each year from the date of execution of this Agreement through the expiration or termination of this Agreement, a written report to the City Manager demonstrating that Grantee is fulfilling its purpose and has complied with all applicable City, Miami-Dade County, state and federal requirements. The City Manager may also request that a compilation statement and/or independent financial audit and accounting for the expenditure of the Grant Award funds be prepared by an independent certified public accountant at Grantee's expense.
- 2.10 Final Report. In addition to the monthly and annual reports required pursuant to Sections 2.4(d) and 2.8, above, within thirty (30) days of completion of the Project, the Grantee shall submit a final written report to the City Manager demonstrating that Grantee is fulfilling its purpose and has complied with all applicable City, Miami-Dade County, state and federal requirements, and which report shall include, at a minimum: (a) the date the Project (or area of the facility incorporating the Project) was placed in service (b) the useful life of the Project, and (c) the amount of the Grant Award applied for each asset or improvement constituting the Project.
- 2.11 Failure to Submit Reports. Failure by the Grantee to submit the reports required pursuant to Section 2.4(d), 2.7 and 2.9 shall constitute a default, and the City Manager may, subject to any applicable cure period, terminate this Agreement in accordance with the provisions of Article 6. Further, the City Manager must approve these reports for the Grantee to be deemed to have met all conditions of the Grant Award.

### **ARTICLE 3 MONITORING AND AUDITING**

- 3.1. Program Monitoring and Evaluation. The City Manager may monitor and conduct an evaluation of the Grantee's operations and the Project, which may include visits by City representatives to: observe the Project and/or Grantee's programs, procedures, and operations; discuss the Grantee's programs with the Grantee's personnel; and/or evaluate the public impact of the Project. Upon request, the Grantee shall provide the City Manager with notice of all meetings of its Board of Directors or governing board, general activities and Project-related events. In the event the City Manager concludes, as a result of such monitoring and/or

evaluation, that the Grantee is not in compliance with the terms of this Agreement or that there are other reasons which significantly impact on the Grantee's ability to fulfill the terms and conditions of this Agreement, then the City Manager must provide in writing to the Grantee, within thirty (30) business days of the date of said monitoring/evaluation, notice of the inadequacy or deficiencies noted which may significantly impact on the Grantee's ability to complete the Project within a reasonable time frame or otherwise fulfill the terms of this Agreement. If Grantee refuses or is unable to address the areas of concern within ten (10) business days of receipt of such notice from the City Manager, then the City Manager may, in her sole discretion, take other actions which may include reduction or rescission of the Grant Award, or withholding Grant Award funds until such time as the Grantee can demonstrate that such issues have been corrected. Further, in the event that the Grantee uses any portion of the Grant Award for costs not associated with the Project or that do not constitute capital expenditures (collectively, "Non-Project Costs") and the Grantee refuses or is unable to replace the amount so used into the Grant Award bank account within ten (10) business days from the date such unauthorized use is discovered, then the City Manager may request the return of such portion of the Funding Allocation award as was used to pay for Non-Project Costs. The City Manager may also institute a moratorium on applications from the Grantee to City grants programs for a period of up to one (1) year or until the deficient areas have been addressed to the satisfaction of the City Manager, whichever occurs first.

