

# REIMBURSEMENT AGREEMENT FOR PROVISION OF ART PROGRAMS BY THE YOUNG PERFORMING ARTISTS, INC. IN SUMTER COUNTY

**THIS AGREEMENT** (hereinafter referred to as "Agreement") is made and entered into this 12<sup>th</sup> day of January 2021, by and between **Board of Sumter County Commissioners** (hereinafter referred to as "Board," or "County"), whose address is 7375 Powell Road, Wildwood, Florida 34785, and Young Performing Artists (YPAs), Inc. (hereafter referred to as "Vendor"), whose address is 9060 County Road 231, Wildwood, FL 34785-8525.

## RECITALS

WHEREAS, the Board receives funding from Department of Highway Safety and Motor Vehicles under provision of F.S. 320 Sections 320.08053, 320.08056, 320.08058, 320.08062 and 320.08068 for the specialty license plate annual use fee for Florida Arts license plates; and

WHEREAS, the Board has the authority to apply received funding to support arts organizations, arts programs and arts activities within Sumter County; and

WHEREAS, the parties desire to enter into a written agreement outlining the requirements to request funding from Florida Art Specialty License Plate Fund as reimbursement of the expenses for the provision of the art programs by the Young Performing Artists (YPAs), Inc.

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements contained herein, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. The Young Performing Artists (YPAs), Inc. shall perform the conditions of this Agreement as an independent contractor and nothing contained herein shall be construed to be inconsistent with this relationship or status. Nothing in the Agreement shall in any way be construed to constitute the Young Performing Artists (YPAs), Inc. or any of its agents or employees as the agent, employees as the agent, employee or representative of the Board.
2. The term of this Agreement shall commence on January 12, 2021 and continue in full force through September 30, 2021 unless otherwise terminated as provided in paragraph four (4) of this Agreement. The term of this Agreement does not relieve the Vendor of any future responsibility as described in paragraph five (5) of this Agreement.
3. This Agreement may be terminated by either party upon thirty (30) days prior written notice to the other party at the address designated in this Agreement for receiving such notice. If this Agreement is terminated, Vendor shall be authorized to receive reimbursement for all work performed up to the date of termination.
4. With regard to reimbursements paid to Vendor, Vendor shall furnish to the Board an itemized reimbursement request detailing all of Vendor's hours, services, expenses and any other services authorized for reimbursement under F.S. 320 Sections 320.08053, 320.08056, 320.08058, 320.08062 and 320.08068. The reimbursement request shall be itemized pursuant to and in accordance with the Authorized Expenditure Schedule, attached hereto as Exhibit A.
5. General Considerations.
  - a. Vendor is required to: (i) keep and maintain public records required by Board; (ii) upon request from Board's custodian of public records, provide Board with a copy of the requested records or

allow the records to be inspected or copied within a reasonable time at a reasonable or as otherwise provided by law; (iii) ensure that public records that are exempt or, confidential and exempt, from public records disclosure requirements are not disclosed except as authorized by law for the duration of this Agreement and following completion of this Agreement if Vendor does not transfer the records to Board; (iv) upon completion of this Agreement, transfer, at no cost, to Board all public records in possession of Vendor or keep and maintain public records required by Board.

- b. If Vendor transfers all public records to Board upon completion of this Agreement, Vendor shall destroy any duplicate public records that are exempt or, confidential and exempt, from public records disclosure requirements. If Vendor keeps and maintains public records upon completion of this Agreement, Vendor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to Board, upon request from Board's custodian of public records, in a format that is compatible with the information technology systems of Board.
- c. Vendor shall keep all books, records, files, plans and other documentation, including all electronically stored items, which concern or relate to the services required hereunder (the "Records"), for a minimum of five (5) years from the date of expiration or termination of this Agreement, or as otherwise required by any applicable law, whichever date is later. The Board shall have the right to order, inspect, and copy all the Records as often as it deems necessary during any such period-of-time. The right to audit, inspect, and copy Records shall include all of the records of sub-Vendors (if any).
- d. Vendor shall, at all times, comply with the Florida Public Records Law, the Florida Open Meeting Law and all other applicable laws, rules and regulations of the State of Florida.
- e. **PUBLIC RECORDS.** The parties shall, at all times, comply with the Florida Public Records Law, the Florida Open Meeting Law and all other applicable laws, rules, and regulations of the State of Florida.

