

1. Requested Motion:

Meeting Date: September 17, 2012

Approval of the Town to execute and record in the public records a restrictive covenant to guarantee that the Mound House located at 451 Connecticut Street is maintained as a cultural facility/museum for a period of ten (10) years.

Why the action is necessary:

Research indicates that Town Council was not previously informed of the need to develop a restrictive covenant as a condition of accepting grant funds.

What the action accomplishes:

Permits signing the Letter of Agreement between the Florida Division of Cultural Affairs and the Town of Fort Myers Beach, as a precursor to receiving the Mound House Restoration grant in the amount of \$445,000.

2. Agenda:

Consent
 Administrative

3. Requirement/Purpose:

Resolution
 Ordinance
 Other

4. Submitter of Information:

Council
 Town Staff
 Town Attorney

5. Background:

On June 21, 2010 Town Council authorized preparation of three (3) grant applications that could fund remaining restoration of the William H. Case house and part of or all of the museum installation. Grant applications to the Division of Cultural Affairs Cultural Facilities Grant Program and the Division of Historical Resources Special Category Grant Program would fund similar scopes of work.

Town Council discussed the application for a grant in the amount of \$445,000 during their June 21, 2010 meeting. Subsequently, Resolution Number 10-17 authorized the grant application.

Town Council discussed the application for a grant in the amount of \$350,000 during their July 12, 2010 meeting. Subsequently, Resolution Number 10-18 authorized the grant application.

Following our award notification of the Town having received a grant from the Florida Division of Cultural Affairs in the amount of \$445,000, we received the Grant Award Package. In review of the Grant Award Agreement, the Town is required to execute and record in public records a restrictive covenant to guarantee that the property will be maintained as a cultural facility/museum for a period of ten (10) years.

Staff has performed research to identify if Council was previously provided this specific information as a condition of the grant application. The minutes from both June 21, 2010 and July 12, 2010 do not indicate this item was presented to Council. Further, we have listened to the recording of the July 12th Council meeting where the parameters of the grants were defined between staff and Council.

There is no indication from the resources available to staff at this time that Town Council was advised of the requirement to designate the William H. Case House a cultural facility/museum for a period of ten (10) years.

6. Alternative Action:

Failure to accept this condition would result in forfeiture of the grant funds.

7. Management Recommendations:

Town Attorney Marilyn Miller has reviewed this item and recommends approval of the motion to execute and record in public records a restrictive covenant to guarantee that the William H. Case Home remain a cultural facility/museum for a period of ten (10) years. This action will permit staff to execute the Grant Award Agreement.

8. Recommended Approval:

Town Manager	Town Attorney	Finance Director	Public Works Director	Community Development Director	Parks & Recreation Director	Town Clerk
					<i>Patti Evans</i> 9.6.2012	

9. Council Action:

Approved Denied Deferred Other

RESTRICTIVE COVENANT

(Grantee owns land and building.)

THIS RESTRICTIVE COVENANT is hereby entered into this _____ day of _____, 20____, by **Town of Fort Myers Beach**, hereinafter referred to as "the Grantee;" and the State of Florida, Department of State, Division of Cultural Affairs, hereinafter referred to as the "Division".

WHEREAS, the Grantee is the fee simple title holder of the land and the building(s) to be used as a cultural facility located at **289 Connecticut Street, Fort Myers Beach, Florida 33931**. A legal description of the subject property is attached as Exhibit A and is made a part of this covenant.

WHEREAS, the Grantee has been approved to receive a Cultural Facilities Grant in the amount of **\$445,000**, to be administered by the Division and used only for the acquisition, renovation, and construction of the cultural facility, as required by Section 265.701(1), Florida Statutes. "Facility" is used herein to refer to the building(s) and associated land that will be used as a "cultural facility," as defined herein.

WHEREAS, the Division has authority under Section 265.701(4), Florida Statutes, to require that this restrictive covenant be recorded to ensure that the facility will be used as "cultural facility," as defined herein, for at least ten (10) years following execution of the grant award agreement.

NOW THEREFORE, in partial consideration for the Cultural Facilities Grant and in accordance with Section 265.701(4), Florida Statutes, the Parties agree to the following:

- 1.) This restrictive covenant shall run with the title to the facility and the associated land, shall encumber them, and shall be binding upon the Grantee and its successors in interest for (10) ten years following execution of the grant award agreement.
- 2.) The grant award shall only be expended for

Project Title: Mound House: History from the Ground Up (13-9035)

3.) For the required duration of this covenant, the Parties agree that the Grantee shall own all improvements made to the facility and the associated land, funded in whole or in part by grant funds.

4.) The Division has the right to inspect the facility at all reasonable times to determine whether the conditions of the grant award agreement and this covenant are being complied with.

5.) The Grantee shall maintain the facility as a "cultural facility," defined as a building which shall be used primarily for the programming, production, presentation, exhibition or any combination of the above functions of any of the cultural disciplines defined in s. 265.283(7), F.S. These disciplines include, but are not limited to music, dance, theatre, creative writing, literature, architecture, painting, sculpture, folk arts, photography, crafts, media arts, visual arts, programs of museums, and other such allied, major art forms.

6.) This restrictive covenant will be violated if the Grantee or its successors in interest do not use the facility as a cultural facility, as defined above, within ten (10) years following execution of the grant award agreement. If the Grantee violates this covenant, it shall repay the grant funds to Division pursuant to the amortization schedule set forth below:

a. If the violation occurs within five (5) years following the execution of the grant award agreement, 100% of the grant amount;

b. If the violation occurs more than five (5) but less than six (6) years following execution of the grant award agreement, 80% of the grant amount; c. If the violation occurs more than six (6) but less than seven (7) years following the execution of the grant award agreement, 65% of the grant amount;

d. If the violation occurs more than seven (7) but less than eight (8) years following execution of the grant award agreement, 50% of the grant amount;

e. If the violation occurs more than eight (8) but less than nine (9) years following execution of the grant award agreement, 35% of the grant amount; and

f. If the violation occurs more than nine (9) but less than ten (10) years following execution of the grant award agreement, 20% of the grant amount.

