

**AGREEMENT
BETWEEN
BROWARD COUNTY
AND
CITY OF POMPANO BEACH
FOR
GRANT FUNDS TO FINANCE PLAYGROUND EQUIPMENT AT MCNAIR PARK**

This Agreement ("Agreement") between BROWARD COUNTY, a political subdivision of the State of Florida, whose address is 115 South Andrews Avenue, Fort Lauderdale 33301 ("County"), and the City of Pompano Beach, a Florida municipal corporation ("City"), is entered into and effective as of the date this Agreement is fully executed by the Parties ("Effective Date"). County and City are hereinafter referred to collectively as the "Parties," and individually referred to as a "Party."

RECITALS

The 2000 Broward County Safe Parks and Land Preservation Bond Program provides for funds that may be allocated and distributed to municipalities to benefit municipal parks and recreation systems within the geographic boundaries of Broward County ("Park Bond Program").

The Board of County Commissioners of Broward County, Florida ("Board"), at a regular commission meeting held on _____, approved the allocation and distribution of FIFTY EIGHT THOUSAND DOLLARS AND 00/100 CENTS (\$58,000.00) to the City from the Park Bond Program to help finance playground equipment at McNair Park in the City of Pompano Beach, Florida.

The Parties desire to enter this Agreement for the purpose of allocating and disbursing the Grant Funds in accordance with the terms hereunder.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises and conditions contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Recitals.** The recitals set forth above are true, accurate, and fully incorporated by reference herein.
2. **Description of Property.** City is the owner of McNair Park in the City of Pompano Beach, Florida, as more particularly described in **Exhibit A**, attached hereto and made a part hereof ("Property").

3. **Term.** The term of this Agreement shall be effective for three (3) years commencing on the Effective Date ("Initial Term"). The Parties shall have the option to renew the Agreement upon the same terms and conditions, for one (1) additional six (6) month term ("Renewal Term"). The Renewal Term option shall be exercised by City sending written notice to County, at least thirty (30) calendar days before the expiration of the Initial Term, and County, through its Contract Administrator (as defined herein), acknowledging the Renewal Term. The Initial Term, and the Renewal Term if exercised, are collectively referred to herein as the "Term."

4. **Grant Funds.**

4.1 County shall pay the City, in accordance with Section 4.6, an amount up to, but not exceeding, FIFTY EIGHT THOUSAND DOLLARS AND 00/100 CENTS (\$58,000.00) from the Park Bond Program (the "Grant Funds").

4.2 City shall comply with the requirements of the Park Bond Program identified in **Exhibit B** ("Bond Requirements"). City shall use the Grant Funds to fund playground equipment at the Property ("Funded Items"), as specified in **Exhibits B and B-1**. The Contract Administrator may approve changes to the Funded Items listed for the Property in **Exhibit B-1**, as long as the total amount of Grant Funds is not exceeded.

4.3 City shall not use Grant Funds for (i) architectural or engineering costs exceeding twelve percent (12%) of the Grant Funds; (ii) the City's administrative costs in overseeing or managing the Property; and (iii) recreation programming or operational costs.

4.4 City shall dedicate the Funded Items, when completed, for public recreational uses for a minimum of twenty-five (25) years ("Dedication Period"). City shall record such dedication, in the form attached hereto as **Exhibit C**, in the Public Records of Broward County, Florida, pursuant to Section 28.222, Florida Statutes.

4.5 If the City ceases to use the Funded Items for public recreational uses during the Dedication Period, County shall give a written demand to City for repayment of all Grant Funds. City shall repay all Grant Funds to County as specified in Section 9.

4.6 **Billing and Payments.**

4.6.1 City shall submit to County a monthly invoice, certified by an authorized City official, to be reimbursed for the actual costs of the Funded Items ("Invoice(s)"). An Invoice may only be submitted after the work reflected on such Invoice has been completed. Invoices must be submitted with an original Invoice plus a copy within fifteen (15) days of the end of the month, except the final

Invoice must be submitted within sixty (60) days after the expiration or earlier termination of this Agreement.

4.6.2 Invoices shall designate the nature of the work performed and, as applicable, the personnel, hours, tasks, or any other details requested by the Contract Administrator. Additionally, the documentation required in **Exhibit B** must accompany every Invoice.

