

AGREEMENT TO FUND CULTURAL ARTS PROGRAMS OPERATED BY
THE CENTER FOR DOCUMENTARY STUDIES USING
CITY OF DURHAM GRANT FUNDS FOR FY 2015-2016

This contract (“Contract” or “Agreement”) is dated, made and entered into as of the 1st day of July, 2015 between the City of Durham, North Carolina (“City”) and The Center for Documentary Studies (hereinafter, the “Grantee”). The Grantee is a not-for-profit corporation organized and existing under the laws of North Carolina.

Sec. 1. Background and Purpose.

This agreement is to provide funding in the amount of \$55,000.00 to support the FY 2015-2016 Full Frame Documentary Film Festival.

Sec. 2. Grantee Warranties and Representations. Term of Agreement and Annual Submittals.

(a) During the term of this Agreement, the Grantee warrants, represents, and covenants that all information provided or submitted to the City regarding the proposed use of all the monies being granted by the City to the Grantee pursuant to this Agreement (hereinafter, “City Funds”) for described programs is accurate and true.

(b) The Grantee represents that it is an organization described by Section 501(c)(3) of the Internal Revenue Code and that it has provided the City with a valid, un-revoked letter from the Internal Revenue Service that it is such an organization.

(c) The term of this Agreement shall be one year (“Term”) according to the City’s fiscal calendar, beginning with July 1, 2015 to June 30, 2016.

(d) To be eligible for the City Funds, Grantee shall provide documentation of its program and budget information in the form of Attachments A (“Program Scope and Description- FY 2015-2016”) and Attachment B (“Budgeted City-Funded Expenditures-FY 2015-2016”), and Attachment C (“Full Frame Production Expenses-FY 2015-2016”) references in this instrument to “this Agreement” include those attachments, unless the context requires otherwise. In case of conflict, this agreement form shall control the attachments.

Sec. 3. Services; Uses of Funds.

(a) The Grantee affirmatively represents that is shall provide the program of services set forth in Attachment A during the subject fiscal year. By the end of the subject fiscal year, and before entering into an amendment for following fiscal year, the Grantee shall use the City Funds paid to it by the City pursuant to this Agreement exclusively in the category of the programs identified in Attachment A. Grantee shall document the nature of expenditures of City funded expenditures in the form of Attachment B prior to the end of the subject fiscal year. The maximum amount to be paid by the City under this Agreement shall be based upon the City Funds available for the subject fiscal year. The available funding amount for fiscal year 2015-2016 is \$55,000.00.

(b) (i) The Grantee shall include the City of Durham’s name and/or logo in all communications produced between during the Term of this Agreement in which the Grantee identifies any person or entity as being a sponsor of, or donor or contributor to, Grantee. The style of presentation (text and/or logo, font size, etc.) shall be determined by the Grantee. It is generally expected that when another person or entity is identified in the communication as a sponsor, donor, or contributor, and that person’s or entity’s logo appears in the communication,

the City's logo would also appear. When the style of presentation is based on the amount of financial support provided, the City of Durham's name and/or logo shall be treated equally with other supporters providing similar financial support, and shall be based on the total amount of City funds received and to be received pursuant to this Agreement by the Grantee.

(ii) In performing its obligations under subsection (i), the Grantee must obtain the permission of the City before including the City's name or logo in any communication that is:

- required to include the name or logo pursuant to subsection (i), or
- produced during the time period specified in subsection (i) if the communication identifies the City as a sponsor, donor, or contributor.

Permission may be granted by the Public Affairs Division of the City Manager's Office. Public Affairs shall determine the style in which the City's name and logo are presented in such communications. If the City denies permission to place the City's name and logo in a particular communication, this subsection (b) shall not apply to that particular communication, and nothing in this section (b) shall prevent Grantee from sending that communication out.

Sec. 4. Deadline for Performance. The Grantee shall comply, by **June 30** of the year during the Term of the Agreement, with all of the requirements imposed on it by this Agreement, except to the extent, if any, that this Agreement indicates a different time for performance.

Sec. 5. Reporting Requirements.

