

**AGREEMENT BETWEEN
THE STATE OF FLORIDA, DEPARTMENT OF STATE
AND
VILLAGE OF WELLINGTON**

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 Village of Wellington hereinafter referred to as the "Grantee."

The Grantee has been awarded a Cultural Facilities Grant (CSFA 45.014) by the Division, grant number 17.9.200.548 for the project "Wellington Community Center," in the amount of \$500,000. Funds for this grant have been appropriated in the FY 2016-2017 General Appropriations Act on line 3108A. The Division has the authority to administer this grant in accordance with Section 265.701, *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 "Wellington Community Center," project, the public purpose for which these funds were appropriated as described in **Attachment A**, Project Description.

a) The Grantee shall perform the following Scope of Work:

Village of Wellington will construct a 2 story, 25,000 square foot facility to serve all the needs of the Community. The Center, built in virtually the same location as the previous structure, is being constructed to accentuate the adjacent lake and provide greater access to the site other popular facilities such as the outdoor amphitheater. The new Center will provide almost 30% more programming space and include areas dedicated for dance, music and crafts. The project will also construct a state of the art stage facility within the building that can be used to host large performances. This stage area will include lighting, sound and dressing areas for performers. In addition to performing art space, the Center will have education facilities such as computer labs and multi-purpose rooms for a wide range of programming.

Project Deliverables:

1. Metal Framing, Drywall & Stucco
2. Metal Awning Louvers
3. HVAC
4. Painting, Floor Tiling, Acoustic Ceilings
5. Cabinets
6. Elevator
7. Electric System including Audio/Visual system
8. Structure exterior lighting, signage and parking

All tasks associated with the renovation will be performed by June 1, 2018. All project work will be completed under the supervision of a licensed architect or licensed contractor.

- b) The Grantee agrees to provide the following **Deliverables** and **Performance Measures** related to the Scope of Work for payments to be awarded.

Payment 1, Deliverable/Task 1:

- The first payment will be a fixed price in the amount of 30 percent (30%) of the grant award. The Grantee will have completed at least 30 percent (30%) of the project prior to payment.
The performance measure documenting satisfactory completion of Deliverables will be a completed Application and Certificate for Payment (AIA Document G702) and Schedule of Contract Values (AIA Document G703) or its equivalent (see Appendix 1) **along with a Contractor's Affidavit of Completion**, showing at least 30 percent (30%) of the project completed.

Payment 2, Deliverable/Task 2:

- The second payment will be a fixed price in the amount of 30 percent (30%) of the grant award. The Grantee will have completed at least 60 percent (60%) of the project prior to payment. The performance measure documenting satisfactory completion of Deliverables will be a completed Application and Certificate for Payment (AIA Document G702) and Schedule of Contract Values (AIA Document G703), or its equivalent (see Appendix 1) **along with a Contractor's Affidavit of Completion**, showing at least 60 percent (60%) of the project completed.

Payment 3, Deliverable/Task 3:

- The third payment will be a fixed price in the amount of 40 percent (40%) of the grant award. The Grantee will have completed 100 percent (100%) of the project prior to payment.
The performance measure documenting satisfactory completion of Deliverables will be a completed Application and Certificate for Payment (AIA Document G702), Schedule of Contract Values (AIA Document G703), and a Certificate of Substantial Completion (AIA Document G704), or its equivalent (see Appendix 1) **along with a Contractor's Affidavit of Completion**, showing 100 percent (100%) of the project completed, including all retainage amounts paid.

- c) The Grantee has provided an Estimated Project Budget (which is incorporated as part of this Agreement and entitled Attachment C). All expenditures for this agreement shall be in accordance with this budget (Attachment C).
- d) **Change Orders.** Should grant expenditures exceed the budgeted grant amount for any work item by more than 20%, the Grantee shall be required to submit a proposal for revision of the Project Budget with a written explanation for the reason(s) for deviation(s) from the original Project Budget to the Division for review and written approval.

2. **Length of Agreement.** This Agreement shall begin on July 1, 2016, and shall end June 1, 2018, unless terminated in accordance with the provisions of Section 37 of this Agreement. Contract extensions will not be granted unless Grantee is able to provide substantial written justification and the Division approves such extension. The Grantee's written request for such extension must be submitted to the Division no later than thirty (30) days prior to the termination date of this Agreement.

