

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

THIS CITY OF FORT LAUDERDALE NOT FOR PROFIT GRANT PARTICIPATION AGREEMENT, ("Agreement"), made and entered into this 18th day of December, 2018, is by and between the City of Fort Lauderdale, a Florida municipality, ("City"), whose principal place of business is 100 North Andrews Avenue, Fort Lauderdale, Florida, 33301, and Nova Southeastern University, Inc., a Florida not for profit corporation whose principal place of business is 3301 College Avenue, Fort Lauderdale, Florida, 33314-7796, ("Participant" or "Organization" or "Contractor").

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 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. The City agrees to donate \$500,000 to the Participant per each year of this Agreement, to be used solely to support the Participant's NSU Art Museum, payable in quarterly installments of \$125,000 beginning on or before January 1, 2019, for the previous quarter.

2. In exchange for the City's donation, Participant shall, during each year of this Agreement on or before September 30:

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 one free rental of the NSU Art Museum to the City for a City event each year on a date and at a time to be agreed upon by the City's City Manager ("City Manager") and the Participant's Director and Chief Curator;

d. Extend a 10% discount on catalogues published by the NSU Art Museum to residents of the City of Fort Lauderdale; and

e. Acknowledge the City's support by including the City's logo on all NSU Art Museum printed and digital materials.

3. The term of this Agreement is from October 1, 2018, through September 30, 2021, subject to and conditioned on the City's annual budget appropriation to fund this Agreement and the availability of funds.

4. On or before October 31, 2019, October 31, 2020, and October 31, 2021, the Participant shall certify to the City Manager in writing the completion of all of the activities set forth in Section 2 of this Agreement during the previous year, with a detailed description of each activity. This Section shall survive the expiration or early termination of this Agreement.

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

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

6. 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
City Manager
City of Fort Lauderdale
100 North Andrews Avenue
Fort Lauderdale, FL 33301

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

7. 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, settlements, 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 nonperformance of its obligations or activities 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 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.

8. 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.

9. 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:

- 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 (2018), 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.

10. 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 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, 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. The Participant's breach, violation, or failure to perform any of the obligations or any of the covenants or conditions set forth in this Agreement.

d. The closure, sale, spin-off, or liquidation of the NSU Art Museum.

Upon the occurrence of any event of default, the City shall issue written notice in accordance with Section 6 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 City may terminate this Agreement immediately, whereupon the Participant shall forthwith return

to the City the balance of any unused grant funds together with a detailed statement of account showing the activities that have been completed.

11. The Contractor shall not, in any of its activities, including employment, discriminate against any individual on the basis of race, color, national origin, religion, creed, sex, disability, sexual orientation, gender, gender identity, gender expression, or marital status.

a. The Contractor certifies and represents that it will comply with Section 2-187, Code of Ordinances of the City of Fort Lauderdale, Florida, as amended by Ordinance C-18-33 (collectively, "Section 2-187").

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.

12. Subject to *Odebrecht Construction, Inc., v. Prasad*, 876 F.Supp.2d 1305 (S.D. Fla. 2012), *affirmed*, *Odebrecht Construction, Inc., v. Secretary, Florida Department of Transportation*, 715 F.3d 1268 (11th Cir. 2013), with regard to the "Cuba Amendment," the Contractor certifies that it is not on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List or the Scrutinized Companies that Boycott Israel List created pursuant to Section 215.4725, Florida Statutes (2018), as may be amended or revised, and that it is not engaged in a boycott of Israel, and that it does not have business operations in Cuba or Syria, as provided in section 287.135, Florida Statutes (2018), as may be amended or revised. 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 (2018), as may be amended or revised, or been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List or the Scrutinized Companies that Boycott Israel List created pursuant to Section 215.4725, Florida Statutes (2018), as may be amended or revised, or is engaged in a boycott of Israel or has been engaged in business operations in Cuba or Syria, as defined in Section 287.135, Florida Statutes (2018), as may be amended or revised.

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

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

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

16. 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.

17. 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 shall be in the courts in and for Broward County, Florida, or in the event of federal jurisdiction, in the Southern District of Florida.

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

ATTEST:

City of Fort Lauderdale

Jeffrey A. Modarelli, City Clerk

By: _____
Dean J. Trantalis, Mayor

By: _____
Lee R. Feldman, City Manager

Approved as to form:

Assistant City Attorney

WITNESSES:

Nova Southeastern University, Inc.

Print Name:

By: _____
George L. Hanbury II
President and Chief Executive Officer

Print Name:

ATTEST:

(Corporate Seal)

Samuel F. Morrison
Secretary

STATE OF FLORIDA:
COUNTY OF BROWARD:

The foregoing instrument was acknowledged before me this ____ day of _____, 2018, by George L. Hanbury II as President and Chief Executive 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: _____