

ESCROW AGREEMENT

THIS ESCROW AGREEMENT (this "**Agreement**"), is made and entered into as of March 2, 2021, by and among the City of Fort Lauderdale, a Florida municipality (the "**City**"), The Stranahan House, Inc., a Florida not for profit corporation, (the "**Participant**"), and Tripp Scott, P.A., a Florida professional association, as escrow agent (the "**Escrow Agent**").

WHEREAS, City and Participant have entered into a certain CITY OF FORT LAUDERDALE FY 2021 NOT FOR PROFIT GRANT PARTICIPATION AGREEMENT, dated March 2, 2021, (the "**Grant Participation Agreement**"); and

WHEREAS, the Grant Participation Agreement provides that a grant contribution shall be deposited by City into escrow to be held and distributed by the Escrow Agent in accordance with the terms of this Agreement and the Grant Participation Agreement; and

WHEREAS, the execution and delivery of this Agreement is a condition to the parties' obligations under the Grant Participation Agreement;

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants hereinafter set forth, the parties agree as follows:

1. Defined Terms. All capitalized terms used in this Agreement but not otherwise defined herein are given the meanings set forth in the Grant Participation Agreement.
2. Escrow Deposit. City shall deposit a total amount of \$100,000 ("**Escrow Amount**") with the Escrow Agent. The Escrow Amount will be available for reimbursement of certain costs expended toward construction of the Welcome Center as provided in Section I.A. of the Grant Participation Agreement, subject to a written authorization of withdrawal by the City as provided in Section 3(a) of this Agreement.

The Escrow Agent agrees to hold the Escrow Amount in a separate and distinct deposit account insured by the Federal Deposit Insurance Corporation in the name of Tripp Scott, P.A., as Escrow Agent, in trust for the City of Fort Lauderdale and The Stranahan House, Inc., (the "**Escrow Account**"), subject to the terms and conditions of this Agreement. The Escrow Amount shall be held as a trust fund and shall not be subject to any lien, attachment, trustee process or any other judicial process of any creditor of any party hereto. The Escrow Agent shall not distribute or release any portion of the Escrow Amount except in accordance with the express terms and conditions of this Agreement.

3. Release of Escrow Amount. The Escrow Amount held pursuant to this Agreement is intended to provide a non-exclusive source of funds for the payment of any amounts which may become payable in respect of the claims and matters described in Section 2 above. Except for tax distributions made pursuant to Section 9, the Escrow Amount shall only be distributed and released as follows:

- (a) Participant shall provide City with a written request for a withdrawal of a portion of the Escrow Amount. Upon receipt of Participant's written request for a withdrawal of a portion of the Escrow Amount, City shall have forty-five days to provide a written response approving or denying of the release of funds. If the City denies the withdrawal of a portion of the Escrow Amount, the reasons for denial shall be explicitly stated.

- (b) Upon the Escrow Agent's receipt of a joint written instruction signed by City and Participant stating that there has been a determination of the amount of funds to be released pursuant

to Section 3(a) of this Agreement, the Escrow Agent shall promptly, and in any event within ten Business Days of its receipt of that instruction, release to Participant an amount of Escrow Amount from the Escrow Account equal to the amount specified in such instruction.

(c) If the Escrow Amount has not been entirely utilized by Participant on or before expiration or early termination of the Grant Participation Agreement, Escrow Agent shall release the remaining balance of the Escrow Amount to the City within fourteen calendar days of expiration or early termination of the Grant Participation Agreement.

(d) Notwithstanding any other provision in this Agreement to the contrary, the Escrow Agent shall disburse the Escrow Amount or a portion thereof in accordance with a notice from either City or Participant of a final and non-appealable order from a court of competent jurisdiction ordering disbursement of the Escrow Amount or a portion thereof, along with a copy of the order.

4. Inspection Rights and Account Statements. City shall have the right to inspect and obtain copies of the records of the Escrow Agent pertaining to this Agreement and to receive quarterly reports on the status of the Escrow Account.

5. Termination. This Agreement shall terminate when the entire Escrow Account has been distributed in accordance with Section 3 of this Agreement.