4.6.3 County shall pay the City via wire transfer within thirty (30) calendar days after receiving an Invoice. Payment may be withheld if the City fails to comply with a term, condition, or requirement of this Agreement. County shall reject an improper Invoice and provide written notice to City regarding the necessary corrective action within thirty (30) calendar days after receiving the Invoice.

4.6.4 County may withhold or recoup Grant Funds for (i) fraud or misrepresentation in connection with this Agreement; (ii) incomplete or defective construction of all or a portion of the Funded Items, which has not been remedied or resolved to the Contract Administrator's satisfaction; or (iii) noncompliance with the Bond Requirements. County shall provide written notice to City explaining the claim for withholding or recouping the Grant Funds and detailing the necessary corrective action. City shall have thirty (30) calendar days to cure such claim, to the extent such claim is curable. Any Grant Funds withheld under this Section 4.6.4 shall not be subject to payment of interest by County.

5. **Indemnification.** To the extent permitted by law, and without either Party waiving its sovereign immunity or any limits established by Section 768.28, Florida Statutes, City shall indemnify, hold harmless and defend County and County's current and former officers, agents, servants, and employees ("collectively and individually "Indemnified Party") from and against any and all claims, actions, damages, liabilities, and expenditures, including attorneys' fees and court costs, in connection with any property damage or personal injury arising from, relating to, or in connection with this Agreement (collectively, a "Claim"). In the event any Claim is brought against an Indemnified Party, City shall, upon written notice from County, defend each Indemnified Party against each such Claim by counsel satisfactory to County or, at County's option, pay for an attorney selected by the County Attorney to defend the Indemnified Party.

6. **Insurance.** City is a state agency as defined by Section 768.28, Florida Statutes, and City shall furnish the Contract Administrator with written verification of liability protection in accordance with Florida law prior to final execution of this Agreement.

7. **Termination.** County may terminate this Agreement if City has not corrected a breach within thirty (30) calendar days after receiving written notice from

County identifying said breach. For the purposes of this Agreement, "breach" as used in the foregoing sentence shall include, but is not limited to, the negligent or intentional submission of false or incorrect Invoices, failure to suitably perform or complete the Funded Items, abandonment or discontinuance of the Funded Items, misuse of Grant Funds, fraud or misrepresentation in connection with this Agreement, or noncompliance with the Bond Requirements identified in **Exhibit B**. Notice of termination shall be provided in accordance with the "Notices" Section of this Agreement.

8. **Financial Statements.**

8.1 City shall annually provide to County the "Single Audit Report" prepared by an independent certified public accountant showing that there are sufficient and acceptable internal controls over the administration of the City's grants. The Single Audit Report will encompass the controls over grants in general without reference to any specific grant award. The Single Audit Report shall be provided to County within forty-five (45) calendar days after it is received by City.

8.2 **Schedule.**

8.2.1 City shall provide, within one hundred twenty (120) calendar days after the expiration or earlier termination of this Agreement, the Contract Administrator with a schedule of revenues and expenditures accounting for the Funded Items during all of the City's fiscal years for which Grant Funds were provided ("Schedule"). The Schedule shall include (i) all revenues relating to the Funded Items classified by the source of the revenues, and (ii) all expenditures relating to the Funded Items classified by the type of expenditures.

8.2.2 The Schedule shall be prepared by the City's Finance Director, in a form acceptable to the County Auditor. A transmittal letter, signed by the City's Finance Director, must accompany the Schedule and shall include: (i) the statement, "No Grant Funds, including interest earned on such funds, are due back to the County" or, a listing of Grant Funds, including interest earned on such funds, which are due back to County; and (ii) an opinion or finding as to whether the Grant Funds received by City have been expended in accordance with this Agreement.

8.2.3 County may request, in writing, corrections to the Schedule. City shall make such corrections and submit the corrected Schedule to County within sixty (60) calendar days after the receipt of County's request.

8.2.4 In the event City fails to provide the Schedule within the

timeframe specified in Section 8.1, County may request, in writing, repayment of all or any portion of the Grant Funds.

- 8.3 Failure of City to meet the financial reporting requirements of Section 8 shall result in the suspension of any payment due under this Agreement or any other grant agreement in effect, and disqualify City from obtaining future grant awards until the Single Audit Report or Schedule is received and accepted by County.
- 8.4 City shall repay any and all Grant Funds not used in strict compliance with this Agreement.