7.) Any amount due from the Grantee as a result of a violation of this restrictive covenant shall be due in full within 90 days of the violation, or some other period of time as agreed upon by the parties

8.) If the entire amount due under the provisions of paragraph six (6) is not repaid by the Grantee within the time allotted, the Parties agree that the Division may obtain a stipulated judgment against the Grantee for the amount due plus interest at the current legal rate, and record it in the public records of the county where the land and cultural facility are located. The Parties further

agree that such a judgment shall be a stipulated judgment by virtue of full execution of this restrictive covenant; that it shall not require further approval of the Grantee to obtain; and that no trial or hearing shall be necessary to make such a stipulated judgment legally effective. Such a judgment, when recorded, shall be considered a valid lien upon Grantee's interest in the facility and the associated land, including all improvements funded in whole or part by grant funds.

- 9.) As a condition to receipt of grant funds, the Grantee shall:
- a. Record this covenant in the public records with the Clerk of the Circuit Court of **Lee** County, Florida;
 - b. Pay fees associated with its recording; and
 - c. Provide a certified copy of the recorded covenant to the Division.
- 10.) The Parties agree that the Division shall incur no tax liability as a result of this covenant.

IN WITNESS WHEREOF, the Grantee hereby affirms that he/she has read this restrictive covenant, understands and agrees to its terms, and hereby affixes his/her signature accordingly.

PARTIES and WITNESSES:

GRANTEE SIGNATURE

GRANTEE NAME (print)

First Witness Signature

First Witness Name (print)

Second Witness Signature

Second Witness Name (print)

GRANTEE ADDRESS

City State Zip

The State of Florida
County of _____

I certify that on this date before me, an officer duly authorized in the state and county named above to take acknowledgments, that

_____ personally
(Name)

appeared as _____ for _____
(Position) (Name of Qualifying Entity)

known to me to be or proved to my satisfaction that he/she is the person described in and who executed the foregoing instrument.

Type of Identification Produced _____

Executed and sealed by me at _____, Florida on _____

Notary Public in and for
The State of _____

My commission expires: _____

[SEAL]

For the Division of Cultural Affairs:

Name Title

R.A. Gray Building
500 S. Bronough St.
Tallahassee, Florida 32303

First Witness Signature

First Witness Name (print)

Second Witness Signature

Second Witness Name (print)

The State of Florida
County of _____

I certify that on this date before me, an officer duly authorized in the state and county named above to take acknowledgments, that

_____ personally
(Name)

appeared as _____ for the Florida Department of State,
(Position)

Division of Cultural Affairs known to me to be or proved to my satisfaction that he/she is the person described in and who executed the foregoing instrument.

Type of Identification Produced _____

Executed and sealed by me at _____, Florida on _____

Notary Public in and for
The State of _____
My commission expires: _____

[SEAL]

AGREEMENT BETWEEN
THE STATE OF FLORIDA, DEPARTMENT OF STATE
AND
TOWN OF FORT MYERS BEACH

This Agreement is by and between the State of Florida, Department of State, Division of Cultural Affairs hereinafter referred to as the "Division," and the **Town of Fort Myers Beach**, hereinafter referred to as the "Grantee."

The Grantee has been awarded a Cultural Facilities Program Grant (CSFA 45.014) by the Division; grant number **13-9035**, for the project "**Mound House: History from the Ground Up**," in the amount of **\$445,000**. The Division has the authority to administer this grant in accordance with Section 265.701(5), *Florida Statutes*.

In consideration of the mutual covenants and promises contained herein, the parties agree as follows:

- 1. Grant Purpose.** This grant shall be used exclusively for the "**Mound House: History from the Ground Up**" the public purpose for which these funds were appropriated.

- 2. Length of Agreement.** This Agreement shall begin upon the date that it is last executed by the parties, and it shall end on April 1, 2014, unless it is extended by written and signed amendment to this Agreement prior to expiration.

- 3. Contract Administration.** The parties are legally bound by the requirements of this agreement. Each party's contract manager, named below, will be responsible for monitoring its performance under this Agreement, and will be the official contact for each party. Any notice(s) or other communications in

regard to this agreement shall be directed to or delivered to the other party's contract manager by utilizing the information below. Any change in the contact information below should be submitted in writing to the contract manager within 10 days of the change.

For the Division of Cultural Affairs:

Cultural Facilities Program Manager
Florida Department of State
Division of Cultural Affairs
R.A. Gray Building, 3rd Floor
500 South Bronough Street
Tallahassee, Florida 32399
Phone: (850) 245-6483
Facsimile: (850) 245-6497
Email: _____

For the Grantee:

Ms. Sarah Desquesnes
Town of Fort Myers Beach Mound House
2523 Estero Boulevard
Fort Myers Beach, Florida 33931
Phone: 239-765-0865
Fax:
Email: sarah@fortmyersbeachfl.gov

4. Prior to the Disbursement of Grant Funds. Prior to the disbursement of funds, the Grantee must:

4.1 Sign this Grant Agreement. The Grantee must execute this Grant Agreement and agree to comply with all of its terms.

4.2 Attach an approved "Project Narrative." The Grantee has provided and attached an approved Project Narrative (which is incorporated as part of this

Agreement and entitled **Attachment A**). The Project Narrative describes the entire project, including those elements that will be funded by the grant.

4.3 Attach an approved "Project Budget." The Grantee has provided and attached an approved Project Budget (which is incorporated as part of this Agreement and entitled **Attachment B**). The Project Budget was created by the Grantee, is based upon reasonable expenditures projected to accomplish the Scope of Work, and details how grant funds will be spent. (Itemized Project Budget expenditures not funded by this grant are indicated by a zero (\$0) next to the respective item in the Project Budget.). Only items included in the approved Project Budget may be funded by the grant.

4.4 Attach a Legal Description of the Property. The Grantee has provided and attached the legal description of the property on which the cultural facility is or will be located, (which is incorporated as part of this Agreement and entitled **Attachment C**).