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:

Elsie J. Rogers, Contract Manager
Florida Department of State
R.A. Gray Building
500 South Bronough Street
Tallahassee, FL 32399
Phone: 850.245.6483
Email: Elsie.Rogers@dos.myflorida.com

For the Grantee:

Tanya Quickel
Village of Wellington
12300 Forest Hill Boulevard
Wellington, Florida, 33414
Phone: 561-791-4113
Email: tquickel@wellingtonfl.gov

4. **Required Information Needed with Return of Signed Agreement.** Prior to the disbursement of funds, the Grantee must provide the following with the return of the signed Agreement.

- a) Signed Grant Award Agreement which details the Scope of Work and Deliverables.
- b) 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 B).
- c) Choose to Record a Restrictive Covenant or Purchase a Surety Bond. The Grantee has provided documentation that the Restrictive Covenant has been recorded with the Clerk of the Circuit Court of the county where the property is located, or provided a Surety Bond. (See Section 20 and 21)
- d) Corporate Nonprofit Status. The Grantee must provide a copy of the corporations' not-for-profit status and 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.

e) Historic Preservation Review. The Grantee must submit the confirmation received from the Bureau of Historic Preservation regarding the historical significance of the property. Applies if structures are 50 years or older. (See Section 22)

f) Submit a copy of the Grantee's Florida Substitute Form W-9. (See Section 7)

5. Grant Payments. All grant payments are requested by submitting a payment request, Application and Certificate for Payment (AIA Document G702) and Schedule of Contract Values (AIA Document G703) or its equivalent (See Appendix 1). The total grant award shall not exceed \$Amount which shall be paid by the Division in consideration for the Grantee's minimum performance as set forth by the terms and conditions of this Agreement. The grant payment schedule is outlined below:

a) The first payment will be 30 percent (30%) of the grant award. Payment will be made in accordance with the completion of the Deliverables and performance measures.

b) The second payment will be 30 percent (30%) of the grant award. Payment will be made in accordance with the completion of the Deliverables and performance measures.

c) The third payment will be 40 percent (40%) of the grant award. Payment will be made in accordance with the completion of the Deliverables and performance measures.

6. Electronic Payments. The Grantee can choose to use electronic funds transfer (EFT) to receive grant payments. All grantees wishing to receive their award through electronic funds transfer must submit a Direct Deposit Authorization form to the Florida Department of Financial Services. If EFT has already been set up for your organization, you do not need to submit another authorization form unless you have changed bank accounts. To download this form visit <http://www.myfloridacfo.com/Division/AA/Forms/DFS-A1-26E.pdf>. This page also includes tools and information that allow you to check on payments.

7. Florida Substitute Form W-9. A completed Substitute Form W-9 is required from any entity that receives a payment from the State of Florida that may be subject to 1099 reporting. The Department of Financial Services (DFS) must have the correct Taxpayer Identification Number (TIN) and other related information in order to report accurate tax information to the Internal Revenue Service (IRS). To register or access a Florida Substitute Form W-9 visit <https://flvendor.myfloridacfo.com/>. **A copy of the Grantee's Florida Substitute Form W-9 must be submitted with the executed Agreement.**

8. Amendment to Contract. Either party may request modification of the provisions of this Agreement by submitting a Cultural Facilities Grant Amendment Request form to the Division. Changes which are agreed upon shall be valid only when in writing, signed by each of the parties, and attached to the original of this Agreement. 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. The

Cultural Facilities Grant Amendment Request form is available on the Division's online grant system.