- 3.2. Accounting, Financial Review, Access to Records and Audits by City Manager. The Grantee shall maintain accurate and complete books and records for all receipts and expenditures of the Grant Award and the Project in conformance with reasonable general accounting standards (the "Books and Records"). The Books and Records, as well as all documents pertaining to payments received and made in conjunction with the Grant Award, such as vouchers, bills, invoices, receipts and canceled checks, shall be retained in a secure place and in an orderly fashion in a location within the City of Miami Beach by the Grantee for at least three (3) years after the later of: (a) the Expenditure Deadline specified in Section 2.6; (b) the extended Expenditure Deadline, as approved by the City Manager, if any; (c) the completion of a City requested or mandated audit or compliance review; or the (d) conclusion of a legal action involving the Grant Award, the Grantee and/or Project or activities related to the Grant Award (the period determined pursuant to the foregoing, the "Audit Period"). The Grantee shall use reasonable commercial efforts to maintain the Books and Records in such a manner that it will not be unduly costly or difficult for the City to segregate, ascertain or identify the use of the Grant Award and to determine Grantee's compliance with the terms and conditions of the Grant during an audit by the City. The City Manager may examine the Books and Records at the Grantee's offices or other approved site under the direct control and supervision of the Grantee during regular business hours and upon reasonable notice. Furthermore, the City Manager may, upon reasonable notice and at the City's expense, audit or have audited all financial records of the Grantee, whether or not purported to be related to the Grant Award or the Project.
- 3.3. Inspector General. Pursuant to Section 2-256 of the Code of the City of Miami

Beach (the "Code"), the City has established the Office of the Inspector General ("OIG") which may, pursuant to Section 2-256(f) of the Code, review, audit, inspect, and investigate city contracts, programs, projects, procurements, and expenditures associated with all general obligation bonds issued by the City, including but not limited to the Bonds. This random audit is separate and distinct from any other audit performed by or on behalf of the City. In connection with the foregoing:

- a. Grantee acknowledges that the OIG shall be authorized to review, audit, inspect and investigate the Books and Records and all financial records of Grantee, whether or not purported to be related to the Grant Award or the Project. In addition, the Inspector General shall have the power to subpoena witnesses, administer oaths, require the production of witnesses and monitor City projects and programs. Monitoring of the Grant Award and the Project may include the issuance of reports concerning whether the Project is on time, within Budget and in conformity with plans, specifications, other contract documents and applicable law.
- b. At any time during the Audit Period and upon ten (10) days written notice to Grantee, the Grantee (and any other party that is subject to these provisions) shall make the Books and Records and any other documents and records in the Grantee's possession, custody or control which in the Inspector General's sole judgment, pertain to performance of this Agreement, including, but not limited proposals and agreements from and with successful contractors and design consultants, all Project-related correspondence, memoranda, instructions, financial documents, construction documents, and contract documents, and any supporting documentation for the foregoing.
- c. The OIG shall have the power to report and/or recommend to the City Commission whether the Project or any related program, contract or transaction is or was necessary and, if deemed necessary, whether the method used for implementing the Project or related program, contract or transaction is or was efficient both financially and operationally. Monitoring of the Project may include reporting whether the project is on time, within budget and in conformity with plans, specifications, and applicable law. The OIG shall have the power to analyze the need for, and reasonableness of, proposed change orders
- d. The OIG is authorized to investigate any alleged violation by Grantee of the City's Code of Conduct, as set forth in Chapter 2, Article VII of the Code.
- e. The OIG is empowered to retain the services of independent private sector auditors to conduct one or more of the functions set forth in this Section 3.3.
- f. The provisions in this section shall apply to the Grantee, its contractors and their respective officers, agents and employees. The Grantee shall incorporate the provisions in this Section 3.3 in all contracts and other

agreements executed by its contractors in connection with the performance of this Agreement.

- g. Nothing in this Section 3.3 shall impair any independent right to the City to conduct audits or investigative activities, including without limitation, the City's audit rights pursuant to Section 3.2. The provisions of this Section 3.3 are neither intended nor shall they be construed to impose any liability on the City by the Grantee, its contractors or third parties for such monitoring or investigation or to the failure to have conducted such monitoring or investigation and neither the City nor the OIG shall have any obligation to exercise any of its respective rights for the benefit of the Grantee.

