

PENNSYLVANIA COUNCIL ON THE ARTS
ADDITIONAL TERMS AND CONDITIONS GOVERNING GRANTS-IN-AID
FOR INDIVIDUAL ARTISTS

1. REPORTING

Upon completion of the grant award period, but in no event later than January 31st, grantee shall submit to the Council a Final Report signed by the grantee showing how the grant money was spent. Grantee shall submit the final report on the form provided by the Council.

2. ACKNOWLEDGMENTS

Grantee agrees to include the following phrase in any written or electronically transmitted biographical material distributed by the grantee during the grant period and at least three years following the termination date of the grant: "[Grantee's name] received a 2008-09 fellowship from the Pennsylvania Council on the Arts."

3. MAINTAINING FINANCIAL RECORDS

For the purpose of maintaining records and reporting, grantee shall keep a record reflecting all receipts, obligations and disbursements of funds for all activities covered by this grant award agreement. Grantee agrees to maintain records:

- a. Until the expiration of a three-year period beginning with the submission of the Final Report of Grant-in-Aid, or
- b. Until all audits begun during such three-year period or **prior** thereto have been completed and findings involving the records have been resolved, whichever is the longer period.

4. AUDIT OF RECORDS

Grant awards are subject to audit by State agencies or their authorized representatives.

The Commonwealth reserves the right for State Agencies or their authorized representatives to perform audits of a financial/compliance, economy/efficiency or program results nature, at the discretion of the Agencies. The Council or any duly authorized representatives shall have access to any books, documents, papers, and records maintained to account for funds expended under the terms and conditions of this grant for the purpose of making audit, examination excerpts and transcripts. Grantees shall make such records available upon request for examination during regular business hours.

Audits shall generally be performed in accordance with the auditing standards promulgated by the Comptroller General of the United States as specified in "Standards for Audits of Governmental Organizations, Programs, Activities and Functions" (Yellow Book), latest revision at the time of audit.

5. UNENCUMBERED FUNDS

The grantee should not incur expenses with grant funds after the termination date of the grant. All expenses must be incurred, and funds distributed, between the project beginning and project ending dates specified in the grant award letter. Therefore, any grant funds not dispersed by the project ending date of the grant period must be returned to PCA.

6a NONDISCRIMINATION ON THE BASIS OF RACE, COLOR, NATIONAL ORIGIN, HANDICAP, SEX OR AGE

Grantee agrees to conform to:

- a. Title VI of the Civil Rights Act of 1964, which provides that: 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 subjected to discrimination under any program or activity receiving

Federal financial assistance (section 601).

- b. Section 504 of the Rehabilitation Act of 1973 (29 USCS§ 794), as amended and the implementing regulations. The grantee assures that no otherwise qualified individual with a disability shall, solely by reason of his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal assistance.

- c. Title IX of Education Amendments of 1972, which provides that: No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of or be subjected to discrimination under any program or activity receiving Federal financial assistance.

- d. Age Discrimination Act of 1975, which provides that: No person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

6b. PROVISIONS CONCERNING THE AMERICANS WITH DISABILITIES ACT

1. Pursuant to federal regulations promulgated under the authority of The Americans with Disabilities Act, 28 C.F.R. 35.101 et seq., the contractor understands and agrees that no individual with a disability shall, on the basis of the disability, be excluded from participation in this contract or from activities provided for under this contract. As a condition of accepting and executing this contract, the Contractor agrees to comply with the "General Provisions Against Discrimination," 28 C.F.R. 35.130, and all other regulations promulgated under Title II of The Americans With Disabilities Act which are applicable to the benefits, services, programs, and activities provided by the Commonwealth of Pennsylvania through contracts with outside contractors.

2. The contractor shall be responsible for and agrees to indemnify and hold harmless the Commonwealth of Pennsylvania from all losses, damages, expenses, claims, demands, suits, and actions brought by any party against the Commonwealth of Pennsylvania as a result of the contractor's failure to comply with the provisions of paragraph 1 above.

3. The contractor shall include the provisions of paragraph 1 above in every sub-contract under this Agreement so that such provision binds each sub-contractor.

7. FAIR LABOR STANDARDS

Grantee agrees that:

- a. All professional performers and related or supporting personnel employed on projects or productions which are financed in whole or in part under this grant will be paid, without subsequent deduction or rebate on any account, not less than the minimum compensation as determined by the Secretary of Labor to be the prevailing minimum compensation for persons employed in similar activities.

- b. No part of any project or production which is financed in whole or in part under this grant will be performed or engaged in under working conditions which are unsanitary, hazardous or dangerous to the health and safety of the employees engaged in such project or production.

PENNSYLVANIA COUNCIL ON THE ARTS
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FOR INDIVIDUAL ARTISTS

Compliance with the safety and sanitary laws and applicable anti-pollution regulations and standards of the Commonwealth of Pennsylvania shall be **prima facie** evidence of compliance with the above stipulations.