9. **Financial Consequences.** The Department shall apply the following financial consequences for failure to perform the minimum level of services required by this Agreement in accordance with Sections 215.971 and 287.058, *Florida Statutes*.
 - a) First payment will be withheld if Deliverables are not satisfactorily completed.
 - b) Second payment will be withheld if Deliverables are not satisfactorily completed.
 - c) Third payment will be withheld if Deliverables are not satisfactorily completed. If the grantee has spent less than the total grant award in state funds to complete the Scope of Work, the third payment will be reduced by an amount equal to the difference between state dollars spent and the total grant award.
10. **Encumbrance of Funds.** Encumbrance Period is between July 1, 2016 and June 30, 2017, during which state dollars must be obligated to pay for project expenses. To encumber means to have a signed contract with an architect or contractor for the expenditure of all grant and matching funds. All grant funds must be encumbered under the terms of a binding contractual agreement by June 30, 2017, except as allowed below.
 - a) Extension of Encumbrance Deadline: The encumbrance deadline indicated above may be extended by written approval of the Division. To be eligible for this extension, the Grantee must demonstrate to the Division that full encumbrance of grant funding and the required match by binding contract(s) is achievable by the end of the requested extended encumbrance period. The Grantee's written request for extension of the encumbrance deadline must be submitted to the Department no later than fifteen (15) days prior to the encumbrance deadline indicated above. The maximum extension of the encumbrance period shall be thirty (30) days.
11. **Grant Reporting Requirements.** The Grantee must submit the following reports to the Division, using the Cultural Facilities Progress Report form. The Cultural Facilities Progress Report form is available on the Division's website at <http://dos.myflorida.com/media/31252/culturalfacilitiesreportform.pdf>
 - a) **First Project Progress Report** is due by January 31, 2017, for the period ending December 31, 2016.
 - b) **Second Project Progress Report** is due by July 31, 2017, for the period ending June 30, 2017.
 - c) **Third Project Progress Report** is due by January 31, 2018, for the period ending December 31, 2017.
 - d) **Final Report.** The Grantee must submit a Final Report with photos of completed project to the Division by July 15, 2018.
12. **Matching Funds.** Matching funds must meet the following requirements:

- a) Be directly related to the specific construction or renovation work described in the Project Description and detailed in the Estimated Project Budget.
- b) May not consist of general operating expenses as described in Section 16 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 within the 5 years preceding July 1, 2016, as long as the expenditures are clearly a part of this grant project, as described in the Scope of work and detailed in the Estimated Project Budget.

13. Grant Completion Deadline. The grant completion deadline is June 1, 2018. The Grant Completion Deadline is the date when the project is 100% complete and all grant and matching funds have been paid out in accordance with the work described in the Scope of Work, detailed in the Estimated Project Budget. If the Grantee finds it necessary to request an extension of the Grant Completion Deadline, the extension may not exceed 60 days, unless the Grantee can demonstrate extenuating circumstances as described in Section 14 of this Agreement.

14. Extension of the Grant Completion Deadline. An extension of the completion date must be requested at least thirty (30) days prior to the end of the grant period and may not exceed 60 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.

15. Credit Line(s) to Acknowledge Grant Funding. All construction projects shall display a project identification sign in a prominent location at the Project site and shall maintain said sign while work is in progress. The sign must be a minimum of eight (8) square feet in area, be constructed of plywood or other durable material, and shall contain the following acknowledgment of grant assistance:

- a) "This project is sponsored in part by the Department of State, Division of Cultural Affairs, the Florida Council of Arts and Culture and the State of Florida" (Section 286.25, Florida Statutes).
- b) Any variation in the above specifications must receive prior approval in writing by the Division. The cost of preparation and erection of the project identification sign are allowable project costs. Routine maintenance costs of project signs are not allowable project costs.

16. Non-allowable Grant Expenditures. The Grantee agrees to expend all grant funds received under this agreement solely for the purposes for which they were authorized and appropriated. Expenditures shall be in compliance with the state guidelines for allowable project costs as outlined in the Department of Financial Services' Reference Guide for State Expenditures, which are incorporated by reference and are available online at http://www.myfloridacfo.com/aadir/reference_guide/. In addition, the following are not allowed as grant or matching expenditures:

- a) General Operating Expenses (GOE). Administrative costs for running the organization (including but not limited to salaries, travel, personnel, office supplies, mortgage or rent, operating overhead or indirect costs, etc.)
- b) Costs associated with representation, proposal, or grant application preparation
- c) Costs incurred or obligated outside of the grant period
- d) Costs for lobbying or attempting to influence federal, state or local legislation, the judicial branch, or any state agency
- e) Costs for planning, which include those for preliminary and schematic drawings, and design development documents necessary to carry out the project
- f) Costs associated with bad debts, contingencies (money set aside for possible expenses), fines and penalties, interest, taxes (of any kind), and other financial costs including bank fees and charges and credit card debts
- g) Costs for travel, private entertainment, food, beverages, plaques, awards, or scholarships
- h) Projects 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
- i) Re-granting, contributions, and donations
- j) Reimbursement of costs that are paid prior to the execution of the Grant Award Agreement or outside the dates stated in the grant award agreement
- k) Also refer to Section 216.348, Florida Statutes, Fixed capital outlay grants and aids to certain nonprofit entities.