#### **ARTICLE 4 INSURANCE AND INDEMNIFICATION**

**[DRAFTING NOTE: RISK MANAGEMENT TO REVIEW INSURANCE PROVISIONS IN GENERAL AND REQUIREMENTS FOR EACH GRANT AGREEMENT ON A CASE-BY-CASE BASIS.]**

- 4.1 Insurance Requirement for Grantee. Grantee shall provide, or cause to be provided, and maintain, or cause to be maintained, in force at all times during the Project, at its sole cost and expense, the following types of insurance coverage throughout the Term of the Agreement or until final acceptance of the Project, whichever is later:
  - a. Worker's Compensation Insurance as required by Florida Statute 440, with Employer's Liability Insurance, with no less than \$1,000,000 per accident for bodily injury or disease; and
  - b. Commercial General Liability Insurance on an occurrence basis, contractual liability, property damage, bodily injury and personal & advertising injury with limits no less than \$1,000,000 per occurrence and \$2,000,000 aggregate.
  
- 4.2 Insurance Requirement for Contractors. Each Contractor for the construction of the Project (or any portion) shall purchase and maintain the following insurance coverages:
  - a. Worker's Compensation Insurance as required by Florida Statute 440, with Employer's Liability Insurance, with no less than \$1,000,000 per accident for bodily injury or disease;
  - b. Commercial General Liability Insurance on an occurrence basis, contractual liability, property damage, bodily injury and personal & advertising injury with limits no less than \$1,000,000 per occurrence and \$2,000,000 aggregate.
  - c. Automobile Liability Insurance covering all owned, non-owned and hired vehicles used in connection with the work, in an amount not less

than \$1,000,000 combined single limit per occurrence, for bodily injury and property damage;

- d. Builder's Risk insurance utilizing an "All Risk" coverage form, with limits equal to the completed value of the contract for the construction of the Project and no coinsurance penalty provision. The City of Miami Beach and Grantee shall be a Loss Payee with respect to this coverage.
- e. A payment and performance bond (the "P&P Bond") of the form and containing all the provisions set forth in this Section. The P&P Bond shall be in the form of dual obligee bonds from the Contractor, naming the City and Grantee as dual obligees. The P&P Bond shall be in the amount of one hundred percent (100%) of the contract amount, guaranteeing to City and Grantee the completion and performance of the work under the contract and payment of all subcontractors. The P&P Bond shall continue in effect for one year after completion and acceptance of the Project with liability equal to one hundred percent (100%) of the cost of the work, or an additional P&P Bond shall be conditioned that Grantee will, upon notification by City, correct any defective or faulty work or materials which appear within one year after completion of the Work. The surety company shall have at least the following minimum ratings in the latest revision of Best's Insurance Report:

<u>Amount of Bond</u>	<u>Ratings</u>	<u>Category</u>
500,001 to 1,020,000	B+	Class I
1,020,001 to 2,000,000	B+	Class II
2,000,001 to 5,000,000	A	Class III
5,000,001 to 10,000,000	A	Class IV
10,000,001 to 25,000,000	A	Class V
25,000,001 to 50,000,000	A	Class VI
50,000,001 or more	A	Class VII

4.3 Insurance Requirement for Consultant. The Consultant shall provide, or cause to be provided, and maintain, or cause to be maintained, in force at all times during the Project the following insurance coverages:

- a. Professional Liability Insurance with limits of liability provided by such policy not less than One Million Dollars (\$1,000,000.00) each claim to assure City the indemnification specified in Section 4.4. Such policy may carry a commercially reasonable deductible, not to exceed One Hundred Thousand Dollars (\$100,000.00) for each claim. The Certificate of Insurance for Professional Liability Insurance shall reference the applicable deductible and the Project.
- b. Comprehensive General Liability with minimum limits of One Million Dollars (\$1,000,000.00) per occurrence combined single limit for Bodily

Injury Liability and Property Damage Liability and \$2,000,000 aggregate.

4.4 General Provisions Applicable to Insurance. The following provisions shall apply to insurance required to be provided by the Grantee, Contractors and Consultant.