8. GRANTEE INTEGRITY CLAUSE

Grantees must adhere to the policies of the Commonwealth of Pennsylvania Management Directive 215.8 amended listed below.

1. Definitions.

a. **Confidential information** means information that is not public knowledge, or available to the public on request, disclosure of which would give an unfair, unethical, or illegal advantage to another desiring to contract with the Commonwealth.

b. **Consent** means written permission signed by a duly authorized officer or employee of the Commonwealth, provided that where the material facts have been disclosed, in writing, by pre-qualification, bid, proposal, or contractual terms, the Commonwealth shall be deemed to have consented by virtue of execution of this agreement.

c. **Contractor** means the individual or entity that has entered into this agreement with the Commonwealth, including directors, officers, partners, managers, key employees, and owners for more than 5 % interest.

d. **Financial Interest** means:

- (1) Ownership of more than a 5 % interest in any business; or
- (2) Holding a position as an officer, director, trustee, partner, employee, or the like, or holding any position of management.

e. **Gratuity** means any payment of more than nominal monetary value in the form of cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind.

2. The contractor shall maintain the highest standards of integrity in the performance of this agreement and shall take no action in violation of state or federal laws, regulations, or other requirements that govern contracting with the Commonwealth.

3. The contractor shall not disclose to others any confidential information gained by virtue of this agreement.

4. The contractor shall not, in connection with this or any other agreement with the Commonwealth, directly or indirectly, offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for the decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty by any officer or employee of the Commonwealth.

5. The contractor shall not, in connection with this or any other agreement with the Commonwealth, directly or indirectly, offer, give, or agree or promise to give to anyone any gratuity for the benefit of or at the direction or request of any officer or employee of the Commonwealth.

6. Except with the consent of the Commonwealth, neither the contractor nor anyone in privity with him shall accept or agree to give to, any person, any gratuity from any person in connection with the performance of work under this agreement except as provided therein.

7. Except with the consent of the Commonwealth, the contractor shall not have a financial interest in any other contractor, subcontractor, or supplier providing services, labor, or material on this project.

8. The contractor, upon being informed that any violation of these provisions has occurred or may occur, shall immediately notify the Commonwealth in writing.

9. The contractor, by execution of this agreement and by the submission of any bills or invoices for payment pursuant thereto, certifies and represents that he has not violated any of these provisions.

10. The contractor, upon the inquiry or request of the Inspector General of the Commonwealth or any of that official's agents or representatives, shall provide, or if appropriate, make promptly available for inspection or copying, any information of any type or form deemed relevant by the Inspector General to the contractor's integrity or responsibility, as those terms are defined by the Commonwealth's statutes, regulations, or management directives. Such information may include, but shall not be limited to, the contractor's business or financial records, documents or files of any type or form which refer to or concern this agreement. Such information shall be retained by the contractor for a period of three years beyond the termination of the contract unless otherwise provided by law.

11. For violation of any of the above provisions, the Commonwealth may terminate this and any other agreement with the contractor, claim liquidated damages in an amount equal to the value of anything received in breach of these provisions, claim damages for all expenses incurred in obtaining another contractor to complete performance hereunder, and debar and suspend the contractor from doing business with the Commonwealth. These rights and remedies are cumulative, and the use or nonuse of any one shall not preclude the use of all or any other. These rights and remedies are in addition to those the Commonwealth may have under law, statute, regulation, or otherwise.

9. ASSUMPTION OF LEGAL RESPONSIBILITY BY GRANTEE

Grantee assumes sole legal responsibility for any claims for damages asserted against the Commonwealth of Pennsylvania, its instrumentality, the Pennsylvania Council on the Arts, or any employees thereof, resulting from the negligence or willful actions of grantee involving copyright infringements, violation of personal privacy, misappropriation of ideas or rights and literary piracy or plagiarism, excepting claims arising from matters with respect to which grantee has advised the PCA in writing of the legal issues involved and the PCA, by its specific appraisal in writing, has assumed the risks thereof. The assumption of legal responsibility by grantee shall include but not be limited to the assertion of defenses on the part of the Commonwealth of Pennsylvania, its instrumentality, the PCA and employees thereof, and the costs of such assertion. The PCA will give grantee prompt notice of such claims brought to its attention and grantee may control the defense or settlement thereof.

However, the Commonwealth of Pennsylvania reserves the right for itself, its instrumentality, the PCA or the employees thereof, to participate in the defense of any such claim through its Attorney General at its own expense.

10. TERMINATION OF CONTRACT

The Commonwealth of Pennsylvania reserves the right to terminate this contract at any time, by giving 30 days written notice to the contractor, for any of the following reasons: a. nonavailability of funds; b. nonperformance of the services as stated in this contract; or c.

PENNSYLVANIA COUNCIL ON THE ARTS
ADDITIONAL TERMS AND CONDITIONS GOVERNING GRANTS-IN-AID
FOR INDIVIDUAL ARTISTS

noncompliance with any of the terms and conditions of this contract or the terms and conditions contained in any other contract with the Commonwealth of Pennsylvania.

