

FIRST AMENDMENT TO GRANT AGREEMENT

THIS FIRST AMENDMENT TO GRANT AGREEMENT (this "First Amendment") is made and entered into effective as of this ____ day of _____, 2023 ("Effective Date"), by and between the **CITY OF MIAMI BEACH**, 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, City and Grantee are parties to that certain Grant Agreement dated _____ (the "Grant Agreement") pursuant to which the City awarded a grant under the GO Bond for Arts and Culture Program ("GOBAC Program") in a total amount not to exceed \$_____, which includes a grant award in the amount of \$_____ and a contingency in the amount of \$_____, as set forth in greater detail below; and

WHEREAS, the Grant Agreement contemplates that the Grant Award is to be funded by the City solely from the Bonds proceeds on a reimbursement basis for the purposes set forth in the Agreement; and

WHEREAS, the Grantee may lack the necessary cash flow or other source of funds to pay the expenses of designing, constructing and/or equipping the Project as they become due; and

WHEREAS, the Grantee would like the ability to request that the City advance Grant Award funds to Grantee in a manner that is consistent, to the extent reasonably feasible, with Grantee's cash flow schedule and funding needs for the design and construction of the Project; and

WHEREAS, on July 26, 2023, the Mayor and City Commission of the City of Miami Beach approved the advance of Grant Award funds to certain GO Bond for Arts and Culture Program grant recipient organizations, including Grantee, pursuant to Resolution No. 2023-_____ and authorized the City Manager to sign this First Amendment with each such grant recipient, including Grantee.

NOW, THEREFORE, in consideration of the premises, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by both parties, the City and Grantee agree as follows.

AMENDMENT

1. **Recitals; Section Headings; Defined Terms.** The "Recitals" paragraphs above are deemed to be part of the agreement of the Parties. The paragraph headings of this First Amendment are for convenience and reference only and none of such headings shall limit or amplify the meaning, application or construction of any of the provisions of this First Amendment. Unless specifically defined in this First Amendment, capitalized terms used in this First Amendment shall have the meanings ascribed to such terms in the Grant Agreement.

2. **Advances.** The following subsection is hereby inserted at the end of Section 2.5 of the Grant Agreement:

"e. If Grantee lacks the necessary cash flow or other source of funding to pay the expenses of designing, constructing and/or equipping the Project as they become due,

Grantee may request that up to ninety percent (90%) of the Grant Award be paid as advances in installments (each such installment, an "Advance") based on Grantee's anticipated cash flow needs as reflected in the Cash Flow Schedule, provided, (i) the amount of any Advance will not exceed the lower of (A) twenty-five percent (25%) of the Grant Award (excluding the Contingency unless the Grant Award has been increased to include the Contingency pursuant to Section 1.2) and (B) Five Hundred Thousand Dollars (\$500,000) and (ii) Grantee may not request an Advance more than once in any thirty (30) day period, provided, the final ten (10%) of the Grant Award shall not be advanced and shall be paid only as a reimbursement in accordance with the provisions of Section 2.5(a). Notwithstanding the foregoing, the City Manager (or designee) may, in their sole discretion and based on Grantee's demonstrated need and cash flow requirements, authorize (x) the payment of a percentage greater than twenty-five percent (25%), (y) the payment of a dollar value higher than \$500,000 and/or (z) the processing of more than one advance request within a thirty (30) day period. Furthermore, the City Manager (or designee) may, in their sole discretion and based on Grantee's certified need, authorize payment of the final ten percent (10%) as an Advance, except with regard to equipment, material or personal property. In order to request an Advance, Grantee shall submit to the City a completed, signed certified, and notarized advance request, in the form attached as Exhibit F hereto (or such other form as the City may require)(each, an "Advance Request"), along with all Supporting Materials. Supporting Materials for the first Advance Request should include proposals, contracts, estimates and other documentation establishing the nature of the expenditure and the amount to be paid (collectively, "Proposals and Estimates"). Supporting Materials for the second and subsequent Advance Requests must include Proposals and Estimates in respect of such Advance as well as documentary proof by Grantee that all amounts previously advanced have been used to pay for permitted Project expenses as set forth in prior Advance Requests and otherwise in a manner consistent with the terms of this Agreement. Provided that an uncured default does not exist, and that Grantee is otherwise in compliance with the terms of this Agreement, the City will pay the applicable Advance by check or wire transfer, as the City determines in its sole discretion, within twenty-five (25) business days of its request of an acceptable Advance Request and all Supporting Materials. Grantee understands and agrees that Advances to the Grantee will be made solely in accordance with applicable state and federal laws. Any and all obligations of the City shall be fully subject to and contingent upon the availability of funding solely from the GOBAC Program funds. Prior to the submission of any Advance Request, Grantee shall supplement Exhibit C to include the Cash Flow Schedule. Because delivery to, and possession by, Grantee in Miami Beach, Florida are conditions precedent to receipt of Grant Award funding for purchases of equipment, material or personal property, the final ten (10%) of the cost to purchase any equipment, material or personal property shall be paid on a reimbursement basis and not as an Advance. The foregoing requirement may not be waived by the City Manager (or designee).