4.5 Attach an approved "Grant Completion Schedule." The Grantee has provided and attached an approved Grant Completion Schedule (incorporated as part of this Agreement and entitled **Attachment D**), which is a time-line for the completion of the project described in the Project Narrative.

4.6 Choose to Record a Restrictive Covenant or Purchase a Surety Bond. Before a Grantee may request any grant funds, the Grantee (and the Property Owner, if a different person) must choose to either record a Restrictive Covenant or purchase a Surety Bond to ensure that the facility will be used as a "Cultural Facility" for a period of 10 years following the Grant Award. For the purposes of this program, the Grant Award is the date on which the Grant Award Agreement is fully executed. (This requirement ensures that the State's investment in your cultural facility will benefit the visiting public for at least 10 years.)

4.7 Have (and Maintain) Corporate Nonprofit Status. The Grantee has and must continue to maintain its not-for-profit eligibility, as a public entity or a tax-exempt Florida corporation, for the duration of the Restrictive Covenant or Surety Bond.

4.8 Complete a Historic Preservation Review. If the facility that is being renovated with state funds is 50 years old or older, then in accordance with Section 267.061(2)(a) and (b), *Florida Statutes*, the Grantee must submit information about the grant project to the Division of Historical Resources, Bureau of Historic Preservation ("Bureau"), so that it may determine whether the project has historic significance. Should the Bureau deem the facility to have historic significance, grant funds may only be released after the Bureau notifies the Division, in writing, that the Grantee has satisfied the Bureau's requirements. If the facility is not deemed to be of historic significance, grant funds will be released to Grantee in accordance with section 6 of this Agreement.

4.9 Meet the Requirements for Matching Funds. Matching funds must meet the following requirements:

- (a)** Be directly related to the specific construction or renovation work described in the Project Narrative and detailed in the Project Budget.
- (b)** May not consist of general operating expenses as described in subsection 11.1 of this agreement.
- (c)** Be clearly accounted for by documentation maintained at the Grantee's office.
- (d)** May not consist of state dollars from any source.

- (e) May not consist of matching funds claimed for any other state grant.
- (f) May have been expended prior to the effective date of this Agreement, as long as the expenditures are clearly a part of this grant project, as described in the Project Narrative and detailed in the Project Budget.
- (g) If the Grantee's total support and revenue for the last completed fiscal year is \$500,000 or more, the Grantee must provide not less than \$2.00 in matching funds for every \$1.00 of state funds received under this Agreement.
- (h) If the Grantee's total support and revenue for the last completed fiscal year is less than \$500,000, the Grantee must provide not less than \$1.00 in matching funds for every \$1.00 of state funds received under this Agreement.
- (i) Documentation of in-kind contributions must substantiate fair market value.
- (j) The matching requirement for grants for rural communities designated in accordance with Section 288.0656, *Florida Statutes*, and approved for reduction in accordance with Section 288.06561, *Florida Statutes*, by the application deadline is \$1.00 in matching funds for every \$1.00 of state funds received under this Agreement.

5. Grant Funds. All grant expenditures must be detailed in the Project Budget in order to qualify for grant funding. If the Grantee finds it necessary to expend state dollars for allowable project costs not described in the Project Budget, it must submit to the Division for approval, a completed Grant Amendment Request (Form CA2E047), incorporated by reference and available from the Division's Website at www.florida-arts.org, before the work is started and before grant funds are obligated or paid out.

6. Release of Grant Funds. Before grant funds may be released, the Grantee must:

(a) Sign and return this Agreement with completed Attachments A-D;

(b) Provide documentation that the Restrictive Covenant has been recorded with the Clerk of the Circuit Court of the county where the property is located, or provide a copy of a Surety Bond;

(c) Submit documentation in compliance with subsection 4.8 of this agreement.

(d) Execute a contract or contracts with an architect and/or contractor that obligate(s) at least the amount of grant funds and required match and provide a copy of the signed contract to the Division.

(e) Submit (6)(a) through (6)(d) above to the Division for approval.

7. Grant Payments. All grant payments are requested by submitting a Request for Warrant (Form CA2E001, incorporated by reference and available on the Division's Website at www.florida-arts.org). For planning purposes, Grantees are encouraged to review upcoming expenses in at least six (6) months in advance.

7.1 Initial Grant Payment. Grantees may request up to 25% of the Grant Award. In order to be eligible to request up to 25% of the Grant Award, the Grant must comply with subsections 6a through 6c of this Agreement.

7.2 Grant Payments Beyond the Initial Grant Payment. To request grant payments beyond the Initial Grant Payment, the Grantee must submit:

(a) A Request for Warrant.

(b) A **Schedule of Expenses** using **Cultural Facilities Report Form** (CA2E048, incorporated by reference and available on the Division's website at www.florida-arts.org). The Schedule of Expenses must include actual project expenses paid to date including expenses charged to both match and state grant funds. The Grantee should spend its own money, in the form of match, at approximately the same rate (dollar for dollar), that it requests release of grant funds from the Division.

(c) A **State Funds Expenditure Log**. If grant funds have been paid out, a State Funds Expenditure Log (CA2E119, incorporated by reference and available on the Division's Website) must be submitted with each payment request and all reports. The Expenditure Log must list all project expenditures that were paid using state funds. Documentation of expenditures must include check numbers, payees, dates of payment, and check amounts.

7.3 Grant Payments as Reimbursements. Grantees will be reimbursed with grant funds only for those expenses that are detailed in the Project Budget (Attachment B). To request reimbursement, the Grantee must submit a Request for Warrant (subsection 7.2(a)); a Schedule of Expenses (subsection 7.2(b)); and a State Funds Expenditure Log (subsection 7.2(c)). For reimbursements, the Log should show actual grant expenditures for which the reimbursement is being requested.

8. Investment of Funds Received But Not Paid Out. The Grantee must temporarily invest any or all grant funds received but not expended, in an interest bearing account pursuant to Section 216.181(16)(b), *Florida Statutes*.

