

STATE OF SOUTH DAKOTA
DEPARTMENT OF TOURISM
DIVISION OF ARTS COUNCIL

Sub-Recipient Agreement Between

State of South Dakota
Department of Tourism/ DIVISION OF ARTS COUNCIL
711 E Wells Ave
Pierre, SD 57501
Referred to as **State**

Referred to as **Sub-Recipient** or **the Sub-Recipient**

GRANT AGREEMENT: Please sign this **GRANT AGREEMENT** and return it to the South Dakota Arts Council. Keep the body of the agreement for your files. Please also keep a copy of this signature page, or you may request a digital copy from the South Dakota Arts Council once it has been returned.

- I certify that the information on this form is true and correct and agree that granted funds will be used only for the purposes set forth in my application. (If you require an additional copy of your grant application, please contact the Arts Council at 605-773-5925. If your project will change or does change significantly from what was proposed in your application, you are required to notify the Arts Council as soon as possible.)
- I have read and agree to the Terms and Conditions of the **GRANT AGREEMENT**. In witness hereto, the parties signify their agreement by affixing their signatures hereto.
- I agree that our records of income and expense, including documentation of all expenditures related to these grant funds as well as a copy of this signed grant agreement, will be kept on file for a minimum of 3 years in a suitable form to facilitate auditing.

The State and Sub-Recipient hereby enter into this agreement (the "Agreement" hereinafter) for a grant award of Federal financial assistance to Sub-Recipient.

A. REQUIRED AUDIT PROVISIONS FOR GRANT AWARDS

1. FEDERAL AWARD IDENTIFICATION

Information for the Federal Award Identification, as described in 2 CFR 200.332(a) may be inserted below or may be included in an attached Exhibit A and, if attached, is incorporated herein. In the event of a change in the award or funding source, the information inserted below or included in Exhibit A may change. Sub-Recipient's consent shall not be required for the change in award or funding source and the change shall not be subject to the requirements for an amendment to this Agreement. In the event of a change, the State will provide updated information at least annually.

- a. Sub-recipient's name (which must match the name associated with its Unique Entity Identifier, referred to as Unique Entity ID (SAM): **GRANTEE**
- b. Sub-Recipient's Unique Entity ID (SAM): **GRANTEE UEI**
- c. Federal Award Identification Number (FAIN): **1914156-61-23**
- d. Federal Award Date: **June 5, 2023**
- e. Sub-award Period of Performance: **July 1, 2023 - June 30, 2024**
- f. Amount of state/federal funds obligated to the Sub-Recipient by this agreement: **GRANT AMOUNT**
- g. Total amount of state/federal funds obligated to the Sub-Recipient: **TOTAL AWARDED**
- h. Total amount of the state/federal funds award committed to the Sub-Recipient: **TOTAL AWARDED**
- i. The federal award project description, as required to be responsive to the Federal Funding Accountability and Transparency Act (FFATA), is as follows: **National Endowment for the Arts State Partnership Agreement with the South Dakota Arts Council; Grant Number: 1914156-61-23; CFDA#: 45.025**
- j. Name of Federal awarding agency, pass-through entity, and contact information for awarding official of the Pass-through entity: **National Endowment for the Arts, South Dakota Arts Council, Patrick Baker, Director, 605-773-3301**
- k. CFDA No(s) and Name(s): Grant Number: **1914156-61-23; CFDA#: 45.025**
- l. Is the grant award for research and development (R&D)? YES ___ NO X
- m. Indirect Cost Rate for federal award: NA

2. PERIOD OF PERFORMANCE OF THIS AGREEMENT: This agreement shall be effective on **July 1, 2023** and will end on **June 30, 2024**, unless sooner terminated pursuant to the terms hereof.

3. SCOPE OF WORK AND PERFORMANCE PROVISIONS:

A. The Sub-Recipient will undertake and complete the work or performance described as: We expect you to understand and agree that granted funds are to be used only for the purposes set forth in your application. If

you require an additional copy of your grant application, please contact the Arts Council at 605-773-5925. ***If your project will change or does change significantly from what was proposed in your application, you are required to notify the Arts Council as soon as possible.***

B. If the State will undertake or complete any work or performance under this Agreement, it is described as follows: **The State is committed to making payment as follows:** Grant payments are made in installments. Each request for payment is to be no more than the amount you will spend within a 60-day period. Requests may be made as needed to complete your activity, but they must fall within the correct fiscal year. To receive the final 10 percent of your grant, you must complete **Final Report** and **Request for Payment Form** within 30 days after the completion of the project or the end of the fiscal year (June 30th)—whichever comes first.