17. Unobligated and Unearned Funds and Allowable Costs. In accordance with Section 215.971, *Florida Statutes*, the Grantee shall refund to the State of Florida any balance of unobligated funds which has been advanced or paid to the Grantee. In addition, funds paid in excess of the amount to which the recipient is entitled under the terms and conditions of the agreement must be refunded to the state agency. Further, the recipient may expend funds only for allowable costs resulting from obligations incurred during the specified agreement period. Expenditures of state financial assistance must be in compliance with the laws, rules, and regulations applicable to expenditures of State funds, including, but not limited to, the *Reference Guide for State Expenditures*.

18. Repayment. All refunds or repayments to be made to the Department under this agreement are to be made payable to the order of the "Department of State" and mailed directly to the following address: Florida Department of State, Attention: Elsie Rogers, Division of Cultural Affairs, 500 South Bronough Street Tallahassee, FL 32399. In accordance with Section 215.34(2), *Florida Statutes*, if a check or other draft is returned to the Department for collection, Recipient shall pay to the Department a service fee of \$15.00 or five percent (5%) of the face amount of the returned check or draft, whichever is greater.

19. 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).

- a) **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.

- b) **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.

20. Restrictive Covenant. If the Grantee chooses to record a Restrictive Covenant and the facility ceases to be used as a "Cultural Facility" during the ten (10) 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 Attachment D).

21. 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 ten (10) 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 Attachment E).

22. Historic Preservation Review. If the facility that is being renovated with state funds is fifty (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 5 of this Agreement.

23. Fortuitous Finds. In the event of unexpected discoveries during ground disturbing activities within the project area:

- a) If prehistoric or historic artifacts, such as pottery or ceramics, projectile points, dugout canoes, metal implements, historic building materials, or any other physical remains that could be associated with Native American, early European, or American settlement are encountered at any time within the project site area, the project shall cease all activities involving subsurface disturbance in the immediate vicinity of the discovery. The applicant shall contact the Florida Department of State, Division of Historical Resources, Compliance Review Section, at (850)-245-6333. Project activities shall not resume without verbal and/or written authorization.
- b) In the event that unmarked human remains are encountered during permitted activities, all work shall stop immediately and the proper authorities notified in accordance with Section 872.05, *Florida Statutes*.

24. Single Audit Act. Each grantee, other than a grantee that is a State agency, shall submit to an audit pursuant to Section 215.97, *Florida Statutes*. See Attachment F for additional information regarding this requirement.

- 25. Retention of Accounting Records.** Financial records, supporting documents, statistical records, and all other records including electronic storage media pertinent to the Project shall be retained for a period of ten (10) years after the close out of the grant. If any litigation or audit is initiated, or claim made, before the expiration of the ten-year period, the records shall be retained until the litigation, audit, or claim has been resolved. Retention period shall match the ten (10) year Restrictive Covenant or Surety Bond period.
- 26. 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.
- 27. 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.
- 28. 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.
- 29. Accounting Requirements.** The Grantee must maintain an accounting system that provides a complete record of the use of all grant funds as follows:
- a) The accounting system must be able to specifically identify and provide audit trails that trace the receipt, maintenance, and expenditure of state funds;
 - b) 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.
 - c) An interest-bearing checking account or accounts in a state or federally chartered institution may be used for revenues and expenses described in the Scope of Work and detailed in the Estimated Project Budget.

- d) The name of the account(s) must include the grant award number;
- e) The Grantee's accounting records must have effective control over and accountability for all funds, property, and other assets; and
- f) 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).

30. 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.

31. 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.

32. 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.

33. 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.

- a) 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.
- b) 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.

- c) The Division shall not be liable for attorney fees, interest, late charges or service fees, or cost of collection related to this Agreement.
- d) The Grantee shall be responsible for all work performed and all expenses incurred in connection with the project. The Grantee may subcontract as necessary to perform the services set forth in this Agreement, including entering into subcontracts with vendors for services and commodities; provided that such subcontract has been approved in writing by the Department prior to its execution; and provided that it is understood by the Grantee that the Department shall not be liable to the subcontractor for any expenses or liabilities incurred under the subcontract and that the Grantee shall be solely liable to the subcontractor for all expenses and liabilities incurred under the subcontract.

34. 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.

35. No Discrimination. The Grantee may not discriminate against any employee employed under this Agreement, or against any applicant for employment because of race, 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.