9. **Repayment or Recoupment.** If County demands repayment or recoupment of Grant Funds pursuant to Sections 4.5, 4.6.4, 8.2.4, or 8.4, City shall remit said funds to County within sixty (60) calendar days after receiving written notice from County regarding repayment or recoupment. If the Grant Funds are not repaid within the sixty-day period, County may (i) deduct the amount of the unrepaid Grant Funds from any payments owed by the County to the City under any contract, agreement, or County program; and (2) deny any pending or future requests from the City for funding under any County program.

10. **Audit Rights and Retention of Records.**

- 10.1 County shall have the right to audit the books, records, and accounts of City, its agents, contractors, subcontractors, and suppliers ("Agents") that are related to this Agreement. City and its Agents shall keep such books, records, and accounts as may be necessary to record complete and correct entries related to the Agreement and performance thereunder. All books, records, and accounts of City and its Agents shall be kept in written form, or in a form capable of conversion into written form within a reasonable time, and upon request to do so, City or its Agents, as applicable, shall make same available in written form at no cost to County.
- 10.2 City and its Agents shall preserve and make available, at reasonable times within Broward County, for examination and audit by County, all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for a minimum period of three (3) years after expiration or earlier termination of this Agreement or until resolution of any audit findings, whichever is longer ("Audit Period"). County audits and inspections pursuant to this Section may be performed by any County representative (including any outside representative engaged by County). County reserves the right to conduct such audit or review at City's place of business, if deemed appropriate by County, with seventy-two (72) hours advance notice.

10.3 Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for County's disallowance and recovery of any payment upon such entry. If an audit or inspection in accordance with Section 10 discloses overpricing or overcharges to County of any nature by City in excess of five percent (5%) of the total contract billings reviewed by County, the reasonable actual cost of the County's audit shall be reimbursed to the County by the City in addition to making adjustments for the overcharges. Any adjustments or payments due as a result of such audit or inspection shall be made within thirty (30) calendar days from presentation of County's findings to City.

10.4 City shall ensure that the requirements of Section 10 are included in all agreements with its Agents that are related to this Agreement.

11. **Truth-in-Negotiation Representation.** The payment of Grant Funds to City under this Agreement is based upon representations supplied to County by City, and City certifies that the information supplied, including without limitation in the negotiation of this Agreement, is accurate, complete, and current at the time of contracting. County shall be entitled to recover any damages it incurs to the extent such representation is untrue.

12. **Third Party Beneficiaries.** The Parties do not intend to directly or substantially benefit a third party by this Agreement. Therefore, the Parties acknowledge that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a right or claim against either of them based upon this Agreement.

13. **Notices.** For a notice to a Party to be effective under this Agreement, notice must be sent via U.S. first-class mail with a contemporaneous copy via e-mail to the addresses listed below and shall be effective upon mailing. The addresses for notice shall remain as set forth herein unless and until changed by providing notice of such change in accordance with the provisions of this Section.

NOTICE TO COUNTY:

County Administrator
Broward County Governmental Center, Room 409
115 South Andrews Avenue
Fort Lauderdale, Florida 33301
Email Address: bhenry@broward.org

NOTICE TO CITY:

Recreation Programs Administrator
1801 NE 6 Street
Pompano Beach, FL 33060

Email Address: mark.beaudreau@copbfl.com

14. **Assignment and Performance.** Neither this Agreement nor any right or interest herein may be assigned, transferred, or encumbered without the prior written consent of the other Party. For County, such written consent may only be given by action of its Board.

15. **Independent Contractor.** City is an independent contractor under this Agreement. In taking any action or performing any obligation under this Agreement, neither City nor its Agents shall act as officers, employees, or agents of County. No partnership, joint venture, or other joint relationship is created hereby. City shall not have the right to bind County to any obligation not expressly undertaken by County under this Agreement.

16. **EEO Compliance.** City shall not unlawfully discriminate on the basis of race, color, sex, religion, national origin, disability, age, marital status, political affiliation, sexual orientation, pregnancy, or gender identity and expression in the performance of this Agreement, the solicitation for or purchase of goods or services relating to this Agreement, or in subcontracting work relating to this Agreement, and shall not otherwise unlawfully discriminate in violation of Chapter 16½, Broward County Code of Ordinances. City shall comply with the Americans with Disabilities Act in the course of providing any services funded by County. City shall include the foregoing or similar language in all agreements with its Agents performing work or services related to this Agreement. Failure to comply with this Section shall constitute a material breach of this Agreement, which shall permit County to terminate this Agreement or to exercise any other remedy provided under this Agreement, Broward County Code of Ordinances, Broward County Administrative Code, or other applicable law, all such remedies being cumulative.