4. BASIS FOR SUBAWARD AMOUNTS:

This grant may contain a combination of both State and Federal dollars. The actual mix of Federal and State funds will be identified in the remit message of any payments associated with this grant. This grant is made for the purpose of: **Based on grant awarded**

Amount provided by State/Grantor is	GRANT AWARD
Amount matched by Sub-Recipient	Based on grant awarded
Total Grant Amount	TOTAL AWARDED

5. RISK ASSESSMENTS, MONITORING AND REMEDIES:

Risk assessments will be ongoing throughout the project period. Sub-Recipient agrees to allow the State to monitor Sub-Recipient to ensure compliance with program requirements, to identify any deficiencies in the administration and performance of the award and to facilitate the same. At the discretion of the State, monitoring may include but is not limited to the following: On-site visits, follow-up, document and/or desk reviews, third-party evaluations, virtual monitoring, technical assistance and informal monitoring such as email and telephone interviews. As appropriate, the cooperative audit resolution process may be applied.

Sub-Recipient agrees to comply with ongoing risk assessments, to facilitate the monitoring process, and further, Sub-Recipient understands and agrees that the requirements and conditions under the grant award may change as a result of the risk assessment/monitoring process.

In the event of noncompliance or failure to perform under the grant award, the State has the authority to apply remedies, including but not limited to: temporary withholding payments, disallowances, suspension or termination of the federal award, suspension of other federal awards received by Sub-Recipient, debarment, or other remedies including civil and/or criminal penalties as appropriate.

6. RETENTION AND INSPECTION OF RECORDS:

The Sub-Recipient agrees to maintain or supervise the maintenance of records necessary for the proper and efficient operation of the program, including records and documents regarding applications, determination of eligibility (when applicable), the provision of services, administrative costs, and statistical, fiscal, and other information records necessary for reporting and accountability required by the State. The Sub-Recipient shall retain such records for a period of three years after the date of the submission of the final expenditure report.

If any litigation, claim, or audit is started before the expiration of the three-year period, the records must be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken. The three-year retention period may be extended upon written notice by the State. Records for real property and equipment acquired with Federal funds must be retained for three years after final disposition. When records are transferred to or maintained by the Federal awarding agency or the State, the three-year retention requirement is not applicable to the Sub-Recipient. In the event Sub-Recipient must report program income after the period of performance, the retention period for the records pertaining to the earning of the

program income starts from the end of Sub-Recipient's fiscal year in which the program income is earned. In the event the documents and their supporting records consist of indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable, the following applies: (1) If submitted for negotiation - If the proposal, plan, or other computation is required to be submitted to the Federal Government (or to the State) to form the basis for negotiation of the rate, then the three -year retention period for its supporting records starts from the date of such submission. (2) If not submitted for negotiation - If the proposal, plan, or other computation is not required to be submitted to the Federal Government (or to the State) for negotiation purposes, then the three-year retention period for the proposal, plan, or computation and its supporting records starts from the end of the Sub-Recipient's fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

The State, through any authorized representative, shall have access to and the right to examine and copy all records, books, papers or documents related to services rendered under this Agreement and shall have access to personnel of the Sub-Recipient for purposes of interview and discussion related to the records, books, papers and documents. State Proprietary Information, which shall include all information disclosed to the Sub-Recipient by the State, shall be retained in Sub-Recipient's secondary and backup systems and shall remain fully subject to the obligations of confidentiality stated herein until such information is erased or destroyed in accordance with Sub-Recipient's established record retention policies.

All payments to the Sub-Recipient by the State are subject to site review and audit as prescribed and carried out by the State. Any over payment under this Agreement shall be returned to the State within thirty days after written notification to the Sub-Recipient.