- a. The City of Miami Beach must be covered as an additional insured with respect to liability arising out of work or operations performed by or on behalf of Grantee.
- b. Grantee hereby grants, and shall cause each Contractor and the Consultant to grant, a waiver of any right to subrogation which any insurer of Grantee, Contractor or Consultant may acquire against the City of Miami Beach by virtue of the payment of any loss under such insurance. Grantee agrees to obtain, and shall cause each Contractor and the Consultant to obtain, any endorsement that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not the City of Miami Beach has received a waiver of subrogation endorsement from the insurer.
- c. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than **A:VII**, unless otherwise acceptable to the City of Miami Beach Risk Management Office.
- d. Grantee shall provide the required insurance certificates, endorsements or applicable policy language effecting coverage required by this Section. All certificates of insurance and endorsements are to be received prior to any work commencing. However, failure to obtain the required coverage prior to the work beginning shall not excuse Grantee's obligation to obtain (and to cause its Contractors and the Consultant to obtain) the required coverages. The City of Miami Beach reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.
- e. The City of Miami Beach reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

**Certificate Holder**  
**CITY OF MIAMI BEACH**  
**c/o EXIGIS Insurance Compliance Services**  
**P.O. Box 947**  
**MURRIETA, CA 92564**

All certificates of insurance, endorsements, exemption letters shall be submitted to the City's servicing agent, EXIGIS, at:

[Certificates-miamibeach@riskworks.com](mailto:Certificates-miamibeach@riskworks.com)

- f. Compliance with the foregoing requirements shall not relieve the Grantee of its liability and obligation under this section or under any other section of this agreement.

4.5 Indemnification by Contractors and Consultant. The contracts between Grantee and its Contractors and the architect's agreement between Grantee and Consultant shall provide that Contractor or Consultant (as applicable) shall defend, indemnify and save harmless the City, its officers, agents and employees, from or on account of any injuries or damages, received or sustained by any person or persons during or on account of any construction activities of Contractor or Consultant (as applicable), or any of its subcontractors, subconsultants, agents, servants, or employees connected with the Project; or by or in consequence of any negligence of Contractor or Consultant (as applicable), or any of its subcontractors, subconsultants, agents, servants, or employees (excluding negligence of the City), in connection with the construction activities of Contractor or Consultant (as applicable), or any of its subcontractors, subconsultants, agents, servants, or employees connected with the Project; or by use of any improper materials or by or on account of any act, error or omission of Contractor or Consultant (as applicable) or any subcontractor, subconsultants, agents, servants or employees, except to the extent any such injuries or damages are caused by City. The contracts between Grantee and its Contractors and the architect's agreement between Grantee and the Consultant shall further provide that Contractor or Consultant (as applicable) shall indemnify and save harmless City (a) against any claims or liability arising from or based upon the violation of any City, Miami-Dade County, state or federal laws, bylaws, ordinances or regulations by Contractor, its subcontractors, agents, servants or employees (excluding negligence of City); and (b) from all such claims and fees, and from any and all suits and actions of every name and description that may be brought against City on account of any claims, fees, royalties, or costs for any invention or patent, and from any and all suits and actions that may be brought against City for the infringement of any and all patents or patent rights claimed by any person, firm, or corporation. The contracts between Grantee and its Contractors and the architect's agreement between the Grantee and the Consultant shall provide that the Contractors' and Consultant's indemnification obligations to the City shall survive the expiration or termination of such agreements.

4.6 Indemnification by Grantee. The Grantee shall indemnify and hold harmless the City and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including attorneys' fees and costs of defense, which the City or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the performance of this Agreement by the Grantee or its employees, agents, servants, partners, principals, subconsultants or subcontractors. Grantee shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits, or actions of any kind or nature in the name of the City, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorneys' fees which may

issue thereon. Grantee expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by the Grantee shall in no way limit the responsibility to indemnify, keep and save harmless and defend the City or its officers, employees, agents and instrumentalities as herein provided. Grantee's obligation to indemnify the City pursuant to the foregoing shall survive the expiration or termination of this Agreement. Grantee recognizes the broad nature of this indemnification and hold harmless clause, and voluntarily makes this covenant and expressly acknowledges the receipt of good and valuable consideration, provided by the City in support of the obligation in accordance with the laws of the State of Florida. Nothing herein shall be construed to waive any of the City's rights set forth in Section 768.28, Florida statutes. Nothing contained in this Agreement shall be deemed a waiver of sovereign immunity by the City. This paragraph shall survive the expiration or early termination of this Agreement.