6. Conditions to Escrow. The Escrow Agent agrees to hold the Escrow Amount in the Escrow Account and to perform in accordance with the terms and provisions of this Agreement. City and Participant agree that the Escrow Agent does not assume any responsibility for the failure of City or Participant to perform in accordance with the Grant Participation Agreement or this Agreement. The acceptance by the Escrow Agent of its responsibilities hereunder is subject to the following terms and conditions, which the parties hereto agree shall govern and control with respect to the Escrow Agent's rights, duties, liabilities and immunities:

(a) The Escrow Agent shall have only those duties as are specifically provided herein, which shall be deemed purely ministerial in nature, and shall under no circumstance be deemed a fiduciary for any of the other parties to this Agreement.

(b) The Escrow Agent shall be protected in acting upon any written notice, consent, receipt or other paper or document furnished to it, not only as to its due execution and validity and effectiveness of its provisions, but also as to the truth and accuracy of any information therein contained, which the Escrow Agent in good faith believes to be genuine and what it purports to be.

(c) The Escrow Agent shall not be liable for any error of judgment or for any act done or step taken or omitted by it in good faith, or for anything which it may do or refrain from doing in connection herewith, except for its own negligence or willful misconduct.

(d) [Reserved.]

(e) [Reserved.]

(f) In the event that the Escrow Agent shall be uncertain as to its duties or rights hereunder or shall receive instructions, claims or demands from City or Participant which, in its opinion, conflict with any of the provisions of this Agreement, it shall follow the City's direction.

(g) Any corporation or association into which the Escrow Agent may be converted or merged, or with which it may be consolidated, or to which it may sell or transfer its escrow business and assets as a whole or substantially as a whole, or any corporation or association resulting from any such conversion, sale, merger, consolidation or transfer to which it is a party, shall be and become the successor escrow agent hereunder and vested with all of the title to the whole property or trust estate and all of the trusts, powers, immunities, privileges, protections and all other matters as was its predecessor, without the execution or filing of any instrument or any further act, deed or conveyance on the part of any of the parties hereto, anything herein to the contrary notwithstanding.

7. Resignation and Removal of Escrow Agent.

(a) The Escrow Agent reserves the right to resign at any time by giving thirty days written notice of resignation, specifying the effective date thereof. On the effective date of such resignation, the Escrow Agent shall deliver this Agreement together with the remaining portion of the Escrow Amount and any and all related instruments or documents to any successor escrow agent agreeable to City and Participant. If a successor escrow agent has not been appointed and has not accepted such appointment prior to the expiration of thirty days following the date of the notice of such resignation, the Escrow Agent shall disburse the remaining portion of the Escrow Amount to the City. Notwithstanding anything to the contrary in the foregoing, the Escrow Agent or any successor escrow agent shall continue to act as Escrow Agent until a successor is appointed and qualified to act as Escrow Agent.

(b) The Escrow Agent may be removed (with or without cause) and a new escrow agent may be appointed upon mutual agreement of City and Participant. In such event, City and Participant shall deliver joint written notice to the Escrow Agent of such removal together with joint written instructions authorizing delivery of this Agreement together with the remaining portion of the Escrow Amount and any and all related instruments or documents to a successor escrow agent.

(c) Upon delivery of the remaining portion of the Escrow Amount to a successor escrow agent in accordance with this Section 7, the Escrow Agent shall thereafter be discharged from any further obligations hereunder. All power, authority, duties and obligations of the Escrow Agent shall apply to any successor escrow agent.

8. [Reserved.]

9. Taxes.

(a) Ownership for Tax Purposes. Each of City and Participant agree that, for purposes of United States federal and other taxes based on income, City shall be treated as the owner of the Escrow Amount and that Participant shall report the income, if any, that is earned on, or derived from, the Escrow Amount as its income, in the taxable year or years in which such income is properly includible and pay any taxes attributable thereto.

10. Business Days. If any date on which the Escrow Agent is required to make a delivery pursuant to the provisions hereof is not a day on which the Escrow Agent is open for business, then the Escrow Agent shall make such delivery on the next succeeding Business Day.

11. Escrow Costs. Escrow Agent shall perform all services pursuant to this Agreement free of charge.

12. Force Majeure. No party shall be liable or responsible to the other parties, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement, when and to the extent such failure or delay is caused by or results from acts beyond the affected party's reasonable control ("**Force Majeure Events**"), including, without limitation: (a) acts of God; (b) flood, fire or explosion; (c) war, invasion, riot or other civil unrest; (d) government order or law; (e) actions, embargoes or blockades in effect on or after the date of this Agreement; (f) action by any governmental authority; (g) national or regional emergency; and (h) strikes, labor stoppages or slowdowns or other industrial disturbances. The party suffering a Force Majeure Event shall give notice to the other party, stating the period of time the occurrence is expected to continue and shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized.

