

**CITY OF FORT LAUDERDALE
FY 2024 NOT FOR PROFIT GRANT PARTICIPATION AGREEMENT**

THIS CITY OF FORT LAUDERDALE FY 2024 NOT FOR PROFIT GRANT PARTICIPATION AGREEMENT, (“Agreement”), made and entered into this 23rd day of January, 2024, is by and between the City of Fort Lauderdale, a Florida municipality, (“City” or “CITY”), whose principal address is 101 NE 3rd Avenue, Suite 1400, Fort Lauderdale, Florida, 33301, and Nova Southeastern University, Inc., a Florida not for profit corporation, (“Participant” or “Organization” or “Contractor”), whose principal place of business is 3301 College Avenue, Fort Lauderdale, Florida, 33314-7796.

WHEREAS, the purpose of this Agreement is for the Participant to provide innovative art exhibitions and free of charge supplemental cultural, educational, and enrichment programs for the residents of and visitors to the City of Fort Lauderdale through the NSU Art Museum in the interest of enhancing cultural and educational opportunities and stimulating tourism in the City of Fort Lauderdale; and

WHEREAS, the City’s provision of funding for Participant’s NSU Art Museum’s cultural, educational, and enrichment programs, and for the City’s use of the NSU Art Museum Auditorium for public meetings of the City Commission, will serve a legitimate municipal and public purpose;

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and the Participant hereby agree as follows:

1. **Contribution:** The City agrees to contribute \$500,000 to the Participant, to be used solely to support the Participant’s NSU Art Museum, (“Contribution”), payable in quarterly installments of \$125,000 beginning after January 1, 2024, but no later than April 1, 2024, for the preceding quarter-year.

The Participant shall not use City grant funds for:

- Profit
- Alcoholic beverages
- Staff bonuses
- Lobbying services
- Legal services
- Land acquisition
- Membership fees
- Travel
- Costs due to negligence
- Taxes
- Debt
- Unemployment compensation
- Recreational activities
- Receptions
- Fundraising
- Gift certificates or monetary awards
- Luxury items as determined by the City in the City’s sole discretion
- Any activity that would violate any applicable law, ordinance, or regulation
- Audit Services

A. Audit

The City or the City's designee may audit the books, records, and accounts of the Participant that are related to this Agreement. The Participant shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to this Agreement. The Participant shall preserve and make available, at reasonable times for examination and audit by the City in Broward County, Florida, 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 law (Chapter 119, Florida Statutes) and corresponding retention schedules, or for a minimum of three (3) years after expiration or termination of this Agreement, whichever is longer. 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. The Participant shall comply with all requirements of the Florida public records law; however, no confidentiality or non-disclosure requirement of either federal or state law shall be violated by the Participant. Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for the City's disallowance of funding and recovery of any payment upon such incomplete or incorrect entry.

2. **Services:** In exchange for the City's donation, Participant shall:

- a. Provide innovative art exhibitions and supplemental cultural, educational, and enrichment programs for the residents of and visitors to the City of Fort Lauderdale through the NSU Art Museum in the interest of enhancing cultural and educational opportunities and stimulating tourism in the City of Fort Lauderdale;
- b. Designate one day each calendar month as Fort Lauderdale Neighbor Day at the NSU Art Museum for the period of the grant, providing free admission to residents of the City of Fort Lauderdale with proof of residency;
- c. Provide the City the use of the NSU Art Museum Auditorium ("Auditorium") for public meetings of the City's City Commission on the following dates in 2024: March 5th and 19th, April 2nd and 16th, May 7th and 21st, June 4th and 18th, July 2nd, August 20th, September 3rd and 17th, October 1st and 15th, November 7th and 19th, December 3rd and 17th, beginning at 9:00 a.m., and ending one-half hour following adjournment of the last public meeting on each of such days and into each of the following days at the City's sole discretion, as further provided in Section 29 of this Agreement. Notwithstanding anything to the contrary in the foregoing, Participant's receipt of the donation is not contingent on the City's use of the Auditorium;
- d. Provide the City the use of space in the Auditorium during the term of this Agreement to store equipment, subject to and as further described in Section 30 of this Agreement;
- e. Extend a 10% discount on catalogues published by the NSU Art Museum to residents of the City of Fort Lauderdale; and
- f. Acknowledge the City's support by including the City's logo on all NSU Art Museum

printed and digital materials which have a reasonable amount of space for the placement of such logo.