36. 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.

37. 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 fifteen (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 thirty (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.

38. 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.

39. 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.

- 40. Required Procurement Procedures for Obtaining Goods and Services.** The Grantee shall provide maximum open competition when procuring goods and services related to the grant-assisted project in accordance with Section 287.057, *Florida Statutes*.
- 41. 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.
- 42. 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.
- 43. 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.
- 44. 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.
- 45. Americans with Disabilities Act.** All programs and facilities related to this Agreement must meet the standards of Sections 553.501-553.513, *Florida Statutes*, and the Americans with Disabilities Act of 1990.
- 46. 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.
- 47. Entire Agreement.** The entire Agreement of the parties consists of the following documents:
 - a) This Agreement
 - b) Project Description (Attachment A)
 - c) Legal Description of the Property (Attachment B)
 - d) Estimated Project Budget (Attachment C)

- e) Recorded Restrictive Covenant and Amortization Schedule (Attachment D) or Issued Surety Bond and Amortization Schedule (Attachment E)
- f) Single Audit Act Requirements and Exhibit I (Attachment F)
- g) Schedule of Contract Values form (Appendix 1)

In acknowledgment of Grant Number 17.9.200.548 provided for from funds appropriated in the FY 2016-17 General Appropriation Act in the amount of \$500,000, I hereby certify that I have read this entire Agreement, and will comply with all of its requirements.

Department of State:

By: _____
 [INSERT DIRECTOR'S NAME], Division
 Director

Grantee:

By: _____
 Authorizing Official for the Grantee*

 Print name and title

 Witness

 Witness

 Date

 Date

ATTACHMENT A

Project Description

In 2014 the Village of Wellington approved moving forward with its largest Cultural project in the Community's 64 year history, construction of a new Community Center. While the need for the new facility had been determined through a wide range of public input including spatial studies, usage data and numerous community meetings, completing the project was not going to be simple. With very little available land for new construction, the Village decided that the best location for the new Center would be at the Civic Complex, the current home to the existing Community Center.

The site is the heart of the community with an outdoor amphitheater, tennis center, pool, water-front-park and Village Hall offices. While the Civic Complex seemed to be an easy choice, the reality of completing the proposed project was problematic. If a larger building were to be constructed, the popular 15 court tennis complex would have to be relocated to another site.

After over a year of planning and public input the plan was put in motion. A new tennis center was completed in 2015 and the existing courts are scheduled to be removed in the summer of 2015. The 37 year old Community Center will be demolished later in the year. In 2016 the Village will construct a new 25,000 square foot facility that will be able to serve all the needs of the Community.

The Center, built in virtually the same location as the previous structure, is being constructed to accentuate the adjacent lake and provide greater access to the site other popular facilities such as the outdoor amphitheater. The new Center will provide almost 30% more programming space and include areas dedicated for dance, music and crafts. The project will also develop a state of the art stage facility within the building that can be used to host large performances. This area will include lighting, sound and dressing areas for performers. In addition to performing art space, the Center will have education facilities such as computer labs and multi-purpose rooms for a wide range of programming.

The estimated cost of the entire project, including the relocation of the tennis court complex is over 12 million dollars. The Center is projected to cost 8.5 million. The Village is requesting financial assistance in the amount of \$500,000 and will provide the required 200% required matching funds.

The Village engaged a design-build team in 2014 to complete construction specifications, construct the new tennis center, demo the existing facilities and complete the new center. Plans have been completed for the entire project and the Village anticipates opening the new center in late 2016.

ATTACHMENT B

ATTACH LEGAL DESCRIPTION OF PROPERTY

ATTACHMENT C

Estimated Project Budget

	Budget Category	Total	Match	State
3	Architectural Services			
4	General Requirements			
5	Site Construction			
6	Concrete			
7	Masonry	\$ 83,760		
	Metal Framing, Drywall & Stucco		\$ 83,760	
8	Metals			
9	Wood and Plastic			
10	Thermal and Moisture Protection			
11	Doors and Windows	\$ 112,972		
	Metal Awning Louvers		\$ 112,972	
12	Finishes	\$ 301,121		
	Painting (\$91,860), Floor Tiling (\$106,784), Acoustic Ceilings (\$20,686), Resilient Flooring & Carpet (\$81,791)		\$ 261,121	\$ 40,000
13	Carpentry/Millwork	\$ 111,718		
	Millwork & Cabinets		\$ 111,718	
14	Equipment			
15	Furnishings			
16	Mechanical	\$ 118,634		
	Elevator		\$ 118,634	
17	HVAC	\$ 527,304		
			\$ 427,304	\$100,000
18	Plumbing			
19	Electrical	\$ 721,939		
			\$ 361,939	\$360,000
20	Exterior Improvements			
21	Special Construction			
	TOTAL PROJECT EXPENDITURES	\$1,977,448	\$ 1,477,448	\$ 500,000

