

# Creative Capital

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Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Phone: \_\_\_\_\_

Social Security Number: \_\_\_\_\_

Re: \_\_\_\_\_ (the "Project")

Dear \_\_\_\_\_:

This Letter of Agreement, when fully signed by the parties hereto, shall, along with the Attachments, constitute the entire agreement between Creative Capital Foundation ("Creative Capital" of "Grantor") and you (the "Awardee") with respect to the Project.

## **1. Award.**

Creative Capital agrees to pay to you the sum of \$10,000 (the "Award") for the purpose of developing, producing and distributing the Project. The award shall be paid in one installment. A check for the full award amount will be mailed to you upon return of the signed contract.

## **2. Additional Funding and Services.**

In addition to the initial award of \$10,000 that has been awarded to the Awardee by Creative Capital, the Awardee is eligible to apply for additional funding and service opportunities once they have convened with Grantor for an orientation meeting regarding the Project. These funding and service opportunities include Infrastructure Support of \$5,000, an invitation to attend the Annual Artist Retreat and/or participation in the Professional Development Series.

Once an Awardee has participated in one or more of the following: the Annual Artist Retreat; and/or Strategic Planning Program; and/or the Creative Capital Professional Development Retreat; they are eligible for Special Opportunities and Follow-up Funding as well as opportunities for special presentations on Creative Capital's website. The awardee must attend an orientation meeting with the Grantor no later than March 31<sup>st</sup> of the year in which they have received their award.

Any potential additional funding or opportunities referenced herein are not guaranteed and are subject to the approval of Creative Capital in its sole and absolute discretion.

**3. What you will need to provide.**

(a) Before this Letter of Agreement can be fully signed and as a condition precedent to Creative Capital's payment to you of the first installment of the Award, the Awardee must provide the following documents:

(i) a detailed description of the Project, including a project timeline, which shall be attached to this Agreement as Attachment A, "Project Description"; and

(ii) a project budget for the Project, which shall be attached to this Agreement as Attachment B, "Project Budget".

(b) After you have received your first installment payment, you shall deliver the following reports to Creative Capital:

(i) a written status report regarding the Project shall be delivered at a date to be determined by Creative Capital. Please note that such status report must be delivered as part of any request submitted to Creative Capital for additional funding. Creative Capital will provide the Awardee with the forms for such reports; and

(ii) a final report within sixty (60) days of the Project's completion (the "Final Report"). Creative Capital will provide the Awardee with the form for the reports.

**4. Changes to the Project Description or Project Budget.**

Creative Capital acknowledges that the creative process may necessitate changes and/ or supplements to the Project and the Project Description; however, the following element(s) are of the essence of this Letter of Agreement and may not be changed by you without the prior written consent of Creative Capital:

(a) Participation by \_\_\_\_\_ (awardee's name); and

(b) Project Budget, provided that consent to changes thereto shall not be unreasonably withheld, including incidental and not material changes to line allocations in the Project Budget, not exceeding, in the aggregate, an amount equal to twenty percent (20%) of the overall Project Budget.

Any other changes to the Project Description that do not require Creative Capital's consent shall nevertheless be disclosed in writing to Creative Capital in the reports furnished pursuant to Paragraph 2 above.

**5. Financial Terms.**

(a) In consideration of the Award, you hereby agree that Creative Capital shall be entitled to a portion of the Gross Proceeds, if any, derived from the exploitation of the Project. Accordingly, you shall pay or cause to be paid to Creative Capital that certain portion of the Gross Proceeds ("Creative Capital's Percentage") as follows:

(i) until such time as Creative Capital has received amounts equal to the Award, Creative Capital's Percentage of the Gross Proceeds shall be the percentage of Creative Capital's funding in relation to the total amount of the Project Budget; and

(ii) upon Creative Capital's full recoupment of the Award, Creative Capital's Percentage shall be reduced to one half of the percentage set forth in (i) above and which Creative Capital shall be entitled to receive for as long as there are Gross Proceeds derived from the Project.