3. **Term; Appropriation:** The term of this Agreement shall be October 1, 2023, through September 30, 2024. The Organization shall have incurred all expenditures of funds that are reimbursable pursuant to this Agreement on or after October 1, 2023, and before September 30, 2024. The effectiveness of this Agreement is subject to and conditioned on the City's budget appropriation to fund this Agreement and the availability of funds.

4. **Certification:** Within thirty days following the end of each calendar quarter, beginning with the calendar quarter ending December 31, 2023, the Participant shall submit to the City a request for reimbursement on a form prescribed by the City, together with detailed receipts, invoices, and reports certifying the services that were performed in accordance with the terms of this Agreement during the previous calendar quarter. In no event will the Participant be compensated for any services that have not been described in this Agreement or in a separate amendment to this Agreement. This Section shall survive the expiration or early termination of this Agreement.

5. **Financial Statement:** Within ninety days following the close of the Participant's fiscal year, the Participant shall submit a financial statement and summary report, prepared in accordance with generally accepted accounting principles, accounting for the funds received during the previous fiscal year pursuant to this Agreement and reporting upon the manner in which they were expended, to:

City of Fort Lauderdale
Office of Management and Budget
Budget/CIP and Grants Division
101 NE 3rd Avenue, Suite 1400
Fort Lauderdale, FL 33301

This Section shall survive the expiration or early termination of this Agreement.

6. **Notice:** Notices required by this Agreement shall be in writing and delivered via mail (postage prepaid), commercial courier, or personal delivery or sent by facsimile or other electronic means. Any notice delivered or sent as aforesaid shall be effective on the date of delivery. All notices and other written communications under this Agreement shall be addressed to the individuals in the capacities indicated below, unless otherwise modified by subsequent written notice.

Communications related to this Agreement shall be directed as follows:

City
Greg Chavarria
City Manager
City of Fort Lauderdale
101 NE 3rd Avenue, Suite 1430
Fort Lauderdale, FL 33301

Participant
Bonnie Clearwater
Director and Chief Curator
NSU Art Museum
Nova Southeastern University, Inc.
One East Las Olas Boulevard
Fort Lauderdale, FL 33301

This Section shall survive the expiration or early termination of this Agreement.

7. **Amendment:** This Agreement may be amended only by a written instrument executed by

both parties, except that the City may, in the City's discretion, amend this Agreement to conform with federal, state, or local governmental guidelines, policies, availability of funds, or for other reasons.

8. **Independent Contractor:** Nothing contained in this Agreement is intended to, or shall be construed in any manner, as creating or establishing the relationship of employer/employee between the parties. The Participant shall at all times remain an independent contractor with respect to the services to be performed under this Agreement. The City shall be exempt from payment of all Unemployment Compensation, FICA, retirement, life and/or medical insurance and Workers' Compensation Insurance, as the Participant is an independent contractor.

9. **Indemnification:** Participant shall protect and defend, counsel being subject to the City's approval, and indemnify and hold harmless the City, and the City's officers, employees, and agents from and against any and all lawsuits, penalties, claims, damages, judgments, decrees, settlements, costs, charges, and other expenses or liabilities of every kind, sort, or description, including, but not limited to, any award of attorney fees and any award or costs at both the trial and appellate levels, in connection with or arising, directly or indirectly, out of or resulting from the Participant's acts or omissions in Participant's performance or non-performance of its obligations or services under this Agreement. Without limiting the foregoing, any and all such claims, relating to personal injury, death, damage to property, defects in material or workmanship, actual or alleged infringement of any patent, trademark, copyright or of any other tangible or intangible personal or property right, or any actual or alleged violation of any applicable statute, ordinance, administrative order, rule or regulation or decree of any court, are included in the indemnity. This Section shall survive the expiration or early termination of this Agreement.

10. **Amendment:** No modification, amendment, or alteration of the terms or conditions contained in this Agreement shall be effective unless contained in a written document executed by the parties hereto with the same formality and of equal dignity herewith, except that the City may, in the City's sole discretion, amend this Agreement to conform with federal, state, or local governmental guidelines or policies, the availability of funds, or for other reasons.