7. AUDIT REQUIREMENTS:

If Sub-Recipient expends \$750,000 or more in federal awards during the Sub-Recipient's fiscal year, the Sub-Recipient must have an audit conducted in accordance with 2 CFR Part 200, Subpart F-Audit Requirements, by an auditor approved by the Auditor General to perform the audit. On continuing audit engagements, the Auditor General's approval should be obtained annually. Approval of an auditor must be obtained by forwarding a copy of the audit engagement letter to:

Department of Legislative Audit
A-133 Coordinator
427 South Chapelle
C/O 500 East Capitol
Pierre, SD 57501-5070

If the Sub-Recipient expends less than \$750,000 during any Sub-Recipient fiscal year, the State may perform a more limited program or performance audit related to the completion of the Agreement objects, the eligibility of services or costs, and adherence to Agreement provisions.

Audits shall be completed and filed with the Department of Legislative Audit by the end of the 9 months following end of the fiscal year being audited.

For either an entity-wide, independent financial audit or an audit under 2 CFR Part 200 Subpart F, the Sub-Recipient shall resolve all interim audit findings to the satisfaction of the auditor. The Sub-Recipient shall facilitate and aid any such reviews, examinations, agreed upon procedures etc., the State or its contractor(s) may perform.

Failure to complete audit(s) as required, including resolving interim audit findings, will result in the disallowance of audit costs as direct or indirect charges to programs. Additionally, a percentage of awards may be withheld, overhead costs may be disallowed, and/or awards may be suspended, until the audit is completely resolved.

The Sub-Recipient shall be responsible for payment of any and all audit exceptions which are identified by the State. The State may conduct an agreed upon procedures engagement as an audit strategy. The Sub-Recipient may be responsible for payment of any and all questioned costs, as defined in 2 C.F.R. 200.84, at the discretion of the State.

Notwithstanding any other condition of the Agreement, the cooperative audit resolution process applies, as appropriate. The books and records of the Sub-Recipient must be made available if needed and upon request at the Sub-Recipient's regular place of business for audit by personnel authorized by the State. The State and/or federal agency has the right to return to audit the program during performance under the grant or after close-out, and at any time during the record retention period, and to conduct recovery audits including the recovery of funds, as appropriate.

If applicable, Sub-Recipient agrees to comply in full with the administrative requirements and cost principles as outlined in OMB uniform administrative requirements, cost principles, and audit requirements for federal awards – 2CFR Part 200 (Uniform Administrative Requirements).

8. SUB-RECIPIENT ATTESTATION:

By signing this Agreement, Sub-Recipient attests to the following requirements as set forth in SDCL § 1-56-10:

(A) A conflict of interest policy is enforced within the recipient's or sub-recipient's organization;

(B) The Internal Revenue Service Form 990 has been filed, if applicable, in compliance with federal law, and is displayed immediately after filing on the recipient's or sub-recipient's website;

(C) An effective internal control system is employed by the recipient's or sub-recipient's organization; and

(D) If applicable, the recipient or sub-recipient is in compliance with the federal Single Audit Act, in compliance with § 4-11-2.1, and audits are displayed on the recipient's or sub-recipient's website.

Sub-Recipient further represents that any and all concerns or issues it had in complying with the foregoing attestations were provided to the State and resolved to their satisfaction prior to signing this Agreement.

In the event of a significant change in the conflict of interest policy, sub-recipient agrees to provide immediate notice of such change to the State, and provide a copy of the new conflict of interest policy. Sub-recipient understands that any change in the conflict of interest policy may result in a change in their monitoring or other performance requirements under the grant and expressly agrees to comply with those changes and to facilitate any additional monitoring as required by the State.

9. CLOSEOUT [AND REQUESTING PAYMENT]:

Appropriate terms and conditions concerning closeout of the sub-award.

(A) Requesting Payment: Grant payments are made in installments. Each request for payment is to be no more than the amount you will actually spend within a 60-day period. Requests may be made as needed to complete your activity, but they must fall within the correct fiscal year. To receive the final 10 percent of your grant, you must complete a Final Report and Request for Payment Form within 30 days after the completion of the project or the end of the fiscal year (June 30th)—whichever comes first.

(B) "Date of Completion" shall mean the close of the project – as stated in the application OR the close of the grant period, which has been set at June 30, 2024.