The Commonwealth shall have the right to terminate the Contract for its convenience if it determines that termination is in its best interest. Upon termination, the grantee shall be prohibited from spending or disbursing grant funds and shall immediately return to PCA all remaining unused grant funds.

11. OFFSET PROVISIONS FOR COMMONWEALTH CONTRACTS

The contractor agrees that the Commonwealth may set off the amount of any state tax liability or other debt of the contractor or its subsidiaries that is owed to the Commonwealth and not being contested on appeal against any payments due the contractor under this or any other contract with the Commonwealth.

12. CONTRACTOR RESPONSIBILITY PROVISIONS

a. Contractor certifies that he is not currently under suspension or debarment by the Commonwealth, any other state, or the federal government.

b. If contractor enters into any subcontracts under this contract with subcontractors who are currently suspended or debarred by the Commonwealth or who become suspended or debarred by the Commonwealth during the term of this contract or any extensions or renewals thereof, the Commonwealth shall have the right to require the contractor to terminate such subcontracts.

c. The contractor agrees that it shall be responsible for reimbursing the Commonwealth for all necessary and reasonable costs and expenses incurred by the Office of the Inspector General relating to an investigation of the contractor's compliance with the terms of this or any other agreement between the contractor and the Commonwealth which results in the suspension or debarment of the contractor.

13. HOLD HARMLESS CLAUSE

The contractor shall be responsible for and agrees to indemnify and hold harmless the Commonwealth from damages to property or injuries (including death) to any person(s) and other losses, damages, expenses, claims, demands, suits and actions by any party against the Commonwealth in connection with the work performed by the contractor.

14. NONDISCRIMINATION CLAUSE

During the term of this contract, contractor agrees as follows:

a. Contractor shall not discriminate against any employee, applicant for employment, independent contractor, or any other person because of race, color, religious creed, ancestry, national origin, age or sex. Contractor shall take affirmative action to insure that applicants are employed, and that employees or agents are treated during employment, without regard to their race, color, religious creed, handicap, ancestry, national origin, age, or sex. Such affirmative action shall include, but is not limited to: employment, upgrading, demotion or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training. Contractor shall post in conspicuous places, available to employees agents, applicants for employment, and other persons, a notice to be provided by the

contracting agency setting forth the provisions of this nondiscrimination clause.

b. Contractor shall, in advertisements or requests for employment placed by it or on its behalf, state that all qualified applicants will receive consideration for employment without regard to race, color, religious creed, handicap, ancestry, national origin, age or sex.

c. Contractor shall send each labor union or workers' representative in which it has collective bargaining agreement or other contract or understanding, a notice advising said labor union or workers' representative of its commitment to this nondiscrimination clause. Similar notice shall be sent to every other source of recruitment regularly utilized by contractor.

d. It shall be no defense to a finding of noncompliance with this nondiscrimination clause that contractor had delegated some of its employment practices to any union, training program, or other source of recruitment which prevents it from meeting its obligations. However, if the evidence indicates that the contractor was not on notice of the third-party discrimination or made a good faith effort to correct it, such factor shall be considered in mitigation in determining appropriate sanctions.

e. Where the practices of a union or any training program or other source of recruitment will result in the exclusion of minority group persons, so that contractor will be unable to meet its obligations under this nondiscrimination clause, contractor shall then employ and fill vacancies through other nondiscriminatory employment procedures.

f. Contractor shall comply with all state and federal laws prohibiting discrimination in hiring or employment opportunities. In the event of contractor's noncompliance with the discrimination clause of this contract or with any such laws, this contract may be terminated or suspended, in whole or in part, and contractor may be declared temporarily ineligible for further Commonwealth contracts, and other sanctions may be imposed and remedies invoked.

g. Contractor shall furnish all necessary employment documents and records to, and permit access to its books, records, and accounts by the contracting agency for purposes of investigation to ascertain compliance with the provisions of this clause. If contractor does not possess documents or records reflecting the necessary information requested, it shall furnish such information on reporting forms supplied by the contracting agency.

h. Contractor shall actively recruit minority and women subcontractors or subcontractors with substantial minority representation among their employees.

i. Contractor shall include the provisions of this nondiscrimination clause in every subcontract, so that such provisions will be binding upon each subcontractor.

j. Contractor obligations under this clause are limited to the contractor's facilities within Pennsylvania or, where the contract is for purchase of goods manufactured outside of Pennsylvania, the facilities at which such goods are actually produced.

15. INQUIRIES

If for any reason you are unable to comply with any condition or administrative requirement of this grant or have questions about them, contact the Council Office.

PENNSYLVANIA COUNCIL ON THE ARTS
ADDITIONAL TERMS AND CONDITIONS GOVERNING GRANTS-IN-AID
FOR INDIVIDUAL ARTISTS

16. MEANING OF “CONTRACT” AND “CONTRACTOR”

The parties understand the terms “contract” and “contractor” within this Agreement shall mean “grant agreement” and “grantee” respectively.