Creative Capital will use such amount solely for its exempt purposes.

(b) "Gross Proceeds" as used herein shall mean all receipts, in excess of the Project Budget, derived from the distribution, exhibition, presentation, reproduction and exploitation of the Project including but not limited to grants, fellowships, awards, television sales and ticket receipts, or any ancillary or derivative rights therein, in all media, throughout the universe, in perpetuity and all ancillary, allied, subsidiary and derivative rights therewith and thereto.

(c) You will be required to deliver to Creative Capital statements of account in the form of a Project Payback Worksheet (see Attachment C hereto) commencing with the submission of the Final Report and continuing for so long as there are Gross Proceeds derived from the Project until such time as Gross Proceeds are less than Five Thousand dollars (\$5,000) a year for two (2) consecutive years. Your obligation to submit statements of account shall resume, however, for any year in which there are Gross Proceeds in excess of Five Thousand dollars (\$5,000) during the period that is five (5) years from the last statement of account submitted. Each statement shall be delivered within thirty (30) days of the end of the applicable Accounting Period. You may be required to supply Creative Capital with additional reports upon Creative Capital's reasonable request. The parties may mutually agree at any time to discontinue your obligation to furnish such annual statements. Creative Capital will provide the Awardee with any and all forms required for such reports.

(d) At Creative Capital's sole expense, Creative Capital shall have the right to audit your books and records applicable to the Project, one time only in any twelve-month period, and upon reasonable prior written notice.

(e) If, at any time, Awardee, in Awardee's sole discretion, makes contributions or donations to Creative Capital, then at Awardee's request, the value of such contribution or donation will be applied to Creative Capital's recoupment of the Award, and thus reduce or eliminate, as applicable, Awardee's obligations under Sub-paragraph 5 a) i) above, provided such amount shall no longer be deemed a charitable contribution/donation.

## **6. Credit.**

In all and any usage of the Project issued by or authorized by the Awardee, credits shall be included or attached containing substantially the following: "A Project of Creative Capital" (using our logo when possible) (the "Credit"). The Credit shall appear in a grouping with all other funding credits. Wherever you receive credit in any advertising, promotion or publicity for the Project, Creative Capital shall receive the Credit, provided that such advertising, biographical information, promotion or publicity is within your control. When such is not the case, then you shall use your best efforts to ensure the Credit is afforded to Creative Capital.

## **7. Intellectual Property.**

As between Creative Capital and you, you shall own and control all intellectual property rights, including without limitation copyright, trademark and patent rights, in and to the Project; and you shall have the right to assign, transfer, sell or encumber any such rights provided, however, you shall give Creative Capital written notice of any such assignment or transfer and the assignee thereof shall be bound to your obligations hereunder.

## **8. Representations and Warranties.**

You warrant and represent that: (a) the Project is your original creation and is solely the result of your artistic effort; (b) the Project is free and clear of liens or encumbrances from any source whatsoever; (c) you know of no adverse claims to the Project and that the Project, as a whole, is not in the public domain; (d) you have secured, or will have secured prior to completion of the Project Description, any and all necessary rights, clearances and/or licenses with respect to the Project, and any other materials and elements embodied in or used in connection with the performance of this Agreement; (e) none of the Project and/or other materials provided, created, produced, compiled, developed or otherwise supplied hereunder, shall violate or infringe upon the copyright, trademark, privacy, creative or other rights of any person, firm, corporation or other third party by reason of distribution, exhibition or other use; (f) you have not entered into and will not enter into any agreement adverse to or inconsistent with this Agreement.

## **9. Indemnification; Release.**

(a) You agree to indemnify and hold Creative Capital, its directors, officers and employees harmless from and against any claims, causes of action, demands, loss or damage by reason of (i) a breach of any representation, warranty or covenant hereunder, (ii) any installation, fabrication, exhibition, presentation, distribution or exploitation of the Project or any rights therein and (iii) the negligence, fault or default of you, your employees, authorized agents, servants or independent contractors hired by you, or any subcontractor hired by any of the foregoing.