Interest earned on such investments should be returned to the Division quarterly, except that interest accrued less than \$100 within any quarter may be held until the next quarter when the accrued interest totals more than \$100. All interest accrued and not paid to the Division, regardless of amount, must be submitted with the Grantee's Final Report at the end of the Grant Period.

9. June 30, 2013 Deadline to Obligate All Grant and Match Funds.

The encumbrance deadline is the date by which the Grantee must have all grant and match under contract with an architect or contractor for expenditure. (To "Encumber" means to execute a contract with an architect or contractor for the expenditure of all State grant dollars and required match.) In-kind goods and services must be received and paid out no later than June 30, 2013, unless an extension is obtained from the Division prior to the deadline. Extensions may be requested using the Grant Amendment Request form. If the Grantee finds it necessary to request an extension of the encumbrance date, the extension may not exceed 120 days, unless the Grantee can demonstrate extenuating circumstances as described in section 10 of this Agreement.

10. Extension of the Grant Completion Deadline. An extension of the completion date must be requested at least 30 days prior to the end of the grant period and may not exceed 120 days, unless the Grantee can clearly demonstrate extenuating circumstances. An extenuating circumstance is one that is beyond the control of the Grantee, and one that prevents timely completion of the project such as a natural disaster, death or serious illness of the individual responsible for the completion of the project, litigation related to the project, or failure of the contractor or architect to provide the services for which they were contracted to provide. An extenuating circumstance does not include failure to read or understand the administrative requirements of a grant or failure to raise sufficient matching funds. Prior written approval is required for extensions.

11. Non-allowable Grant Expenditures. If the Grantee expends grant funds for work not detailed in the Project Budget, the Division will have the right to terminate this Agreement and/or demand the return of all or a part of these funds, and/or withhold funds from subsequent grants. In addition to the foregoing, grant funds may not be spent on the following:

11.1 General operating expenses (including but not limited to salaries, travel, personnel, office supplies, mortgage, rent, operating overhead, indirect costs, etc.).

11.2 Costs incurred in writing or submitting this grant application.

11.3 Costs for lobbying or attempting to influence federal, state or local legislation, the judicial branch, or any state agency.

11.4 Costs for planning, which include those for preliminary and schematic drawings, and design development documents necessary to carry out the project.

11.5 Costs for bad debts, contingencies, fines and penalties, interest, and other financial costs.

11.6 Costs for travel, private entertainment, food, beverages, plaques, awards, or scholarships.

11.7 Projects that are restricted to private or exclusive participation, including restriction of access to programs on the basis of sex, race, creed, national origin, disability, age, or marital status.

11.8 Re-granting, contributions, and donations.

11.9 Costs that are paid prior to the execution of the Grant Award Agreement and for which reimbursement is requested, or after April 1, 2014.

12. April 1, 2014 Grant Completion Deadline. The grant completion deadline is April 1, 2014 and is included in the Grant Completion Schedule (Attachment D). The Grant Completion Deadline is the date when all grant and matching funds have been paid out in accordance with the work described in the Project Narrative and detailed in the Project Budget. If the Grantee finds it necessary to request an extension of the Grant Completion Deadline, the extension may not exceed 120 days, unless the Grantee can demonstrate extenuating circumstances as described in section 13 of this Agreement.

13. Noncompliance With Grant Requirements. Any applicant that has not submitted required reports or satisfied other administrative requirements for other Division of Cultural Affairs grants or grants from any other Office of Cultural, Historical, and Information Programs (OCHIP) Division will be in noncompliance status and subject to the OCHIP Grants Compliance Procedure. (OCHIP) Divisions include the Division of Cultural Affairs, the Division of Historical Resources, and the Division of Library and Information Services.) Grant compliance issues must be resolved before a grant award agreement may be executed, and before grant payments for any OCHIP grant may be released.

14. Unrestricted Use and Access: The Grantee must maintain Unrestricted Use of the land and buildings associated with the Cultural Facility for a minimum of 10 years following the Grant Award (Grant Award means the date on which the Grant Award Agreement is fully executed).

14.1 Lease of Land and Buildings. If the land and buildings are leased, the Division may, from time to time, require certification from the Grantee or the property owner that the lease is in full force and effect, that it has not been

modified or terminated, and that the Grantee is not in default of the lease (or in the case of an owner, documentation of ownership is required). Failure to provide such certification will constitute a default hereunder, which will give the Division the right to terminate this Agreement and demand the return of all or a part of any funds already delivered, and/or to withhold funds from subsequent grants.

14.2 Retaining Ownership of Land and Buildings. The owner of land and building(s) must retain ownership of the land and buildings, along with improvements made to the land and building(s), for at least 10 years following the Grant Award. Exception: Land and buildings owned by the State of Florida and leased to an eligible applicant. For the purposes of this program, the applicant must not be a political subdivision of the state.

15. Restrictive Covenant. If the Grantee chooses to record a Restrictive Covenant and the facility ceases to be used as a "Cultural Facility" during the (10) ten years following the Grant Award, the grant funds must be repaid to the Division according to the **Restrictive Covenant Amortization Schedule** (incorporated into this Agreement and attached as Appendix 1).

16. Surety Bond instead of a Restrictive Covenant. If a Surety Bond is selected by the Grantee and the facility ceases to be used as a "Cultural Facility" during the (10) ten years following the Grant Award, the grant funds must be repaid to the Division according to the **Surety Bond Amortization Schedule** (incorporated into this Agreement and attached as Appendix 2).

17. Modifications to this Agreement. If changes are desired to any part of this Agreement, or its Attachments, the Grantee must submit a **Grant Amendment Request** form, prior to the implementation of such changes. Although changes to the Agreement will not be unreasonably denied, the Grantee is not authorized to implement any changes without the prior written

approval of the Division's Contract Manager. If changes are implemented without the Division's written approval, the organization is subject to noncompliance, and the grant award is subject to reduction, partial, or complete refund to the State of Florida and termination of this agreement.

18. No Changes to the Project Scope of Work or Venue. No changes to the Scope of Work (Project Narrative) or Venue are permitted. Such changes require submission of a new application.