13. Notices. All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by facsimile or email of a PDF document (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next Business Day if sent after normal business hours of the recipient or (d) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective parties at the addresses indicated below (or at such other address for a party as shall be specified in a notice given in accordance with this Section 13). Notwithstanding the above, in the case of communications delivered to the Escrow Agent whereby the Escrow Agent must act based on a specified number of days upon its receipt of such communication, if applicable, such communications shall be deemed to have been given on the date received by an officer of the Escrow Agent or any employee of the Escrow Agent who reports directly to any such officer at the above-referenced office.

If to City: Christopher J. Lagerbloom
City Manager
City of Fort Lauderdale
100 North Andrews Ave.
Fort Lauderdale, FL 33301

If to Participant: April Kirk
Executive Director
The Stranahan House, Inc.
335 Southeast 6th Ave.
Fort Lauderdale, FL 33301

If to Escrow Agent: Christine Yates, Esq.
Escrow Agent
Tripp Scott, P.A.
110 SE 6th Street
Fort Lauderdale, FL 33301

14. Entire Agreement. This Agreement, together with the Grant Participation Agreement and related exhibits and schedules, constitutes the sole and entire agreement of the parties to this Agreement with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter. Notwithstanding the foregoing, in the event of any inconsistency between the statements in the body of this Agreement and those of the Grant Participation Agreement, (i) with respect to any inconsistency as between City and Participant, the statements in the body of the Grant Participation Agreement shall control; and (ii) with

respect to any inconsistency as between the Escrow Agent, on the one hand, and either City or Participant or both, on the other hand, the statements in the body of this Agreement shall control.

15. Successor and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns. No party may assign any of its rights or obligations hereunder.

16. No Third-Party Beneficiaries. This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

17. Headings. The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

18. Amendment and Modification; Waiver. This Agreement may only be amended, modified or supplemented by an agreement in writing signed by each party hereto. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any rights, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

19. Severability. If any term or provision of this Agreement is held by a court of competent jurisdiction to be invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination by a court of competent jurisdiction that any term or other provision is invalid, illegal or unenforceable, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

20. Governing Law; Submission to Jurisdiction. This Agreement shall be governed by and construed in accordance with the internal laws of the State of Florida without giving effect to any choice or conflict of law provision or rule (whether of the State of Florida or any other jurisdiction). Any legal suit, action or proceeding arising out of or based upon this Agreement or the transactions contemplated hereby may be instituted in the federal courts of the United States or the courts of the State of Florida in each case located in the city of Fort Lauderdale and County of Broward, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding. The parties irrevocably and unconditionally waive any objection to the laying of venue of any suit, action or any proceeding in such courts and irrevocably waive and agree not to plead or claim in any such court that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum.

21. Waiver of Jury Trial. Each party acknowledges and agrees that any controversy which may arise under this Agreement is likely to involve complicated and difficult issues and, therefore, each such party irrevocably and unconditionally waives any right it may have to a trial by jury in respect of any legal action arising out of or relating to this Agreement or the transactions contemplated hereby. Each party to this Agreement certifies and acknowledges that (a) no representative of any other party has represented, expressly or otherwise, that such other party would not seek to enforce the foregoing waiver in the event of a legal action, (b) such party has considered the implications of this waiver, (c) such party makes this waiver

voluntarily, and (d) such party has been induced to enter into this Agreement by, among other things, the mutual waivers and certifications in this Section 21.

22. IF THE ESCROW AGENT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE ESCROW AGENT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT CITY CLERK'S OFFICE, PHONE: 954-828-5002, EMAIL: PRRCONTRACT@FORTLAUDERDALE.GOV, 100 NORTH ANDREWS AVENUE, FORT LAUDERDALE, FLORIDA, 33301.

Escrow Agent shall comply with public records laws, and Escrow Agent shall:

- a. Keep and maintain public records that ordinarily and necessarily would be required by the City in order 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 (2020), 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 Agreement term and following completion of this Agreement if the Escrow Agent does not transfer the records to the City.
- d. Upon completion of the Agreement, transfer, at no cost, to the City all public records in possession of the Escrow Agent or keep and maintain public records required by the City to perform the service. If the Escrow Agent transfers all public records to the City upon completion of this Agreement, the Escrow Agent shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Escrow Agent keeps and maintains public records upon completion of this Agreement, the Escrow Agent 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.