- 4.7 Indemnification Obligation Includes Defense Through Appeals. For the avoidance of doubt, the indemnification provided above shall obligate each Contractor, the Consultant or Grantee (as applicable) to defend at its own expense to and through appellate, supplemental or bankruptcy proceeding, or to provide for such defense, at City's option, any and all claims of liability and all suits and actions of every name and description that may be brought against City which may result from the operations and activities under or as a consequence of this Agreement performed by the applicable indemnitor and its respective subcontractors, subconsultants, and anyone directly or indirectly employed by such indemnitor.

## **ARTICLE 5 COMPLIANCE**

- 5.1 Compliance with Laws. In its performance of this Agreement, Grantee shall comply with all applicable laws, ordinances, and regulations of the City, Miami-Dade County, the State of Florida, and the federal government, as applicable.
- 5.2 No Discrimination. In connection with the Project, Grantee shall not exclude from participation in, deny the benefits of, or subject to discrimination anyone on the grounds of race, color, national origin, sex, age, disability, religion, income or family status. Additionally, Grantee shall comply fully with the City of Miami Beach Human Rights Ordinance, codified in Chapter 62 of the Code, as may be amended from time to time, prohibiting discrimination in employment, housing, public accommodations, and public services on account of actual or perceived race, color, national origin, religion, sex, intersexuality, gender identity, sexual orientation, marital and familial status, age, disability, ancestry, height, weight, domestic partner status, labor organization membership, familial situation, or political affiliation.
- 5.3 Compliance with County's Conflict of Interest and Code of Ethics Ordinance. Grantee herein agrees to adhere to and be governed by all applicable laws as it relates to conflicts of interest including, without limitation, Section 2-11.1 of the Code of Miami-Dade County (the County's Conflict of Interest and Code

of Ethics Ordinance), as may be amended from time to time, and by Chapter 2, Article VII of the Code, as may be amended from time to time (collectively, the "Conflict Statutes"), both of which are incorporated by reference as if fully set forth herein. Grantee covenants that, in connection with its performance of this Agreement, it presently has no interest and shall not acquire any interest, directly or indirectly, which could constitute a conflict of interest, as described under the Conflict Statutes. Grantee further covenants that in the performance of this Agreement, Grantee shall not employ any person having any such conflict of interest.

5.4 Compliance with Florida Public Records Law. Grantee shall comply with Florida Public Records law under Chapter 119, Florida Statutes, as may be amended from time to time, as follows:

- a. "Public Records" Defined. The term "public records" shall have the meaning set forth in Section 119.011(12), which means all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business of the City.
- b. Obligations of "Contractors" as defined under Florida Public Records Act. Pursuant to Section 119.0701 of the Florida Statutes, if the Grantee meets the definition of "Contractor" as defined in Section 119.0701(1)(a), the Grantee shall:
  - (i) Keep and maintain public records required by the City to perform the service;
  - (ii) Upon request from the City's custodian of public records, provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes or as otherwise provided by law;
  - (iii) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed, except as authorized by law, for the duration of the contract term and following completion of the Agreement if the Grantee does not transfer the records to the City;
  - (iv) Upon completion of the Agreement, transfer, at no cost to the City, all public records in possession of the Grantee or keep and maintain public records required by the City to perform the service. If the Grantee transfers all public records to the City upon completion of the Agreement, the Grantee shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Grantee keeps and maintains public

records upon completion of the Agreement, the Grantee shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.

c. Request for Records; Noncompliance.

