

**AMERICAN RESCUE PLAN
LOCAL FISCAL RECOVERY FUNDING AGREEMENT**

THIS AMERICAN RESCUE PLAN LOCAL FISCAL RECOVERY FUNDING AGREEMENT (“Agreement”) is entered into effective as of the date last executed (the “Effective Date”) by and between **Polk County**, a political subdivision of the State of Florida (the “County”), 330 W. Church Street, Attn.: Budget and Management Director, Bartow, Florida 33831, and **Theatre Winter Haven, Inc.** (“Recipient”), a Florida not for profit corporation, **210 Cypress Gardens Blvd., Attention: Sara Beth Reynolds, Development Director, Winter Haven, Florida, 33880**

WHEREAS, pursuant to an agreement (the “SLFRF Agreement”) with the U. S. Department of Treasury the County has received federal stimulus funding from the Coronavirus State and Local Fiscal Recovery Funds (the “ARP Funds”) under Section 603(b) of the Social Security Act, as amended by Section 9901 of the American Rescue Plan Act (the “Act”); and

WHEREAS, the Act authorizes the County to expend ARP Funds for the purpose of, among others, responding to the COVID-19 public health emergency or its negative economic impacts, including assistance to small businesses and non-profit agencies, as outlined in the U.S. Department of Treasury’s Coronavirus State and Local Fiscal Recovery Funds Interim Final Rule and, when effective, its Final Rule (both and each, as applicable, the “SLFRF Rule”), and in accordance with all other applicable federal laws, regulations, rules, and guidance regarding the ARP Funds to include without limitation the U. S. Treasury Department’s current version of its Coronavirus State and Local Fiscal Recovery Funds Guidance on Recipient Compliance and Reporting Responsibilities (collectively, the “SLFRF Guidance”); and

WHEREAS, the County retains discretion, consistent with the Act, the SLFRF Rule, the SLFRF Agreement, and the SLFRF Guidance, to act on a countywide basis to ensure efficient and responsible use of available ARP Funds; and

WHEREAS, pursuant to the Act, the SLFRF Rule, the SLFRF Agreement, and the SLFRF Guidance, all ARP Funds received by the County must be obligated no earlier than March 3, 2021, and no later than December 31, 2024, with final disbursement of all funds no later than December 31, 2026; and

WHEREAS, the County desires to allocate a portion of the ARP Funds to support the COVID-19 public health and economic response by addressing COVID-19 and its impact on public health as well as addressing its economic harm to households, small businesses, nonprofits, and impacted industries; and

WHEREAS, the County has accordingly requested and received requests for an allocation of ARP Funds from small businesses and non-profit agencies located in Polk County, such as the Recipient, who (i) have requested the funds for programs, services, or capital expenditures that respond to the public health and negative impacts of the pandemic; or (ii) whose operations and financial conditions were negatively impacted by the COVID-19 public health emergency, whether through a reduction in revenues, increase in operating costs, business disruption or closure, event cancellation or other similar circumstances occurring during the pandemic that created a financial hardship; and

WHEREAS, Applicant has submitted a written application (the “Application”) to the County requesting an allocation of ARP Funds; and

WHEREAS, the County, by and through its Board of County Commissioners, has considered the Application and selected the Recipient for an award of ARP Funds in the amount set forth in Section 3 below, for those proposed uses(s) (the “Uses”) specified in the Scope of Use attached hereto as Exhibit “A” and fully incorporated herein by reference, provided the Recipient only utilizes the ARP Funds for eligible uses as described in the Act, the SLFRF Rule, the SLFRF Agreement, and the SLFRF Guidance; and

WHEREAS, the Recipient has agreed to accept and use the awarded ARP Funds in accordance with the terms, conditions, requirements, and limitations stated in the Act, the SLFRF Rule, the SLFRF Agreement, and the SLFRF

Guidance, as each of the foregoing may from time to time be further amended, revised, supplemented, or restated in whole or in part, together with any other federal law, regulation, requirement, or guidance regarding the ARP Funds to include without limitation those stated within the prior referenced documents, and in accordance with the terms and conditions of this Agreement; and

WHEREAS, the parties enter into this Agreement to memorialize and document the award of ARP Funds and the obligations and duties related thereto.