19. Grant Reporting Requirements. The Grantee must submit the following reports to the Division, using the Cultural Facilities Report form (CA2E048, incorporated by reference and available on the Division's Website at www.florida-arts.org):

19.1 First Interim Status Report is due by January 31, 2013, for the period ending December 31, 2012.

19.2 Second Interim Status Report is due by July 31, 2013, for the period ending June 30, 2013.

19.3 Third Interim Status Report is due by January 31, 2014, for the period ending December 31, 2013.

19.4 Final Report. The Grantee must submit a Final Report to the Division, 45 days after all grant and match funds have been expended, but no later than May 15, 2014, unless the Grantee requests prior written approval from the Division's Contract Manager through a Grant Amendment Request. The Final Report must detail all project activity that occurred during the grant period and include a narrative description of the work completed, as described in either the Project Narrative or detailed in the Project Budget. If the Division approves an extension to the Final Report due date, the Grantee must submit

a Fourth Interim Status Report on or before April 30, 2014, for the period January 1, 2014 through March 30, 2014.

20. Audit Requirements. Each non-state entity that expends a total amount of state awards (i.e., state financial assistance provided to the recipient to carry out a state project) equal to or in excess of \$500,000 in any fiscal year of such recipient, shall be required to have a Florida Single Audit or project-specific audit for such fiscal year in accordance with the requirements of Section 215.97, *Florida Statutes*; the applicable rules of the Executive Office of the Governor, the Chief Financial Officer, and the Auditor General. The audit must include a schedule of receipts and expenditures for the entire grant amount, and be submitted within nine (9) calendar months following the end of the organization's fiscal year. See **Florida Single Audit Act (FSAA) information**, attached as **Addendum A**, for more specific information.

21. Accounting System Requirements. The Grantee must maintain an accounting system that provides a complete record of the use of all grant funds as follows:

21.1 The accounting system must be able to specifically identify, and provide audit trails that trace the receipt, maintenance, and expenditure of state funds;

21.2 Accounting records must adequately identify the sources and application of funds for all grant activities and must classify and identify grant funds by using the same budget categories that were approved in the grant application. If Grantee's accounting system accumulates data in a different format than the one in the grant application, subsidiary records must document and reconcile the amounts shown in the Grantee's accounting records to those amounts reported to the Division.

21.3 An interest-bearing checking account or accounts in a state or federally chartered institution must be used for revenues and expenses described in the Project Narrative and detailed in the Project Budget. This account must be used solely for grant expenditures. Any other use will be considered a violation of this Agreement;

21.4 The name of the account(s) must include the grant award number;

21.5 The Grantee's accounting records must have effective control over and accountability for all funds, property, and other assets; and

21.6 Accounting records must be supported by source documentation and be in sufficient detail to allow for a proper pre-audit and post-audit (such as invoices, bills, and canceled checks).

22. Public Records Retention Requirement. Financial records, executed construction or other project-related contracts, supporting documents, interest documentation, statistical records, and all other records related to the grant are public records and must be retained for a minimum period of five (5) years after the filing of the Final Report. If any litigation or an audit is started or any claim is made before the expiration of the five-year period, the records must be retained until the litigation, claim, or audit questions involving the grant records have been resolved, or for five (5) years after filing the Final Report, whichever period is longer.

23. Obligation to Provide State Access to Grant Records. The Grantee must make all grant records of expenditures, copies of reports, books, and related documentation available to the Division or a duly authorized representative of the State of Florida for inspection at reasonable times for the purpose of making audits, examinations, excerpts, and transcripts.

24. Obligation to Provide Public Access to Grant Records. The Division reserves the right to unilaterally cancel this Agreement in the event that the Grantee refuses public access to all documents or other materials made or received by the Grantee that are subject to the provisions of Chapter 119, *Florida Statutes*, known as the *Florida Public Records Act*. The Grantee must immediately contact the Division's Contract Manager for assistance if it receives a public records request related to this Agreement.

25. Credit Line(s) to Acknowledge Grant Funding. Any nongovernmental organization that sponsors a program financed partially by state funds or funds obtained from a state agency shall, in publicizing, advertising, or describing the sponsorship of the program, state "Sponsored in part by the Department of State, Division of Cultural Affairs, the Florida Council on Arts and Culture, and the State of Florida." (Section 286.25, *Florida Statutes*).

26. Availability of State Funds. The State of Florida's performance and obligation to pay under this Agreement are contingent upon an annual appropriation by the Florida Legislature. In the event that the state funds upon which this Agreement is dependent are withdrawn, this Agreement will be automatically terminated and the Division shall have no further liability to the Grantee, beyond those amounts already expended prior to the termination date. Such termination will not affect the responsibility of the Grantee under this Agreement as to those funds previously distributed. In the event of a state revenue shortfall, the total grant may be reduced accordingly.

27. Independent Contractor Status of Grantee. The Grantee, if not a state agency, agrees that its officers, agents and employees, in performance of this Agreement, shall act in the capacity of independent contractors and not as officers, agents, or employees of the state. The Grantee is not entitled to accrue any benefits of state employment, including retirement benefits and any other rights or privileges connected with employment by the State of Florida.

28. Grantee's Subcontractors. The Grantee shall be responsible for all work performed and all expenses incurred in connection with this Agreement. The Grantee may subcontract, as necessary, to perform the services and to provide commodities required by this Agreement. The Division shall not be liable to any subcontractor(s) for any expenses or liabilities incurred under the Grantee's subcontract(s), and the Grantee shall be solely liable to its subcontractor(s) for all expenses and liabilities incurred under its subcontract(s). The Grantee must take the necessary steps to ensure that each of its subcontractors will be deemed to be "independent contractors" and will not be considered or permitted to be an agents, servants, joint venturers, or partners of the Division.

29. Liability. The Division will not assume any liability for the acts, omissions to act, or negligence of, the Grantee, its agents, servants, or employees; nor may the Grantee exclude liability for its own acts, omissions to act, or negligence, to the Division.