11. **Public Records: IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 954-828-5002, CITY CLERK'S OFFICE, ONE EAST BROWARD BOULEVARD, SUITE 444, FORT LAUDERDALE, FLORIDA 33301, PRRCONTRACT@FORTLAUDERDALE.GOV.**

Contractor shall comply with public records laws, and Contractor shall:

- a. Keep and maintain public records required by the City to perform the service.
- b. Upon request from the City's custodian of public records, provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes (2023), as may be amended or revised, or as otherwise provided by law.
- c. 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 the contract term and following completion of the contract if the Contractor does not transfer the

records to the City.

- d. Upon completion of the Contract, transfer, at no cost, to the City all public records in possession of the Contractor or keep and maintain public records required by the City to perform the service. If the Contractor transfers all public records to the City upon completion of the Contract, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the Contract, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.

12. **Default:** Any of the following events shall constitute an "event of default" pursuant to this Agreement:

- a. The Participant fails to perform any covenant or term or condition of this Agreement; or any representation or warranty of the Participant herein or in any other grant documents executed concurrently herewith or made subsequent hereto, shall be found to be inaccurate, untrue or breached.
- b. If the Participant files a voluntary petition in bankruptcy or shall be adjudicated as bankrupt or insolvent, or shall file any petition or answer seeking reorganization, arrangement, composition, readjustment, liquidation, wage earner's plan, assignment for the benefit of creditors, receivership, dissolution or similar relief under any present or future federal bankruptcy law or any other present or future applicable federal, state or other local law, or shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of Participant for all or any part of the properties of Participant; or if within ten (10) days after commencement of any proceeding against the Participant, seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution, debtor relief or similar relief under any present or future federal bankruptcy law or any other present or future federal, state or other local law, such proceeding shall not have been dismissed or stayed on appeal; or if, within ten (10) days after the appointment, without the consent or acquiescence of the Participant, of any trustee, receiver, or liquidator of the Participant, such appointment shall not have been vacated or stayed on appeal or otherwise; or if within ten days after the expiration of any such stay, such appointment shall not have been vacated.
- c. Participant's breach, violation, or failure to perform any of the obligations or any of the covenants or conditions set forth in this Agreement.

Upon the occurrence of any event of default, the City shall issue written notice in accordance with Section 6 of this Agreement and the Participant shall have thirty (30) days within which to cure such default. If Participant fails to cure the default within the thirty (30) days, the City may terminate this Agreement immediately.

14. **Severability:** If any provision of this Agreement is held invalid by a court of competent jurisdiction, the remainder of the Agreement shall not be affected thereby, and all other parts of this Agreement not having been held invalid by a court of competent jurisdiction shall remain in full force and effect.

15. **Non-Discrimination:** The Contractor shall not discriminate against its employees based on the employee's race, color, religion, gender, gender identity, gender expression, marital status, sexual orientation, national origin, age, disability, or any other protected classification as defined by applicable law.

- a. The Contractor certifies and represents that the Contractor offers the same health benefits to the domestic partners of its employees as are offered its employees' spouses or offers its employees the cash equivalent of such health benefits because it is unable to provide health benefits to its employees' domestic partners, and that the Contractor will comply with Section 2-187, Code of Ordinances of the City of Fort Lauderdale, Florida, (2023), as may be amended or revised, ("Section 2-187"), during the entire term of this Agreement.
- b. The failure of the Contractor to comply with Section 2-187 shall be deemed to be a material breach of this Agreement, entitling the City to pursue any remedy stated below or any remedy provided under applicable law.
- c. The City may terminate this Agreement if the Contractor fails to comply with Section 2-187.
- d. The City may retain all monies due or to become due until the Contractor complies with Section 2-187.
- e. The Contractor may be subject to debarment or suspension proceedings. Such proceedings will be consistent with the procedures in section 2-183 of the Code of Ordinances of the City of Fort Lauderdale, Florida.

16. **Scrutinized Companies:** The Contractor certifies that it is not on the Scrutinized Companies that Boycott Israel List created pursuant to Section 215.4725, Florida Statutes (2023), and that it is not engaged in a boycott of Israel. The City may terminate this Agreement at the City's option if the Contractor is found to have submitted a false certification as provided under subsection (5) of section 287.135, Florida Statutes (2023), as may be amended or revised, or been placed on the Scrutinized Companies that Boycott Israel List created pursuant to Section 215.4725, Florida Statutes (2023), as may be amended or revised, or is engaged in a boycott of Israel.

