

## **AGREEMENT FOR ADVANCEMENT OF FUNDS**

THIS AGREEMENT made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2015, by and between the **CITY OF FORT PIERCE** ("CITY"), a municipal corporation, hereinafter referred to as "**CITY**" and the **MARTIN LUTHER KING, JR. COMMEMORATIVE COMMITTEE, INC. OF SAINT LUCIE COUNTY, FLORIDA**, a Florida not for profit corporation, hereinafter referred to as the "**RECIPIENT**".

### **WITNESSTH**

**WHEREAS**, the **MARTIN LUTHER KING, JR. COMMEMORATIVE COMMITTEE, INC. OF SAINT LUCIE COUNTY, FLORIDA**, a not for profit corporation, located at 800 Virginia Avenue, Suite 10, Fort Pierce Florida 34950, has received a State of Florida Grant titled: "**LINCOLN THEATER FAÇADE RENOVATION & THEATER MARQUEE ACQUISITION AND INSTALLATION**" (Grant No.: 15-9904), for rehabilitating the property located at **1132 Avenue D Street, Ft. Pierce, Fl. (Parcel ID 2409-501-0303-000-3)** (hereinafter "**Theater**"), to restore the Theater property for the benefit of the citizens of the City of Fort Pierce; and

**WHEREAS**, the State of Florida and **RECIPIENT** have entered into a grant agreement for rehabilitation funding for the Theater, said Grant Agreement being attached hereto as **Exhibit "A"**

**WHEREAS**, the **CITY**, on February \_\_\_\_, 2015 has approved entering into an Agreement with **RECIPIENT** for advancing the funds to **RECIPIENT** for the purpose of facilitating the orderly rehabilitation of the Theater, said funds to be paid by the **RECIPIENT** upon receipt of grant funds from the State, the approvals appearing in the minutes of said meetings, subject to the provisions of this Agreement; and

WHEREAS, the RECIPIENT has agreed to fully reimburse the CITY for all funds advanced upon receipt of State of Florida grant funds.

WHEREAS, the CITY has determined that a valid public purpose will be served, and it is in the public interest of Fort Pierce to support neighborhood rehabilitation;

WHEREAS, MARTIN LUTHER KING, JR. COMMEMORATIVE COMMITTEE, INC. OF SAINT LUCIE COUNTY, FLORIDA, a Florida non profit 501 C (3) organization registration number, (EIN #65-0134582), warrants and represents it is currently the legal owner of 1132 Avenue D Street, Ft. Pierce, Fl. further described as Parcel Identification Number 2409-501-0303-000-3 in the records of the St. Lucie County Tax Assessor and possesses all current permits and occupational licenses to allow them to rehabilitate 1132 Avenue D Street, and possesses legal authority to enter into this Agreement; and

NOW, THEREFORE, the parties do hereby agree as follows:

1. The specific grant is to be phased, with the first phase covered by this Agreement specifically including façade renovation in the amount of \$ 50,000 (fifty thousand dollars) which includes the intended or anticipated uses for the Grant funds by RECIPIENTs are set forth in Exhibit "A" to this Agreement.
2. Subsequent phased advances to RECIPIENT may proceed upon repayment of the previous advances
3. RECIPIENT agrees to keep all necessary books and records, including property, personnel and financial records, in connection with its grant agreement, and shall further document all transactions so that all expenditures may be properly audited upon request and shall retain such records for a period of no less than 7 years.
4. RECIPIENT expressly agrees that funds advanced shall not be used for any purpose outside the scope of its Grant Agreement for the rehabilitation required by the Grant Agreement.

5. In exchange for the advance of funds by CITY for the purposes described herein RECIPIENT agrees as follows:

- A) To make available to CITY staff or the CITY's authorized representative copies of all construction contracts entered into by RECIPIENT, or its agents on its behalf, related to the work performed under the Grant Agreement terms in Exhibit "A". RECIPIENT agrees that CITY or any authorized representative may have access to and the right to examine all records, books, papers, receipts, or documents related to funds advanced under this Agreement.
- B) To provide CITY staff or the CITY's authorized representative access to all receipts of payments made and all invoices related to the work to be performed under the Grant Agreement terms in Exhibit "A"
- C) To perform all work in conformance with federal, state, and local laws and to obtain all necessary approvals and permits and to comply with the terms and conditions of all such approvals and permits..
- D) To promptly reimburse CITY for all previously advance funds within fifteen (15) days of receipt of payment by the State of Florida.
- E) To submit written progress and status reports to CITY staff with copies to the City Manager on no less than a quarterly basis, or more frequently if requested, and other reports as may be reasonably required by CITY, including itemized or detailed lists of all expenditures.
- F) To include in all publications, press releases, media productions and exhibit graphics produced by the RECIPIENT shall include the following statement:

