

CULTURAL SERVICES CONTRACT

THIS CONTRACT, made as of the 1st day of January, 2017, effective through December 31, 2017, by and between **THE COUNTY OF ERIE**, a municipal corporation of the State of New York, having its principal place of business at 95 Franklin Street, in the City of Buffalo, New York, 14202 (the "County"), and «UPPERCASE_NAMES» (the "Organization"), a not-for-profit corporation, having its principal place of business at «Address1», «Address2».

WITNESSETH:

WHEREAS, the County, pursuant to the authority granted to it by Sections 224 and 225 of the County Law and Local Law No. 3-2002, has appropriated funds in the County's 2017 Budget for the purpose of making a conditional grant to the Organization, and

WHEREAS, the County and Organization wish to more specifically define the terms and conditions related to the payment of said conditional grant to the Organization by the County and the obligations of the Organization upon receipt of said conditional grant.

NOW, THEREFORE, IT IS MUTUALLY AGREED BY AND BETWEEN THE PARTIES:

1. The Organization agrees to provide public benefit services for and within Erie County as specified in the Scope of Work which is attached hereto and incorporated herein as **Exhibit A** ("Scope of Work"). No funds granted under this Contract shall be applied to any purposes other than those described in paragraph 21 below.

2. In support of such public benefit services, the County agrees to pay to the Organization, subject to the terms and conditions enumerated herein, an amount not to exceed «Worded_Funding», payable as follows:

50% thereof or \$«M_50_Payment».00 within 60 days of the execution of this Contract;
and

50% thereof or \$«M_50_Payment».00 on or about «Date».

Payments shall be made on two separate invoices submitted by the Organization to the Erie County Department of Environment and Planning (the "Department") and approved by the Department. The Department will approve payments once it has received the invoices and signed attestation regarding the Organization's financial documentation as described in **Exhibit B** as "Additional Understandings". The invoice for first payment should be dated the same date as the Contract signed by the Organization. The second invoice is to be dated «Date» for that payment to be issued.

If, in order to perform its obligations under this Contract on a timely basis, the Organization requires the use of an additional part of said amount prior to such payment dates, the County may, upon approval of the Budget Director, pay to the Organization from time to

time such amounts as the Budget Director may determine.

3. This Contract shall be deemed executory only to the extent of funds available as determined by the Budget Director and appropriated by the County for the performance of the terms hereof, and no liability on account thereof shall be incurred by the County beyond such funds. Funds provided pursuant to this Contract shall not be used for any purpose prohibited by law.

This Contract is also subject to further financial analysis of (1) the impact of any New York State Budget (the "State Budget") proposed and adopted during the term of this Contract; and (2) the impact of any federal government budgetary actions, including but not limited to the "sequestration" process. The County shall retain the right, upon the occurrence of any release by the Governor of a proposed State Budget and/or the adoption of a State Budget or any amendments thereto, and following certain congressional budgetary actions and adjustments through sequestration or related legislative actions, and for a reasonable period after such release(s) or adoption(s), to conduct an analysis of the impacts of any such State Budget or sequestration on County finances. After such analysis, the County shall retain the right to either terminate this Contract or to change the amounts and rates approved herein. If the County subsequently offers to pay a reduced amount to the Organization, then the Organization shall have the right to terminate this Contract upon reasonable prior written notice.

4. Notwithstanding any contrary provision of this Contract, or any provision of the County's current budget, the County Executive may reduce the total amount of funds in this Contract, and not yet paid to the Organization, upon ten (10) days written notice.

5. The Organization shall maintain complete, accurate and current records of all financial transactions relating to its operation and the services performed pursuant to this Contract. During the term of this Contract and at any time within six (6) years thereafter, the Organization shall make such records available, upon request, to the County for review. The County shall have the right, upon reasonable notice and at reasonable times, to inspect the books and records of the Organization, its offices and facilities, for the purpose of verifying information supplied to the County or for any other purpose reasonably related to monitoring the services to be performed by the Organization pursuant to this Contract.