29.1 The Grantee shall be responsible for claims of any nature, including but not limited to injury, death, and property damage arising out of activities related to this Agreement by the Grantee, its agents, servants, employees, and subcontractors. The Grantee shall indemnify and hold the Division harmless from any and all claims of any nature and shall investigate all such claims at its own expense. If the Grantee is governed by Section 768.28, *Florida Statutes*, it shall only be obligated in accordance with this section.

29.2 Neither the state nor any agency or subdivision of the state waives any defense of sovereign immunity, or increases the limits of its liability, by entering into this Agreement.

29.3 The Division shall not be liable for attorney fees, interest, late charges or service fees, or cost of collection related to this Agreement.

30. Strict Compliance with Laws. The Grantee shall perform all acts required by this Agreement in strict conformity with all applicable laws and regulations of the local, state and federal law.

31. No Discrimination. The Grantee may not discriminate against any employee employed under this Agreement, or against any applicant for employment because of race, color, religion, gender, national origin, age, handicap or marital status. The Grantee shall insert a similar provision in all of its subcontracts for services under this Agreement.

32. Breach of Agreement. The Division will demand the return of grant funds already received, will withhold subsequent payments, and/or will terminate this agreement if the Grantee improperly expends and manages grant funds, fails to prepare, preserve or surrender records required by this Agreement, or otherwise violates this Agreement.

33. Termination of Agreement. The Division will terminate or end this Agreement if the Grantee fails to fulfill its obligations herein. In such event, the Division will provide the Grantee a notice of its violation by letter, and shall give the Grantee 15 calendar days from the date of receipt to cure its violation. If the violation is not cured within the stated period, the Division will terminate this Agreement. The notice of violation letter shall be delivered to the Grantee's Contract Manager, personally, or mailed to his/her specified address by a method that provides proof of receipt. In the event that the Division terminates this Agreement, the Grantee will be compensated for any work completed in accordance with this Agreement, prior to the notification of termination, if the Division deems this reasonable under the circumstances. Grant funds previously advanced and not expended on work completed in

accordance with this Agreement shall be returned to the Division, with interest, within 30 days after termination of this Agreement. The Division does not waive any of its rights to additional damages, if grant funds are returned under this section.

34. Preservation of Remedies. No delay or omission to exercise any right, power, or remedy accruing to either party upon breach or violation by either party under this Agreement, shall impair any such right, power or remedy of either party; nor shall such delay or omission be construed as a waiver of any such breach or default, or any similar breach or default.

35. Non-Assignment of Agreement. The Grantee may not assign, sublicense nor otherwise transfer its rights, duties or obligations under this Agreement without the prior written consent of the Division, which consent shall not unreasonably be withheld. The agreement transferee must demonstrate compliance with the requirements of the project. If the Division approves a transfer of the Grantee's obligations, the Grantee shall remain liable for all work performed and all expenses incurred in connection with this Agreement. In the event the Legislature transfers the rights, duties, and obligations of the Division to another governmental entity pursuant to Section 20.06, *Florida Statutes*, or otherwise, the rights, duties, and obligations under this Agreement shall be transferred to the successor governmental agency as if it was the original party to this Agreement.

36. Prohibition of Conflicts of Interest. The Grantee hereby certifies that it is cognizant of the prohibition of conflicts of interest described in sections 112.311 through 112.326, *Florida Statutes*, and affirms that it will not enter into or maintain a business or other relationship with any employee of the Department of State that would violate those provisions. The Grantee further agrees to seek authorization from the General Counsel for the Department of

State prior to entering into any business or other relationship with a Department of State Employee to avoid a potential violation of those statutes.

37. Binding of Successors. This Agreement shall bind the successors, assigns and legal representatives of the Grantee and of any legal entity that succeeds to the obligations of the Division of Cultural Affairs.

38. No Employment of Unauthorized Aliens. The employment of unauthorized aliens by the Grantee is considered a violation of Section 274A(a) of the Immigration and Nationality Act. If the Grantee knowingly employs unauthorized aliens, such violation shall be cause for unilateral cancellation of this Agreement.

39. Severability. If any term or provision of the Agreement is found to be illegal and unenforceable, the remainder will remain in full force and effect, and such term or provision shall be deemed stricken.

40. Americans with Disabilities Act. All programs and facilities related to this Agreement must meet the standards of the Americans with Disabilities Act of 1990.

41. Governing Law. This Agreement shall be construed, performed, and enforced in all respects in accordance with the laws and rules of Florida. Venue or location for any legal action arising under this Agreement will be in Leon County, Florida.

42. Entire Agreement. The entire Agreement of the parties consists of the following documents:

(a) This Agreement (including all required forms);

- (b) Attachment A: Project Narrative;
- (c) Attachment B: Project Budget;
- (d) Attachment C: Legal Description of the Property;
- (e) Attachment D: Project Completion Schedule; and
- (f) A recorded Restrictive Covenant and Amortization Schedule as Appendix 1 or an Issued Surety Bond and Amortization Schedule as Appendix 2.

In acknowledgment of Grant Number 13-9035, provided for from funds appropriated in the 2012 Appropriation Act in the amount of \$445,000, Town of Fort Myers Beach, I hereby certify that I have read this entire Agreement, and that I will comply with all of its requirements.

Department of State:

Grantee:

By: _____
Secretary of State

By: _____
Authorizing Official for the Grantee*

Witness

Typed name and title

Date

Witness

Date

***If the authorizing official signing above on behalf of the grantee organization is not the president of the board, then another authorized board member or other equivalent official must sign below.**

On behalf of the governing body of the Grantee organization, I hereby acknowledge awareness of, and agree to comply with all of the requirements of this Grant Agreement.

Signature

Typed name and title

Witness

Date

APPENDIX 1

Restrictive Covenant Provisions and Amortization Schedule

1. If the Grantee chooses to record a Restrictive Covenant, the Grantee, and the property owner(s) (if the land or buildings or both are leased by the grantee), shall execute and file a Restrictive Covenant with the Clerk of the Circuit Court in the county where the property is located, prior to the date that the agreement is executed.