(C) Grantees shall submit an evaluation to the South Dakota Arts Council within 30 days after the completion of the project. Subsequent grants are dependent upon receipt of completed evaluation reports. Subsequent grants are dependent upon receipt of completed evaluation reports.

B. STANDARD CLAUSES

10. ASSURANCE REQUIREMENTS:

The Sub-Recipient agrees to abide by all applicable provisions of the following: Debarment and Suspension (Executive Orders 12549 and 12689 and 2 C.F.R. 180), Drug-Free Workplace, Executive Order 11246 Equal Employment Opportunity as amended by Executive Order 11375 and implementing regulations at 41 C.F.R. part 60, Title VIII of the Civil Rights Act of 1968, Drug Abuse Office and Treatment Act of 1972, Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, Pro-Children Act of 1994, Hatch Act, Health Insurance Portability and Accountability Act (HIPAA) of 1996 as amended, Clean Air Act, Federal Water Pollution Control Act, Charitable Choice Provisions and Regulations, Equal Treatment for Faith-Based Religions at Title 28 Code of Federal Regulations Part 38, the Violence Against Women Reauthorization Act of 2013 and American Recovery and Reinvestment Act of 2009.

As a condition of receipt of Federal financial assistance, you acknowledge and agree to execute your project, and require any contractors, successors, transferees, and assignees to comply with applicable provisions of national laws and policies prohibiting discrimination, including but not limited to: Title VI of the Civil Rights Act of 1964, as amended (42 USC 2000d et seq.), As clarified by Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, Title IX of the Education Amendments of 1972, as amended (20 USC 1681 et seq.), The Age Discrimination Act of 1975, as amended (42 USC 6101 et seq.), The Americans with Disabilities Act of 1990 (ADA), as amended (42 USC 12101-12213), Section 504 of the Rehabilitation Act of 1973 (29 USC 794).

Grants made by the National Endowment for the Arts and sub-granted by the South Dakota Arts Council are also subject to the requirements outlined below. Grantees agree to abide by all federal and state regulations, including the following certified assurances: National Foundation on the Arts and the Humanities Act of 1965 (as amended, Public Law 089-209, 20 U.S.C 951 et seq), The National Environmental Policy Act of 1969 (42 USC Sec. 4332), The National Historic Preservation Act of 1966, as amended, (16 USC 470), Debarment and Suspension, as adopted by the Arts Endowment (2 CFR 32.3254), The Drug Free Workplace Act (41 USC 701 et seq. and 45 CFR 1155), Lobbying (18 USC 1913). (2 CFR 200.450), Certification Regarding Lobbying to Obtain Awards (Section 319 of Public Law 101-121, codified at 31 USC 1352), Davis-Bacon and Related Acts (DBRA), as amended, (29 CFR Part 1, Part 3, and Part 5) [Native American nations (if the labor is completed by non-tribal laborers)]. The Native American Graves Protection and Repatriation Act of 1990 (25 USC 3001 et seq.), U.S. Constitution Education Program (P.L. 108-447, Division J, Sec. 111(b)); Prohibition on use of funds to ACORN or its subsidiaries (P.L. 111-88 Sec. 427).

CREDIT: This grant is funded in part by a grant from the National Endowment for the Arts (**CFDA No. 45.025**). All published material and announcements regarding any project or production which is financed in part under this grant must include the following special acknowledgment statement: ***South Dakota Arts Council support is provided with funds from the State of South Dakota, through the Department of Tourism, and the National Endowment for the Arts.*** (In order to inform audiences of the importance of governmental support for the arts, we request that you include a display advertisement in your printed programs and/or organizational newsletters. South Dakota Arts Council logos are available on the website, www.artscouncil.sd.gov.)

11. SUB-RECIPIENT IDENTIFICATION:

Upon execution of this Agreement, Sub-Recipient will provide the State with Sub-Recipient's Employer Identification Number, Federal Tax Identification Number or Social Security Number.

12. USE OF EQUIPMENT, SUPPLIES AND FACILITIES:

Sub-Recipient will not use State equipment, supplies or facilities.