17. **Materiality and Waiver of Breach.** Each requirement, duty, and obligation set forth herein was bargained for at arms-length and is agreed to by the Parties. Each requirement, duty, and obligation set forth herein is substantial and important to the formation of this Agreement, and each is, therefore, a material term hereof. 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. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

18. **Compliance with Laws.** City shall comply with all applicable permits, regulations, ordinances, rules and laws of the State of Florida, the United States, any political subdivision, or agency of either in performing its duties, responsibilities, and obligations related to this Agreement.

19. **Severability.** In the event that any part of this Agreement is found to be invalid by a court of competent jurisdiction, that part shall be severed from this

Agreement and the balance of this Agreement shall remain in full force and effect unless both Parties to elect to terminate the Agreement. The election to terminate this Agreement pursuant to this Section shall be made within ten (10) business days after the court's finding becomes final.

20. **Joint Preparation.** This Agreement has been jointly prepared by the Parties hereto, and shall not be construed more strictly against either Party.

21. **Interpretation.** The headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement. All personal pronouns used in this Agreement shall include the other gender, and the singular shall include the plural, and vice versa, unless the context otherwise requires. Terms such as "herein," "hereof," "hereunder," and "hereinafter" refer to this Agreement as a whole and not to any particular sentence, paragraph, or section where they appear, unless the context otherwise requires. Whenever reference is made to a Section of this Agreement, such reference is to the Section as a whole, including all of the subsections of such Section, unless the reference is made to a particular subsection or subparagraph of such Section.

22. **Priority of Provisions.** If there is a conflict or inconsistency between any term, statement, requirement, or provision of any document or exhibit attached hereto or referenced or incorporated herein and any provisions of any Sections of this Agreement, the provisions contained in the Sections shall prevail and be given effect.

23. **Law, Jurisdiction, Venue, Waiver of Jury Trial.** This Agreement shall be interpreted and construed in accordance with and governed by the laws of the state of Florida. The Parties agree that the exclusive venue for any lawsuit arising from, related to, or in connection with this Agreement shall be in the state courts of the Seventeenth Judicial Circuit in and for Broward County, Florida. If any claim arising from, related to, or in connection with this Agreement must be litigated in federal court, the Parties agree that the exclusive venue for any such lawsuit shall be in the United States District Court or United States Bankruptcy Court for the Southern District of Florida. **BY ENTERING INTO THIS AGREEMENT, THE PARTIES HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT. IF A PARTY FAILS TO WITHDRAW A REQUEST FOR A JURY TRIAL IN A LAWSUIT ARISING OUT OF THIS AGREEMENT AFTER WRITTEN NOTICE BY THE OTHER PARTY OF VIOLATION OF THIS SECTION, THE PARTY MAKING THE REQUEST FOR JURY TRIAL SHALL BE LIABLE FOR THE REASONABLE ATTORNEYS' FEES AND COSTS OF THE OTHER PARTY IN CONTESTING THE REQUEST FOR JURY TRIAL, AND SUCH AMOUNTS SHALL BE AWARDED BY THE COURT IN ADJUDICATING THE MOTION.**

24. **Amendments.** No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed by the Parties hereto, with the same formality and of equal dignity herewith.

25. **Prior Agreements.** This Agreement represents the final and complete understanding of the Parties and incorporates or supersedes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein. The Parties agree that there is no commitment, agreement, or understanding concerning the subject matter of this Agreement that is not contained in this written document. Accordingly, the Parties agree that no deviation from the terms hereof shall be predicated upon any prior representation or agreement, whether oral or written.

26. **Payable Interest.**

26.1 County shall not be liable to pay any interest, whether as prejudgment interest or for any other purpose, to City. City waives, rejects, disclaims and surrenders any and all entitlement it has or may have to receive interest in connection with a dispute or claim arising from, related to, or in connection with this Agreement. This paragraph shall not apply to any claim for interest, including for post-judgment interest, if such application would be contrary to applicable law.

26.2 If the preceding subsection is determined to be invalid or unenforceable by a court of competent jurisdiction, the annual rate of interest payable by County under this Agreement, whether as prejudgment interest or for any other purpose, shall be, to the full extent permissible under applicable law, one quarter of one percent (0.25%) simple interest, uncompounded.