6. The Organization agrees to furnish to the County any management letter, if issued and independent auditor's report and related financial statements and notes made for it or for other agencies and available to it, which reflects the receipt and use of funds paid to it hereunder, within thirty (30) days after receipt of the request.

7. The Organization also agrees to make available to the County for inspection at reasonable times and places, its current membership and Board of Trustees/Directors lists, financial reports, and minutes of its last annual meeting, Board of Directors or Trustees meetings, and such other minutes as may be pertinent to the operation of such Organization in the public interest. No such membership list shall be published or be made available for any commercial use.

8. To the extent that the funds provided by this Contract are for specific activities or

services, the Organization agrees to furnish verified accounts of its disbursements hereunder, together with certified or verified invoices thereto attached, at such times as the County may determine, in such form and detail as may be required by the County, and a final account within one hundred twenty (120) days after the close of the Organization's fiscal year.

9. The County may, at its option, audit such books and records of the Organization as are reasonably pertinent to this Contract to substantiate the basis for payment. The County shall, in addition, have the right to audit such books and records subsequent to payment, if such audit is commenced within one year following termination of this Contract. Any expenditure determined by audit to be inconsistent with this contract may be disallowed by the County and shall be subject to refund by the Organization to the County.

10. a. The Organization agrees to refund to the County any unused amount of monies paid to it hereunder, that is, any amount of said moneys encumbered by any current operating expenses, it being understood that in the event the unencumbered revenue of the Organization exceeds its expenses for the Organization's fiscal year, the Organization shall refund to the County within ninety (90) days of the Organization's audit report that part of the surplus which bears the same ratio to the total surplus as the amount actually paid to the Organization by the County bears to the total revenue of the Organization.

b. In determining whether a surplus is accrued by the Organization during the fiscal year, pursuant to subdivision "a" of this paragraph, all revenue of the Organization, not expressly restricted to a particular purpose by the grantor of the revenue, shall be deemed "operating revenue". All encumbered expenses of the Organization, other than those paid from funds specifically restricted to a particular purpose by a grantor, or paid from a segregated capital fund, shall be deemed "operating expense". The Organization shall be deemed to have a surplus if operating revenue exceeds expenses before any transfer of operating revenue into capital, endowment or other restricted funds or accounts.

c. Upon showing in writing to the Budget Director of the County that such a refund would cause extreme hardship to the Organization owing to unforeseen or unanticipated circumstances, the Budget Director may, subject to approval by the Erie County Legislature, authorize the Organization to retain all or part of any funds which the Organization would otherwise be required to refund to the County under this paragraph if the Legislature determines that such retention is consistent with the purpose and intent of this agreement, as applicable. Such authorized retained funds shall be used only for the purposes authorized under this Contract, but may be expended in the calendar year subsequent to this Contract.

11. The Organization agrees to perform the public benefit services which are the object of this Contract as an Independent Contractor and neither it nor any of its employees, members, directors, agents, or representatives shall be or hold themselves out to be employees, officers, agents or representatives of the County.

12. The Organization shall comply, at its own expense, with the provisions of all applicable local, state and federal laws, rules and regulations. The Organization shall further comply, at its

own expense, with all applicable rules, regulations and licensing requirements pertaining to its professional status and that of its employees, partners, associates, subconsultants and others employed to render the services hereunder.

13. The Organization shall be fully accountable for its performance under this Contract and it and its officers agree to answer under oath all questions relative to the performance hereof, and to any transaction, act or omission, had, done or omitted in connection herewith if called before any judicial, county, state or federal agency empowered to investigate this Contract or its performance.