13. THIRD PARTY BENEFICIARIES:

This Agreement is intended to govern only the rights and interests of the parties named herein. It is not intended to create, does not and may not be relied upon to create, any rights, substantive or procedural, enforceable at law by any third party in any matters, civil or criminal.

14. COST PRINCIPLES:

If applicable, Sub-Recipient agrees to comply in full with administrative requirements and cost principles as outlined in OMB uniform administrative requirements, cost principles, and audit requirements for federal awards – 2CFR Part 200 (Uniform Administrative Requirements).

15. TERMINATION:

This Agreement may be terminated by either party hereto upon thirty (30) days written notice. In the event the Sub-Recipient breaches any of the terms or conditions hereof, this agreement may be terminated by the State for cause at any time, with or without notice. Upon termination of this agreement, all accounts and payments shall be processed according to financial arrangements set forth herein for services rendered to date of termination.

16. FUNDING:

This contract depends upon the continued availability of appropriated funds and expenditure authority from the Legislature for this purpose. If for any reason the Legislature fails to appropriate funds or grant expenditure authority, or funds become unavailable by operation of the law or federal funds reduction, this Agreement will be terminated by the State. Termination for any of these reasons is not a default by the State nor does it give rise to a claim against the State.

17. ASSIGNMENT AND AMENDMENT:

This Agreement may not be assigned without the express prior written consent of the State. This Agreement may not be amended except in writing, which writing shall be expressly identified as a part hereof, and be signed by an authorized representative of each of the parties hereto.

18. CONTROLLING LAW:

This Contract shall be governed by and construed in accordance with the laws of the State of South Dakota, without regard to any conflicts of law principles, decisional law, or statutory provision which would require or permit the application of another jurisdiction's substantive law. Venue for any lawsuit pertaining to or affecting this Agreement shall be in the Circuit Court, Sixth Judicial Circuit, Hughes County, South Dakota.

19. SUPERCESSION:

All other prior discussions, communications and representations concerning the subject matter of this Agreement are superseded by the terms of this Agreement, and except as specifically provided herein, this Agreement constitutes the entire agreement with respect to the subject matter hereof.

20. SEVERABILITY:

In the event that any provision of this Agreement shall be held unenforceable or invalid by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision of this Agreement, which shall remain in full force and effect.

21. NOTICE:

Any notice or other communication required under this Agreement shall be in writing and sent to the address set forth above. Notices shall be given by and to the Division being contracted with on behalf of the State, and by the Sub-Recipient, or such authorized designees as either party may from time to time designate in writing. Notices or communications to or between the parties shall be deemed to have been delivered when mailed by first class mail, provided that notice of default or termination shall be sent by registered or certified mail, or, if personally delivered, when received by such party.

22. SUBCONTRACTORS/SUB-SUB-RECIPIENTS:

The Sub-Recipient will not use subcontractors or other sub-recipients to perform work under this Agreement without the express prior written consent from the State. The State reserves the right to complete a risk assessment on any proposed sub-contractor or sub-recipient and to reject any person or entity presenting insufficient skills or inappropriate behavior.

The Sub-Recipient will include provisions in its subcontracts or sub-grants requiring its subcontractors and sub-recipients to comply with the applicable provisions of this Agreement, to indemnify the State, and to provide insurance coverage for the benefit of the State in a manner consistent with this Agreement. The Sub-Recipient will cause its subcontractors, sub-recipients, agents, and employees to comply with applicable federal, state and local laws, regulations, ordinances, guidelines, permits and requirements and will adopt such review and inspection procedures as are necessary to assure such compliance. The State, at its option, may require the vetting of any subcontractors and sub-recipients. The Sub-Recipient is required to assist in this process as needed.

23. CONFLICT OF INTEREST:

Sub-Recipient agrees to establish safeguards to prohibit any employee or other person from using their position for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain as contemplated by SDCL 5-18A-17 through 5-18A-17.6. Any potential conflict of interest must be disclosed in writing and approved, in writing, by the State. In the event of a conflict of interest, the Sub-Recipient expressly agrees to be bound by the conflict of interest resolution process set forth in SDCL § 5-18A-17 through 5-18A-17.6.

24. TERMS:

By accepting this Agreement, the Sub-Recipient assumes certain administrative and financial responsibilities. Failure to adhere to these responsibilities without prior written approval by the State shall be a violation of the terms of this Agreement, and the Agreement shall be subject to termination.

25. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY, AND VOLUNTARY EXCLUSION:

Sub-Recipient certifies, by signing this Agreement, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or any state or local government department or agency. Sub-Recipient further agrees that it will immediately notify the State if during the term of this Agreement it or its principals become subject to debarment, suspension or ineligibility from participating in transactions by the federal government, or by any state or local government department or agency.

C. AGENCY OR GRANT SPECIFIC CLAUSES

26. [INTENTIONALLY OMITTED]

27. [INTENTIONALLY OMITTED]

28. COMPLIANCE WITH EXECUTIVE ORDER 2020-01:

By entering into this Agreement, Sub-Recipient certifies and agrees that it has not refused to transact business activities, it has not terminated business activities, and it has not taken other similar actions intended to limit its commercial relations, related to the subject matter of this Agreement, with a person or entity that is either the State of Israel, or a company doing business in or with Israel or authorized by, licensed by, or organized under the laws of the State of Israel to do business, or doing business in the State of Israel, with the specific intent to accomplish a boycott or divestment of Israel in a discriminatory manner. It is understood and agreed that, if this certification is false, such false certification will constitute grounds for the State to terminate this Agreement. Sub-Recipient further agrees to provide immediate written notice to the State if during the term of this Agreement it no longer complies with this certification, and agrees such noncompliance may be grounds for termination of this Agreement.

29. COMPLIANCE WITH EXECUTIVE ORDER 2023-02:

Sub-Recipient certifies and agrees that the following information is correct:

In preparing its response or offer or in considering proposals submitted from qualified, potential vendors, suppliers, and subcontractors, or in the solicitation, selection, or commercial treatment of any vendor, supplier, or subcontractor, Sub-Recipient is not an entity, regardless of its principal place of business, that is ultimately owned or controlled, directly or indirectly, by a foreign national, a foreign parent entity, or foreign government from China, Iran, North Korea, Russia, Cuba, or Venezuela, as defined by South Dakota Executive Order 2023-02.

Sub-Recipient further agrees that, if this certification is false, such false certification will constitute grounds for the State to terminate this Agreement. Sub-Recipient further agrees to provide immediate written notice to the State if during the term of this Agreement it no longer complies with this certification and agrees such noncompliance may be grounds for termination of this Agreement.

30. PROPERTY MANAGEMENT STANDARDS:

The Sub-Recipient agrees to observe Federal Government uniform standards governing the utilization of property whose cost was charged to a project supported by a Federal grant.

31. TECHNICAL ASSISTANCE:

The State agrees to provide technical assistance regarding the State's rules, regulations and policies to the Sub-Recipient and to assist in the correction of problem areas identified by the State's monitoring activities.

32. LICENSING AND STANDARD COMPLIANCE:

The Sub-Recipient agrees to comply in full with all federal, state, tribal, and local statutes, regulations, ordinances, guidelines, permits, requirements and other standards applicable to the service provided under this Agreement and will be solely responsible for obtaining information regarding the foregoing. The Sub-Recipient will maintain effective internal controls in managing the federal award. Liability resulting from the failure to comply with all federal, state, tribal and local statutes, regulations, ordinances, guidelines, permits, requirements and standards is assumed entirely by the Sub-Recipient.

33. [INTENTIONALLY OMITTED]

34. INDEMNIFICATION:

The Sub-Recipient agrees to indemnify the State of South Dakota, its officers, agents and employees, from and against any and all claims or proceedings for actions, suits, damages, liabilities, other losses or equitable relief that may arise at least in part as a result of an act or omission in performing services under this Agreement. Sub-Recipient shall defend the State of South Dakota, its officers, agents and employees against any claim, including any claim, action, suit or other proceeding related to the claim. Sub-Recipient's obligation to indemnify includes the payment of attorney fees and other costs of defense. In defending the State of South Dakota, its officers, agent and employees, Sub-Recipient shall engage other professionals, subject to the written approval of the State which shall not be unreasonably withheld. Notwithstanding the foregoing, the State may, in its sole discretion and at the expense of Sub-Recipient, engage attorneys and other professionals to defend the State of South Dakota, its officers, agents, and employees, or to assist Sub-Recipient or in the defense. This paragraph does not require the Sub-Recipient to be responsible for or defend against claims or proceedings for damages, liabilities, losses or equitable relief arising solely from errors or omissions of the State, its officers, agents or employees.