2. The Restrictive Covenant shall include the following provisions:

a. That the Restrictive Covenant shall run with title to the building(s) and the associated land and improvements funded by the grant, shall encumber them, and shall be binding upon the Grantee (and the owner(s), if different person(s), and the successors in interest), for (10) ten years from the Grant Award.

b. The owner(s) of the improvements made to the building(s) and associated land, funded in whole or in part by grant funds, must also execute the Restrictive Covenant. Exception: Land or buildings or both owned by the State of Florida and leased to an eligible applicant. For the purposes of this program, the applicant must not be a political subdivision of the state.

c. The Grantee (and owners, if different persons) shall permit the Division to inspect the Cultural Facility and associated land at all reasonable times to determine whether the Grantee is in compliance with the Grant Award Agreement and the Restrictive Covenant.

d. The Grantee must maintain the building(s) as a "Cultural Facility." For the purposes of this program, a "Cultural Facility" is defined as a building which shall be used primarily for the programming, production, presentation, exhibition or any combination of the foregoing for any of the cultural disciplines listed in Section 265.283(7), *Florida Statutes*. These disciplines include, but are not limited to music, dance, theatre, creative writing, literature, architecture, painting, sculpture, folks arts, photography, crafts, media arts, visual arts, programs of museums, and other such allied, major art forms.

e. The Restrictive Covenant shall also contain the following amortization schedule for repayment of grant funds, should the Grantee or owners or their successors in interest violate the Restrictive Covenant.

(1) If the violation occurs within five (5) years following the Grant Award, 100% of the grant amount;

(2) If the violation occurs more than five (5) but less than six (6) years following the Grant Award, 80% of the grant amount;

(3) If the violation occurs more than six (6) but less than seven (7) years following the Grant Award, 65% of the grant amount;

(4) If the violation occurs more than seven (7) but less than eight (8) years following the Grant Award, 50% of the grant amount;

(5) If the violation occurs more than eight (8) but less than nine (9) years following the Grant Award, 35% of the grant amount; and

(6) If the violation occurs more than nine (9) but less than ten (10) years following the Grant Award, 20% of the grant amount.

f. Other provisions as agreed upon by the Division and the Grantee.

APPENDIX 2

Surety Bond and Amortization Schedule

1. Any Grantee entering into a Grant Award Agreement with the Division for the acquisition, renovation, or construction of a Cultural Facility that chooses not to record a Restrictive Covenant must purchase a 10-year Surety Bond.
2. A certified copy of the Bond Agreement must be provided to the Division prior to the execution of the Grant Award Agreement.
3. The Bond Agreement must:
 - a. Provide that the facility described in Attachment A: Scope of Work, incorporated by reference in the Grant Award Agreement, will be used as a "Cultural Facility" for (10) ten years following the Grant Award; A Cultural Facility means a building which shall be used primarily for the programming, production, presentation, exhibition or any combination of the above functions of any of the arts and cultural disciplines defined in s. 265.283(7), F.S. These disciplines include, but are not limited to music, dance, theatre, creative writing, literature, architecture, painting, sculpture, folks arts, photography, crafts, media arts, visual arts, programs of museums, and other such allied, major art forms.
 - b. Be purchased from a surety insurer authorized to do business in the Florida as a Surety;
 - c. Provide that there will be a violation of the Bond Agreement if the facility ceases to be used as a "Cultural Facility" as required by Section 265.701(4), *Florida Statutes*, within 10 years following the Grant Award, and that the surety insurer must immediately repay funds to the Division, pursuant to the following amortization schedule:
 - (1) If the violation occurs within three (3) years following the Grant Award, 100% of the grant amount;
 - (2) If the violation occurs more than three (3) but less than four (4) years following the Grant Award, 80% of the grant amount;

(3) If the violation occurs more than four (4) but less than five (5) years following the Grant Award, 70% of the grant amount;

(4) If the violation occurs more than five (5) but less than six (6) years following the Grant Award, 60% of the grant amount;

(5) If the violation occurs more than six (6) but less than seven (7) years following the Grant Award, 50% of the grant amount;

(6) If the violation occurs more than seven (7) but less than eight (8) years following the Grant Award, 40% of the grant amount;

(7) If the violation occurs more than eight (8) but less than nine (9) years following the Grant Award, 30% of the grant amount;

(8) If the violation occurs more than nine (9) but less than ten (10) years following the Grant Award, 20% of the grant amount.

Addendum A

Florida Single Audit Act Addendum

The administration of resources awarded by the Department of State to the recipient may be subject to audits and/or monitoring by the Department of State, as described in this section.

MONITORING

In addition to reviews of audits conducted in accordance with OMB Circular A- 133 and Section 215.97, F.S., as revised (see "AUDITS" below), monitoring procedures may include, but not be limited to, on-site visits by Department of State staff, limited scope audits as defined by OMB Circular A-133, as revised, and/or other procedures. By entering into this agreement, the recipient agrees to comply and cooperate with any monitoring procedures/processes deemed appropriate by the Department of State. In the event the Department of State determines that a limited scope audit of the recipient is appropriate, the recipient agrees to comply with any additional instructions provided by the Department of State staff to the recipient regarding such audit. The recipient further agrees to comply and cooperate with any inspections, reviews, investigations, or audits deemed necessary by the Chief Financial Officer (CFO) or Auditor General.

AUDITS

PART I: FEDERALLY FUNDED

This part is applicable if the recipient is a State or local government or a non-profit organization as defined in OMB Circular A-133, as revised.