NOW THEREFORE, in consideration of and pursuant to the terms and conditions set forth herein, the COUNTY and the RECIPIENT hereby enter into this Agreement for the disbursement and use of ARP Funds, as further set forth and described below.

1. Recitals. The recitals set forth above are true and accurate and fully incorporated herein.
2. Term. The term of this Agreement shall be from the Effective Date through December 31, 2026, unless sooner terminated by the County.
3. Recipient's Use of ARP Funds; Payment; Repayment.
 - (a) The County agrees to provide ARP Funds to Recipient in the amount of **Fifteen Thousand Dollars, (\$15,000.00)** (the "Recipient Funds") as further provided in the Scope of Use. The Recipient Funds shall only be expended for the Uses described in the scope. At the sole discretion of the County, the Recipient Funds may be distributed in multiple tranches of varying amounts as the County shall determine based on the anticipated demands for such funds.
 - (b) Unless the parties agree the Recipient Funds will be disbursed to Recipient by delivery of a check, the County will disburse the Recipient Funds via electronic funds transfer.
 - (c) If the Recipient has not timely disbursed the Recipient Funds as stated in the Scope of Use and in accordance with this Agreement, then upon the County's request, the Recipient shall immediately return all such undistributed Recipient Funds to the County in accordance with instructions the County provides. Additionally, if Recipient disburses, distributes, or expends any portion of the Recipient Funds in violation of this Agreement due to negligence; willful misconduct; fraud, misrepresentation or other deceptive act; theft, embezzlement, conversion or other intentional wrongful act, or any other act of malfeasance, then the County may require the Recipient to repay or to reimburse the County the full amount of all such disbursements, distributions, or expenditures including any discovered after the expiration or other termination of the Agreement. This section shall survive the termination or expiration of the Agreement. Any return, repayment, or reimbursement of Recipient Funds shall be via electronic transfer to the County.
4. Ineligible Uses. The Recipient acknowledges and agrees that it shall not use any portion of the Recipient Funds for non-allowable uses specified under the Act, the SLFRF Rule, the SLFRF Agreement, or the SLFRF Guidance, including, without limitation, the following: (i) usage of funds to either directly or indirectly offset a reduction in net tax revenue resulting from a change in law, regulation or administrative interpretation during the covered period that reduces any tax or delays the imposition of any tax or tax increase; (ii) damages covered by insurance; (iii) usage of funds as a deposit into any pension fund; (iv) expenses that have been or will be reimbursed under any federal program; (v) debt service costs; (vi) contributions to a "rainy day" fund; or (vii) legal settlements.
5. Maintenance and Audit of Records; Performance Monitoring; Report Requirements.
 - (a) Recipient agrees to maintain accurate and complete books, records, and documents in accordance with accounting procedures and practices which sufficiently and properly reflect all expenditures of funds provided under this Agreement, and in accordance with Florida's Public Records Act. Recipient further agrees to provide for audit purposes (upon request) all files, books, records, and documents pertaining to the expenditure or other distribution of the Recipient Funds which shall include without limitation

receipts, invoices, and other related documents. The Recipient shall retain all such records in a secure place within Polk County. Recipient hereby grants the County and its designated representatives - which may include any representative or agent of the state or federal government to include without limitation the State Inspector General's Office, and those identified in the Act, the SLFRF Rule, the SLFRF Guidance, or other applicable federal requirements, an absolute right of access to all Recipient's records pertaining to the Recipient Funds and this Agreement together with a right to review, copy and audit the same, and the right to access, meet, confer, and interview Recipient's employees, agents, and any person receiving benefit from the Recipient Funds, or any portion thereof. The records shall be made available to the designated reviewer(s) and auditor(s) upon written request. Recipient shall assure that all records will be retained for a period of seven (7) years after all services and activities related to this Agreement are concluded. Recipient shall assure if any litigation, claim, negotiation, audit, or other action has been started before the expiration of the above mentioned seven (7) year term, the records will be retained until seven (7) years from completion of the action and resolution of all issues which arise from it. If it is determined at any time during the course of an audit or otherwise that the Recipient used all or any portion of the Recipient Funds for an ineligible purpose, the Recipient shall promptly reimburse the County for such payment(s).

