

**CITY OF FORT LAUDERDALE
FY 2020 NOT FOR PROFIT GRANT PARTICIPATION AGREEMENT**

THIS CITY OF FORT LAUDERDALE FY 2020 NOT FOR PROFIT GRANT PARTICIPATION AGREEMENT, ("Agreement"), made and entered into this ____ day of _____, 2020 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 Fort Lauderdale Historical Society, Inc. a non-profit corporation whose principal place of business is 219 SW 2nd Ave, Fort Lauderdale, FL 33301, ("Participant" or "Organization" or "Contractor").

WHEREAS, the purpose of this Agreement is for Participant to contribute to the operations of the Fort Lauderdale Historical Society that was established in 1962 with the intent to enhance heritage in the region and benefit the City of Fort Lauderdale, its residents and visitors; and

WHEREAS, the City is providing funds to the Participant's program to help serve a municipal public purpose by acting in an integral position in the educational, cultural and historical life of the City of Fort Lauderdale and to serve as an important resource as a heritage tourist destination within the Riverwalk Arts and Entertainment District; and

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

I. SCOPE OF SERVICES AND USE OF FUNDS

A. The Participant shall use funds provided by the City pursuant to this Agreement to Act as a historic preservation research facility for the general public who are preparing Certificates of Appropriateness applications or Historic Designation applications for the City of Fort Lauderdale Historic Preservation Board or City of Fort Lauderdale staff administrative review, or to conduct research related to a property that is designated as a Historic Landmark, Historic Landmark Site, Archaeological Site, or a property located in a locally designated historic district.

B. The funding will be used to conduct research related to historic preservation, the designation of historic districts or historic landmarks, or for the preparation of Certificate of Appropriateness Applications for submission to the City. Any inquiries requiring technical expertise related to historic preservation or pertaining to the application process for the Historic Preservation Board shall be forwarded to the Director of the Department of Sustainable Development or his or her designee; and

C. The funding will be used to provide information that addresses requests by the City Commission, Historic Preservation Board, or City staff regarding matters related

to historic preservation. Information is to be provided in the format requested by the Director of the Department of Sustainable Development or his or her designee.

D. The funding will be used to provide access to research materials and archives held by the Participant to a designated City Staff person who shall be trained by the Participant in their standard operating procedures on accessing research materials and archives.

E. Allow use of reports, reference material, photographs, maps, graphics, and any other documentation obtained through the archives of the Participant by the City in the assembly of research reports, historic designation reports, and staff reports, so long as appropriate reference by City to the Participant and other parties is provided.

F. Distribution of Funds

The funds will be distributed based upon the Participant providing supporting receipts and invoices to the City dated on or before December 1st; March 1st; June 1st; and September 1st of each year outlining the activities set forth in Section I. of this Agreement. Following the receipt and approval of supporting invoices, funds will be distributed through quarterly payments. The City shall not pay for any services that are not included in the above scope of services or that are not directly related to applications for Historic Designation or Certificates of Appropriateness that will be or are submitted to the City of Fort Lauderdale.

The Participant shall not use City grant funds 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

G. Audit

The City 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. If the Florida public records law is determined by the City to be applicable to the Participant's records, the Participant shall comply with all requirements thereof; 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. Any funds not expended during the term of this agreement for the services authorized in this Agreement, shall be automatically returned by Participant to the City.

II. TERM AND TIME OF PERFORMANCE

The term of this Agreement is from October 1, 2019, nunc pro tunc through and until September 30, 2022 subject to and conditioned on the City's annual budget appropriation to fund this Agreement and the availability of funds.

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

III. FINANCIAL REPORTING

Within ninety (90) days after the close of the Organization's fiscal year, the Organization shall submit to the City a financial statement and summary report, prepared in accordance with generally accepted accounting principles, accounting for the funds expended pursuant to this Agreement and reporting upon the manner in which they were expended. The financial statement and summary report shall be certified by a Certified Public Accountant. The financial statement and summary report shall be, directed to the City as follows:

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

With a Copy to:

Anthony Fajardo
Director of the Department of Sustainable Development
700 NW 19th Avenue
Fort Lauderdale, Florida 33311

IV. PAYMENT

It is expressly agreed and understood that the total amount to be paid by the City pursuant to this Agreement shall not exceed \$85,000.00 per year.