- (i) A request to inspect or copy public records relating to the City's contract for services must be made directly to the City. If the City does not possess the requested records, the City shall immediately notify the Grantee of the request, and the Grantee must provide the records to the City or allow the records to be inspected or copied within a reasonable time.
- (ii) Grantee's failure to comply with the City's request for records shall constitute a breach of this Agreement, and the City, at its sole discretion, may: (1) avail itself of the remedies set forth under the Agreement; and/or (2) avail itself of any available remedies at law or in equity.
- (iii) If Grantee who fails to provide the public records to the City within a reasonable time, it may be subject to penalties under Section 119.10, Florida Statutes.

d. Civil Action.

- (i) If a civil action is filed against Grantee to compel production of public records relating to the City's contract for services, the court shall assess and award against Grantee the reasonable costs of enforcement, including reasonable attorney fees, if:
  - A. The court determines that Grantee unlawfully refused to comply with the public records request within a reasonable time; and
  - B. At least 8 business days before filing the action, the plaintiff provided written notice of the public records request, including a statement that the Grantee has not complied with the request, to the City and to Grantee.
- (ii) A notice complies with subparagraph (1)(b) if it is sent to the City's custodian of public records and to Grantee at the Grantee's address listed on its contract with the City or to the Grantee's registered agent. Such notices must be sent by common carrier delivery service or by registered, Global Express Guaranteed, or certified mail, with postage or shipping paid by the sender and with evidence of delivery, which may be in an electronic format.

(iii) If Grantee complies with a public records request within 8 business days after the notice is sent is not liable for the reasonable costs of enforcement.

- e. **Questions.** IF THE GRANTEE HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE GRANTEE'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:

**CITY OF MIAMI BEACH**

**ATTENTION: RAFAEL E. GRANADO, CITY CLERK  
1700 CONVENTION CENTER DRIVE  
MIAMI BEACH, FLORIDA 33139  
E-MAIL: [RAFAELGRANADO@MIAMIBEACHFL.GOV](mailto:RAFAELGRANADO@MIAMIBEACHFL.GOV)  
PHONE: 305-673-7411**

## **ARTICLE 6 DEFAULT AND REMEDIES**

6.1 **Events of Default.** Each of the following shall constitute a default by Grantee:

- a. If Grantee uses all or any portion of the Grant Award for costs not associated with the Project and Grantee fails to refund the unauthorized disbursement within thirty (30) days after written notice of the default is given to Grantee by the City.
- b. If Grantee shall breach any of the other covenants or provisions in this Agreement, and Grantee fails to cure its default within thirty (30) days after written notice of the default is given to Grantee by the City; provided, however, that if not reasonably possible to cure such default within the thirty (30) day period, such cure period shall be extended for up to ninety (90) days following the date of the original notice, if within thirty (30) days after such written notice, Grantee commences diligently and thereafter continues to cure.

6.2 **Remedies**

- a. Upon the occurrence of a default as provided in Section 6.1, and such default is not cured within the applicable cure period, the City, in addition to all other remedies conferred by this Agreement, may require that Grantee reimburse the City for all Grant Award funding provided by the City hereunder. At the City's sole discretion, the City may, from amounts otherwise appropriated to Grantee (or due to Grantee pursuant to any other agreement), withhold, deduct or set off any amounts that the City reasonably believes are sufficient to reimburse the City for any default under this Agreement.

- b. The City may institute litigation to recover damages for any default or to obtain any other remedy at law or in equity (including specific performance, permanent, preliminary or temporary injunctive relief, and any other kind of equitable remedy).
- c. Upon the occurrence of a default by Grantee which remains uncured within the time periods provided in Section 6.1, the City may terminate this Agreement, upon written notice to Grantee. Upon termination of this Agreement under this section, the City shall have no further liability or obligation to Grantee. Grantee understands and agrees that termination of this Agreement under this section shall not release Grantee from any obligation occurring prior to the effective date of termination.
- d. In the event Grantee fails to reimburse the Grant Award to the City as required by subsection a, in addition to all other remedies conferred onto the City under this Agreement, Grantee agrees to transfer to the City all title and interest in and to any personal property that has been purchased with Grant Award funds but not installed as a fixture.
- e. Any failure of the City to exercise any right or remedy as provided in this Agreement shall not be deemed a waiver by the City of any claim for damages it may have by reason of the default.
- f. The rights and remedies of the City are cumulative and the exercise by the City of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default.