- (b) The County, through its employees, contractors, or other designated representatives, shall have the right to review and monitor the Recipient's performance of its Agreement obligations. The Recipient shall cooperate with the County to provide all necessary access to do so.
- (c) The Recipient shall regularly compile and submit reports to the County regarding Recipient's use and expenditure of the Recipient Funds. The reports shall be delivered, contain the content, and be formatted as the County will from time to time advise the Recipient so the County may fully comply with the Act, the SLFRF Rule, the SLFRF Agreement, and the SLFRF Guidance as the same may be updated or revised during the Agreement term.
- (d) The provisions of this Section 5 shall survive the expiration or earlier termination of this Agreement.

6. Recipient's Representations and Warranties. Recipient hereby represents and warrants the following to the County:

- (a) Recipient currently maintains a physical location in Polk County and has continuously maintained such physical location since at least January 1, 2021.
- (b) Recipient has thoroughly reviewed the terms and conditions of this Agreement and the SLFRF Agreement, as well as the SLFRF Rule and the SLFRF Guidance, both available at: <https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/state-and-local-fiscal-recovery-funds>, has consulted with its own legal counsel on these matters to the extent it desires to do so, and enters into this Agreement freely and of its own accord.
- (c) All information contained in the Application was true and correct at the time of submission and remains true and correct as of Recipient's signing of this Agreement.
- (d) The person executing this Agreement on behalf of the Recipient has the full power and authority to do so and is authorized to bind the Recipient.
- (e) The Recipient shall only use the Recipient Funds for eligible purposes as set forth in the Act, the SLFRF Rule, the SLFRF Agreement, and the SLFRF Guidance as each of the foregoing may from time to time be further amended, revised, supplemented, or restated in whole or in part, together with any other federal law, regulation, requirement, or guidance regarding the ARP Funds, and in accordance with the terms and conditions of this Agreement, for eligible costs for the Uses which Recipient incurs between March 3, 2021 through December 31, 2024, and are expended by Recipient no later than December 31, 2026.

7. Federal Requirements. Recipient acknowledges that the United States Government has provided all or a portion of the Recipient Funds. To fulfill certain federal requirements associated with the receipt of the Recipient Funds, Recipient shall comply with the applicable supplemental conditions attached hereto as Exhibit "B" and fully

incorporated herein by reference, and will also execute and deliver to the County the certifications attached hereto as Exhibit "C" and Exhibit "D", respectively.

8. Assurances. Recipient shall comply with all applicable Federal, State, and County constitutions, laws, ordinances, codes, and regulations now in effect and hereafter adopted in the performance of this Agreement. The Recipient's governance documents (e.g., Bylaws, Policies and Procedures, Articles of Incorporation, etc.) shall also regulate the program operation of Recipient. Any conflict or inconsistency between the Federal, State, or County guidelines and regulations, Recipient's governance documents, and this Agreement shall be resolved in favor of the most restrictive regulations. In accordance with Title VI of the Civil Rights Act of 1964 (P.L. 88-352), no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which Recipient receives Federal financial assistance. Recipient shall not exclude eligible residents from participation in any program on the grounds of race, color, national origin, sex, religion, handicap, or familial status. Recipient shall establish safeguards to prohibit employees from using positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties. Should such possible conflicts, real or apparent, arise, Recipient shall immediately disclose such situations to the County and the County Attorney's Office for review. In accordance with the Drug Free Workplace Act of 1988, Recipient certifies that it has a policy designed to ensure that the Recipient's workplace is free from the illegal use, possession, or distribution of drugs or alcohol. Recipient is in compliance with Paragraph (2)(a) of Section 287.133, Florida Statutes, which provides that a "person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list. Additionally, Recipient shall ensure compliance with the U.S. Department of Health Office of Inspector General Medicare/Medicaid fraud, waste, and abuse requirements, if applicable.

9. Default and Remedy. If Recipient fails to comply with any Agreement provisions and cure such non-compliance within seven (7) days after receiving written notice from the County, the County may withhold, temporarily or permanently, all or any unpaid portion of the Recipient Funds or of any invoiced amount which are in dispute until such failure is cured. In addition to the foregoing, upon any uncured default the County may also pursue any other available legal or equitable remedy.

