

## GRANT AGREEMENT

**THIS GRANT AGREEMENT** (the “Agreement”) is made and entered into as of March 14, 2022, by and between the **NORTH MIAMI COMMUNITY REDEVELOPMENT AGENCY**, a public body corporate and politic (the “NMCRA”), having an address at 735 N.E. 125<sup>th</sup> Street, Suite 100, North Miami, Florida 33161, and the **MUSEUM OF CONTEMPORARY ART, INC.**, a Florida not for profit corporation (the “Grantee”), having an address at 770 N.E. 125<sup>th</sup> Street, North Miami, Florida 33161.

### R E C I T A L S

1. The NMCRA facilitates the reduction of slum and/or blighted conditions in the NMCRA Redevelopment Area by providing financial assistance to various persons, business and organizations.

2. Pursuant to that certain Management and Operating Agreement dated August 1, 2019, between the Grantee and the City of North Miami (the “City”), the Grantee manages and operates the Museum of Contemporary Art, which is owned by the City and located at 770 N.E. 125<sup>th</sup> Street, North Miami, Florida 33161 (the “Property”).

3. The Grantee has applied the NMCRA for a grant for the purpose of funding the Grantee’s Arts on the Plaza program, and at a duly noticed public meeting held on March 14, 2023, the NMCRA Board approved an award to the Grantee of a grant in the amount of Seventy Thousand and No/100 Dollars (\$70,000) (the “Grant”) for the purpose of funding Grantee’s Arts on the Plaza program in accordance with the terms and conditions of this Agreement including, but not limited to, the scope of work and budget for the project attached hereto as Exhibit “A” and by this reference made a part hereof (the “Project” or “Scope of Work”).

4. The Grantee desires to accept the Grant subject to the terms, conditions, and restrictions set forth in this Agreement.

**NOW, THEREFORE**, in consideration of the Grant and the mutual covenants and conditions set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the parties hereto do hereby agree as follows:

**Section 1. Recitals; Program Guidelines.** The Recitals set forth above are true and correct and are incorporated in this Agreement by reference.

**Section 2. Effective Term.** The term of this Agreement shall commence on the date when it has been executed by both parties (the “Effective Date”) and the obligation of the NMCRA to fund the Grant shall terminate on September 30, 2023 (the “Termination Date”). Notwithstanding the foregoing, this Agreement shall remain in full force and effect following the Termination Date for such time periods as necessary to give the terms and provisions of this Agreement their full force and effect.

**Section 3. Scope of Work.** The Grantee agrees to use the Grant solely for the costs and expenses paid by the Grantee for the performance of the Scope of Work subject to and in accordance with this Agreement. The Grantee further agrees that the Grant shall only be disbursed in accordance with the attached budget in the amounts for each line item as set forth therein. The Grantee agrees that the Scope of Work performed under this Agreement shall be performed in accordance with all applicable laws.

**Section 4. Disbursement of Grant; Reporting Requirements.** Subject to the payment and reporting procedures set forth below, the NMCRA agrees to disburse the Grant to the Grantee in three equal payments as follows:

4.1 \$23,333.33 shall be disbursed by the NMCRA to the Grantee upon execution of this Agreement;

4.2 \$23,333.33 shall be disbursed by the NMCRA to the Grantee on July 1, 2022;

4.3 \$23,333.34 shall be disbursed by the NMCRA to the Grantee on September 30, 2023.

4.4 Reporting Requirements. Grantee shall provide the NMCRA with interim report on July 1 and a final report on September 30 with respect to its Arts on the Plaza program, which reports shall certify that the Grant is being expended in accordance with the terms and conditions of this Agreement including the Scope of Work. Such reports shall include a detailed expenditure report with all invoices and proof of payment as well as any other information and documentation reasonably requested by the NMCRA. Notwithstanding anything in this Agreement to the contrary (a) submission of the interim report on July 1 is a condition precedent to the obligation of the NMCRA to disburse the payment as set forth in Section 4.2 above and (b) submission of the final report on September 30 is a condition precedent to the obligation of the NMCRA to disburse the payment as set forth in Section 4.3 above

**Section 5. Relationship of the Parties.** The parties agree that this Agreement recognizes the autonomy of and does not imply any affiliation between the contracting parties. It is expressly understood and intended that the Grantee, its agents and employees, are not agents or employees of the NMCRA, but are only recipients of funding support, and is not an agent or instrumentality of the NMCRA or entitled to any employment benefits by the NMCRA.

