

A G R E E M E N T

Between

BROWARD COUNTY

and

CITY OF FORT LAUDERDALE

For

RIVER OAKS PRESERVE

through the

BROWARD COUNTY LAND STEWARDSHIP PROGRAM

This Agreement, made and entered into by and between BROWARD COUNTY, a political subdivision of the state of Florida, hereinafter referred to as "COUNTY,"

and

CITY OF FORT LAUDERDALE a municipal corporation of the state of Florida, hereinafter referred to as "CITY",

WHEREAS, pursuant to the COUNTY's Land Stewardship Program ("Grant Program"), funding from the 2000 Broward County Safe Parks and Land Preservation Bond Issue has been made available for the ecological restoration of publicly-owned natural lands and sustainable development of passive recreation parks in an expeditious manner; and

WHEREAS, the Broward County Board of County Commissioners ("Board") has determined that these expenditures serve a COUNTY purpose and are authorized by the 2000 Broward County Safe Parks and Land Preservation Bond Program; and

WHEREAS, CITY has been awarded funding under the Grant Program for River Oaks Preserve; and

WHEREAS, the COUNTY consents to provide for the dissemination of Grant Program funds to CITY for reimbursement of activities consistent with the Program;

NOW, THEREFORE, IN CONSIDERATION of the mutual terms, conditions, promises, covenants and payments hereinafter set forth, COUNTY and CITY agree as follows:

ARTICLE 1
SCOPE OF SERVICES

- 1.1 CITY shall perform all services identified in this Agreement in accordance with the Grant Program Guidelines attached hereto as Exhibit "A", the Grant Project Description and schedule (hereinafter referred to as "Project") attached hereto as Exhibit "B", Grant Project Cost/Budget attached hereto as Exhibit "C," and evidence of Project site ownership or lease attached hereto as Exhibit "D". The parties agree that the Project Description is a description of CITY's obligations and responsibilities and is deemed to include preliminary considerations and prerequisites, and all labor, materials, equipments, and tasks, which are such an inseparable part of the work described, that exclusion would render performance by CITY impractical, illogical, or unconscionable.
- 1.2 The COUNTY's Grant Program Administrator may approve changes to the Scope of Services, Project description, unit of services, and changes within the categories of expenditures listed in Exhibits "A, B, C", provided that the total grant dollars awarded to CITY remains unchanged. The COUNTY's Grant Program Administrator may also approve changes to the Project Description if the revisions are consistent with the grant application and the Grant Program guidelines, and the revisions do not diminish the quantity or quality of services to be provided.
- 1.3 For Projects where the site was not acquired utilizing 2000 Broward County Safe Parks and Land Preservation Bond funds, CITY agrees to execute a Declaration of Restrictive Covenants, in a form acceptable to the County Attorney's Office, ensuring that the Project, when completed, shall be utilized for public recreational purposes for a minimum of twenty-five (25) years. The Declaration shall be recorded in the Official Records for Broward County, Florida, pursuant to Section 28.222, Florida Statutes. CITY further agrees to return to COUNTY all funds tendered for the Project in the event the Project becomes utilized during this period for other than the public recreational purposes of the Project.

ARTICLE 2
TERM AND TIME OF PERFORMANCE

- 2.1 The term of this Agreement shall begin on the date Agreement is fully executed by both parties and shall end one (1) year after. CITY may request an extension of up to eighteen (18) months for completion of the Project, subject to approval by COUNTY Administrator. Any extension request shall be in writing and delivered to the Grant Program Administrator at least sixty (60) days prior to the end of the original term.

- 2.2 CITY agrees that it will comply with the construction time table included in Exhibit "B," attached hereto, excepting bona fide force majeure delays.

