

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

1. REPORTING

Upon submission of the grant award agreement, but in no event later than September 30th, grantee shall submit to the Council a narrative report and a financial statement sworn to and signed by the grantee's chief executive officer.

- a. The narrative report shall include, but not be limited to:
 - 1) A detailed description of all activities for which funds have been awarded, including dates of all performances and exhibits;
 - 2) Audience attendance and numbers of participants;
 - 3) Programs and other printed materials;
 - 4) Critical reviews, if any.
- b. The financial report shall consist of a detailed statement of all income and expenses relating to the activities for which funds have been awarded.
- c. Grantee shall submit the narrative report on the Council's "Narrative Report of Grant-in-Aid" form, and the financial report on the Council's "Financial Report of Grant-in-Aid" form, or such other forms as may be specified by the Council.
- d. If grantee obtains a certified financial statement of general operations, grantee shall submit a copy of the statement to the Council immediately after its receipt.

2. ACKNOWLEDGMENTS

Grantee agrees:

- a. To include an acknowledgment of state arts funding support in all published materials and announcements relating to its PCA funded activities and disseminated by the Grantee. The acknowledgment must stand-alone and not be combined with acknowledgments of funding from other public and private sources. Acknowledgment of PCA support must state as follows [Note: select/insert the appropriate information where square brackets indicate]:

For AOAP grantees:

"[Grantee name] receives state arts funding support through a grant from the Pennsylvania Council on the Arts, a state agency funded by the Commonwealth of Pennsylvania and the National Endowment for the Arts, a federal agency."

For all other grantees:

"This [project/program/performance/exhibition/publication/workshop] was supported in part by the Pennsylvania Council on the Arts, a state agency funded by the Commonwealth of Pennsylvania and the National Endowment for the Arts, a federal agency."

- b. To incorporate the PCA logo in its programs, promotional materials, education materials, and posters relating to its PCA funded activities and disseminated by the Grantee. The PCA shall supply said logo on coated stock or by email upon request;
- c. To list the "Pennsylvania Council on the Arts, a state agency" in the appropriate donor category in all donor lists disseminated by the Grantee.

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 contract. Grantees (including those receiving General Support Grants) agree to maintain records:

- a. Until the expiration of a three-year period beginning with the submission of the Financial 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.

Grantee Financial Management Systems shall provide for:

- a. Records which identify adequately the source and application of funds for grant supported activities. These records shall contain information pertaining to grant awards and authorizations, obligations, unobligated balances, assets, liability, outlays, and income.

Specifically, the Council requires that grantees maintain in their files copies of the following documents:

· application · organizational profile · non-discrimination clause · signed and approved invoice · financial and narrative reports · award letter · receipts, invoices and canceled checks · time sheets for prorated salaries · articles, photos, programs, catalogues

- b. Effective control over and accountability for all funds, property and other assets. Grantees shall safeguard all such assets adequately and shall assure that they are used solely for authorized purposes. Effective internal control requires proper segregation of duties so that key duties and responsibilities in authorizing, processing, recording, and receiving grant transactions should be, as much as practically possible, separated among individuals.

- c. Comparison of actual with budgeted amounts for each grant. Also, relation of financial information with performance or productivity data, including the production of unit cost information whenever appropriate and required.

- d. Procedures to minimize the time elapsing between the transfer of funds from the state disbursing office and the disbursement by the grantee.

- e. Procedures for determining the allowability and allocability of costs in accordance with the provision of the Office of Management and Budget Circular A87, A122, A133, or A21 as applicable.

- f. Accounting records which are supported by source documentation.

- g. Properly documented in-kind contributions, if included as part of the financial record (see General Provisions).

- h. A systematic method to assure timely and appropriate resolution of audit findings and recommendations.

4. REGULATIONS

Grantees must adhere to the administrative requirements for grants-in-aid as promulgated in Office of Management and Budget Circular A102 (state and local government recipients) or A110 (institutions of higher education, hospitals, and other nonprofit recipients.)