**Section 6. Assignment.** This Agreement and the Grant are not assignable or transferable in any manner whatsoever.

**Section 7. Records, Reports, Audits, Monitoring and Review.**

7.1 The Grantee shall maintain complete and accurate books, records, and accounts of all costs and expenses incurred in connection with the Project. Upon the request of the NMCRA, all such books and records of the Grantee which relate to the Project shall be available for inspection and audit by the NMCRA or any of its authorized representatives at all reasonable times

during normal business hours. The NMCRA shall be entitled to make such copies of the books and records as the NMCRA deems appropriate.

7.2 The Grantee's books and records shall be maintained or caused to be maintained in accordance with generally accepted accounting principles in a consistent manner, together with the pertinent documentation and data to provide reasonable audit trails for a period of six (6) years following the Termination Date. The foregoing obligation shall expressly survive the expiration or earlier termination of this Agreement.

### **Section 8. Breach of Agreement; Remedies.**

8.1 **Breach.** A breach by the Grantee under this Agreement shall have occurred if: (a) the Grantee fails to complete the Project as set forth in this Agreement; (b) the Grantee ineffectively or improperly uses the Grant allocated under this Agreement; (c) the Grantee fails to submit a detailed report as required by this Agreement or submits incorrect or incomplete proof of expenditures; (d) the Grantee refuses to allow the NMCRA access to records; (e) a transfer or assignment of this Agreement or the Grant occurs in whole or in part, (f) the Grantee discriminates in violation of any Federal, State, or local law; (g) the Grantee attempts to meet its obligations under this Agreement through fraud, misrepresentation, or material misstatement; (h) the Grantee fails to perform or improperly performs any of its obligations set forth in this Agreement; and/or (i) Grantee defaults in its obligations under any other agreements entered into between the Grantee and the NMCRA and/or the City including the Management and Operating Agreement.

8.2 **Remedies.** Immediately upon the breach of this Agreement by Grantee as set forth in Section 8.1 above, in addition to all rights and remedies available at law or in equity, the NMCRA may terminate this Agreement by giving written notice to the Grantee of such termination and by specifying the termination date at least five (5) days before the effective date of termination. In the event of termination, the City may also (a) seek reimbursement of the Grant or any portion thereof paid to the Grantee under this Agreement; or (b) terminate or cancel any other agreements entered into between the NMCRA and the Grantee. The Grantee shall be responsible for all direct and indirect costs associated with such termination including, but not limited to, attorneys' fees and costs at both the trial and appellate levels and also incurred in enforcing this attorneys' fees provision.

8.3 **No Waiver.** No express or implied consent or waiver by the NMCRA to or of any breach or default by the Grantee in the performance or non-performance by the Grantee of its obligations under this Agreement will be deemed or construed to be a consent or waiver to or of any other breach or default in the performance by the Grantee of the same or any other obligations of such other Party hereunder. Failure by the NMCRA to complain of any act or failure to act of the Grantee or to declare the Grantee in default, irrespective of how long such failure continues will not constitute a waiver by the NMCRA of its rights hereunder. The giving of consent by the NMCRA in any one instance will not limit or waive the necessity to obtain the NMCRA's consent in any future instance.

**Section 9. Indemnification by Grantee.** The Grantee hereby covenants and agrees to indemnify and hold harmless the NMCRA and its board members, employees, consultants, attorneys, and/or agents (collectively the "Related Parties") from and against all liability, losses, or damages, including attorneys' fees and costs, at both the trial and appellate levels, which the NMCRA and the

Related Parties may suffer as a result of claims, demands, suits, causes of actions, or proceedings of any kind or nature arising out of, relating to, or resulting from the performance or non-performance of this Agreement by the Grantee or its employees, agents, servants, partners, principals, or subcontractors. The Grantee shall pay all claims and losses and shall investigate and defend (with legal counsel acceptable to NMCRA) all claims, suits, or actions of any kind or nature in the name of the NMCRA, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees and costs which may issue. The Grantee expressly understands and agrees that any insurance required by this Agreement or otherwise provided by the Grantee shall in no way limit the responsibility to indemnify, keep, and save harmless and defend the NMCRA and the Related Parties. Nothing contained in this Agreement shall be construed to affect the NMCRA's right of sovereign immunity as provided in Chapter 768, Florida Statutes. Additionally, the NMCRA does not waive sovereign immunity, and no claim or award against the NMCRA shall include attorney's fees, investigative costs, or pre-judgment interest.