(a) The Grantee, at the Grantee's sole expense, shall account for all City Funds received from the City under this Agreement and all expenditures made from City Funds. The Grantee shall submit a report of program activities and accomplishments associated with the expenditure of City Funds to the City's Office of Economic and Workforce Development (the "Implementing Department"). That report shall be submitted no later than the end of the fiscal year. The report shall be in such form and detail as the Implementing Department may require. If necessary, the Department may require additional detailed information (in addition to the required report), including but not limited to accounts, records, budget-to-actual statements, and other supporting documentation. Without limiting the preceding sentence, it is agreed that, if requested in writing by the City, the Grantee shall make all of that information available for inspection and audit by the City at any time during the workday of the Implementing Department or such other department of the City that the City Manager specifies in writing to the Grantee. If the City Funds are \$30,000 or more, the Grantee shall comply with section 5(b) and not with section 5(c). If the City Funds are under \$30,000, the Grantee shall comply with either section 5(b) or section 5(c).

(b) The Grantee, at the Grantee's sole expense, shall obtain an audit of its financial statements. The audit shall be performed by a Certified Public Accountant or a Certified Public Accounting firm. This audit shall be conducted in accordance with generally accepted auditing standards, and the financial statements shall be prepared in conformity with generally accepted accounting principles. The Grantee shall see that the City's Office of Economic and Workforce Development receives the audit report within six months after the close of the Grantee's fiscal year.

(c) The Grantee, at the Grantee's sole expense, shall prepare a certified and sworn statement and a schedule of Grantee receipts and expenditures (cash basis) in a format prescribed by the City. The Grantee shall see that the City's Office of Economic and Workforce

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Development receives the statement and schedule within six months after the close of the Grantee's fiscal year.

Sec. 6. Payment. The City shall make two payments of \$27,500.00 to the Grantee for the amounts to be paid pursuant to this Agreement and described in Sec. 3. Services; Uses of Funds, based upon the submission of invoices. The first payment of \$27,500.00 will be based on contract execution and the final payment of \$27,500 will be made after the conclusion of the FY2015-2016 Full Frame Documentary Film Festival. Within thirty days after the City receives an invoice, the City shall send the Grantee a check in payment for all undisputed amounts contained in the invoice. The City, in its sole discretion, and without affecting its other rights and remedies, may delay or cancel any or all of those payments for failure by the Grantee to comply with any of the provisions of this Agreement, including deadlines for submitting any accounting, audit, statement, information, record, documentation, or report. The Director shall have the authority to decide whether the Grantee has complied with this Agreement, including the attachments. That determination shall include the authority to construe vague and/or ambiguous requirements, if any. That determination, unless it is unreasonable, shall be binding on the Grantee. Unless the City otherwise specifies, if the withholding is designated to be a delay of payment instead of a cancellation of payment, the payment so delayed shall be made when the Grantee has submitted the missing items, provided that such items are received by the City within 45 days after the date that they were due. If any of said missing items is not received by the City before the expiration of the additional 45-day period, then the amounts so withheld shall not be paid to the Grantee even if the missing items are later received by the City. If the City does not delay or cancel in one instance, the City shall still have the right to delay or cancel after any other instance of failure by the Grantee.

Sec. 7. Applicable Laws. In carrying out any services or activities funded in whole or part under this Agreement, the Grantee shall comply with all applicable federal, state, and local laws, regulations, and ordinances.

Sec. 8. Repayment of Funds. The Grantee shall repay to the City the full amount of any City Funds lost, misapplied, unaccounted for, or inadequately accounted for in violation of this Agreement.

Sec. 9. Indemnification.

(a) To the maximum extent allowed by law, the Grantee shall defend, indemnify, and save harmless Indemnitees from and against all Charges that arise in any manner from, in connection with, or out of this Agreement as a result of acts or omissions of the Grantee or subcontractors or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. In performing its duties under this subsection (a), the Grantee shall at its sole expense defend Indemnitees with legal counsel reasonably acceptable to City.

(b) Definitions. As used in subsections (a) above and (c) below -- "Charges" means claims, judgments, costs, damages, losses, demands, liabilities, duties, obligations, fines, penalties, royalties, settlements, and expenses (included without limitation within "Charges" are (1) interest and reasonable attorneys' fees assessed as part of any such item, and (2) amounts for alleged violations of sedimentation pollution, erosion control, pollution, or other environmental laws, regulations, ordinances, rules, or orders -- including but not limited to any such alleged

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violation that arises out of the handling, transportation, deposit, or delivery of the items that are the subject of this Agreement). "Indemnities" means City and its officers, officials, independent contractors, agents, and employees, excluding the Grantee.