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5. AUDIT OF RECORDS Grant awards are subject to audit by Federal and State agencies or their authorized representatives. Grantees shall provide access to the Council, authorized Federal and State agencies (including the NEA and the Comptroller General) and their authorized representatives, 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 audits, examination excerpts and transcripts, and shall provide audit reports of Grantee-conducted audits of these funds upon request. Grantees shall make all such records available upon request for examination during regular business hours.

The Commonwealth reserves the right for itself, authorized Federal and State agencies and their authorized representatives to perform additional audits of a financial/compliance, economy/efficiency or program results nature, of all grant recipients regardless of grant amount or source, at their discretion. Any such additional audit work will rely on work already performed by the Grantee's auditor, and the costs for any additional work performed by the Federal or State agencies will be borne by those agencies at no additional expenses to Grantee. The Council further reserves the right at its discretion to require grantees who are not otherwise required to conduct audits to perform an audit in accordance with applicable Yellow Book standards, if it is reasonable to do so.

Grantee is responsible for obtaining any required audit and shall secure the services of a public accountant, certified public accountant, the PA Council on the Arts Comptrollers Office, the Department of the Auditor General or other independent governmental auditor. Federal regulations preclude public accountants licensed in the Commonwealth of Pennsylvania from performing audits of federal financial assistance. However, public accountants licensed with the State Board of Accountancy may perform audits of 100 percent state funded programs.

Grantees subject to particular audit requirements by the laws and regulations governing the programs in which they participate shall comply with those requirements. 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 as of the time of the audit.

Federal Audit Requirements

Requirements and guidelines for audits of *Federal* financial assistance provided to state and local governments are covered under OMB Circular A133, "Audits of States, Local Governments and Non-profit Organizations", as amended. The audit requirement of this agreement will be satisfied if a single audit is performed under the provisions of the Single Audit Act of 1984, 31 U.S.C. 7501 et seq., and all rules and regulations promulgated pursuant to the Act.

The PA Council on the Arts provides federal financial assistance to a variety of entities that are or are not subject to the provisions of the Single Audit Act of 1984 (31 U.S.C. 7501 et seq.) If Grantee expends \$300,000 or more of Federal awards during its fiscal year (\$500,000 for fiscal years ending after December 31, 2003), either directly from the federal government or indirectly from a recipient of federal funds, OMB Circular A133 requires that Grantee shall have an audit made in accordance with its provisions.

If Grantee is a nonprofit institution and expends \$300,000 (\$500,000 for fiscal years ending after December 2003) or more during the year but receives awards under only one program, and no applicable laws, regulations or grant agreements require a financial statement audit, Grantee may elect to conduct a program-specific audit in accordance with OMB Circular A-133.

If Grantee expends less than \$300,000 (\$500,000 for fiscal years ending after December 31, 2003) a year in Federal awards, it is exempt from Federal audit requirements for that year, but records must be available for review or audit by appropriate officials of the Federal agency, pass-through entity, and General Accounting Office (GAO)Grantees subject to particular audit requirements by the laws and regulations governing the programs in which it participates shall comply with those requirements.

Period Subject to Audit and Audit Frequency A single audit or organization-wide audit made in accordance with OMB Circular A133 shall encompass the fiscal period of the Grantee and shall be performed on an annual basis. Audits of institutions of higher education may be performed every two years; however, annual audits are encouraged.

Audits made on a program-by-program basis shall cover the period as specified in the applicable laws and regulations.

Submission of Audit Reports to the Commonwealth If a single audit or organization-wide audit is made in accordance with the provisions of OMB Circular A133, Grantee must submit the audit report within 30 days after completion of the audit, but the audit shall be completed and the report submitted not later than 13 months after the end of the Grantee's fiscal year. For audits made on a program-by program basis, Grantee shall have an audit made and the report submitted in accordance with the applicable laws and regulations.

Grantee shall submit five copies of the audit report to the Office of the Budget, Single Audit Coordinator at:

Commonwealth of Pennsylvania/Office of the Budget/Comptroller Operations/Bureau of Audits Wagner Building/931 North Seventh Street Harrisburg, PA 17120

After processing of the report by Comptroller Operations, a copy of the audit report will be sent to the PA Council on the Arts.