17. **Laws:** The Participant shall at all times conduct its affairs in accordance with and be in compliance with all applicable laws, ordinances, and regulations.

18. **Insurance:** As a condition precedent to the effectiveness of this Agreement, during the term of this Agreement and during any renewal or extension term of this Agreement, the Participant, at the Participant's sole expense, shall provide insurance of such types and with such terms and limits as noted below. Providing proof of and maintaining adequate insurance coverage are material obligations of the Participant. The Participant shall provide the CITY a certificate of insurance evidencing such coverage. The Participant's insurance coverage shall be primary insurance for all applicable policies. The limits of coverage under each policy maintained by the Participant shall not be interpreted as limiting the Participant's liability and obligations under this Agreement. Such insurance may be provided by commercial insurer, captive insurer, self-insurance, or a combination thereof. All insurance

policies are subject to approval by the CITY's Risk Manager.

The coverages, limits, and endorsements required herein protect the interests of the CITY, and these coverages, limits, and endorsements may not be relied upon by the Participant for assessing the extent or determining appropriate types and limits of coverage to protect the Participant against any loss exposure, whether as a result of this Agreement or otherwise. The requirements contained herein, as well as the CITY's review or acknowledgement, are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by the Participant under this Agreement.

The following insurance is required:

Commercial General Liability

Coverage must be afforded under a Commercial General Liability policy with limits not less than:

- \$1,000,000 each occurrence and \$2,000,000 aggregate for Bodily Injury, Property Damage, and Personal and Advertising Injury
- \$1,000,000 each occurrence and \$2,000,000 aggregate for Products and Completed Operations

Policy must include coverage for Contractual Liability and Independent Contractors.

The CITY and the CITY's officers, employees, and volunteers are to be covered as additional insureds with a CG 20 26 04 13 Additional Insured – Designated Person or Organization Endorsement or similar endorsement providing equal or broader Additional Insured Coverage with respect to liability arising out of activities performed by or on behalf of the Participant. The coverage shall contain no special limitation on the scope of protection afforded to the CITY or the CITY's officers, employees, and volunteers.

Insurance Certificate Requirements

- a. The Participant shall provide the CITY with valid Certificates of Insurance (binders are unacceptable) no later than thirty (30) days prior to the start of work contemplated in this Agreement.
- b. The Participant shall provide to the CITY a Certificate of Insurance having a thirty (30) day notice of cancellation; ten (10) days' notice if cancellation is for nonpayment of premium.
- c. In the event that the insurer is unable to accommodate the cancellation notice requirement, it shall be the responsibility of the Participant to provide the proper notice. Such notification will be in writing by registered mail, return receipt requested, and addressed to the certificate holder.
- d. In the event the Agreement term goes beyond the expiration date of the insurance policy, the Participant shall provide the CITY with an updated Certificate of Insurance no later than ten (10) days prior to the expiration of the insurance currently in effect. The CITY

reserves the right to suspend the Agreement until this requirement is met.

e. The Certificate of Insurance shall indicate whether coverage is provided under a claims made or occurrence form. If any coverage is provided on a claims-made form, the Certificate of Insurance must show a retroactive date, which shall be the effective date of the initial contract or prior.

f. The CITY shall be named as an Additional Insured on Commercial General Liability policy.

g. The title of the Agreement or other identifying reference must be listed on the Certificate of Insurance.

The Certificate Holder should read as follows:

City of Fort Lauderdale
101 NE 3rd Avenue, Suite 1400
Fort Lauderdale, FL 33301

The Participant has the sole responsibility for the payment of all insurance premiums and shall be fully and solely responsible for any costs or expenses as a result of a coverage deductible, co-insurance penalty, or self-insured retention; including any loss not covered because of the operation of such deductible, co-insurance penalty, self-insured retention, or coverage exclusion or limitation. Any costs for adding the CITY as an Additional Insured shall be at the Participant's expense.

If the Participant's primary insurance policy/policies do not meet the minimum requirements, as set forth in this Agreement, the Participant may provide evidence of an Umbrella/Excess insurance policy to comply with this requirement.