3. **Advance Request Form.** Exhibit 1 hereto is hereby incorporated as Exhibit F to the Grant Agreement.

4. **Counterparts.** This First Amendment 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 First Amendment.

5. **Entire Amendment.** This First Amendment sets forth the entire agreement of the parties with respect to the subject matter hereof. All prior or contemporaneous understandings and discussions, whether written or verbal, are entirely superseded by this First Amendment. Except as amended by the express provisions of this First Amendment, the terms and conditions of the Grant Agreement are hereby ratified and confirmed by the Parties and shall remain in full force

and effect. If there is any conflict between the terms and conditions of the Grant Agreement and those set forth in this First Amendment, the terms and conditions in this First Amendment shall govern.

[SIGNATURES ON FOLLOWING PAGE.]

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 1

“EXHIBIT F”
FORM OF ADVANCE REQUEST

MIAMI BEACH

CITY OF MIAMI BEACH
ADVANCE REQUEST FORM

GRANT PROJECT No.:	
GRANTEE NAME:	
GRANTEE ADDRESS:	
GRANTEE CONTRACT ADMINISTRATOR:	
GRANTEE CONTRACT ADMINISTRATOR'S E-MAIL ADDRESS:	
REQUEST No.	

NOTE:

Capitalized terms used herein and not otherwise defined shall have the meaning given to them in the Grant Agreement, as amended by the First Amendment. Pursuant to the executed Grant Agreement, Grantee shall submit to the City a completed, signed and notarized Advance Request Form, along with (i) the monthly status report described in subsection (2.5 d), 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”). Supporting Materials for the first Advance Request should include proposals, contracts, estimates and other documentation establishing the nature of the expenditure and the amount to be paid (collectively, “Proposals and Estimates”). Supporting Materials for the second and subsequent Advance Requests must include Proposals and Estimates in respect of such Advance as well as proof of payment in respect of all amounts advanced pursuant to prior Advance Requests. Because delivery to, and possession by, Grantee in Miami Beach, Florida are conditions precedent to the receipt of Grant Award funding for purchases of equipment, material or personal property, the final ten (10%) of the cost to purchase any equipment, material or personal property shall be paid on a reimbursement basis and not as an Advance.

The Grantee shall be solely responsible for submitting all documentation required by this Agreement. 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 Disbursements to the Grantee by check or wire transfer, as the City determines in its sole discretion. Grantee may not request an Advance more than once in any thirty (30) day period unless the City Manager (or her designee) authorizes, in her sole

discretion, a higher frequency of Advance Requests based on Grantee's demonstrated need. Provided that an uncured default does not exist, and that Grantee is otherwise in compliance with the terms of this Agreement, the City will pay the applicable Advance within twenty-five (25) business days of its receipt of an acceptable Advance Request and all Supporting Materials. Grantee understands and agrees that Advances to the Grantee will be made solely in accordance with applicable state and federal laws. Any and all obligations of the City shall be fully subject to and contingent upon the availability of funding solely from the GOBAC Program funds.

Amount of Grant Award:	
Less Previous Total Disbursements:	
Balance Available:	
Funds Requested this Advance:	

Certification of Need and Payment: On behalf of Grantee, under penalties of perjury, (a) I represent and warrant that Grantee lacks the necessary cash flow or other source of funding to pay the expenses of designing and constructing the Project as they become due, (b) I certify that the above expenses are necessary and reasonable for the completion of the Project and in accordance with the terms and conditions set forth in Grant Agreement and (c) I further warrant and represent that these expenses have not been, and will not be, covered by any other third party funding source, including under any other separate agreement between the City and Grantee or any other grant agreement between the Grantee and any other party.

Grantee

Report Prepared By:

Name

Signature/Date

STATE OF FLORIDA

COUNTY OF MIAMI DADE

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this ____ day of _____, 20__, by ____ (name)_____, as ____ (title)_____ for ____ (company)_____. He/she (_____) is personally known to me or (_____) produced _____ as identification.

Notary Public

Print Name:

My Commission Expires:

City of Miami Beach

Report Reviewed By:

Name

Signature/Date