

**CITY OF FORT LAUDERDALE  
FY 2018 NOT FOR PROFIT GRANT PARTICIPATION AGREEMENT  
WITH WINTERFEST, INC.**

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

**WINTERFEST, INC.**, a non-profit corporation organized under the laws of Florida whose usual place of business is 512 NE 3<sup>rd</sup> AVENUE, FORT LAUDERDALE, FL 33301, hereinafter referred to as "Participant".

**WHEREAS**, the Participant shall administer the Annual Winterfest Boat Parade and will build a festival and full complement of events around the Greater Fort Lauderdale Area; and

**WHEREAS**, the City is providing funding for Participant's program and authorizes the City Manager to enter into this agreement ("Agreement") to serve a municipal public purpose by the production and promotion of recognized events that will enhance the image of the Greater Fort Lauderdale area; and

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

**I. SCOPE OF SERVICE**

**A. Activities**

The Participant will use the City of Fort Lauderdale contribution to administer the Annual Winterfest Boat Parade and to build a festival and full complement of related events around the Greater Fort Lauderdale Area.

**B. Deliverables**

The funding will be used to create unique quality entertainment while bringing national as well as international attention to the Greater Fort Lauderdale Area. The Participant will produce a one-hour television show in cooperation with WSVN (Fox Affiliate) showcasing the City of Fort Lauderdale and will support an extensive advertising campaign that compliments the effort.

### C. Use of Funds

The Funds will be distributed on an annual reimbursement basis based upon supporting receipts and invoices that tie expenses to associated deliverables outlined in the "Scope" of this agreement. 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 119.0701.

City grant 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 Organization 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. The Organization shall expend the funds by 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 30<sup>th</sup>, 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, a financial statement and summary report, prepared in accordance with generally accepted accounting principles, accounting for these funds and reporting upon the manner in which they were expended, shall be submitted to:

**CITY OF FORT LAUDERDALE**

City Manager's Office  
Budget/CIP and Grants Division  
101 NE 3<sup>rd</sup> 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 **\$10,000**.

**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**

Lisa Scott-Founds  
President

**As to the City:**

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

**As to the Participant:**

Winterfest, Inc.  
512 NE 3rd Avenue  
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,

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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 (2016), 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

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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.

[THIS SPACE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the \_\_\_\_\_ day of \_\_\_\_\_, 2017.

**PARTICIPANT**

WITNESSES:

Winterfest, Inc., a Florida non-profit corporation

\_\_\_\_\_

By \_\_\_\_\_  
Lisa Scott-Founds, President

\_\_\_\_\_  
[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 Lisa Scott-Founds, as President/Chief Executive Officer of Winterfest, 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**

ATTEST:

CITY OF FORT LAUDERDALE, a municipal  
corporation of the State of Florida.

\_\_\_\_\_  
JEFFREY A. MODARELLI  
City Clerk

\_\_\_\_\_  
LEE R. FELDMAN, City Manager

(SEAL)

Approved as to form:  
CYNTHIA A. EVERETT, City Attorney

By:\_\_\_\_\_  
CANDACE R. DUFF  
Assistant City Attorney