The Participant's insurance coverage shall be primary insurance as applied to the CITY and the City's officers, employees, and volunteers. Any insurance or self-insurance maintained by the CITY covering the CITY, the CITY's officers, employees, or volunteers shall be non-contributory.

Any exclusion or provision in the insurance maintained by the Participant that excludes coverage for work contemplated in this Agreement shall be unacceptable and shall be considered breach of contract.

All required insurance policies must be maintained until the contract work has been accepted by the CITY, or until this Agreement is terminated, whichever is later. Any lapse in coverage shall be considered breach of contract. In addition, the Participant must provide to the CITY confirmation of coverage renewal via an updated certificate should any policies expire prior to the expiration of this Agreement. The CITY reserves the right to review, at any time, coverage forms and limits of the Participant's insurance policies.

The Participant shall provide notice of any and all claims, accidents, and any other occurrences associated with this Agreement to the Participant's insurance company or companies and the CITY's Risk Management office as soon as practical.

It is the Participant's responsibility to ensure that any and all of the Participant's independent contractors and subcontractors comply with these insurance requirements. All coverages for independent contractors and subcontractors shall be subject to all of the applicable requirements stated herein. Any and all deficiencies are the responsibility of the Participant.

19. **Subcontractors:** In the event Contractor engages any subcontractor in the performance of this Agreement, Contractor shall ensure that all of Contractor's subcontractors perform in accordance with the terms and conditions of this Agreement. Contractor shall be fully responsible for all of Contractor's subcontractors' performance, and liable for any of Contractor's subcontractors' non-performance and all of Contractor's subcontractors' acts and omissions. Contractor shall defend at Contractor's expense, counsel being subject to City's approval or disapproval, and indemnify and hold harmless City, and City's officers, employees, and agents, from and against any claim, lawsuit, third party action, fine, penalty, settlement, or judgment, including any award of attorney fees and any award of costs, by or in favor of any of Contractor's subcontractors for payment for work performed for City by any of such subcontractors, and from and against any claim, lawsuit, third party action, fine, penalty, settlement, or judgment, including any award of attorney fees and any award of costs, occasioned by or arising out of any act or omission by any of Contractor's subcontractors or by any of Contractor's subcontractors' officers, agents, or employees. This Section shall survive the expiration or early termination of this Agreement.

20. **E-Verify:** Pursuant to Section 448.095, Florida Statutes (2023), as may be amended or revised, the Contractor and its subcontractors providing services under this Agreement shall register with and use the E-Verify system to electronically verify the employment eligibility of newly hired employees.

a. The Contractor shall require each of its subcontractors, if any, to provide the Contractor with an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien. The Contractor shall maintain a copy of the subcontractor's affidavit for the duration of this Agreement and in accordance with the public records requirements of this Agreement.

b. The City, the Contractor, or any subcontractor who has a good faith belief that a person or entity with which it is contracting has knowingly violated Subsection 448.09(1), Florida Statutes (2023), as may be amended or revised, shall terminate the contract with the person or entity.

c. The City, upon good faith belief that a subcontractor knowingly violated the provisions of Subsection 448.095(5), Florida Statutes (2023), as may be amended or revised, but that the Contractor otherwise complied with Subsection 448.095(5), Florida Statutes (2023), as may be amended or revised, shall promptly notify Contractor and order the Contractor to immediately terminate the contract with the subcontractor, and the Contractor shall comply with such order.

d. A contract terminated under Subparagraph 448.095(5)(c)1. or 2., Florida Statutes (2023), as may be amended or revised, is not a breach of contract and may not be considered as such. If the City terminates this contract under Paragraph 448.095(5)(c), Florida Statutes (2023), as may be amended or revised, the Contractor may not be awarded a public contract for at least one year after the date on which the contract was terminated. The Contractor is liable for any additional costs incurred by the City as a result of termination of this Agreement.

e. Contractor shall include in each of its subcontracts, if any, the requirements set

forth in this Section 20, including this subparagraph, requiring any and all subcontractors, as defined in Subsection 448.095(1)(e), Florida Statutes (2023), as may be amended or revised, to include all of the requirements of this Section 20 in their subcontracts. Contractor shall be responsible for compliance by any and all subcontractors, as defined in Subsection 448.095(1)(e), Florida Statutes (2023), as may be amended or revised, with the requirements of Section 448.095, Florida Statutes (2023), as may be amended or revised.