(c) Other Provisions Separate. Nothing in this section 9 ("Indemnification") shall affect any warranties in favor of the City that are otherwise provided in or arise out of this Agreement. This section is in addition to and shall be construed separately from any other indemnification provisions that may be in this Agreement.

(d) Survival. This section 9 ("Indemnification") shall remain in force despite termination of this Agreement (whether by expiration of the Term or otherwise) and termination of the services of the Grantee under this Agreement.

(e) Limitations of the Grantee's Obligation. If this section is in, or is in connection with, a contract relative to the design, planning, construction, alteration, repair or maintenance of a building, structure, highway, road, appurtenance or appliance, including moving, demolition and excavating connected therewith, then subsection (a) above shall not require the Grantee to indemnify or hold harmless Indemnitees against liability for damages arising out of bodily injury to persons or damage to property proximately caused by or resulting from the negligence, in whole or in part, of Indemnitees.

Sec. 10. Notice. (a) All notices and other communications required or permitted by this contract shall be in writing and shall be given either by personal delivery, fax, or certified United States mail, return receipt requested, addressed as follows:

To the City:

Director, Office of Economic and Workforce Development
City of Durham
101 City Hall Plaza
Durham, NC 27701
The fax number is 919/560-4986

To the Contractor:

Executive Director
Full Frame Documentary Film Festival
324 Blackwell St, Suite 400
Washington Building, Bay 5
Durham, NC 27701
The fax number is 919-687-4200

(b) Change of Address. Date Notice Deemed Given. A change of address, fax number, or person to receive notice may be made by either party by notice given to the other party. Any notice or other communication under this contract shall be deemed given at the time of actual delivery, if it is personally delivered or sent by fax. If the notice or other communication is sent by United States mail, it shall be deemed given upon the third calendar day following the day on which such notice or other communication is deposited with the United States Postal Service or upon actual delivery, whichever first occurs.

Sec. 11. Insurance. Grantee shall maintain insurance not less than the following:

Commercial General Liability, covering

- premises/operations
- products/completed operations
- contractual liability
- independent contractors, if any are to be used in the performance of this contract
- City of Durham must be named additional insured, and an original of the endorsement to effect the coverage must be attached to the certificate (if by blanket endorsement, then agent may so indicate in the GL section of the certificate, in lieu of an original endorsement)
- combined single limit not less than \$1,000,000 per occurrence; aggregate limit not less than \$2,000,000 per year

Automobile Liability Insurance, covering

- owned, hired, or borrowed vehicles
- employee vehicles, if used in performance of this contract
- combined single limit not less than \$1,000,000 per occurrence; aggregate limit not less than \$2,000,000 per year
- this requirement applies only when the scope of work includes transporting children

Workers' Compensation Insurance, covering

- statutory benefits;
- covering employees; covering owners partners, officers, and relatives (who work on this contract)
- employers' liability, \$1,000,000.

Insurance shall be provided by:

- companies authorized to do business in the State of North Carolina
- companies with Best rating of A-VIII or better.

Insurance shall be evidenced by a certificate:

- providing notice to the City of not less than 30 days prior to cancellation or reduction of coverage
- certificates shall be addressed to:
Director, Office of Economic and Workforce Development
City of Durham
302 E. Pettigrew St., Suite 190
Durham, NC 27701

Sec. 12. Termination. The City, in its discretion and for its convenience, may terminate this Agreement at any time by giving written notice of termination to the Grantee. If termination is for convenience and not due to a breach of contract by the Grantee, then the City shall pay to the Grantee a share of the City Funds to reflect the services performed and authorized expenditures incurred, if any, by the Grantee in accordance with this Agreement prior to such termination. The Director shall have the authority to decide the appropriate amount to be paid pursuant to the preceding sentence, and that determination, unless it is unreasonable, shall be binding on the Grantee.

Sec. 13. Assignment. The Grantee may not assign, transfer, or delegate any of its duties under this Agreement without the prior written consent of the City. It shall be within the sole

discretion of the City whether to consent to such assignment, transfer, or delegation. Nothing in this Agreement, including references to subcontracting and assignment, constitutes such consent.