ARTICLE 3 COMPENSATION

- 3.1 COUNTY agrees to pay CITY, in the manner specified in Section 3.3, the total amount of (not to exceed) **Fifteen thousand Dollars (\$ 15,000)** for Project pursuant to this Agreement. It is acknowledged and agreed by CITY that this amount is the maximum payable and constitutes a limitation upon COUNTY's obligation to compensate CITY for services and expenses related to this Agreement. This maximum amount, however, does not constitute a limitation, of any sort, upon CITY's obligation to perform all items of work required by or which can be reasonably inferred for the Project from the Grant Project Description.
- 3.2 The Grant Program Administrator is responsible for ensuring performance of the terms and conditions of this Agreement and shall approve all requests from CITY for payment prior to payment. CITY shall furnish to the Grant Program Administrator a copy of the Project's construction contract(s) at least thirty (30) days prior to any reimbursement from the COUNTY.
- 3.3 METHOD OF BILLING AND PAYMENT
- 3.3.1 Upon completion of the Project and approval by the COUNTY, CITY may submit an invoice(s) for reimbursement in the funding amount set forth herein. The invoice should be received by the Grant Program Administrator's office no later than sixty (60) days after this Agreement expires. Invoices shall designate the nature of the services performed and the expenses incurred.
- 3.3.2 Documentation as required in Exhibit "A" must accompany any request for payment. Invoices shall be certified by CITY's authorized official.
- 3.3.3 COUNTY shall pay CITY within thirty (30) calendar days of receipt of CITY's proper invoice, as required by the "Broward County Prompt Payment Ordinance" (Broward County Ordinance No. 89-49, as may be amended from time to time). To be deemed proper, all invoices must comply with the requirements set forth in this Agreement and must be submitted on the form and pursuant to instructions prescribed by COUNTY. Payment may be withheld for failure of CITY to comply with a term, condition, or requirement of this Agreement.

- 3.4 Notwithstanding any provision of this Agreement to the contrary, COUNTY may withhold, in whole or in part, payment to the extent necessary to protect itself from loss on account of inadequate or defective work which has not been remedied or resolved in a manner satisfactory to the Grant Program Administrator. The amount withheld shall not be subject to payment of interest by COUNTY.
- 3.5 If it becomes necessary for COUNTY to demand a refund of any or all funds paid to CITY pursuant to this Agreement, CITY agrees to remit said funds to COUNTY within sixty (60) days after notification. If not returned within sixty-(60) days, CITY agrees that any further CITY requests for funding, as to this or any other program under COUNTY's administration, may be denied until the funds have been returned.
- 3.6 Payment shall be made to CITY at:

City Manager
City of Fort Lauderdale
100 North Andrews Avenue
Fort Lauderdale, FL 33301

ARTICLE 4 LIABILITY

CITY/TOWN is a municipal corporation existing under the laws of the state of Florida, as defined in Section 768.28, Florida Statutes, and is fully responsible for acts and omissions of its agents, contractors, or employees to the extent permitted by law. Nothing herein is intended to serve as a waiver of sovereign immunity by any party to which sovereign immunity may be applicable. Nothing herein shall be construed as consent by a state agency or political subdivision of the state of Florida to be sued by third parties, in any matter, arising out of this Agreement or any other contract.

ARTICLE 5 INSURANCE

CITY is a municipal corporation existing under the laws of the state of Florida, as defined by Section 768.28, Florida Statutes, and CITY shall furnish the Grant Program Administrator with written verification of liability protection, in accordance with state law prior to final execution of this Agreement.

ARTICLE 6 TERMINATION

- 6.1 This Agreement may be terminated for cause by action of the Board or by CITY upon thirty (30) days written notice by the party that elected to terminate, or for convenience by action of the Board upon, not less than, ten (10) days written notice by the Grant Program Administrator. Grant Program Administrator may terminate this Agreement upon such notice, as the Grant Program Administrator deems appropriate under the circumstances, in the event the Grant Program Administrator determines that termination is necessary to protect the public health, safety, or welfare.
- 6.2 Notices shall be provided in accordance with "NOTICES" section of this Agreement (Section 8.5); except that notice of termination deemed by the Grant Program Administrator necessary to protect the public health, safety, or welfare may be verbal and promptly confirmed in writing in accordance with the "NOTICES" section of this Agreement.
- 6.3 In the event this Agreement is terminated for convenience, CITY shall be paid for any services performed to the date this Agreement is terminated; however, upon being notified of COUNTY's election to terminate, CITY shall refrain from performing further services or incurring additional expenses under the terms of this Agreement. CITY acknowledges and agrees that Ten Dollars (\$10.00) of the compensation to be paid by COUNTY, the adequacy of which is hereby acknowledged by CITY, is given as specific consideration for COUNTY's right to terminate this Agreement for convenience.
- 6.4 COUNTY shall have the right to terminate this Agreement and demand refund of Program funds provided to CITY for noncompliance with the terms and conditions of the Program guidelines. Failure to comply with these terms and conditions shall result in COUNTY declaring CITY ineligible for further participation in the Program until such time as CITY complies therewith.
- 6.5 In the event this Agreement is terminated, any compensation payable by COUNTY shall be withheld until all documents are provided to COUNTY pursuant to Section 8.1.