14. The Organization shall not delegate any duties or assign any of its rights under this Contract without the prior express written consent of the County. The Organization shall not subcontract any part of the services without the written consent of the County, subject to any necessary legal approvals. Any purported delegation of duties, assignment of rights or subcontracting of services under this Contract without the prior express written consent of the County is void. All subcontracts that have received such prior written consent shall provide that subcontracts are subject to all terms and conditions set forth in this Contract. It is recognized and understood by the Organization that for the purposes of this Contract, all services performed on an approved subcontract shall be deemed services performed by the Organization and the Organization shall insure that such subcontracted service is subject to the material terms and conditions of this Contract.

15. The Organization shall indemnify and hold harmless the County, its officers, employees and agents from and against any and all liability, damage, claims, demands, costs, judgments, fees, attorney's fees or loss arising directly or indirectly out of the performance or failure to perform hereunder by the Organization or third parties under the direction or control of the Organization; and to provide defense for and defend, at its sole expense, any and all claims, demands or causes of action directly or indirectly arising out of this Contract and to bear all other costs and expenses related thereto.

16. During the term of this Contract, the Organization agrees to procure and maintain insurance coverage naming the County as additional insured: Commercial General Liability with a minimum combined single limit of bodily injury and property damage of \$1,000,000 per occurrence and general aggregate of \$1,000,000. The Organization shall provide a Certificate of Insurance as evidence of such coverage(s) on the County of Erie Standard Insurance Certificate or its equivalent.

In the event that the Organization utilizes vehicles, whether owned, leased, hired/borrowed or non-owned, in the performance of the services provided pursuant to this Contract, the Organization agrees to procure and maintain insurance coverage.

The Organization shall further provide evidence of workers compensation insurance on NYS Form C105.2 or U26.3 obtained from insurer. If there are no paid employees of the Organization, the Organization shall provide a "Certificate of Attestation of Exemption from New York State Workers' Compensation and/or Disability Benefits Insurance Coverage" (Form

CE-200) which can be obtained at the State Worker's Compensation Board website: www.wcb.ny.gov.

Attached hereto and incorporated herein as **Exhibit C** are copies of the Organization's Certificates of Insurance evidencing the aforementioned coverage.

17. The County and the Organization and their respective employees are not and shall not be considered as joint venturers, employees, partners or agents of each other and neither shall have the power to bind or obligate the other except as set forth in this Contract. There shall be no liability on the part of the County or Organization to any person for any debts incurred by the other.

18. In the event of a breach or default by the Organization of any of the terms and conditions of this Contract, the County may terminate this Contract on ten (10) days written notice to the Organization and request such other remedy as may be reasonable and appropriate in view of the circumstances of such breach or default, including but not limited to, reimbursement to the County by the Organization of all or part of the funds granted to the Organization under this Contract.

19. The Organization shall comply with Erie County Executive Order 13 (2014) and agrees to complete the Certificate collectively attached hereto as Exhibit "D" and made a part hereof. The Organization shall make such records available, upon request, to the County's Division of Equal Employment Opportunity for review. The County shall have the right, upon reasonable notice and at reasonable times, to inspect the books and records of the Organization its offices and facilities, for the purpose of verifying information supplied in the Erie County Equal Pay Certification and for any other purpose reasonably related to confirming the Agency's compliance with Erie County Executive Order 13 (2014). Notwithstanding the termination provisions contained herein, violation of the provisions of Executive Order 13 (2014) , may constitute grounds for the immediate termination of this Agreement and may constitute grounds for determining that the Organization is not qualified to participate in future County contracts.

20. The Organization agrees to comply with the terms, if any, of the resolution of the County Budget, and implementing resolutions appropriating funds for this Contract.

21. The Organization agrees to acknowledge in any and all promotional material the fact that the Organization receives financial support from the County, including, but not limited to the Organization's website, marketing materials and/or other publications.

22. Except as specifically provided otherwise in this Contract, the use of County funds shall be limited to current operating expenses including salaries, program costs, fringe benefits, rents, utilities, office supplies and equipment. No County funds shall be used for or applied toward any capital project or improvement, nor as a set-off against accounts receivable. No funds received under this Contract shall be used for any service provided or activity performed outside Erie County.