**ARTICLE 7  
GENERAL PROVISIONS**

7.1 Relationship of the Parties. It is expressly understood and intended that the Grantee, as the recipient of GOBAC Program funds, is not an officer, employee or agent of the City, the City Commission, nor the City department(s) administering the GOBAC Program or the Grant Award. Further, for purposes of this Agreement, the Project or activity, the parties hereto agree that the Grantee, its officers, agents and employees are independent contractors and solely responsible for the Project. The Grantee shall take all actions as may be necessary to ensure that its officers, agents, employees, assignees and/or subcontractors shall not act as, nor give the appearance that they are, agents, servants, joint venturers, collaborators or partners of the City, the City Commission or the department(s) administering the GOBAC Program or the Grant Award. No Party or its officers, elected or appointed officials, employees, agents, independent contractors or consultants shall be considered employees or agents of any other Party, nor to have been authorized to incur any expense on behalf of any other Party, nor to act for or to bind any other Party, nor shall an employee claim any right in or entitlement to any pension, workers' compensation benefit,

unemployment compensation, civil service or other employee rights or privileges granted by operation of law or otherwise, except through and against the entity by whom they are employed.

- 7.2 Entire Agreement. This Agreement states the entire understanding and agreement between the Parties and supersedes any and all written or oral representations, statements, negotiations or agreements previously existing between the Parties with respect to the subject matter of this Agreement. The parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this Agreement that are not contained in this Agreement, and that this Agreement contains the entire agreement between the parties as to all matters contained herein. Accordingly, (a) no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written and (b) any oral representations or modifications concerning this Agreement shall be of no force or effect.
- 7.3 Amendment. This Agreement may be amended only with the written approval of the Parties. The City Manager, on behalf of the City, shall have authority to amend or modify this Agreement, including any changes to the budget for the Project, provided that the changes do not materially change the scope of the Project and the amount of the Grant Monies are not increased.
- 7.4 No Assignment. The Grantee is not permitted to assign this Agreement or any portion thereof. Any purported assignment will render this Agreement null and void and subject to immediate rescission of the full amount of the Grant Award and reimbursement by the Grantee of its full value to the City.
- 7.5 Waiver. No waiver shall be effective unless in writing and signed by the Party against whom enforcement is sought. Such waiver shall be limited to provisions of this Agreement specifically referred to herein and shall not be deemed a waiver of any other provision. No waiver shall constitute a continuing waiver unless the writing states otherwise. Failures or waivers to insist on strict performance of any covenant, condition, or provision of this Agreement by the Parties, their successors and assigns shall not be deemed a waiver of any of its rights or remedies, nor shall it relieve the other Party from performing any subsequent obligations strictly in accordance with the terms of this Agreement.
- 7.6 Time of the Essence. The Parties agree that time is of the essence in the performance of each and every obligation under this Agreement.
- 7.7 No Third-Party Beneficiary Rights. The terms of this Agreement inure to the benefit of only those Parties named herein. This Agreement is not intended to and shall not be construed to give any third party any interest or rights, including without limitation third-party beneficiary rights, with respect to or in connection with any agreement or provision contained herein or contemplated hereby.
- 7.8 Notices. Any notice, consent or other communication required to be given

under this Agreement shall be in writing, and shall be considered given when delivered in person or sent by facsimile or electronic mail (provided that any notice sent by facsimile or electronic mail shall simultaneously be sent personal delivery, overnight courier or certified mail as provided herein), one (1) business day after being sent by reputable overnight carrier or three (3) business days after being mailed by certified mail, return receipt requested, to the parties at the addresses set forth below (or at such other address as a party may specify by notice given pursuant to this Section to the other party):

The City:

City of Miami Beach  
1700 Convention Center Drive  
Miami Beach, FL 33139  
Attn: Director of Facilities and Fleet Management Department

With copy to:

City of Miami Beach  
1700 Convention Center Drive  
Miami Beach, FL 33139  
Attn: City Attorney

The Grantee:

[INSERT ADDRESS]

- 7.9 Further Acts. In addition to the acts recited in this Agreement, the Parties agree to perform, or cause to be performed, any and all such further acts as may be reasonably necessary to consummate the transactions contemplated hereby. Each of the Parties agrees that it will execute and deliver all such documents and instruments as may be necessary and appropriate to effectuate the terms of this Agreement.
- 7.10 Partial Invalidity. In the event that any provision of this Agreement is declared by any court of competent jurisdiction or any administrative judge to be void or otherwise invalid, all of the other terms, conditions and provisions of this Agreement shall remain in full force and effect to the same extent as if that part declared void or invalid had never been incorporated in the Agreement and in such form, the remainder of the Agreement shall continue to be binding upon the Parties
- 7.11 Counterparts; Electronic Signatures. This Agreement may be executed in counterparts and by electronic signature (e.g. via DocuSign, accompanied by the confirming e-signature certificate) and may be transmitted by facsimile copy or e-mailed PDF file, each of which when so executed and delivered shall be deemed to be an original and all of which, when taken together, shall constitute one and the same instrument. Upon request by any party receiving an executed counterpart by facsimile or PDF (by e-mail) to also receive an

ink-signed original, the other party shall provide original ink-signed signature pages as soon as practicable, but failure to do so shall not affect the validity, enforceability, or binding effect of this Agreement.

- 7.12 Optional Mediation. In the event a dispute arises, that the Parties cannot resolve between themselves, the Parties shall have the option, but not the obligation, to submit their dispute to mediation. The mediator or mediators shall be impartial, shall be selected by the Parties, and the cost of the mediation shall be borne equally by the Parties.
- 7.13 Governing Law; Venue; Attorneys' Fees. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida without regard to its conflict of laws principles. The City and Grantee agree to submit to service of process and jurisdiction of the State of Florida for any controversy or claim arising out of or relating to this Agreement or a breach of this Agreement. Venue for any court action between the Parties for any such controversy arising from or related to this Agreement shall be in the Eleventh Judicial Circuit in and for Miami-Dade County, Florida, or in the United States District Court for the Southern District of Florida, in Miami-Dade County, Florida.
- 7.14 Force Majeure. Whenever a period of time is herein prescribed for the taking of any action by a Party hereunder, such Party shall not be liable or responsible for any delays (including, without limitation, any delay by the City in making the Reimbursement, nor shall such Party be obligated to perform hereunder, nor deemed to be in default hereunder, if the required action or performance of a Party is prevented due to strikes, riots, acts of God, shortages of labor or materials, epidemics, pandemics, war, governmental laws, regulations or restrictions, or any other cause whatsoever beyond the control of such Party.
- 7.15 Captions. Captions as used in this Agreement are for convenience of reference only and do not constitute a part of this Agreement and shall not affect the meaning or interpretation of any provisions herein.

[REMAINDER OF THIS PAGE LEFT INTENTIONALLY BLANK]

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed in their names by their duly authorized officials as of the date first set forth above.

ATTEST:

**CITY OF MIAMI BEACH, FLORIDA**

\_\_\_\_\_  
Rafael E. Granado  
City Clerk

\_\_\_\_\_  
Alina T. Hudak  
City Manager

ATTEST:

**[GRANTEE NAME]**

\_\_\_\_\_  
Secretary

\_\_\_\_\_  
President

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

**EXHIBIT A**  
**DESCRIPTION OF GRANTEE'S OPERATIONS AND PUBLIC PURPOSE**

**EXHIBIT B**  
**PROJECT DESCRIPTION**

**EXHIBIT C**  
**BUDGET, FUNDING SOURCES AND CASH FLOW SCHEDULE**

**EXHIBIT D**  
**ADDITIONAL PUBLIC BENEFIT**

**EXHIBIT E**  
**REIMBURSEMENT REQUEST**