ARTICLE 7 FINANCIAL STATEMENTS

- 7.1 CITY hereby gives COUNTY, through any authorized representative, access to, and the right to, examine all records, books, papers, or documents relating to the Project.
- 7.2 CITY hereby agrees to maintain books and records in accordance with Generally Accepted Accounting Principles and properly reflect all expenditures of funds provided by COUNTY under this Agreement.
- 7.3 CITY agrees and understands that all funding authorized under this Agreement shall be used only for eligible activities specifically outlined in this Agreement. CITY agrees to reimburse COUNTY any and all funds not used in strict compliance with this Agreement.
- 7.4 Within thirty (30) days of receipt by CITY, CITY shall provide to COUNTY on an annual basis the Single Audit Report prepared by an independent certified public accountant showing that there are sufficient and acceptable internal controls over the administration of the CITY's grants. The Single Audit Report will encompass the controls over grants in general without reference to any specific grant award.
- 7.5 Failure of CITY to meet these financial reporting requirements shall result in suspension of payment under this Agreement or any subsequent grant agreement in effect and disqualify CITY from obtaining future grant awards until such financial statements are received and accepted by COUNTY.
- 7.6 CITY is required to, and hereby agrees to, account for any program income related to Project financed in whole or part with Grant Program Funds.

ARTICLE 8 MISCELLANEOUS

8.1 OWNERSHIP OF DOCUMENTS

Any and all reports, photographs, surveys, and other data and documents provided or created in connection with this Agreement are and shall remain the property of COUNTY. In the event of termination of this Agreement, any reports, photographs, surveys, and other data and documents prepared by CITY, whether finished or unfinished, shall become the property of COUNTY, and shall be delivered by CITY to the Grant Program Administrator within seven (7) days of termination of this Agreement by either party. Any compensation due to CITY shall be withheld until all documents are received as provided herein.

8.2 AUDIT RIGHT AND RETENTION OF RECORDS

COUNTY shall have the right to inspect the Project, as well as the right to audit the books, records, and accounts of CITY that are related to this Project. CITY shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to this Project.

CITY shall preserve and make available, at reasonable times for examination and audit by COUNTY, all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for the required retention period of the Florida Public Records Act (Chapter 119, Fla. Stat.), if applicable, or, if the Florida Public Records Act is not applicable, for a minimum period of three (3) years after termination of this Agreement. If any audit has been initiated and audit findings have not been resolved at the end of the retention period or three (3) years, whichever is longer, the books, records, and accounts shall be retained until resolution of the audit findings. If the Florida Public Records Act is determined by COUNTY to be applicable to CITY's records, CITY shall comply with all requirements thereof; however, no confidentiality or non-disclosure requirement of either federal or state law shall be violated by CITY. Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for COUNTY's disallowance and recovery of any payment upon such entry.

8.3 NONDISCRIMINATION, EQUAL EMPLOYMENT OPPORTUNITY, AND AMERICANS WITH DISABILITIES ACT

CITY shall not unlawfully discriminate against any person in its operations and activities in its use or expenditure of the funds or any portion of the funds provided by this Agreement and shall affirmatively comply with all applicable provisions of the Americans with Disabilities Act (ADA) in the course of providing any services funded in whole or in part by COUNTY, including Titles I and II of the ADA (regarding nondiscrimination on the basis of disability), and all applicable regulations, guidelines, and standards.

CITY's decisions regarding the delivery of services under this Agreement shall be made without regard to or consideration of race, age, religion, color, gender, sexual orientation (Broward County Code, Chapter 16½), national origin, marital status, physical or mental disability, political affiliation, or any other factor which cannot be lawfully or appropriately used as a basis for service delivery.

CITY shall comply with Title I of the Americans with Disabilities Act regarding nondiscrimination on the basis of disability in employment and further shall not discriminate against any employee or applicant for employment because of race, age, religion, color, gender, sexual orientation, national origin, marital status, political affiliation, or physical or mental disability. In addition, CITY shall take affirmative steps to ensure nondiscrimination in employment against disabled persons. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay, other forms of compensation, terms and conditions of employment, training (including apprenticeship), and accessibility.

CITY shall take affirmative action to ensure that applicants are employed and employees are treated without regard to race, age, religion, color, gender, sexual orientation (Broward County Code, Chapter 16 ½), national origin, marital status, political affiliation, or physical or mental disability during employment. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay, other forms of compensation, terms and conditions of employment, training (including apprenticeship), and accessibility.

CITY shall not engage in or commit any discriminatory practice in violation of the Broward County Human Rights Act (Broward County Code, Chapter 16 ½) in performing the Scope of Services or any part of the Scope of Services of this Agreement.