21. **Section Headings:** The section headings and subheadings contained in this Agreement are included for convenience only and shall not limit or otherwise affect the terms of this Agreement.

22. **Materiality; Waiver:** The parties agree that each requirement, duty, and obligation set forth in this Agreement is substantial and important to the formation of this Agreement and, therefore, is a material term. Either party's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement unless the waiver is in writing and signed by the party waiving such provision. A written waiver shall only be effective as to the specific instance for which it is obtained and shall not be deemed a continuing or future waiver.

23. **Entire Agreement:** This Agreement shall constitute the entire agreement between City and Participant for the use of funds received pursuant to this Agreement, and it supersedes all prior or contemporaneous communications and proposals, whether electronic, oral, or written between the City and the Participant with respect to this Agreement. No prior written or contemporaneous oral promises or representations shall be binding. Neither this Agreement nor any interest in this Agreement may be assigned, transferred, or encumbered by the Participant without the prior written consent of the City. All representations and warranties made herein regarding the Participant's indemnification obligations and obligations to maintain and allow inspection of records shall survive the termination of this Agreement.

24. **Governing Law; Venue:** This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. Venue for any lawsuit by either party against the other party or otherwise arising out of this Agreement, and for any other legal proceeding, shall be in the courts in and for Broward County, Florida, or in the event of federal jurisdiction, in the Southern District of Florida.

25. **Termination:** The CITY has the unqualified and absolute right to terminate this Agreement at any time upon written notice by the CITY to the Participant, in which event, the Participant shall be paid its compensation for services performed up to the termination date. In the event that the Participant abandons this Agreement or causes it to be terminated, the Participant shall indemnify the CITY against any losses pertaining to such termination.

26. **Interpretation:** It is acknowledged that each party to this agreement had the opportunity to be represented by counsel in the preparation of this Agreement, and accordingly, the rule that a contract shall be interpreted strictly against the party preparing same shall not apply to this Agreement due to the joint contributions of both parties.

27. **Service Mark:** The City retains all right, title, and interest in and to the City's trademarks and service marks, including any goodwill associated therewith. The City grants to Participant a non-exclusive, non-transferable, revocable, limited license to use the City's logo as provided in this Agreement during the term of this Agreement. Participant shall not use the City's trademarks or service marks or logos for any other purpose.

28. **Public Meetings:** The City agrees to pay the reasonable costs of security, janitorial services, and other services required by the City, such as information technology installation, as directed by the City, for the City's use of the Auditorium as provided in Subsection 2.c. of this Agreement ("Subsection 2.c."). The City will provide to the Participant a lump sum deposit of \$50,000 together with the first quarterly installment of the Contribution to defray costs incurred during the term of this Agreement in accordance with this section. The Participant shall submit to the City a reconciliation together with its quarterly report pursuant to Section 4, and the allowable costs will be reimbursed. After a final reconciliation of expenses, the balance of the deposit will be used to offset the final installment payment made in October 2024. The Participant will invoice the City for such agreed-upon reasonable costs of security and janitorial services within 30 days following the incurred expense. The City will pay each such invoice within 30 days following the City's receipt of a proper invoice. If City requires the use of Participant's board room or any other space outside the Auditorium, City will similarly pay the reasonable costs of security and janitorial services for such use within 30 days of City's receipt of an invoice as to such costs. Any additional expenses, including but not limited to staffing, equipment, and utilities, shall be the sole responsibility of the Participant. Public meeting dates in addition to those set forth in Subsection 2.c. and changes to the schedule set forth in Section 2.c. are subject to the parties' agreement by and through the City's City Manager and the Participant's Director and Chief Curator, respectively.

29. **Equipment Storage:** Participant agrees that the City may store audio-visual and meeting equipment within the designated space of the Auditorium as provided in Subsection 2.d. of this Agreement with Participant's prior written consent in each instance, which consent may be granted or withheld in Participant's sole discretion. The City is responsible for ensuring the proper insurance coverage or self-insurance, maintenance, security, and installation or de-installation (if any) of the stored equipment. The Participant shall not be liable for any damage to or loss of the stored equipment unless caused solely by the Participant's negligence, recklessness, or intentional act. The City agrees to remove all equipment from the Auditorium upon the termination of this Agreement or upon the Participant's written request at its sole discretion.