**IF THE VENDOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE VENDORS' DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 352-689-4400, SUMTER COUNTY BOARD OF COUNTY COMMISSIONERS, 7375 POWELL ROAD, WILDWOOD, FLORIDA 34785 OR VIA EMAIL AT [RECORDS@SUMTERCOUNTYFL.GOV](mailto:RECORDS@SUMTERCOUNTYFL.GOV).**

6. Vendor shall be solely and entirely responsible for its tortious acts and for the tortious acts of its agents, employees, or servants during the performance of this Agreement. Vendor shall indemnify and save harmless the Board, its agents, employees and officers from and against all liabilities, claims, demands, or actions at law and equity including court costs and attorney's fees that may hereafter at any time be made or brought by anyone for the purposes of enforcing a claim on account of any injury or damage allegedly caused or occurring to any person or property in which was caused in whole or in part by any tortious, wrongful, or intentional acts or omissions of Vendor, its agents, or employees during performance under this Agreement. The foregoing is not intended, and shall not be construed, as a waiver by Board of the benefits of Section 768.28, *Florida Statutes*.
7. Vendor is, and shall be, in the performance of all services and activities under this Agreement, an independent contractor, and not an employee, agent, or servant of Board; and no provisions of Board's personnel policies shall apply to this Agreement. None of the benefits provided by Board to its employees including, but not limited to, worker's compensation insurance and unemployment insurance, are available from Board to Vendor, or its employees, agents or servants. Vendor assumes responsibility for payment of all federal, state and local taxes imposed or required of Vendor including but not limited to FICA, FUTA, unemployment insurance, Social Security and

income tax laws for which Vendor, as employer is responsible. Vendor shall be solely responsible for any worker's compensation insurance required by law and shall provide the Board with proof of insurance upon demand. The parties agree that Board shall not: (a) pay dues, licenses or membership fees for Vendor; (b) require attendance by Vendor, except as otherwise specified herein; (c) control the method, manner or means of performing under this Agreement, except as otherwise specified herein; or (d) restrict or prevent Vendor from working for any other party.

8. **Force Majeure.** No party shall be liable or responsible to the other party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (except for any obligations to make payments to the other party hereunder)], when and to the extent such failure or delay is caused by or results from the following force majeure events ("**Force Majeure Events**"): (a) acts of God; (b) flood, fire, earthquake or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot, warlike operation, insurrection, rebellion, revolution, military or usurped power, sabotage or other civil unrest; (d) strikes, embargoes, blockades, labor stoppages, lockouts or slowdowns or other industrial disturbances or inability to obtain necessary materials or services (e) governmental delay regarding permits or approvals; (f) action by any governmental authority; (g) national or regional emergency; (h) shortage of adequate power or transportation facilities; or (j) other similar events beyond the reasonable control of the party impacted by the Force Majeure Event (the "**Impacted Party**") and provided further, however, that such performance shall be resumed and completed with due diligence and reasonable dispatch as soon as the contingency causing the delay or impossibility shall abate.
9. **Attorney's Fees; and Costs of Enforcement.** In the event suit is commenced to enforce this Agreement, costs of said suit including reasonable attorneys' fees in all proceedings, trials, investigations, appearances, appeals and in any bankruptcy proceeding or administrative proceeding shall be paid to the prevailing party by the non-prevailing party. In the event of default by either party hereto, the defaulting party shall be liable for all costs and expenses, including reasonable attorney' s fees and costs incurred by the other party in enforcing its rights hereunder, whether litigation be instituted or not, at the trial court and appellate court level.
10. **Law of the Agreement; Jurisdiction and Venue.** The Parties agree that the laws of the State of Florida shall govern any dispute arising from or related to this Agreement. The Parties to this Agreement agree that venue and jurisdiction is mandated to lie only in the state courts located in Sumter County, Florida. Removal of this case to federal court is not permitted. Litigation in federal court is precluded by agreement of the parties hereto. If, even though precluded by agreement of the Parties hereto, litigation arising from or based upon this contract should be mandated by a court of competent jurisdiction issued pursuant to a duly noticed hearing giving Sumter County adequate time to respond and all of the benefits of due process to lie in the proper venue or jurisdiction of a federal court, that federal court shall only be in the Middle District of Florida, Ocala Division. The Parties further agree that entry into this agreement constitutes irrevocable consent that the exclusive venue for any such dispute shall lie solely in the state or county courts in and for Sumter County, Florida. The Parties expressly and irrevocably waive any right(s) to removal of any such dispute to any federal court, unless the federal court has exclusive jurisdiction; in such cases, the parties agree that the exclusive venue for any such disputes shall be the United States District Court, in and for the Middle District of Florida, Ocala Division. Process in any action or proceeding referred to in this paragraph may be served on any party anywhere in the world, such party waives any argument that said party is not subject to the jurisdiction of the state courts located in Sumter County, Florida and that the laws of the state of Florida.
11. **Entire Agreement.** This Agreement contains the entire agreement of the Parties and may not be changed except by written agreement duly executed by the Parties hereto. This Agreement