V. NOTICES

Notices required by this Agreement shall be in writing and delivered via mail (postage prepaid), commercial courier, or personal delivery. 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 as follows:

City

Chris Lagerbloom, City Manager
City of Fort Lauderdale
100 North Andrews Avenue
Fort Lauderdale, Florida 33301

Participant

Patricia Zeiler
Fort Lauderdale Historical Society
219 SW 2nd Avenue
Fort Lauderdale, Florida 33301

With a Copy to:

Anthony Fajardo
Director of the Department of Sustainable Development
700 NW 19th Avenue
Fort Lauderdale, Florida 33311

With a Copy to:

Alain E. Boileau, City Attorney
City of Fort Lauderdale
100 North Andrews Avenue
Fort Lauderdale, Florida 33301

VI. GENERAL CONDITIONS

A. Independent Contractor

Nothing contained in this Agreement is intended to, or shall it be construed in any manner as creating or establishing a 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 Worker's Compensation Insurance, as the Participant is an independent contractor.

B. Hold Harmless

Participant shall protect, defend, 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 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 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. City reserves the right to select counsel of its own choosing.

C. Amendments

This Agreement may be amended subject to City Commission approval, only by a written Amendment executed by both the City Manager and a duly authorized representative of the Participant.

The City may in its discretion, amend this Agreement to conform with federal, state, or local governmental guidelines, policies, availability of funds, or for other reasons. Participant agrees to execute and comply with any written amendments that are done to conform with federal, state or local government guidelines, or availability of funds.

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

Contractor shall:

1. Keep and maintain public records required by the City 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 (2019), 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 contract term and following completion of the contract if the Contractor does not transfer the records to the City.

4. 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.

E. Default

- a. It shall constitute an "event of default" if 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 are found to be inaccurate, untrue or breached.
- b. 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 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 and the City shall not pay any remaining funds to Participant under this Agreement.

F. 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.

G. Non-Discrimination

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, age, disability, sexual orientation, gender, gender identity, gender expression, or marital status or any other protected classification as defined by applicable law.

- 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.
- 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 immediately 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.

H. Scrutinized Companies

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 (2019), 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 (2019), 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 (2019), 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 (2019), 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 (2019), as may be amended or revised.

I. Compliance with the Law

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

J. 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 Contractor, at its 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 Contractor. The Contractor shall provide the City a certificate of insurance evidencing such coverage. The Contractor's insurance coverage shall be primary insurance for all applicable policies. The limits of coverage under each policy maintained by the Contractor shall not be interpreted as limiting the Contractor's liability and obligations under this Agreement. All insurance policies shall be through insurers authorized or eligible to write policies in the State of Florida and possess an A.M. Best rating of A-, VII or better, subject to approval by the City's Risk Manager.

The coverages, limits, and/or endorsements required herein protect the interests of the City, and these coverages, limits, and/or endorsements shall in no way be required to be relied upon by the Contractor for assessing the extent or determining appropriate types and limits of coverage to protect the Contractor against any loss exposures, 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 Contractor under this Agreement.

The following insurance policies and coverages are 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, a Florida municipal corporation, its officials, employees, and volunteers are to be covered as an additional insured 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 Contractor. The coverage shall contain no special limitation on the scope of protection afforded to the City, its officials, employees, and volunteers.

Insurance Certificate Requirements

- a. The Contractor 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 Contractor 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 Contractor 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 Contractor 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 the general liability policy.
- g. The title of the Agreement and/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 Contractor has the sole responsibility for 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 Contractor's expense.

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

The Contractor's insurance coverage shall be primary insurance as respects to the City, a Florida municipal corporation, its officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, a Florida municipal corporation, its officials, employees, or volunteers shall be non-contributory.

Any exclusion or provision in any insurance policy maintained by the Contractor that excludes coverage required in this Agreement shall be deemed 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, Contractor 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 Contractor's insurance policies.

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

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

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 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.

IX. 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.

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

Approved as to form:

Shari C. Wallen, Esq.
Assistant City Attorney

WITNESSES:

FORT LAUDERDALE HISTORICAL
SOCIETY, INC.

Print Name: _____

By: _____
Patricia Zeiler
Executive Director

Print Name: _____

(Corporate Seal)

STATE OF FLORIDA:
COUNTY OF BROWARD:

The foregoing instrument was acknowledged before me by means of ☐ physical presence
or ☐ online notarization, this ____ day of _____, 20__, by Patricia Zeiler as
Executive Director of the Fort Lauderdale Historical Society, Inc., a Florida not for profit
corporation.

(SEAL)

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

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

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