Sec. 14. City Discrimination Policies; ADA Requirements. THE CITY OPPOSES DISCRIMINATION ON THE BASIS OF RACE AND SEX AND URGES ALL OF ITS CONTRACTORS TO PROVIDE A FAIR OPPORTUNITY FOR MINORITIES AND WOMEN TO PARTICIPATE IN THEIR WORK FORCE AND AS SUBCONTRACTORS AND VENDORS UNDER CITY CONTRACTS. The City likewise opposes discrimination on the basis of “disability,” as defined by the Americans with Disabilities Act of 1990 (“ADA”), prohibits Grantee from discriminating on the basis of disability in the use of the funds paid to it by the City pursuant to this Agreement, and advises Grantee that receipt of any of those funds may obligate the Grantee to provide the services identified in Attachment A in a manner that complies with Title II of the ADA, since Title II extends to all services, programs, and activities provided or made available by the City.

Sec. 15. E-Verify Requirements. (a) If this contract is awarded pursuant to North Carolina General Statutes (NCGS) 143-129 – (i) the contractor represents and covenants that the contractor and its subcontractors comply with the requirements of Article 2 of Chapter 64 of the NCGS; (ii) the words "contractor," "contractor's subcontractors," and "comply" as used in this subsection (a) shall have the meanings intended by NCGS 143-129(j); and (iii) the City is relying on this subsection (a) in entering into this contract. (b) If this contract is subject to NCGS 143-133.3, the contractor and its subcontractors shall comply with the requirements of Article 2 of Chapter 64 of the NCGS.

Sec. 16. Miscellaneous.

(a) Choice of Law and Forum. This Agreement shall be deemed made in Durham County, North Carolina. This Agreement shall be governed by and construed in accordance with the law of North Carolina. The exclusive forum and venue for all actions arising out of this Agreement shall be the North Carolina General Court of Justice, in Durham County. Such actions shall neither be commenced in nor removed to federal court. This subsection (a) shall not apply to subsequent actions to enforce a judgment entered in actions heard pursuant to this subsection.

(b) Waiver. No action or failure to act by the City shall constitute a waiver of any of its rights or remedies that arise out of this Agreement, nor shall such action or failure to act constitute approval of or acquiescence in a breach by the Grantee, except as may be specifically agreed in writing.

(c) Performance of Government Functions. Nothing contained in this Agreement shall be deemed or construed so as to in any way estop, limit, or impair the City from exercising or performing any regulatory, policing, legislative, governmental, or other powers or functions.

(d) Severability. If any provision of this Agreement shall be unenforceable, the remainder of this Agreement shall be enforceable to the extent permitted by law.

(e) No Third Party Rights Created. This Agreement is intended for the benefit of the City and the Grantee, and not any other person.

(f) Modification. A modification of this Agreement is not valid unless signed by both parties and otherwise in accordance with requirements of law. Further, a modification is not enforceable against the City unless the City Manager or a deputy or assistant City Manager or the

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Implementing Department Director signs it for the City.

(g) Entire Agreement. This Agreement contains the entire agreement between the parties pertaining to the subject matter of this Agreement. With respect to that subject matter, there are no promises, agreements, conditions, inducements, warranties, or understandings between the parties, written or oral, expressed or implied, other than as set forth or referenced in this Agreement.

(h) Headings. All headings that appear after section numbers and section letters in this Agreement are included for convenience only and shall not affect the interpretation of this Agreement.

IN WITNESS WHEREOF, the City and the Company have caused this contract to be executed under seal themselves or by their respective duly authorized agents or officers.

ATTEST:

CITY OF DURHAM

By: _____

preaudit certificate

CENTER FOR DOCUMENTARY STUDIES

By: _____ (SEAL)

Title of officer: _____

State of _____ ACKNOWLEDGMENT BY CENTER FOR
DOCUMENTARY STUDIES

County of _____

I, a notary public in and for the aforesaid county and state, certify that
_____ personally appeared before this day
and stated that she or he is the (~~strike through the inapplicable:~~) chairperson/ president/ chief
executive officer/ vice-president/ assistant vice-president/ treasurer/ chief financial officer of the
Center for Documentary Studies, a corporation, and that by authority duly given and as the act of
the corporation, he or she signed the foregoing contract with the City of Durham and the
corporate seal was affixed thereto.

This the _____ day of _____, 20_____.

My commission expires:

_____ Notary Public