8.4 INDEPENDENT CONTRACTOR

CITY is an independent contractor under this Agreement. Services provided by CITY pursuant to this Agreement shall be subject to the supervision of CITY. In providing such services, neither CITY nor its agents shall act as officers, employees, or agents of COUNTY. This Agreement shall not constitute or make the parties a partnership or joint venture.

8.5 THIRD PARTY BENEFICIARIES

Neither CITY nor COUNTY intends to directly or substantially benefit a 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.

8.6 NOTICES

Whenever either party desires to give notice to the other, such notice must be in writing, sent by certified United States Mail, postage prepaid, return receipt requested, or by hand-delivery with a request for a written receipt of acknowledgment of delivery, addressed to the party for whom it is intended at the place last specified. The place for giving notice shall remain the same, as set forth herein, until changed in writing in the manner provided in this section. For the present, the parties designate the following:

FOR COUNTY:

Director
Broward County Natural Resources Planning and Management Division
115 S. Andrews Avenue, Room 329H
Fort Lauderdale, FL 33301

FOR CITY:

City Manager
City of Fort Lauderdale
100 North Andrews Avenue
Fort Lauderdale, FL 33301

8.7 ASSIGNMENT AND PERFORMANCE

Neither this Agreement nor any interest herein shall be assigned, transferred, or encumbered by either party. In addition, CITY shall not subcontract any portion of the work required by this Agreement except as authorized by Exhibit "A."

CITY represents that all persons delivering the services required by this Agreement have the knowledge and skills, either by training, experience, education, or a combination thereof, to adequately and competently perform the duties, obligations, and services set forth in the Grant Project Description and to provide and perform such services to COUNTY's satisfaction for the agreed compensation.

CITY shall perform its duties, obligations, and services under this Agreement in a skillful and respectable manner. The quality of CITY's performance and all interim and final product(s), provided to or on behalf of CITY, shall be comparable to the best local and national standards.

8.8 CONFLICTS

Neither CITY nor its employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with CITY's loyal and conscientious exercise of judgment related to its performance under this Agreement.

CITY agrees that none of its officers or employees shall, during the term of this Agreement, serve as an expert witness against COUNTY in any legal or administrative proceeding in which he or she is not a party, unless compelled by court process, nor shall such persons give sworn testimony or issue a report or writing, as an expression of his or her expert opinion, which is adverse or prejudicial to the interests of COUNTY or in connection with any such pending or threatened legal or administrative proceeding. The limitations of this section shall not preclude CITY or any other persons from representing themselves in any action or in any administrative or legal proceeding.

In the event CITY is permitted to utilize subcontractors to perform any services required by this Agreement, CITY agrees to prohibit such subcontractors, by written contract, from having any conflicts within the meaning of this section.

8.9 AMENDMENTS

Except for the provisions set forth in Article 1, no modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by the Board and CITY.

8.10 WAIVER OF BREACH AND MATERIALITY

Failure by COUNTY to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

8.11 COMPLIANCE WITH LAWS

CITY shall comply with all federal, state, local laws, codes, ordinances, rules, and regulations in performing its duties, responsibilities, and obligations related to this Agreement.

8.12 SEVERANCE

In the event this Agreement, or a portion of this Agreement, is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective unless COUNTY or CITY elects to terminate this Agreement. The election to terminate this Agreement based upon this provision shall be made within seven (7) days after the finding by the court becomes final.

8.13 JOINT PREPARATION

The parties hereto acknowledge that they have sought and received whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein, and that the preparation of this Agreement has been a joint effort of the parties, the language has been agreed to by parties to express their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.

8.14 PRIORITY OF PROVISIONS

In the event of a conflict or inconsistency between any term, statement, requirement, or provision of any exhibit attached hereto, any document or events referred to herein, or any document incorporated into this Agreement by reference and a term, statement, requirement, or provision of this Agreement, the term, statement, requirement, or provision contained in the Florida Statutes, Florida Administrative Code, and Broward County Code of Ordinances, shall prevail and be given effect.

8.15 APPLICABLE LAW AND VENUE

This Agreement shall be interpreted and construed in accordance with and governed by the laws of the state of Florida. Venue for litigation concerning this Agreement shall be in Broward County, Florida.

8.16 PRIOR AGREEMENTS

This document incorporates and includes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, the parties agree that no deviation from the terms, hereof, shall be predicated upon any prior representations or agreements, whether oral or written. It is further agreed that no modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document in accordance with Section 9.9 above.

8.17 INCORPORATION BY REFERENCE

The truth and accuracy of each "Whereas" clause set forth above is acknowledged by the parties. The attached Exhibits "A," "B," "C," and "D" are incorporated into and made a part of this Agreement.