27. **Conflicts.** City agrees that neither it nor its employees will have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with City's loyal and conscientious exercise of the judgment and care required to perform under this Agreement. City further agrees that none of its officers or employees shall, during the Term of this Agreement, serve as an expert witness against County in any legal or administrative proceeding in which he, she, or City is not a party, unless compelled by court process. Further, such persons shall not give sworn testimony or issue a report or writing, as an expression of his or her expert opinion, which is adverse or prejudicial to the interests of County in connection with any such pending or threatened legal or administrative proceeding unless compelled by court process. The limitations of this Section shall not preclude City or any person from representing themselves, including giving expert testimony in support thereof, in any administrative or legal proceeding. City agrees that each of its contracts with Agents performing under this Agreement shall contain substantively identical language to ensure that each Agent and its officers and employees meet the obligations contained in this Section.

28. **Incorporation by Reference.** Attached **Exhibits A, B, B-1, C, D, and E** are incorporated into and made a part of this Agreement.

29. **Contract Administrator.** The "Contract Administrator," as referenced herein, shall be the County Administrator or his or her designee, as designated in writing. The County Administrator is defined as the administrative head of County pursuant to Sections 3.02 and 3.03 of the Broward County Charter.

30. **Representation of Authority.** Each individual executing this Agreement on behalf of a Party hereto hereby represents and warrants that he or she is, on the date he or she signs this Agreement, duly authorized by all necessary and appropriate action to execute this Agreement on behalf of such Party and does so with full legal authority.

31. **Counterparts.** This Agreement may be executed in counterparts. Each executed counterpart will constitute an original document, and all of them, together, will constitute one and the same agreement. It shall not be necessary for every Party to sign each counterpart but only that each Party shall sign at least one such counterpart.

32. **Survival.** The following Sections and obligations shall survive the expiration or earlier termination of this Agreement: (i) Sections 4.5, 4.6.4, 8.2.4, 8.4, and 9 in connection with repayment or recoupment of Grant Funds; (ii) Section 5 pertaining to indemnification; (iii) Section 8.2 with regards to City providing a Schedule to County; and (iv) Section 10 in relation to County conducting audits during the Audit Period.

[The Remainder of this Page is Intentionally Left Blank]

IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement: County, signing by and through its County Administrator, authorized to execute same by Board action on the _____ day of _____, 2018, and City, signing by and through its _____, duly authorized to execute same.

COUNTY

WITNESSES:

BROWARD COUNTY, by and through its County Administrator

Signature

By: _____

_____ day of _____, 2018

Print Name of Witness above

Signature

Approved as to form by
Andrew J. Meyers
Broward County Attorney
Governmental Center, Suite 423
115 South Andrews Avenue
Fort Lauderdale, Florida 33301
Telephone: (954) 357-7600
Telecopier: (954) 357-7641

Print Name of Witness above

Insurance requirements approved by
Broward County
Risk Management Division:

By: _____
Irma Qureshi (Date)
Assistant County Attorney

By: _____
Risk Manager (Date)

By: _____
Annika E. Ashton (Date)
Assistant County Attorney

IQ/

1/10/18

Park Grant Agreement – Playground Equipment at McNair Park

AGREEMENT BETWEEN BROWARD COUNTY AND CITY OF POMPANO BEACH FOR ALLOCATION AND DISTRIBUTION OF GRANT FUNDS TO FINANCE PLAYGROUND EQUIPMENT AT MCNAIR PARK.

"CITY":

Witnesses:

CITY OF POMPANO BEACH

By: _____
LAMAR FISHER, MAYOR

By: _____
GREGORY P. HARRISON, CITY

MANAGER

Attest:

ASCELETA HAMMOND, CITY CLERK

(SEAL)

Approved As To Form:

MARK E. BERMAN, CITY ATTORNEY

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this _____ day of _____, 2018 by **LAMAR FISHER** as Mayor, **GREGORY P. HARRISON** as City Manager and **ASCELETA HAMMOND** as City Clerk of the City of Pompano Beach, Florida, a municipal corporation, on behalf of the municipal corporation, who are personally known to me.

NOTARY'S SEAL:

NOTARY PUBLIC, STATE OF FLORIDA

(Name of Acknowledger Typed, Printed or Stamped)

Commission Number