

Coulee Collaboration Award Default Guidelines

The Robert & Eleanor Franke Charitable Foundation, Inc. (the “Foundation”) reserves the right to discontinue, modify or withhold any payments to be made under this grant award or to require a total or partial refund of any grant funds if, in the Foundation's sole discretion, such action is necessary: (1) because you have not fully complied with the terms and conditions of this Award; (2) to protect the purpose and objectives of the Award or any other charitable activities of the Foundation; or (3) to comply with the requirements of any law or regulation applicable to you, the Foundation or this Award.

In order to afford Award-recipients sufficient information regarding their obligation to repay the Foundation in the event of a declaration of default, the Foundation submits the following guidelines:

I. DEFINITIONS: [defined terms will be *italicized* after Article I]

- 1.01 **Appeal**, refers to the process of seeking to have the adverse decision of the Board modified, clarified or reversed, which process is more specifically outlined in Article 5.02, below.
- 1.02 **Award**, refers to the Coulee Collaboration Award. The Award itself represents a tangible or digital image of the physical award presented by the Foundation to the Award-Recipient at the ceremony designed for that purpose.
- 1.03 **Award-Amount**, refers to the \$100,000.00 which is paid to the Award-Recipient.
- 1.04 **Award-Recipient**, refers to the Applicant whose Proposal was selected to receive the Award, including the Award-Amount.
- 1.05 **Board**, refers to the Board of Directors of the Robert & Eleanor Franke Charitable Foundation, Inc.
- 1.06 **Collaborative**, refers to any group, organization, federation, association or other entity consisting of two or more parties who are contractually bound, directly or indirectly, to share in the benefits and responsibilities of producing and submitting a Proposal to the Board for consideration in making the Award.
- 1.07 **Default**, refers to the condition of any agreement or understanding following the expiration of any notice period following the declaration of an Event of Default.
- 1.08 **Event of Default**, consists of any event or occurrence as a result of which the Foundation is empowered to seek a remedy under Article IV, below.
- 1.09 **Franke Foundation**, refers to the Foundation.
- 1.10 **Full Performance**, refers to the state of affairs which finds that the Award-Recipient has fully performed all terms and conditions of the Award.
- 1.11 **Grant**, refers to the Award-Amount.
- 1.12 **Immediate**, refers to the obligation to act without delay.
- 1.13 **Insolvent**, refers to either of two conditions:
 - (A) When the sum of an entities debts exceeds the value of such entity’s assets at fair value; or
 - (B) When an entity is unable to pay its just debts in the ordinary course as they come due.
- 1.14 **Notice**, refers to a written communication by any party involved in the Award process to any other party involved in the process. Notice may be made by USPS mail or e-mail, except that any e-mail notice must contain sufficient identifying information so as to be able to obviously confirm the identity sender and recipient. A read-receipt notification is satisfactory evidence of receipt of an e-mail notice.
- 1.15 **Partial Performance**, refers to that state of affairs which finds the Award-Recipient’s performance of its obligations under the terms and conditions of the Proposal for which the Award was made, has been less than 50% performed according to such terms and conditions.

- 1.16 **Receive/Receipt**, refers to the time or date that a mailed notice is post-marked or an e-mail is noted as having been read.
- 1.17 **Reimbursement**, refers to the obligation to repay the Foundation some portion or all of the Award-Amount.
- 1.18 **Staff**, refers to the Executive Director and Executive Assistant of the Foundation.
- 1.19 **Substantial Performance**, refers to the state of affairs which finds the Award-Recipient's performance of its obligations under the terms and conditions of the Proposal for which the Award was made, has been greater than 50% performed according to such terms and conditions.
- 1.20 **Timely**, refers to a non-specific, circumstance-based length of time which a reasonable person would understand to mean "so as not to cause or contribute to additional damage or injury" or "so as not to mislead by act or omission". In any consideration of the requirement of "timely" notice, it is permissible to consider whether, among other things, new, other or additional circumstances or events exist or are reasonably projected to exist, so that a delay in providing notice, more likely than not, will result in the amelioration of the event, fact or circumstance which would otherwise require such notice.