10. Indemnification. Recipient shall indemnify and hold harmless the County, its agents, and employees from all suits, actions, claims, demands, damages, losses, expenses, including attorney's fees, costs and judgments of every kind and description to which the County, its agents, or employees may be subjected to by reason of injury to person or death or property damage, resulting from, arising out of or related to any action or commission, omission, negligence or fault of Recipient in connection with (i) this Agreement, including, without limitation, any default hereof or misrepresentation made hereunder, (ii) Recipient's performance of any services listed in the Application, or (iii) any use of the Recipient Funds. Additionally, Recipient shall indemnify and hold harmless the County, its agents, and employees from all suits, actions, claims, demands, damages, losses, expenses, including attorney's fees, costs and judgments of every kind and description arising from, based upon, arising out of or related to the violation of any Federal, State, County or City constitution, law, ordinance, or regulation by Recipient. Funds made available pursuant to this Agreement shall not be used by Recipient for the purpose of initiating or pursuing litigation against the County. The provisions of this Section 10 shall survive the expiration or earlier termination of this Agreement.

11. Entire Agreement. The entire agreement between the parties is set forth herein and contained within this document and the parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this Agreement that are not contained herein. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written. No modification to this Agreement shall be binding on either party unless in writing and signed by both parties.

12. Law and Venue. The County and Recipient agree that all activities shall be governed in all respects by the laws of the State of Florida, and venue shall be in the state courts of Polk County, Florida or the United States District Court for the Middle District of Florida located in Hillsborough County, Florida.

13. 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.

14. No Construction against Drafter. The Parties acknowledge that this Agreement and all the terms and conditions contained herein have been fully reviewed and negotiated by the Parties. Accordingly, any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in interpreting this Agreement.

15. Independent Contractor. Nothing stated in this Agreement is intended or should be construed in any manner as creating or establishing a relationship of co-partners between the parties, or as constituting the Recipient (including its officers, employees, and agents) as the agent, representative, or employee of the County for any purpose, or in any manner, whatsoever. The Recipient is to be and shall remain forever an independent contractor with respect to all services performed under this Agreement. The Recipient shall not pledge the County's credit or make the County a guarantor of payment or surety for any contract, debt, obligation, judgment, lien or any form of indebtedness, and the Recipient shall have no right to speak for or bind the County in any manner.

16. Assignment. This Agreement and each parties' respective rights, interests and obligations herein are not assignable without the prior written consent of the other party.

17. Notice. Any notice required to be provided hereunder shall be in writing, directed to the respective party at the address stated in the opening paragraph, and shall be effective upon receipt or refusal to accept receipt. Notices may be delivered via hand, certified U. S. Mail, return receipt requested, or via nationally or locally recognized reliable delivery service. Notice will be effective upon receipt or upon refusal to accept receipt.

**THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK;
THE AGREEMENT CONTINUES ON THE FOLLOWING PAGE
WITH THE PARTIES' SIGNATURES**

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by and through their respective authorized representatives as of the Effective Date defined above.

Theatre Winter Haven, Inc.
a Florida not for profit corporation

By: [Signature]
Name: DANIEL J. CHENICKA
Title: PRODUCING DIRECTOR

POLK COUNTY, a political subdivision of
the State of Florida

By: [Signature]
Dr. Martha Santiago, Chair
Board of County Commissioners
P. 52



ATTEST:

By: Sara Beth Wyatt
Name: Sara Beth Wyatt
Title: Development Director
Date Signed by Recipient: 3.10.22

ATTEST:

Stacy M. Butterfield, Clerk of the Board
By: Alison Holland
Deputy Clerk

Date Signed by County: 4/5/22

Reviewed as to form and legal sufficiency:

[Signature]
County Attorney's Office

EXHIBIT "A"
SCOPE OF USE

Party we are entering the agreement with:

Theatre Winter Haven, Inc.

Purpose of the program awarded the funding:

The students attending this program will experience a different art form each week including mural painting, playwriting, musical instrument creation, African Drumming, Dance Therapy, and ensemble theatre work.

Community to be served:

The program will consist of 70 students K-8 who are predominately students of color coming from homes of low socioeconomic status.