(b) You shall be solely responsible for all injuries to persons, including death, or damage of property, sustained during or after your performance of this Agreement and resulting from any negligence, fault or default of you or any of your employees, authorized agents, servants or independent contractors hired by you, or any subcontractor hired by any of the foregoing.

(c) You shall comply with all applicable State, City and Federal laws, ordinances, codes and regulations which affect the Project. In addition you shall comply with not-for-profit rules forbidding the carrying on of propaganda or otherwise attempting to influence legislation or intervention in (including the publishing or distribution of statements) any political campaign on behalf of any candidate for public office which affect the Project. Artist shall, at his or her own expense, obtain all permits, licenses and approvals required and shall comply with all laws in connection therewith.

(d) You agree to notify Creative Capital promptly, in writing, of any legal claim or action of which you have knowledge, which is in any way related to this Agreement or your obligations hereunder.

(e) From time to time you may request, and/or Creative Capital may offer, advice with respect to the Project or other matters. You understand and acknowledge that you will be solely responsible for any and all decisions that you make with respect to any such advice given to you by Creative Capital

or any of its representatives or agents, even if such decisions are consistent with the advice you may receive. You hereby release Creative Capital and all of Creative Capital's subsidiaries, affiliates, directors, officers, employees, successors, assignees, agents, representatives, independent contractors and licensees, and each of them from any and all claims, liabilities, demands, actions, causes of action, costs and expenses, whatsoever, at law or in equity, known or unknown, anticipated or unanticipated, suspected or unsuspected, which you and/or your heirs, executors, administrators, successors and assigns ever had, now have, or may, shall, or hereafter have arising out of any such advice and/or Creative Capital's involvement (financial or otherwise) in the Project.

(f) The warranties, representations, indemnifications and releases contained herein shall survive any termination or expiration of this Agreement.

#### **10. Creative Capital Rights.**

(a) From the execution hereof forward, Creative Capital and others, as specified, shall have the following rights in the Project on a non-exclusive basis: (i) Creative Capital shall have the non-exclusive right to use the Project for archival purposes; (ii) Creative Capital shall have the non-exclusive right to use and authorize others to use the Project, and the names, likenesses and biographies of any and all persons appearing in or performing services in connection with the Project for purposes of promoting the Project or for institutional promotion of Creative Capital; and (iii) Creative Capital, and such other parties as they may designate, shall have the non-exclusive right to duplicate and distribute any written materials prepared for use in conjunction with the Project.

(b) Creative Capital shall have the right to terminate the Agreement for cause if: (i) you fail to cure or correct Non-compliance. "Non-compliance" as used herein shall mean if you should materially breach any of the terms, conditions or covenants of this Agreement, or conduct yourself in such a way in the provision of services required by this Agreement that the interest or activities of Creative Capital is subject to substantial harm. In such event, then Creative Capital shall notify you in writing of such failure, breach or conduct and offer you an opportunity to correct such failure, breach or conduct within thirty (30) days. If, in the reasonable opinion of Creative Capital, you do not cure such failure, breach or conduct, then Creative Capital shall have the right to terminate this Agreement; or (ii) you shall become insolvent or bankrupt, or assign the Agreement or its proceeds for the benefit of creditors, or take advantage of any insolvency statute or debtor or creditor law, now or hereafter enacted or amended, or if your property or affairs shall be placed in the hands of a receiver or receivers. In the event of any such termination as set forth above, all executory obligations of Creative Capital shall be null and void and of no further force or effect, but your executory obligations shall survive and remain in full force and effect.