35. [INTENTIONALLY OMITTED]

36. CONFIDENTIALITY OF INFORMATION:

For the purpose of this paragraph, "State Proprietary Information" shall include all information, regardless of its format, disclosed to the Sub-Recipient by the State. Sub-Recipient acknowledges that it shall have a duty to not disclose any State Proprietary Information to any third person for any reason without the express written permission of a State officer or employee with authority to authorize the disclosure. Sub-Recipient shall not: (i) disclose any State Proprietary Information to any third person unless otherwise specifically allowed under this contract; (ii) make any use of State Proprietary Information except to exercise rights and perform obligations under this contract; (iii) make State Proprietary Information available to any of its employees, officers, agents or consultants except those who have agreed to obligations of confidentiality at least as strict as those set out in this contract and who have a need to know such information and who have been instructed that such information is or may be confidential under state or federal law. Sub-Recipient is held to the same standard of care in guarding State Proprietary Information as it applies to its own confidential or proprietary information and materials of a similar nature, and no less than holding State Proprietary Information in the strictest confidence. Sub-Recipient shall protect confidentiality of State Proprietary Information from the time of receipt to the time that such information is either returned to the State or destroyed to the extent that it cannot be recalled or reproduced. State Proprietary Information shall not include information that (i) was in the public domain at the time it was disclosed to Sub-Recipient; (ii) was known to Sub-Recipient without restriction at the time of disclosure from the State; (iii) that is disclosed with the prior written approval of State's officers or employees having authority to disclose such information; (iv) was independently developed by Sub-Recipient without the benefit or influence of the State's information; or (v) becomes known to Sub-Recipient without restriction from a source not connected to the State of South Dakota. State Proprietary Information may include names, social security numbers, employer numbers, addresses and all other data about applicants, employers or other clients to whom the State provides services of any kind. Sub-Recipient understands that State Proprietary Information may be confidential and protected under applicable state or federal law and agrees to immediately notify the State if the Information is disclosed, either intentionally or inadvertently. Sub-Recipient acknowledges that the State and its agencies are public entities and thus are bound by South Dakota open meetings and open records laws. It is therefore not a breach of this agreement for the State to take any action that the State reasonably believes is necessary to comply with the South Dakota open records or open meetings laws, including but not limited to posting this Agreement on the State of South Dakota's website. If work assignments performed in the course of this Agreement require additional security requirements or clearance, Sub-Recipient agrees that its officers, agents and employees may be required to undergo investigation or may be required to sign separate confidentiality agreements, and it will limit access to the confidential information and related work activities to employees that have executed such agreements.

Sub-Recipient agrees to remove any employee or agent from performing work under this Agreement that has or is suspected to have violated the terms of this Confidentiality paragraph and to immediately notify the State of such matter.

Sub-Recipient will comply with any other confidentiality measures and terms included in the Agreement.

Upon termination of this Agreement, if not already done so as part of the services performed under the Agreement, Sub-

Recipient agrees to return to the State, at Sub-Recipient’s cost, any State Proprietary Information or documentation maintained by Sub-Recipient regarding the services provided hereunder in a format readily useable by the State as mutually agreed by Sub-Recipient and State.

Sub-recipient acknowledges that the State shares general information, including performance information, about Sub-recipient among and between other State agencies upon request of such agencies for the purpose of making determinations of the risk involved with potential, subsequent grant awards and for other purposes. Sub-recipient expressly consents and agrees to such uses by the State.

- 37. When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”).
- 38. Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5).
- 39. If the Federal award meets the definition of “funding agreement” under 37 CFR §401.2 (a) and the recipient or sub-recipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or sub-recipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

State Program Contact Person	Patrick Baker, Director, South Dakota Arts Council
Phone	605-773-5507
State Fiscal Contact	Hallie Getz
Phone	605 280-6823
Sub-Recipient Program Contact Person	
Sub-Recipient	GRANTEE
Phone	GRANTEE PHONE