Amount of the agreement:

\$15,000

Performance Measures for the program:

1. Provide program attendance sign up sheets
2. Provide curriculum list (including field trips)
3. Report the dates and times of the field trips with a list of students who have attended
4. Report on the transportation such as locations visited
5. Provide progress reports on students as well as students self-confidence surveys before and after the program

Federal required documentation to validate reimbursement

1. Quote packages if applicable
2. Contracts for purchases
3. Purchase orders if applicable
4. Invoices/Itemized Receipts
5. Proof of payment
 - a. Check and bank statement
 - b. Money order
 - c. Cash receipt
 - d. Electronic receipt
 - e. Bank statement
6. Payroll records (required to show time and wage)
 - a. Timecards (include name and date)
 - b. Proof of payment to employee

c. Cash receipt
d. Electronic receipt
e. Bank statement
7. Before and after photos if applicable
<u>Project timeframes:</u>
January 2022-December 2022 to track progress at quarterly intervals beginning at the mark of the first event.
Quarterly deadlines to be reported to the Budget Office as follows or until the funding has been completely disbursed at which time additional dates will be given:
• April 5, 2022 covering the period January 2022-March 2022
• July 5, 2022 for the period April 2022-June 2022
• October 5, 2022 for the period July 2022-September 2022
• January 5, 2023 for the period October 2022-December 2022
• April 5, 2023 covering the period January 2023-March 2023
• July 5, 2023 for the period April 2023-June 2023
• October 5, 2023 for the period July 2023-September 2023
• January 5, 2024 for the period October 2023-December 2023
• April 5, 2024 covering the period January 2024-March 2024
<u>Disbursement of funding:</u>
by reimbursement process, receipts should be bundled in at least \$2500 packages. Itemized receipts will be submitted on County supplied spreadsheet. Once all documentation is validated, the organization will be reimbursed for the submitted amount requested. If there are any outstanding questions/receipts, the receipt in question will come off of the reimbursement
<u>In the event all funding is not utilized:</u>
The organization will need to submit another proposal/application. In the new proposal, the awardee must detail why the supplemental items will be needed. The new proposal/application is not a guaranteed approval by the Board.
<u>Administrative Fees</u>
Not to exceed 10% of total award

Theatre Winter Haven – Northeast Arts Program

TIMELINE

Pilot Session

March 28 - May 20, 2022 (8 Weeks)

Pilot Budget: \$5,200

Summer Session

June 6 - August 5, 2022 (9 weeks)

Summer Budget: \$4,900

Fall Session

August 15 - December 9, 2022 (16 weeks)

Fall Budget: \$4,900

SCOPE

- Each session will take place at the Northeast Recreational Center twice a week for 90 minutes.
- Students will experience a different art form each week including mural painting, playwriting, musical instrument creation, African Drumming, Dance Therapy, and ensemble theatre work.
- Partnering with the community center to monitor student success academically based on their school report cards
- Students will complete our "Self-Confidence Survey" at the start of the program, at the mid-point, and during the last week of the program.
- Students will be taken on at least 2 field trips to local arts organizations during each term. They will also be invited to attend other events hosted by local arts organizations at no charge.

Theatre Winter Haven - Northeast Arts	
Instructors	\$ 6,250.00
Supplies	\$ 1,750.00
Guest Artists	\$ 1,500.00
Field Trips	\$ 3,500.00
Transportation	\$ 1,000.00
Misc	\$ 1,000.00
TOTAL	\$ 15,000.00

EXHIBIT "B"

FEDERAL SUPPLEMENTAL CONDITION

The following conditions are supplemental to the other Agreement terms and conditions. When there is conflict these Supplemental Conditions prevail unless other Agreement terms and conditions are stricter.

1. **Equal Employment Opportunity**. (*Applicable to construction contracts only*)

During the performance of this Contract, the Contractor agrees as follows:

(1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.

(3) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract/Purchase Order or with any of the said rules, regulations, or orders, this contract/Purchase Order may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions as may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions.

including sanctions for noncompliance: Provided, however, That in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the contractor may request the United States to enter into such litigation to protect the interests of the United States.