supersedes any prior understandings or agreements between the Parties, and there are no representations, warranties, or oral agreements other than those expressly set forth herein.

12. **Assignment.** This Agreement shall not be assigned nor may any portion of the obligations contemplated in this Agreement be subcontracted to another party without prior written approval of County. No such approval by County of any assignment or subcontract shall be deemed in any event or in any manner to provide for the incurrence of any obligation of County. All such assignments and subcontracts shall be subject to the terms and conditions of this Agreement and to any conditions of approval that County shall deem necessary.
13. **Compliance with Licenses, Permits, and Applicable Laws.** In performing services hereunder, Vendor shall comply with all federal, state and local laws and regulations. Vendor shall be responsible for identifying and obtaining all permits necessary to complete the scope of services. Vendor shall be responsible for obtaining, at its sole cost and expense, all necessary license licenses and other governmental approvals required in order for Vendor to provide the type of services required hereunder.
14. **Conflict of Interest.** Vendor shall notify Board in writing of any commitments during the term of this Agreement, which may constitute a potential or actual conflict of interest with respect to the scope of services to be performed for the Board.
15. **Corporate Status; Change of Ownership.** If Vendor is a non-governmental, corporate entity:
  - a. *Corporate Status.* Vendor shall ensure that the corporate status shall continuously be in good standing and active and current with the state of its incorporation and the State of Florida and at all times throughout the Term, and any renewal or extension hereof. Failure of the Vendor to keep its corporate status active and current shall constitute a material breach under the terms of this Agreement.
  - b. *Change of Ownership.* Vendor shall notify County immediately upon any change in corporate ownership or any substitution of the key professional assigned (the "Key Person") to perform under this Agreement ("Change of Ownership" ). County shall have the option of cancelling this Agreement if a Change of Ownership is not suitable to it, provided however, no cancellation shall relieve the Vendor of its obligations to perform the work described herein or for liability for breach of same. A Change of Ownership means the occurrence of any one or more of the following: a sale, lease, or other disposition of 50% or more of the interest or assets of the company or corporation; a merger, reverse merger or consolidation with another entity; a transaction wherein a third-party becomes the beneficial owner having fifty (50%) percent or more interest in the corporation or company; or fifty (50%) percent or more of the total number of votes that may be cast for any act of the entity.
16. **Default.** Neither Party shall declare the other party in default of any provision of this Agreement without giving the other party at least ten (10) days advance written notice of intention to do so, during which time the other party shall have the opportunity to remedy the default. The notice shall specify the default with particularity.
17. **Dispute Resolution.** All disputes arising out of or in connection with this Agreement shall be attempted to be settled through good-faith negotiation between the Parties, followed if necessary within thirty (30) days by professionally-assisted mediation. Any mediator so designated must be acceptable to each Party. The mediation will be conducted as specified by the mediator and agreed upon by the Parties. The Parties agree to discuss their differences in good faith and to attempt, with the assistance of the mediator, to reach an amicable resolution of the dispute. The mediation will be treated as a settlement discussion and therefore will be confidential. The mediator may not testify for either Party in any later proceeding relating to the dispute. No recording or transcript shall be made

of the mediation proceedings. Each Party will bear its own costs in the mediation. The fees and expenses of the mediator will be shared equally by the Parties. Failing resolution through negotiation or mediation, either Party may file an action in a court of competent jurisdiction or other appropriate remedy available in law or equity as defined herein below.