23. IF THE PARTICIPANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE PARTICIPANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT CITY CLERK'S OFFICE, PHONE: 954-828-5002, EMAIL: PRRCONTRACT@FORTLAUDERDALE.GOV, 100 NORTH ANDREWS AVENUE, FORT LAUDERDALE, FLORIDA, 33301.

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

- a. Keep and maintain public records that ordinarily and necessarily would be required by the City in order 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 (2020), 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 Agreement term and following completion of this Agreement if the Participant does not transfer the records to the City.
- d. Upon completion of the Agreement, transfer, at no cost, to the City all public records in possession of the Participant or keep and maintain public records required by the City to perform the service. If the Participant transfers all public records to the City upon completion of this Agreement, the Participant shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Participant keeps and maintains public records upon completion of this Agreement, the Participant 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.

24. Insurance.

During the term of this Agreement and during any renewal or extension term of this Agreement, the Escrow Agent, at the Escrow Agent'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 Escrow Agent. The Escrow Agent shall provide the City a certificate of insurance evidencing such coverage. The Escrow Agent's insurance coverage shall be primary insurance for all applicable policies. The limits of coverage under each policy maintained by the Escrow Agent shall not be interpreted as limiting the Escrow Agent's liability and obligations under this Agreement. All insurance policies shall be from insurers authorized to write insurance policies in the State of Florida and that possess an A.M. Best rating of A-, VII or better. 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 Escrow Agent for assessing the extent or determining appropriate types and limits of coverage to protect the Escrow Agent 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 Escrow Agent under this Agreement.

The following insurance policies and coverages are required:

Fidelity

Coverage must be afforded in an amount not less than \$100,000.

Professional Liability and/or Errors and Omissions

Coverage must be afforded for Wrongful Acts in an amount not less than \$1,000,000 each claim and \$2,000,000 aggregate.

Escrow Agent must keep insurance in force until the third anniversary of expiration of this Agreement or the third anniversary of acceptance of work product by the City.

Insurance Certificate Requirements

- a. The Escrow Agent 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 Escrow Agent 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 Escrow Agent 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 Escrow Agent 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 all liability policies.
- g. The title of the Agreement, Bid/Contract number, event dates, or other identifying reference must be listed on the Certificate of Insurance.

The Certificate Holder should read as follows:

City of Fort Lauderdale
100 N. Andrews Avenue
Fort Lauderdale, FL 33301

The Escrow Agent 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 Escrow Agent's expense.

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

The Escrow Agent'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 Escrow Agent 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, Escrow Agent 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 Escrow Agent's insurance policies.

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

It is the Escrow Agent's responsibility to ensure that any and all of the Escrow Agent'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 Escrow Agent.

IN WITNESS WHEREOF, the parties hereto execute this Escrow Agreement as follows:

ATTEST:

CITY OF FORT LAUDERDALE

Jeffrey A. Modarelli, City Clerk

By: _____
Dean J. Trantalis, Mayor

By: _____
Christopher J. Lagerbloom, ICMA-CM
City Manager

Approved as to form:

Assistant City Attorney

WITNESSES:

THE STRANAHAN HOUSE, INC.

Print Name: _____

By: _____
Pat Kublin, President

Print Name: _____

ATTEST:

(Corporate Seal)

Matthew McAloon, Secretary

STATE OF FLORIDA:
COUNTY OF BROWARD:

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this _____ day of _____, 2021, by Pat Kublin as President for The Stranahan House, Inc., a Florida not for profit corporation.

(SEAL)

Signature of Notary Public - State of Florida

Print, Type, or Stamp Commissioned Name of Notary Public

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

WITNESSES:

TRIPP SCOTT, P.A.

Print Name: _____

By: _____
Edward J. Pozzuoli, Chief Executive Officer

Print Name: _____

ATTEST:

(Corporate Seal)

Paul O. Lopez, Secretary

STATE OF FLORIDA:
COUNTY OF BROWARD:

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this _____ day of _____, 2021, by Edward J. Pozzuoli as Chief Executive Officer for Tripp Scott, P.A., a Florida professional association.

(SEAL)

Signature of Notary Public - State of Florida

Print, Type, or Stamp Commissioned Name of Notary Public

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