II. OBLIGATIONS OF AWARD-RECIPIENT REGARDING PERFORMANCE:

- 2.01 **Full Performance**. The *Award-Recipient* is expected to fully perform the terms and conditions under which the *Award* was granted. Such performance shall be continuous and uninterrupted so long as performance is objectively possible. [See, however, Articles 4.02 and 4.03, below].
- 2.02 **Notice of Risk of Non-Performance**. In the event the *Award-Recipient* becomes aware of any fact or circumstance as a result of which *Full Performance* is unlikely in light of such fact or circumstance, the *Award-Recipient* shall provide *timely* notice, in writing, of the risk of such non-performance to the *Foundation*.
- 2.03 **Notice of Non-Performance**. In the event the *Award-Recipient* concludes that performance under the terms and conditions of the *Award* has ceased, or will cease within a specified or foreseeable time period, the *Award-Recipient* shall *immediately* provide notice, in writing, of such non-performance to the *Foundation*.

III. NON-PERFORMANCE AND DEFAULT:

- 3.01 **Non-Performance Constituting Event of Default**. Failure of the *Award-Recipient* to fully perform the terms and conditions under which the *Award* was granted constitutes an *Event of Default*.
- 3.02 **Notice of Event of Default**. Upon learning of an *Event of Default*, the *Staff* will provide notice in writing of such *Event of Default* to the *Award-Recipient* at the last known USPS mailing address and last-known e-mail address on file for the *Award-Recipient*. Such notice will specify whether the default may be cured, the performance required to constitute a "cure" for purposes of resolving the *Event of Default* and, if applicable, the length of time within which such cure may be accomplished.
- 3.03 **Cure of Default**. Most types of defaults hereunder may be cured. The length of time for any such cure will depend upon the nature and severity of the default in terms of the accomplishment of the terms and conditions under which the *Award* was granted. Certain types of defaults are not subject to cure. Without limitation, these include:
- (A) Bankruptcy or insolvency proceeding instituted by or against the *Award-Recipient*.
- (B) Receivership, including Wis. Chapter 128, proceedings instituted by or against the *Award-Recipient*.

- (C) Imposition of a tax-lien, wage-garnishment, mechanic's, construction or garageman's lien against the *Award-Recipient* or upon any physical structure, asset or vehicle the existence of which is a necessary part of the implementation of the *Award* and without which the goals and objectives of the *Award* cannot be achieved as outlined in the *Award-Recipient's* Proposal.
- (D) Withdrawal of one or more collaborating organizations without whom the goals and objectives of the *Award* cannot be achieved as outlined in the *Award-Recipient's* Proposal.
- (E) Declaration of illegality of purpose declared by a governmental or adjudicating body, the appeal of which has been unsuccessful or not attempted within the time allowed for such appeal.
- (F) Objective impossibility of continued performance of the terms and conditions under which the *Award* was made.

