

CITY OF FORT LAUDERDALE FY 2018 NOT FOR PROFIT GRANT PARTICIPATION AGREEMENT

THIS AGREEMENT, entered this _____ day of _____, 2017 by and between:

CITY OF FORT LAUDERDALE, a municipal corporation of the State of Florida, herein after referred to as "City"

and

RIVERWALK FORT LAUDERDALE, INC., a non-profit corporation organized under the laws of Florida whose usual place of business is 200 SW 1ST AVENUE, SUITE 101, FORT LAUDERDALE, FL 33301, hereinafter referred to as "Participant".

WHEREAS, The Participant shall light up the Riverwalk path during the holiday season and use funding to revitalize the Riverwalk; and

WHEREAS, the City provides funding for Participant's program and authorizes the City Manager to enter into this agreement ("Agreement") to serve a municipal public purpose by beautifying, educating, promoting activities, and stimulating the public's interest in the development of the Riverwalk area; and

NOW, THEREFORE, it is agreed between the parties hereto that;

I. SCOPE OF SERVICE

A. Activities

1) Special Events Operating Costs: Riverwalk Fort Lauderdale, Inc. will receive a reimbursement from the City to engage in special events that activate and promote the Riverwalk area. Special events covered by the agreement include:

- **Light Up Lauderdale** – An event to light up the Riverwalk area during the holiday season. Costs include lights, banners, promotional materials, and costs associated with hosting a free event in Esplanade Park with a holiday concert, games and art projects for children, sleigh rides, holiday vendors and refreshments (\$20,000).
- **Day of the Dead** - Celebration to enhance community engagement and positive neighborly activity across demographics through the arts. City's reimbursement will cover promotional materials and operating costs associated with puppets/performers. (\$30,000).

2) Service Provision: Riverwalk Fort Lauderdale, Inc. will receive a monthly contribution from the City for the following services that are performed throughout the year (\$175,000):

- **Informational Program (\$25,000):** An informational kiosk program highlighting activities and events along the Riverwalk. The City will provide a contribution for costs associated with operating the kiosk and promotional materials distributed at the kiosk.
- **Special Event Coordination (\$75,000):** Revitalization of the Riverwalk by assisting in coordinating events within an expanded boundary (inclusion of programming to SE/SW 6th (Sistrunk) and SE/SW 7th – SW 4th/7th – SE 8th) with partner organizations; and provide any additional duties and services as may be needed to assure compliance and delivery of deliverables outlined in this agreement. Additional duties may include:
 - Solicitation of unique opportunities for activation including, but not limited to, fitness, dog training, boot camps, yoga, Mommy & Me meet ups, or similar activities.
 - Riverwalk Maintenance Coordination: Routinely observe both sides of the Riverwalk and the Riverwalk District for cleanliness and structural integrity, cosmetic needs, replacement and additions, including coordinating with responsible agencies.
 - Coordinate landscape changes, additions and removals to ensure compliance with the Botanical Guidelines of Stranahan Park.
 - Identify hardscape additions and sustainable improvements and provide assessments to the City for review and consideration.
 - Master Calendar Coordination: Coordinate the Greater Fort Lauderdale Master Calendar, including public, charity, and private events along the Riverwalk. Includes coordinating press releases and road closure notices.
- **Special Event Liaison Support (\$75,000):** To provide a consistent and reliable presence in the Riverwalk District on a routine and reliable basis, Riverwalk will meet with event coordinators, work as a liaison with the City for permit review, and ensure staff is on site during an event.
 - **Permit Review:** Meet with event coordinators for initial event permit review before meeting with city disciplines to assure events are in compliance with city regulations.
 - Coordinate with other scheduled events for commonality (dumpsters, toilets) and to avoid conflicting uses and road closures
 - **Onsite Event Support:** Provide staff to be onsite for a period during set up and/or prior to the start of an event to assure compliance with City requirements and approved site plan.
 - **Post Event Support:** Provide staff to inspect site within 8 hours after the conclusion of an event and verify that the site is cleaned appropriately in accordance with city guideline and permit requirements. Staff will ensure that toilets/dumpsters/barricades or other additions to the park have been

removed. Assess park for cleanliness and document any damage and coordinate with City for any observed issues of non-compliance or failure to perform.

B. Deliverables

The Participant will coordinate and administer the activities listed in Section A of this agreement "Activities" in the Riverwalk area and will provide the City with a detailed summary and invoices and reports, in a format agreed upon by the City, listing activities performed, related to the initiatives that were supported by the City's contribution or reimbursement.

C. Use of Funds

Funds for Special Events, section A-1 of the "Scope" of this agreement, for Light Up Lauderdale and Day of the Dead, will be distributed on a reimbursement basis based upon supporting receipts and invoices that tie expenses to associated deliverables.

Funds outlined in section A-2 of the "Scope" of this agreement will be distributed on a monthly basis (1/12 of the annual amount by activity) for service provision of activities and associated deliverables.

The Participant shall maintain all records created during the ordinary course of business pertaining to the funds. All such records shall be made available as requested under Florida Statutes, Chapter 119. (2017)

City contribution or funds may not be used for:

- Profit
- Alcoholic beverages
- Staff bonuses
- Lobbying Services
- Legal Services
- Land Acquisition
- Construction of new buildings
- Membership Fees
- Foreign Travel
- Costs due to negligence
- Debt
- Audit services

The City reserves the right to examine the records of the Organization. Any funds not expended during the term or for the Activities identified above, under I. A. Scope of Services/Activities above, shall be automatically be returned by the Participant to the City. The City reserves the right to conduct audits or utilize external firms to audit the Organization, which shall be in accordance with Generally Accepted Government Auditing Standards (GAGAS).