2. Contract Work Hours and Safety Standards Act.

(1) Overtime requirements. Neither the Contractor, nor any subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) Withholding for unpaid wages and liquidated damages. Polk County, a political subdivision of the State of Florida, shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(4) Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

3. Clean Air Act and the Federal Water Pollution Control Act.

Clean Air Act

(1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.

(2) The Contractor agrees to report each violation to the County and understands and agrees that the County will, in turn, report each violation as required to assure notification to the Florida Division of Emergency Management, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

(3) The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

Federal Water Pollution Control Act

(1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.

(2) The Contractor agrees to report each violation to the County and understands and agrees that the County will, in turn, report each violation as required to assure notification to the Florida Division of Emergency Management, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

(3) The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

4. Debarment and Suspension. (Exhibit "A")

(1) This Contract/Purchase Order is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the contractor is required to verify that none of the Contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

(2) The Contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

(3) This certification is a material representation of fact relied upon by Polk County. If it is later determined that the Contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the Florida Division of Management and the County, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

(4) The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract or purchase order that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

5. Bvrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended)

Contractors who apply or bid for an award of \$100,000 or more shall file the required certification (attached hereto as Exhibit "B"). Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

6. **Procurement of Recovered Materials.**

(1) In the performance of this Contract/Purchase Order, the Contractor shall make maximum use of products containing recovered materials that are EPA- designated items unless the product cannot be acquired—

(i) Competitively within a timeframe providing for compliance with the contract performance schedule;

(ii) Meeting contract performance requirements; or

(iii) At a reasonable price.

(2) Information about this requirement, along with the list of EPA-designate items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.”

7. **Access to Records.** The following access to records requirements apply to this Purchase Order:

(1) The Contractor agrees to provide the Florida Division of Emergency Management, Polk County, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this Purchase Order for the purposes of making audits, examinations, excerpts, and transcriptions.

(2) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

(3) The Contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the Purchase Order.”

8. **DHS Seal, Logo, and Flags.** The Contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre- approval.

9. **Compliance with Federal Law, Regulations, and Executive Orders.** This is an acknowledgement that FEMA financial assistance will be used to fund the Purchase Order only. The Contractor will comply will all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives.

10. **No Obligation by Federal Government.** The Federal Government is not a party to this Purchase Order and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from this Purchase Order.

11. **Program Fraud and False or Fraudulent Statements or Related Acts.**

The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this Purchase Order.

EXHIBIT "C"

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION, PROPOSED DEBARMENT,
AND OTHER RESPONSIBILITY MATTERS**

For all awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs and activities, the Offeror must complete and sign the following:

The Offeror certifies, to the best of its knowledge and belief, that-

- (1) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the contractor is required to verify that none of the contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
- (2) The contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- (3) This certification is a material representation of fact relied upon by Polk County, a political subdivision of the State of Florida (the "County"). If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the Florida Division Emergency Management, the County, and the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- (4) The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

SIGNATURE: _____

COMPANY NAME: _____

DATE: _____

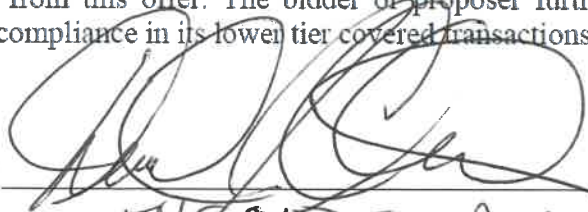

THEATRE WINNER HAVEN
03/10/22

EXHIBIT "D"

APPENDIX A, 44 C.F.R. PART 18 – CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

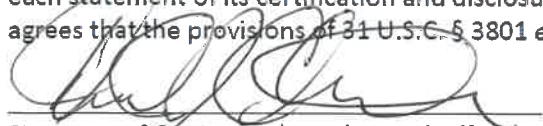
(To be submitted with each bid or offer exceeding \$100,000)

The undersigned THEATRE WINTER HAVEN certifies, to the best of his or her knowledge, that:
(Contractor)

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form- LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor, THEATRE WINTER HAVEN certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. § 3801 *et seq.*, apply to this certification and disclosure, if any.



Signature of Contractor's Authorized Official

DANIEL J. CHESNICKA

Name and Title of Contractor's Authorized Official

03/10/22

Date