General Post-Audit Provisions Grantee shall prepare a Corrective Action Plan to address all material findings of noncompliance or internal control weaknesses disclosed in the audit report. For each finding noted, the Corrective Action Plan should include (1) a description of the finding; (2) the specific steps to be taken to correct the situation or specific reasons why corrective action is not necessary; (3) a timetable for performance of the corrective action steps; and (4) a description of monitoring to be performed to ensure that the steps are taken. The Corrective Action Plan must be submitted together with the audit report, in accordance with the procedures stated above.

Audit working papers and audit reports shall be retained by the Grantee's auditor for a minimum of three years from the date of the auditor report, unless the Grantee's auditor is notified in writing by the Commonwealth or the cognizant Federal agency to extend the retention period. Audit working papers shall be made available upon request to authorized representatives of the Commonwealth, the cognizant Federal agency or the General Accounting Office.

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6. 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.

7. AGENT AND MANAGER FEES Grantee agrees that all professional performers, artists and supporting personnel employed on projects or productions related to this grant will be paid without any direct or indirect rebate or deduction to the grantee, or to any other person or entity acting on behalf of the grantee, unless such rebate or deductions are disclosed on grantee's application and financial report.

8a. 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. 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 financial 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.

8b. 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's.

9. 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. 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.

10. 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

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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 that 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.

11. REGISTRATION WITH THE BUREAU OF CHARITABLE ORGANIZATIONS

Under the provisions of Act 185, all grant recipients who engage in the solicitation of funds **must** register with the Bureau of Charitable Organizations of the Pennsylvania Department of State. Information regarding registration responsibilities, fees and forms may be obtained from the Bureau by calling 1-800-732-0999.

12. LOBBYING

In accordance with a Congressional directive, grantees are requested to note the following provisions of Federal Law regarding the use of National Endowment for the Arts funds for lobbying activities.

18 U.S.C. Sec. 1913 **Lobbying with appropriated moneys** - No part of the money appropriated by any enactment of Congress shall, in the

absence of express authorization by Congress, be used directly or indirectly to pay for any personal service, advertisement, telegram, telephone, letter, printed or written matter, or other device, intended or designed to influence in any manner a Member of Congress, to favor or oppose, by vote or otherwise, any legislation or appropriation by Congress, whether before or after the introduction of any bill or resolution proposing such legislation or appropriation but this shall not prevent officers or employees of the United States or of its departments or agencies from communicating to Members of Congress on the request of any Member of Congress, through the proper official channels, requests for legislation or appropriations which they deem necessary for the efficient conduct of the public business.

13. 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.

14. 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;
- c. 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 or the United States of America, including the National Endowment for the Arts;
- d. The Commonwealth shall have the right to terminate the Contract for its convenience if the Commonwealth determines termination to be in its best interest. Upon termination of the contract, the grantee shall be prohibited from spending or disbursing grant funds and shall return immediately to PCA all remaining unused grant funds.

15. 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

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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.

16. 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.

17. 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.

18. 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.

19. DISBURSEMENT OF GRANT FUNDS

For AOAP Grantees:

Upon completion of the Commonwealth approval process, 90% of the grantee's full grant award amount will be dispersed. At a later date (to be determined by the Commonwealth) the remaining 10% of the grantee's award will be disbursed provided the following conditions are met.

- a. Availability of state funds
- b. Grantee's compliance with the established PCA deadlines. Failure to meet these deadlines may result in your forfeiture of the remaining 10% of the grant award.

20. GRANTEE'S COMPLIANCE WITH DEADLINES

Failure to meet one or more of the established deadlines (including, but not limited to, Full or Interim Applications, Final Reports, Grant Award Agreement paperwork, or any other forms required by the PCA) may severely jeopardize all or some of grantee's award. Furthermore grantee may be subject to removal from the AOAP Track or other PCA

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grant programs.

21. INQUIRIES

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

22. MEANING OF “CONTRACT” AND “CONTRACTOR”

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