ATTACHMENT D

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.
 - 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, folk 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.
 - a. If the violation occurs within five (5) years following the Grant Award, 100% of the grant amount;
 - b. If the violation occurs more than five (5) but less than six (6) years following the Grant Award, 80% of the grant amount;

- c. If the violation occurs more than six (6) but less than seven (7) years following the Grant Award, 65% of the grant amount;
 - d. If the violation occurs more than seven (7) but less than eight (8) years following the Grant Award, 50% of the grant amount;
 - e. If the violation occurs more than eight (8) but less than nine (9) years following the Grant Award, 35% of the grant amount; and
 - f. 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.

ATTACHMENT E

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, folk 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.

ATTACHMENT F

FEDERAL AND STATE OF FLORIDA SINGLE AUDIT ACT REQUIREMENTS

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 \$300,000 (*\$500,000 for fiscal years ending after December 31, 2003*) 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 \$300,000 (*\$500,000 for fiscal years ending after December 31, 2003*) 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 \$300,000 (*\$500,000 for fiscal years ending after December 31, 2003*) 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).

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).

The Internet web addresses listed below will assist recipients in locating documents referenced in the text of this agreement and the interpretation of compliance issues.

State of Florida Department Financial Services (Chief Financial Officer)
www.fldfs.com/

State of Florida Legislature (Statutes, Legislation relating to the Florida Single Audit Act) www.leg.state.fl.us/

PART III: 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 each of the following addresses:

Department of State
Division of Elections
R.A. Gray Building, Ste 316
500 S. Bronough St.
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 each of the following:

Department of State
Division of Elections
R.A. Gray Building, Ste 316
500 S. Bronough St.
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 each of the following:

A. The Department of State at each of the following addresses:

Department of State
Division of Elections
R.A. Gray Building, Ste 316
500 S. Bronough St.
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. 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.
5. 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 IV: RECORD RETENTION

1. The Recipient shall retain sufficient records demonstrating its compliance with the terms of this agreement for a period of 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 3 years from the date the audit report is issued, unless extended in writing by the Department of State. *NOTE: Records need to be retained for at least five years to comply with record retention requirements related to original vouchers prescribed by the Department of State, Division of Library and Information Services, Bureau of Archives and Records Management.*

EXHIBIT – 1

FEDERAL RESOURCES AWARDED TO THE RECIPIENT PURSUANT TO THIS AGREEMENT CONSIST OF THE FOLLOWING:

\$0

COMPLIANCE REQUIREMENTS APPLICABLE TO THE FEDERAL RESOURCES AWARDED PURSUANT TO THIS AGREEMENT ARE AS FOLLOWS:

Resources may be utilized for items in the basic state arts plan; arts education; arts in underserved communities; programs which provide access to the arts for all Americans; an initiative to make the finest works in our nation's artistic legacy available to a broad cross section of America; and projects which strengthen the infrastructure of support for the folk and traditional arts.

State resources awarded to the recipient pursuant to this agreement consist of the following:

\$500,000

Matching resources for federal programs:

Not Applicable.

Subject to section 215.97, Florida Statutes:

Florida Department of State Cultural Facilities Grants, CSFA Number 45.014

Compliance requirements applicable to state resources awarded pursuant to this agreement are as follows:

The compliance requirements of this state project may be found in Part Four (State Project Compliance Requirements) of the State Projects Compliance Supplement located at <https://apps.fldfs.com/fsaa/>.

APPENDIX 1

Schedule of Contract Values

(This form must be completed by the Contractor for the Project.)

PROJECT NAME:
PROJECT #:
CONTRACTOR:

APPLICATION NO:
APPLICATION DATE:
PERIOD TO:
PERCENT COMPLETE
TO DATE:

[illegible]

Contract Manager: Minimum performance requirements successfully completed and approved by: _____ Date: ____/____/____