**Section 10. Notices.** Whenever any party desires to give notice unto any other party, it must be given by written notice, sent by certified United States mail, with return receipt requested, or by nationally recognized overnight delivery service, addressed to the party for whom it is intended and the remaining party, at the places last specified, and the places for giving of notice shall remain such until they shall have been changed by written notice in compliance with the provisions of this section. Notice may also be sent by electronic means (facsimile or email) provided such is followed by a hard copy of such notice provided in the manner set forth above. Notice is deemed given when received. For the present, Grantee and the NMCRA designate the following as the respective places for giving such notice:

NCMRA: Anna-Bo Emmanuel, Esq., Executive Director  
North Miami Community Redevelopment Agency  
735 N.E. 125<sup>th</sup> Street, Suite 100  
North Miami, Florida 33161  
Telephone No. (305) 895-9839  
Facsimile No. (305) 895-9822

Copy to: Steven W. Zelkowitz, Esq., NMCRA Attorney  
Taylor English Duma LLP  
2 S. Biscayne Boulevard, Suite 2050  
Miami, Florida 33131  
Telephone No. (786) 840-1437  
Facsimile No. (770) 434-7376

Grantee: Chana Sheldon, Executive Director  
Museum of Contemporary Art, Inc.  
770 N.E. 125<sup>th</sup> Street  
North Miami, Florida 33161  
Telephone No. (\_\_\_\_) \_\_\_\_\_  
Facsimile No. (\_\_\_\_) \_\_\_\_\_

**Section 11. Inspections.** At any time during normal business hours, the NMCRA or any of its agents, shall have the right to enter the Property, to examine the same for purpose of ensuring Grantor's compliance with the terms and provisions of this Agreement.

**Section 12. Miscellaneous.**

12.1 Publicity. It is understood and agreed between the Parties that this Grantee is receiving funds by the NMCRA. Further, by the acceptance of these funds, the Grantee agrees that activities funded by this Agreement shall recognize the NMCRA as a funding source. The Grantee shall ensure that any publicity, public relations, advertisements, and signs recognize the NMCRA for the support of all contracted activities. Grantee shall permit, or cause the landlord to permit, as applicable, a sign to be placed upon the Property by the NMCRA relative to this Agreement.

12.2 Conflict of Interest. No NMCRA funds shall be used for the payment of services provided by any person employed by Miami-Dade County, the City of North Miami Cultural Affairs Office, and/or any person or entity affiliated with the Grantee's Board of Trustees.

12.3 Compliance with Laws. The Grantee agrees to comply with all applicable federal, state, county, and city laws, rules, and regulations. Without limiting the foregoing, Grantee agrees to comply with all legal requirements relative to any agreements between the City and the Grantee.

12.4 Modifications. Any amendments, variations, modifications, extensions, or waivers of provisions of this Agreement including, but not limited to, amount payable and effective term shall only be valid if in writing, duly approved by the NMCRA Board and signed by both parties.

12.5 Binding Authority. Each person signing this Agreement on behalf of either party individually warrants that he or she has full legal power to execute this Agreement on behalf of the party for whom he or she is signing, and to bind and obligate such party with respect to all provisions contained in this Agreement.

12.6 Headings. Headings herein are for convenience of reference only and shall not be considered on any interpretation of this Agreement.

12.7 Exhibits. Each Exhibit referred to in this Agreement should be treated as part of this Agreement, and are incorporated herein by reference.

12.8 Extent of Agreement. This Agreement represents the entire and integrated agreement between the NMCRA and the Grantee and supersedes all prior negotiations, representations, or agreements, either written or oral.

12.9 Third Party Beneficiaries. Neither of the parties intend to directly or substantially benefit any third party by this Agreement. Therefore, the Parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against either of them based upon this Agreement.

12.10 Construction. Both parties have substantially contributed to the drafting and negotiation of this Agreement and this Agreement shall not, solely as a matter of judicial construction, be construed more severely against one of the Parties than the other.