23. Erie County strongly encourages all not-for-profit agencies that Contract with the County

of Erie to participate in the community service component of the County's Welfare to Work Initiative. This program places qualified public assistance recipients in community service placements. Clients participating in this component must work in their respective community assignments as a condition for receipt of welfare benefits. An agency representative should contact the Director of Employment and Training Program, Erie County Department of Social Services, for additional information regarding this program.

24. This Contract and its attachments constitute the entire Contract between the parties with respect to the subject matter hereof and shall supersede all previous negotiations, commitments and writings. It shall not be released, discharged, changed or modified except by an instrument in writing signed by a duly authorized representative of each of the parties.

In the event of any conflict between the terms of this Contract and the terms of any schedule or attachment hereto, it is understood that the terms of this Contract shall be controlling with respect to any interpretation of the meaning and intent of the parties.

25. Nothing herein is intended or shall be construed to confer upon or give to any third party or its successors and assigns any rights, remedies or basis for reliance upon, under or by reason of this Contract, except in the event that specific third party rights are expressly granted herein.

26. This Contract may be executed simultaneously in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument. This Contract shall be construed and enforced in accordance with the laws of the State of New York. In addition, the parties hereby agree that any cause of action arising out of this Contract shall be brought in the County of Erie.

If any term or provision of this Contract is held by a court of competent jurisdiction to be invalid or void or unenforceable, the remainder of the terms and provisions of this Contract shall in no way be affected, impaired, or invalidated, and to the extent permitted by applicable law, any such term, or provision shall be restricted in applicability or reformed to the minimum extent required for such to be enforceable. This provision shall be interpreted and enforced to give effect to the original written intent of the parties prior to the determination of such invalidity or unenforceability.

27. All notices of any nature referred to in this Contract shall be in writing and either sent by registered or certified mail postage pre-paid, or delivered by hand or overnight courier, or sent by facsimile (with acknowledgment received and a copy of the notice sent by registered or certified mail postage pre-paid), as set forth below or to such other addresses as the respective parties hereto may designate in writing. Notice shall be effective on the date of receipt. Notices shall be sent to the following:

To the County:
Commissioner of Environment and Planning
95 Franklin Street, Room 1053
Buffalo, New York 14202

With a copy to:
County Attorney
95 Franklin Street, Room 1634
Buffalo, New York 14202

To the Organization: at the address first listed above.

28. The Organization represents and warrants to the County as follows:

a. The execution of this Contract and the provision of services hereunder have been duly authorized by its Board of Directors or Trustees of the Organization and that this Contract has been signed by a duly authorized officer of the Organization.

b. That this Contract is valid and enforceable against the Organization in accordance with the terms hereof and that there is no order, decision, judgment or provision of this Organization's certificate of incorporation or by-laws, or Contract, mortgage, or lien which would limit or prohibit the Organization from fully performing the terms and condition of this Contract.

[END TEXT]

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IN WITNESS WHEREOF, the parties hereto have set their hands and seals as of the day and year first above written.

COUNTY OF ERIE

«UPPERCASE_NAMES»

MARK POLONCARZ/ MARIA R. WHYTE
County Executive / Deputy County Executive
Dated: _____

Name: _____
Title: _____
Dated: _____

Witness to Organization's Signature:

Name: _____
Dated: _____

APPROVED AS TO CONTENT

THOMAS R. HERSEY, JR.
Commissioner
Erie County Department of Environment and Planning
Dated: _____

APPROVED AS TO FORM

KRISTEN WALDER
Assistant County Attorney
Document No. _____
Dated: _____

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EXHIBIT A

SCOPE OF WORK

*Public Benefit Services to be Provided Pursuant to this Contract
by the Organization. (Reference Contract Paragraph 1)*

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EXHIBIT B

ADDITIONAL UNDERSTANDINGS
(Reference Contract Paragraph 2)

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ADDITIONAL UNDERSTANDINGS

1. It is your responsibility to promptly notify the Department of Environment and Planning of any adverse situation which impacts the Organization’s operation in a way which impairs its ability to deliver services to Erie County. A representative of the Department of Environment and Planning will meet with representatives of the Organization regarding these circumstances as a prelude to further release of County funds.