8.18 MULTIPLE ORIGINALS

Multiple copies of this Agreement may be fully executed by all parties, each of which shall be deemed to be an original.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement: BROWARD COUNTY through its BOARD OF COUNTY COMMISSIONERS, signing by and through the County Administrator, authorized to execute same by Resolution approved by the BOARD, and CITY OF FORT LAUDERDALE, signing by and through its officer, duly authorized to execute same.

COUNTY

WITNESSES:

BROWARD COUNTY, by and through its
County Administrator

By _____
County Administrator

_____ day of _____, 20____.

Insurance requirements
approved by Broward County
Risk Management Division

Approved as to form by
Office of the County Attorney
Joni Armstrong Coffey, County Attorney
Broward County, Florida
Governmental Center, Suite 423
115 South Andrews Avenue
Fort Lauderdale, Florida 33301
Telephone: (954) 357-7600
Telecopier: (954) 357-7641

By _____

By _____
Deputy/Assistant County Attorney

[Remainder of page intentionally left blank]

AGREEMENT BETWEEN BROWARD COUNTY AND CITY OF FORT LAUDERDALE
BROWARD LAND STEWARDSHIP PROGRAM

CITY

WITNESSES:

ATTEST:

City Clerk

(CORPORATE SEAL)

CITY OF FORT LAUDERDALE

By _____

(insert title)

_____ day of _____, 20____.

APPROVED AS TO FORM:

By _____
City Attorney

EXHIBIT "A"
PROGRAM GUIDELINES—PARTNERS IN PRESERVATION

Qualified Applicants

Municipalities and County agencies that own and manage natural lands with native vegetative communities impacted by invasive non-native vegetation, that have not previously applied for county funding for public land, may apply.

Funding Requirement

Except as provided in this section, funds from this grant may only be applied to the actual costs incurred for the initial removal or eradication of invasive non-native vegetation and replanting with native vegetation. The grant funding is only for projects that propose treatment or containment of invasions to new areas. No part of this grant funding shall be used for project management, administration or overhead costs. The grant funding may not be used to cover costs associated with the preparation, submission or presentation of the funding application.

Project Match Requirement

No match is required but consideration will be given to those entities providing a match if funding is insufficient to award all applicants. The applicant's cost-share match can be direct (actual) or as in-kind contributions (e.g., equipment, material, expenses, or labor).

Minimum Criteria

Applicant must fulfill all minimum criteria to be considered for a grant award.

1. The project site is located on public lands managed or maintained for Conservation.
2. The project will remove new infestations of invasive exotic plant species.
3. The project is not a required mitigation with an invasive plant removal component.
4. The site municipality or County agency has funding sources for follow up and perpetual site maintenance.
5. The project proposes native plant species appropriate for the vegetative community present.
6. The project site has not received other funding for the same objective of exotic removal.
7. The project has a method to protect any already existing native plant species present in the project site.

8. The site municipality or County agency has placed a restrictive covenant designating conservation use, or will place one prior to reimbursement, on project site for conservation use, for a minimum of twenty-five years.

Award Process Information

The award recommendations made by the selection panel and the Land Stewardship program will be submitted to the Board of County Commissioners for approval. Award notices will be sent to the applicants with a Grant Agreement, for the appropriate signature and due back to the County as soon as possible after signing. Funds spent prior to the Grant Agreement signing date will not be eligible for reimbursement or count towards matching funds. Reasons for funding decisions will be provided with a written request from an authorized official.

Before any work is done in developing a proposal for reimbursement, the project director and the authorized official of the municipality should review the following responsibilities to determine if the project applicant is able to comply with all the requirements for the reimbursement of funds.

1. Recipients awarded the Partners in Preservation grant funds will be paid on a reimbursement basis, and payment will be effected through electronic funds transfer;
2. Changes in the scope or detail of the project or in any other arrangements set in the Grant Agreement should be requested in writing, done by an authorized official and with proof of not been executed without the written approval from the Land Stewardship Program designated official;
3. A final report will be submitted as part of the reimbursement package, recording the accomplishments of the project. This report will also include a set of after photographs, taken from the same locations as the photographs submitted with the initial grant application.

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EXHIBIT "B"

PROJECT DESCRIPTION – SCHEDULE

(brief description of proposed work with estimated month of start and completion)

EXHIBIT "C"
PROJECT COST AND PROPOSED BUDGET
(attach a budget estimate for proposed funding usage)

EXHIBIT “D”

REAL PROPERTY DOCUMENTS

(warranty deed or quit claim deed - Per Article 1 – 1.1 Project Scope “A”)