(c) Notwithstanding any other provision of this Agreement to the contrary, you agree that you will look only to Creative Capital for payment of the Award. You further agree that you waive any right(s) of claim(s) you may have for payment against the Board of Directors of Creative Capital (the "Board"), and release and forever discharge the Board from all claims, demands and damages of any type, relating to the Award, including, without limitation, for breach of this contract. No member of Creative Capital or the Board or any officer or employee of Creative Capital or the Board shall be liable to you personally under or by reason of this Agreement or any of its provisions.

**11. Insurance.**

You and/or the exhibitors, presenters and distributors of the Project, as applicable, shall maintain an insurance plan that will include coverage for comprehensive general liability in connection with the Project. Unless otherwise specified, the limits of coverage that will be obtained and maintained by you and/or each subcontractor shall be in the amount of one (1) million dollars (\$1,000,000.00) per occurrence and two (2) million dollars (\$2,000,000.00) in the aggregate. You or your subcontractor must effect said policies and maintain said policies until completion of the Project Description and in all events up to the date when final payment is made by Creative Capital. You shall be solely responsible for all other insurance that is required by law, including but not limited to automobile liability, workers' compensation and disability insurance.

**12. Assignment.**

It is understood and agreed that the subject matter of this Agreement is special, unique, and of an artistic and intellectual nature, and that your personal services are of the essence herein. Accordingly, you shall not assign or transfer this Agreement or any portion thereof to another party without the express written consent of Creative Capital. Notwithstanding the foregoing, you may subcontract portions of the Project Description at your sole expense, provided that said subcontracting shall not affect your primary responsibility for the creative and artistic portions of the Project and provided such work is performed under your personal supervision. Should legal or fiscal concerns require that Creative Capital or the Board assign its rights and obligations hereunder, then Creative Capital may do so without your prior consent, but shall give you written notice of the assignment.

**13. Offer Subject to Rescission.**

Please note that this letter of agreement is an offer, the acceptance of which shall be evidenced only by your signature hereto. Creative Capital must receive your signature on this letter of agreement no later than February 27, 2015 ("offer period") or else this offer shall be automatically revoked, without any further action by Creative Capital. In the event a copy of this letter of agreement signed by you is not received by Creative Capital during the offer period, you shall not be eligible to receive the award or any of the services or additional funding set forth in this letter of agreement and this agreement shall be deemed void and have had no legal validity from its inception.

**14. Miscellaneous.**

The Agreement embodies the entire agreement and understanding of the parties and supersedes all prior agreements and understandings relating to the subject matter hereof. The relationship created by this Agreement between Creative Capital and the Awardee is one between a not-for-profit funding organization and recipient, and shall in no way be construed to create or appoint the Awardee as an agent or employee of Creative Capital or the Board for any purpose whatsoever. This Agreement shall be governed by the laws of the State of New York without regard to its conflicts of law principles. No alteration, change or modification of the terms of this Agreement shall be valid unless made in writing and signed by all parties hereto and approved by appropriate action of Creative Capital.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written, to be effective as of the day and year first above written.

Agreed and Accepted:

Creative Capital Foundation

By: \_\_\_\_\_  
Ruby Lerner, President & Executive Director

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

\_\_\_\_\_  
[Awardee Signature]

\_\_\_\_\_  
[Awardee Name]

\_\_\_\_\_  
[Awardee Social Security Number]

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

**Attachment A:**

“Project Description” (a detailed description of the Project, to be attached by Awardee)

**Attachment B:**

“Project Budget” (a project budget for the Project, to be attached by Awardee)

**Attachment C:**

Within sixty (60) days of the Project’s completion, you will be required to deliver to Creative Capital a written summary of the project (“Final Report”). As part of this final report and at additional dates as determined at the discretion of Creative Capital, continuing for so long as there are Gross Proceeds derived from the Project until such time as Gross Proceeds are less than Five Thousand dollars (\$5,000) a year for two (2) consecutive years, you will deliver to Creative Capital statements of account in the form of a Project Payback Worksheet (see Attachment C). Creative Capital will provide the Awardee with any and all forms required for such reports.