2. A representative of the Department of Environment and Planning may request a meeting with the Organization’s Executive Director and Board Chair at least once during the year, at which time the Organization will be required to supply pertinent information including, but not limited to, its:

- a. Strategic Plan (three to five year time horizon);
- b. Annual Business Plan;
- c. Performance metrics and progress on those metrics related to County funding;
- d. Managerial competence;
- e. Organizational sustainability; and
- f. An accounting of the Organization’s use of County funding, including a detailed list of expenditures of funds received from Erie County.

I, the undersigned, do hereby acknowledge and agree to the requirements detailed under paragraphs 1 and 2 under Exhibit B, entitled “Additional Understandings,” and do certify based on my knowledge, that the supporting documentation provided during the 2017 Cultural Application Process including, but not limited to, the Organization’s Bylaws; 2017 Proposed Operating Budget; 2017 Proposed Cash Flow Statement; and all other relevant financial documents:

- *Are accurate, correct and do not contain any untrue statement of material fact;*
- *Have not been materially altered since they were submitted to the County during the application process;*
- *Do not omit any material fact which, if omitted, would cause the financial statements to be misleading in light of the circumstances under which such statements are made; and*
- *Fairly presents, in all material respects, the financial condition and results of operations of the Organization as of and for the periods presented in the financial statements.*

[Signature of Executive Director or Chair]

Name: _____

Date: _____

NOTE: In the event that the Organization is not able to attest as to the above-listed information and/or that the materials submitted during the 2017 Application Process have been either materially altered or found by the Organization to have contained inaccurate information, the Organization is asked to contact

the Department of Environment and Planning for further instruction.

EXHIBIT C

INSURANCE CERTIFICATES

*To be Provided Pursuant to this Contract by the Organization
(Reference Contract Paragraph 16)*

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EXHIBIT D

ERIE COUNTY EQUAL PAY CERTIFICATION
(Reference Contract Paragraph 19)

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Erie County Equal Pay Certification

In order to comply with Executive Order 13 dated November 6, 2014, we hereby certify that we are in compliance with federal law, including the Equal Pay Act of 1963, Title VII of the Civil Rights Act of 1964, Federal Executive Order 11246 of September 24, 1965 and New York State Labor Law Section 194 (together "Equal Pay Law"). The average compensation for female employees is not consistently below the average compensation for male employees, taking into account mitigating factors. We understand that this certification is a material component of this contract. Violation of the provisions of Executive Order 13, which is attached hereto and made a part hereof, can constitute grounds for the immediate termination of this contract and may constitute grounds for determining that a bidder is not qualified to participate in future county contracts.

We have evaluated wages and benefits to ensure compliance with the Federal Equal Pay Law.

Signature

Verification

STATE OF _____)
COUNTY OF _____) SS:

A) _____, being duly sworn, states he or she is the owner of (or a partner in) _____, and is making the foregoing Certification and that the statements and representations made in the Certification are true to his or her own knowledge.

B) _____, being duly sworn, states that he or she is the (Name of Corporate Officer) _____, of _____, (Title of Corporate Officer) _____ (Name of Corporation)

the enterprise making the foregoing Certification, that he or she has read the Certification and knows its contents, that the statements and representations made in the Certification are true to his or her own knowledge, and that the Certification is made at the direction of the Board of Directors of the Corporation.

Sworn to before me this _____ Day of _____, 20____

Notary Public