II. TERM AND TIME OF PERFORMANCE

The effective date of this Agreement shall commence upon full execution by the City and the Participant and shall end on September 30, 2018. The City reserves the right to extend the agreement for three additional one-year terms, providing all terms conditions and deliverables remain the same, both parties agree to the extension, and such extension is approved by the City. In the event the term of this Agreement extends beyond the end of any fiscal year of the City, to wit, September 30th, the continuation of this Agreement beyond the end of such fiscal year shall be subject to both the appropriation and availability of funds.

III. BUDGET

Within ninety (90) days of the close of the Organization's fiscal year, an audited financial statement and summary report, prepared in accordance with generally accepted accounting principles, accounting for these funds and the manner in which they were expended, including a statement that the services provided by the Participant comply with the terms of this agreement and are aligned with deliverables outlined in the "Scope" of this agreement, shall be submitted to:

CITY OF FORT LAUDERDALE

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

IV. PAYMENT

It is expressly agreed and understood that the total amount to be paid by the City under this Agreement shall not exceed **\$225,000**.

V. NOTICES

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.

Communication and details concerning this Agreement shall be directed to the following Agreement representatives:

City

Lee R. Feldman
City Manager

Participant

Eugenia Duncan Ellis
President/Chief Executive Officer

As to the City:

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

As to the Participant:

Riverwalk Fort Lauderdale, Inc.
200 SW 1st Avenue, Suite 101
Fort Lauderdale, FL 33301

VI. GENERAL CONDITIONS**A. "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.

B. Hold Harmless

Participant shall protect, defend, indemnify and hold harmless the City, its officers, employees and agents, from and against any and all lawsuits, penalties, claims, damages, settlements, judgments, decrees, costs, charges and other expenses or liabilities of every kind, sort or description including, but not limited to, attorneys' fees 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 nonperformance 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 or any patent, trademark, copyright or of any other tangible 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.

C. Amendments

The City or Participant, subject to City Commission approval, may amend this Agreement at any time provided that such amendments make specific reference to this Agreement, and are executed in writing, signed by a duly authorized representative of the Organization and by the City Manager. Such amendments shall not invalidate this Agreement, nor relieve or release the City or Participant from its obligations under this agreement.

The City may, in its discretion, amend this Agreement to conform with Federal, State or local governmental guidelines, policies and available funding amounts, or for other

reasons. If such amendments result in a change in the funding, the scope of services, or schedule of the activities to be undertaken as part of this Agreement, such modifications will be incorporated only by written amendment signed by both City and Participant.

D. 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, 100 N. ANDREWS AVENUE, FORT LAUDERDALE, FLORIDA 33301, PRRCONTRACT@FORTLAUDERDALE.GOV.

Contractor shall:

1. Keep and maintain public records that ordinarily and necessarily would be required by the City in order to perform the service.
2. 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 (2017), as may be amended or revised, or as otherwise provided by law.
3. 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 Contractor does not transfer the records to the City.
4. Upon completion of this Agreement, 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 this Agreement, 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 this Agreement, 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.

E. Default

The following events shall constitute an "Event of Default" pursuant to this Agreement:

1. 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.

2. If the Participant or any endorser of the Agreement 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 Act 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 Act 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 or of any endorser of the Agreement, of any trustee, receiver, or liquidator of the Participant or any endorser of the Note, or of all or any portion of the Property, 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.

3. Participant's breach, violation or failure to perform any of the obligations or any of the covenants and conditions contained herein.

Upon the occurrence of any event of default, the City shall issue written notice in accordance with Article V and the Participant shall have thirty (30) days to cure such default. If Participant fails to cure the default within the thirty (30) days, the Agreement will be deemed terminated and the City shall declare immediately due and payable, all monies advanced hereunder this Agreement.

F. SEVERABILITY

If any provision of this Agreement is held invalid, the remainder of the Agreement shall not be affected thereby and all other parts of this Agreement shall nevertheless be in full force and effect.

VII. **SECTION HEADINGS AND SUBHEADINGS**

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.

VIII. **WAIVER**

The City's failure to act with respect to a breach by the Participant does not waive its right

to act with respect to subsequent or similar breaches. Failure of the City to exercise or enforce any right or provision shall not constitute a waiver of such right or provision.

IX. ENTIRE AGREEMENT

This Agreement, along with attachments, shall constitute the entire Agreement between City and Participant for the use of funds received under 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. This Agreement shall not be amended except by written instrument signed by both parties.

X. AUTHORIZED SIGNATORY

Only upon City Commission delegation, the City Manager is authorized to execute this Agreement on behalf of the City.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals

the _____ day of _____, 2017.

PARTICIPANT

WITNESSES:

Riverwalk Fort Lauderdale, Inc., a Florida non-profit corporation

By _____
Eugenia Duncan Ellis
President/Chief Executive Officer

[Witness print name]

[Witness print name]

ATTEST:

(CORPORATE SEAL)

Secretary

STATE OF FLORIDA:
COUNTY OF BROWARD:

The foregoing instrument was acknowledged before me this _____ day of _____, 2017, by **Eugenia Duncan Ellis**, as **President/Chief Executive Officer** of **Riverwalk Fort Lauderdale, Inc.**, Who is ☐ personally known to me or ☐ has produced _____ as identification.

(NOTARY SEAL)

Notary Public, State of Florida
(Signature of Notary Taking Acknowledgment)

Name of Notary Typed, Printed or Stamped

My Commission Expires:

Commission Number

CITY

WITNESSES:

CITY OF FORT LAUDERDALE

By _____
Lee R. Feldman, City Manager

Date _____

(Witness print name)

(Witness print name)

Approved as to form:
Cynthia A. Everett, City Attorney

By _____
Kimberly Cunningham Mosley,
Assistant City Attorney