30. **Indemnification:** The City shall be responsible for any damage caused to the Auditorium as a result of the City's use and shall, in connection therewith, subject to reservation of all rights under Article VII, Section 10, Pledging Credit, Florida Constitution (1968, as amended or revised from time to time), only to the extent specified in and subject to the limitations specified in Section 768.28, Florida Statutes (2023), as may be amended or revised, indemnify the Participant from and against actions at law to recover damages in tort for money damages for injury or loss of property, or personal injury, caused by the negligent or wrongful act or omission of any employee of the City while acting within the scope of the employee's office or employment under circumstances in which City, if a private person, would be liable to the claimant, in accordance with the general laws of the State of Florida, except to the extent such injury or loss is the result of any act or omission of the Participant or of any of the Participant's officers, trustees, or employees. The foregoing sentence does not serve as a waiver of the City's sovereign immunity or of any other legal defense available to the City.

31. **Self-Insurance:** The City shall, before using the Auditorium, provide to the Participant a letter from the City's Risk Manager evidencing the City's self-insurance in accordance with Subsection 768.28(16)(a), Florida Statutes (2023).

If City will hire a security service to provide armed security services as necessary under this Agreement, City shall ensure that the company providing such security services provides the following (i) the commercial general liability insurance (including bodily injury, death, property damage, contractual

and products liability, cross liability, and completed operations coverage in limits of not less than \$1,000,000 per occurrence and \$2,000,000 annual aggregate, (ii) automobile liability insurance for any City owned, non-owned, leased or hired vehicle, in an amount no less than \$1,000,000 per occurrence combined single limit for death, bodily injury, and property damages, (iii) workers' compensation insurance in accordance with applicable Florida law, (iv) law enforcement liability insurance in an amount no less than \$1,000,000 per occurrence, and (v) excess liability insurance in an amount not less than \$5,000,000 in excess of the limits stated in (i), (ii) and (iv) above. City shall provide Participant with its security services contractor's certificate of insurance evidencing its coverage and listing "Nova Southeastern University, Inc., and its officers, trustees, employees, and agents" as an additional insured on its liability insurance coverages. Prior to any such company sending employees or agents on site to Participant's premises, City shall ensure that Participant is provided with documentation that such employees or agents are licensed and covered by the company's insurance coverages.

32. **Force Majeure:** Participant shall not be liable for any action, failure to act or delay in performance of its obligations under this Agreement due to fire, flood, hurricane or other unusually severe weather, epidemic, pandemic, quarantine or public health requirement or recommendation, terrorist threat or act, labor dispute, shortage of labor or materials, failure of public utility, damage to the Auditorium or any other part of Participant's premises from any cause or casualty, or any other cause, similar or dissimilar beyond its reasonable control ("Force Majeure Event"). For purposes of this Agreement, the parties agree that the COVID-19 pandemic and any declared derivative or other viral pandemic is a *Force Majeure* Event. If Participant suffers a *Force Majeure* Event, then Participant shall have the right, in its sole and reasonable discretion, to disallow the City's use of the Auditorium and/or other spaces on the premises under this Agreement without consequence, and Participant shall be released from any obligations to City with respect to Section 2.c., Section 2.d., Section 29 and Section 30, and released from any and all damages or losses caused thereby, until such time as the *Force Majeure* Event abates in Participant's reasonable discretion.

IN WITNESS WHEREOF, the City and the Participant execute this Agreement as follows:

ATTEST:

City of Fort Lauderdale

David R. Soloman, City Clerk

By: _____
Dean J. Trantalis, Mayor

By: _____
Greg Chavarria, City Manager

Approved as to form:

Assistant City Attorney

WITNESSES:

Nova Southeastern University, Inc.

Print Name:

By: _____

Harry K. Moon, M.D.
President-Elect, Executive Vice President, and
Chief Operating Officer

Print Name:

STATE OF FLORIDA:
COUNTY OF BROWARD:

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this _____ day of _____, 2024, by Harry K. Moon, M.D., as President-Elect, Executive Vice President, and Chief Operating Officer for Nova Southeastern University, Inc., a Florida not for profit corporation.

(SEAL)

Notary Public, State of _____
(Signature of Notary Public)

(Print, Type, or Stamp Commissioned
Name of Notary Public)

Personally Known _____ OR Produced Identification _____
Type of Identification Produced: _____