1. In the event that the recipient expends \$500,000 or more in Federal awards in its fiscal year, the recipient must have a single or program-specific audit conducted in accordance with the provisions of OMB Circular A-133, as revised. EXHIBIT 1 to this agreement indicates Federal resources awarded through the Department of State by this agreement. In determining the Federal awards expended in its fiscal year, the recipient shall consider all sources of Federal awards, including Federal resources received from the Department of State. The determination of amounts of Federal awards expended should be in accordance with the guidelines established by OMB Circular A-133, as revised. An audit of the recipient conducted by the Auditor General in accordance with the provisions OMB Circular A-133, as revised, will meet the requirements of this part.
2. In connection with the audit requirements addressed in Part I, paragraph 1, the recipient shall fulfill the requirements relative to auditee responsibilities as provided in Subpart C of OMB Circular A-133, as revised.
3. If the recipient expends less than \$500,000 in Federal awards in its fiscal year, an audit conducted in accordance with the provisions of OMB Circular A-133, as revised, is not required. In the event that the recipient expends less than \$500,000 in Federal awards in its fiscal year and elects to have an audit conducted in accordance with the provisions of OMB Circular A-133, as revised, the cost of the audit must be paid from non-Federal resources (i.e., the cost of such an audit must be paid from recipient resources obtained from other than Federal entities).
4. Additional guidance on federal monitoring and auditing requirements may be found at: Federal Office of Management and Budget: www.whitehouse.gov/OMB/circulars/a-133.

PART II: STATE FUNDED

This part is applicable if the recipient is a nonstate entity as defined by Section 215.97(2), Florida Statutes.

1. In the event that the recipient expends a total amount of state financial assistance equal to or in excess of \$500,000 in any fiscal year of such recipient (for fiscal years ending September 30, 2004 or thereafter), the recipient must have a State single or project-specific audit for such fiscal year in accordance with Section 215.97, Florida Statutes; applicable rules of the Department of Financial Services; and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General. EXHIBIT 1 to this agreement indicates state financial assistance awarded through the Department of State by this agreement. In determining the state financial assistance expended in its fiscal year, the recipient shall consider all sources of state financial assistance, including state financial assistance received from the Department of State, other state agencies, and other nonstate entities. State financial assistance does not include Federal direct or pass-through awards and resources received by a nonstate entity for Federal program matching requirements.
2. In connection with the audit requirements addressed in Part II, paragraph 1, the recipient shall ensure that the audit complies with the requirements of Section 215.97(8), Florida Statutes. This includes submission of a financial reporting package as defined by Section 215.97(2), Florida Statutes, and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General.
3. If the recipient expends less than \$500,000 in state financial assistance in its fiscal year (for fiscal years ending September 30, 2004 or thereafter), an audit conducted in accordance with the provisions of Section 215.97, Florida Statutes, is not required. In the event that the recipient expends less than \$500,000 in state financial assistance in its fiscal year and elects to have an audit conducted in accordance with the provisions of Section 215.97, Florida Statutes, the cost of the audit must be paid from the nonstate entity's resources (i.e., the cost of such an audit must be paid from the recipient's resources obtained from other than State entities).
4. Additional guidance on state monitoring and auditing requirements may be found at: Department of Financial Services: <https://apps.fdfs.com/fsaal/>.

PART III: OTHER AUDIT REQUIREMENTS

If the recipient expends less than \$500,000 in state financial assistance in its fiscal year, it is not required to have an audit conducted in accordance with the provisions of Section 215.97, Florida Statutes; however, the recipient will be required by the Department of State to submit other financial information as required by the terms of the Grant Award Agreement or required by Florida law.

PART IV: REPORT SUBMISSION

1. Copies of reporting packages for audits conducted in accordance with OMB Circular A-133, as revised, and required by PART I of this agreement shall be submitted, when required by Section _____.320 (d), OMB Circular A-133, as revised, by or on behalf of the recipient directly to each of the following:
 - A. The Department of State at the following addresses:

Department of State
Division of Cultural Affairs
R. A. Gray Building, 3rd Floor
500 South Bronough Street
Tallahassee, FL 32399-0250

- B. The Federal Audit Clearinghouse designated in OMB Circular A-133, as revised (the number of copies required by Sections __.320 (d)(1) and (2), OMB Circular A-133, as revised, should be submitted to the Federal Audit Clearinghouse, at the following address:

Federal Audit Clearinghouse
Bureau of the Census
1201 East 10th Street
Jeffersonville, IN 47132

- C. Other Federal agencies and pass-through entities in accordance with Sections __.320 (e) and (f), OMB Circular A-133, as revised.

2. In the event that a copy of the reporting package for an audit required by PART I of this agreement and conducted in accordance with OMB Circular A- 133, as revised, is not required to be submitted to the Department of State for the reasons pursuant to Section __.320 (e)(2), OMB Circular A-133, as revised, the recipient shall submit the required written notification pursuant to Section __.320 (e)(2) and a copy of the recipient's audited schedule of expenditures of Federal awards directly to the following:

Department of State
Division of Cultural Affairs
R. A. Gray Building, 3rd Floor
500 South Bronough Street
Tallahassee, FL 32399-0250

3. Copies of financial reporting packages required by PART II of this agreement shall be submitted by or on behalf of the recipient directly to the following:

- A. The Department of State at the following address:

Department of State
Division of Cultural Affairs
R. A. Gray Building, 3rd Floor
500 South Bronough Street
Tallahassee, FL 32399-0250

- B. The Auditor General's Office at the following address:

Auditor General's Office
Room 401, Pepper Building
111 West Madison Street
Tallahassee, Florida 32399-1450

4. Copies of reports or the management letter required by PART III of this agreement shall be submitted by or on behalf of the recipient directly to:

- A. The Department of State at the following address:

Department of State
Division of Cultural Affairs
R. A. Gray Building, 3rd Floor
500 South Bronough Street
Tallahassee, FL 32399-0250

5. Any reports, management letter, or other information required to be submitted to the Department of State pursuant to this agreement shall be submitted timely in accordance with OMB Circular A-

133, Florida Statutes, and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, as applicable.

6. Recipients, when submitting financial reporting packages to the Department of State for audits done in accordance with OMB Circular A- 133 or Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, should indicate the date that the reporting package was delivered to the recipient in correspondence accompanying the reporting package.

PART V: RECORD RETENTION

The recipient shall retain sufficient records demonstrating its compliance with the terms of this agreement for a period of five (5) years from the date the audit report is issued, and shall allow the Department of State, or its designee, CFO, or Auditor General access to such records upon request. The recipient shall ensure that audit working papers are made available to the Department of State, or its designee, CFO, or Auditor General upon request for a period of five (5) years from the date the audit report is issued, unless extended in writing by the Department of State.