IV. REMEDIES UPON DEFAULT:

- 4.01 **Reimbursement.** In the event of the declaration of a default under the terms and conditions of the *Award*, which default is not, or may not, be cured within the time allowed for such cure, if any, the *Award-Recipient* shall be obligated to return to the *Foundation* an amount ranging between \$0.00 and \$100,000.00, as provided below.
- 4.02 **Reimbursement – Partial Performance.** If the terms and conditions of the *Award* have been partially performed, the reimbursement to the *Foundation* shall include the aggregate total of the amount of the *Award-Amount* remaining unspent, together with an amount determined by multiplying the amount previously spent prior to the declaration of default by the percentage of the performance uncompleted (not completed) prior to the declaration of default. An example of this calculation follows as **Exhibit 1**.
- 4.03 **Reimbursement – Substantial Performance.** If the terms and conditions of the *Award* have been substantially performed, the reimbursement to the *Foundation* shall include the aggregate total of the amount of the *Award-Amount* remaining unspent, together with an amount to determined as constituting the total necessary to fully perform the remaining terms and conditions of the *Award*, without consideration of any unspent amount returned to the *Foundation*. An example of this calculation follows as **Exhibit 2**.
- 4.04 **Time for Reimbursement.** Unless otherwise agreed between the parties, any unspent funds required to be reimbursed to the *Foundation* shall be returned within ten (10) business days following the later of the expiration of any period allowed hereunder for the cure of an *Event of Default* (without a cure having been affected), the expiration of any appeal period permitted hereunder (See Article 5.02, below), or the decision of any mediator or a court of general or appellate jurisdiction as a result of which the obligation to reimburse monies to the *Foundation* is fixed.
- 4.05 **Failure to Reimburse.** If a final determination is made that the *Award-Amount*, or some portion of that amount, must be reimbursed to the *Foundation* and the required payor fails to reimburse the *Foundation* within the time period described in Article 4.04, above, the *Foundation* reserves all legal and equitable rights and remedies allowed under Wisconsin law, to recover the amount owed, including any costs of collection, if allowed by law.

V. MEDIATION AND APPEAL RIGHTS:

- 5.01 **Mediation.** The parties agree to make good-faith efforts to resolve any and all differences arising among them in the interpretation or performance of and pursuant to the *Award*. If the parties fail to reach agreement on any matter, then prior to taking action, the parties shall attempt to employ, at no cost, the services of a third person mutually acceptable to the parties to mediate the dispute at the earliest availability of the

chosen mediator. If the parties are unable to agree on such a third person within five (5) days of the request of either party for mediation, or if on completion of such mediation the parties are unable to settle the dispute, then any party may request formal arbitration or may take such other action as it deems appropriate. In the event of mediation, each party shall be represented by an individual who has been designated the authority to make a full and final settlement of the dispute. The result of such mediation, if successful, shall be reduced to writing and signed by all parties concerned, along with the mediator. As written, this document shall have the force and effect of a judgment and may be recorded in the office of the Clerk of Circuit Court with similar effect. In the event of such recording, the party or parties who initially requested the mediation shall be obligated, and shall from time to time, continue to be obligated to notify the Court if and when the terms of the mediation have been concluded or satisfied so that the same may be removed from the judgment roll or shown as having been satisfied in whole or in part.

- 5.02 **Appeal.** Any party aggrieved by a decision made by or on behalf of the *Foundation* may be appealed by such party only by:
- (A) Submitting a written statement which substantially conforms to the form appearing as **Exhibit 3**, hereto.
 - (B) Allowing the *Board* a reasonable period of time, not exceeding 30 days from the date of the submission of the *Appeal*, to issue a written decision addressing the matters requiring further determination in the *Appeal*.
 - (C) Submitting any subsequent adverse determination to Mediation in accordance with Article 5.01, above.

EXHIBIT 1

Example Calculation of Partial Performance Reimbursement

A. Award-Amount:	\$100,000.00
B. Amount Spent Before Default:	<u>< 40,000.00 ></u>
AMOUNT UNSPENT:	\$ 60,000.00
C. Percent of Project completed = 35%	
D. Percent of Project uncompleted = 65%	

Determination of Reimbursement: 65% of \$40,000 = \$14,000 + \$60,000 unspent = \$74,000.

EXHIBIT 2

Example Calculation of Substantial Performance Reimbursement

A. Award-Amount:	\$100,000.00
B. Amount Spent Before Default:	<u>< 70,000.00 ></u>
AMOUNT UNSPENT:	\$ 30,000.00
C. Cost to Fully Perform:	<u>\$ 55,000.00</u>
Total to be Reimbursed to Foundation:	\$ 85,000.00