12.11 Governing Law. This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida.

12.12 Invalidity. If any term or provision of this Agreement, or the application thereof to any person or circumstance is determined to be invalid or unenforceable, then to the extent that the invalidity or unenforceability thereof does not deprive a party of a material benefit afforded by this Agreement, the remainder of this Agreement or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, will not be affected thereby, and each term and provision of this Agreement will be valid and will be enforced to the full extent permitted by law.

12.13 Survival. All terms and provisions of this Agreement shall survive the Funding Termination Date and the termination of this Agreement, as applicable, as necessary in order for the parties to enforce their rights hereunder.

12.14 Recording. Grantee agrees that the NMCRA may record a Memorandum of this Agreement in the Public Records of Miami-Dade County at Grantee's expense. The form of Memorandum shall be prescribed by the NMCRA and the Grantee shall execute such Memorandum simultaneously with this Agreement. The rights and interests created herein, are intended to and shall run with the land, and shall be binding upon, inuring to the benefit of, and enforceable against the parties hereto and their respective successors and assigns.

**12.15 JURISDICTION; VENUE AND WAIVER OF JURY TRIAL. EACH OF THE PARTIES IRREVOCABLY AND UNCONDITIONALLY (A) AGREES THAT ANY SUIT, ACTION OR OTHER LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT SHALL BE BROUGHT IN THE FEDERAL OR STATE COURT SITUATED IN MIAMI-DADE COUNTY, FLORIDA; (B) CONSENTS TO THE JURISDICTION OF EACH SUCH COURT IN ANY SUCH SUIT, ACTION OR PROCEEDING; AND (C) WAIVES ANY OBJECTION WHICH IT MAY HAVE TO THE LAYING OF VENUE OF ANY SUCH SUIT, ACTION OR PROCEEDING IN ANY OF SUCH COURTS. EACH PARTY WAIVES ALL RIGHTS TO ANY TRIAL BY JURY IN ALL LITIGATION RELATING TO OR ARISING OUT OF THIS AGREEMENT.**

12.16 Grantee's Required Insurance Coverages. Grantee, at Grantee's expense, agrees to keep in force during the term of this Agreement commercial general liability insurance which insures against claims for bodily injury, personal injury, and property damage based upon, involving, or arising out of the use, occupancy, or maintenance of the Property in an as promulgated by the NMCRA from time to time. All policies required to be carried by Grantee hereunder shall be issued by and binding upon an insurance company licensed to do business in the State of Florida with a rating of at least "A-VIII" or better as set forth in the most current issue of Best's Insurance Reports, unless otherwise approved by the NMCRA. Grantee shall not do or permit anything to be done that would invalidate the insurance policies required herein.

Certificates of insurance, acceptable to NMCRA, evidencing the existence and amount of each insurance policy required hereunder shall be delivered to NMCRA prior to disbursement of any Grant proceeds and thereafter no more than (10) days following each renewal date. Certificates of insurance for insurance required to be maintained as set forth above shall include an endorsement for each policy showing that the NMCRA is included as an additional insured. Further, the certificates must include an endorsement for each policy whereby the insurer agrees not to cancel, non-renew, or materially alter the policy without at least thirty (30) days' prior written notice to the NMCRA. The limits of insurance shall not limit the liability of Grantee or relieve Grantee of any obligation hereunder, except as otherwise expressly provided for herein.

[REST OF PAGE LEFT INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective and duly authorized officers the day and year first above written.

**GRANTEE:**

MUSEUM OF CONTEMPORARY  
ART, INC.,  
a Florida not for profit corporation

**NMCRA:**

NORTH MIAMI COMMUNITY  
REDEVELOPMENT AGENCY,  
a public body corporate and politic

By: \_\_\_\_\_  
Chana Sheldon  
Executive Director

By: \_\_\_\_\_  
Anna-Bo Emmanuel, Esq.  
Executive Director

Attest:

By: \_\_\_\_\_  
Vanessa Joseph, Esq.  
NMCRA Secretary

Approved as to form and legal sufficiency:

By: \_\_\_\_\_  
Taylor English Duma LLP  
NMCRA Attorney

**EXHIBIT “A”**

**Scope of Work**