18. **Jointly Drafted.** The Parties agree that this Agreement is entered into knowingly and voluntarily, after having the opportunity to fully discuss it with an attorney. Having had the opportunity to obtain the advice of legal counsel to review, comment upon, and redraft this Agreement, the Parties agree that this Agreement shall be construed as if the parties jointly prepared it so that any uncertainty or ambiguity shall not be interpreted against any one party and in favor of the other.
19. **Parties Acknowledgement; Parties Bound.** The Parties acknowledge that they have read this Agreement, and that they understand the terms and conditions herein and that the terms have been fully and completely explained to the Parties prior to the execution thereof. Each party acknowledges that the other party has made no warranties, representations, covenants, or agreements, express or implied, except as expressly contained in this Agreement. Further, the Parties have caused this Agreement to be executed on their respective behalf by the authorized officer whose signature appears below under their respective name, to be effective as of the date first written above. This Agreement shall inure to the benefit of and be binding upon the Parties, their successors, heirs, and personal representatives.
20. **Waiver.** The waiver by any party hereto of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by any party.
21. **Time is of the Essence.** Time shall be of the essence of this Agreement.
22. **Survivability.** Any provision of this Agreement, which obligates any of the Parties to perform an obligation either before the commencement of the Term or after the expiration of the Term, or any renewal or extension thereof, shall be binding and enforceable notwithstanding that performance is not within the Term, and the same shall survive.
23. **Severability.** Whenever possible each provision and term of this Agreement will be interpreted in a manner to be effective and valid but if any provision or term of this Agreement is held to be prohibited or invalid, then such provision or term will be ineffective only to the extent of such prohibition or invalidity, without invalidating or affecting in any manner whatsoever the remainder of such provision or term or the remaining provisions or terms of this Agreement.
24. **Counterparts.** This Agreement may be executed in a number of identical counterparts and a facsimile or electronic/digital copy shall be treated as an original. If so executed, each of such counterparts is to be deemed an original for all purposes, and all such counterparts shall, collectively, constitute one agreement. In making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart.
25. **Section and Paragraph Headings.** Captions or paragraph headings herein contained are for organizational convenience only and shall not be constructed as material provisions of this agreement or to limit any provisions hereunder.
26. **Cooperation; Supplementary Actions.** All Parties agree to cooperate fully and to execute any supplementary documents, and to take any additional actions that may be necessary or appropriate to give full force and effect to the basic terms and intent of this Agreement, and which are not inconsistent with its terms.
27. **Miscellaneous.** Whenever the context shall so require, all words in this Agreement of one gender shall be deemed to include the other gender.

28. **Incorporation of Recitals.** Each of the WHEREAS clauses listed above are hereby re-alleged and incorporated into this Agreement as if otherwise fully stated herein.

29. **Notice.** Whenever any notice, demand or request is required or permitted hereunder, such notice, demand or request shall be made in writing and shall be personally delivered to the individuals listed below, sent via prepaid courier or overnight courier, or deposited in the United States mail, registered or certified, return receipt requested, postage prepaid, addressed to the addresses (and individuals) set forth below. No other form of electronic communications (Facebook, Twitter, Text) will be deemed Notice.

FOR THE BOARD

FOR THE VENDOR

Name: Bradley S. Arnold

Name: Beverly Steele

Address: 7375 Powell Road, Wildwood, FL 34785

Address: 9060 CR 231, Wildwood, FL 34785-8525

Title: County Administrator

Title: Founder

Date:

Date:

IN WITNESS WHEREOF, the parties have signed this agreement the day and year first above written.

ATTEST:

SUMTER COUNTY  
BOARD OF COUNTY COMMISSIONERS

By: \_\_\_\_\_

By: \_\_\_\_\_  
Chairman

Date Signed: \_\_\_\_\_

ATTEST:

YOUNG PERFORMING ARTISTS (YPAs), INC.

By: \_\_\_\_\_

By: \_\_\_\_\_

Date Signed: \_\_\_\_\_

## Exhibit A

### Authorized Expenditures Schedule

All expenditures must be authorized for reimbursement under F.S. 320 Sections 320.08053, 320.08056, 320.08058, 320.08062 and 320.08068 including but not limited to the following categories:

1. Supplies for the specific program purpose with the original receipts dated prior to the commencement of the program or during the program time;
2. Payroll if the time card/invoice clearly identifies time and rate of pay spent working on the specified program purpose;
3. Any other expenditures that support provision of the art program itself and it can be clearly identified on the original receipt submitted.