**"This renovation made possible by the support and partnership of the City of Fort Pierce"**

6. Upon request by CITY the RECIPIENT shall submit to the CITY an unqualified audited statement, prepared and signed by an independent certified public accountant, which reviews and identifies the source and expenditures of any advanced funds

7. In the event that the audit of the financial records reveals that the advanced funds were not used for the purpose set forth in this Agreement or the Grant Agreement, then the CITY

may require RECIPIENT to return all unused funds and reimburse the CITYs for improperly used funds.

8. CITY shall not be responsible or liable for any debts, actions, obligations, negligence or liabilities committed by or incurred by the RECIPIENT, its staff or clientele.

9. RECIPIENTS' failure to repay City any advanced amounts or portions of advanced amounts from receipt of funds from the State grant disbursements as provided herein shall constitute breach.

RECIPIENTS' failure to abide by the terms of this Agreement or the terms of the Grant Agreement, Exhibit "A", shall constitute breach.

10. RECIPIENT hereby agrees to defend, hold harmless, and indemnify the CITY, its' agents, servants, and employees from and against any and all claims, liabilities for debts, losses obligations, or causes of action which may arise from any negligent or intentional misconduct, act or omission of the RECIPIENT, its agents, servants, or employees in the performance of any services contemplated under this agreement. No payment, however, final or otherwise shall operate to release the RECIPIENT from any obligations under this Agreement.

11. Nothing contained in this Agreement is intended to, nor shall it be construed in any manner to create or establish an employer-employee relationship, joint venture, partnership, or any other legal relationship between the parties, nor shall any employee or agent of the RECIPIENT by virtue of this Agreement be an employee of the CITY for any purpose whatsoever, nor shall any employee or agent of the RECIPIENT be entitled to any of the rights, privileges or benefits of CITY's employees. The RECIPIENT shall be deemed at all times an independent contractor and shall be wholly responsible for the manner in which it performs the services required of it by the terms of this Agreement. The RECIPIENT assumes exclusively the

responsibility for the acts of its employees or agents as they relate to the services to be provided during the course and scope of their employment. Under no circumstances shall the CITY be deemed a contractor, employer or project owner for purposes of Fla. Stat. § 440.10.

12. The RECIPIENT shall maintain at all times a general policy or policies of insurance so as to insure the work in progress, including coverage for public liability, fire, flood, workers compensation and comprehensive loss, such policy or policies to be underwritten in a sum satisfactory to the CITY. RECIPIENT may be required to submit to the CITY copies of certificates of such coverage prior to conveyance of the sums herein provided for.

13. The obligations of the CITY under this Agreement are subject to the availability of funds lawfully appropriated for its purposes by the CITY, as well as RECIPIENT's compliance with any conditions and terms imposed herein.

14. The RECIPIENT warrants and represents that it possesses the authority to enter into this Agreement, that there are no restrictions or prohibitions contained in any Article of Incorporation or By-laws against entering into this Agreement, and that it possesses the authority and ability to undertake all obligations required of it in this Agreement. A certified copy of the corporate resolution of the directors of **MARTIN LUTHER KING, JR. COMMEMORATIVE COMMITTEE, INC. OF SAINT LUCIE COUNTY, FLORIDA**, approving this Agreement and authorizing its execution, is to be attached hereto and made a part hereof.

15. The CITY reserves the right to terminate this Agreement or to reduce the funding advance provided for herein, or to obtain reimbursement of monies previously paid if the RECIPIENT: Fails to file required reports or provide required documentation; or

- a. Materially fails to comply with any provision of the grant agreement this Agreement; or

- b. Expends funds under this Agreement for activities, services, or items outside the scope of what is provided for herein.

In the event CITY terminates this Agreement, the RECIPIENT shall be required to return all advanced funds not used as of the date of termination. Termination shall not release RECIPIENT from its obligation to reimburse the City for funds advanced.

16. Any notice, request, demand, or other communication required or permitted by this Agreement shall be made in writing and shall be provided by any of the following methods and to the following parties and locations:

1. Hand delivery
2. Mailed registered or certified mail, return receipt requested.

<b>CITY:</b>	<b>WITH COPIES TO:</b>
Libby Woodruff,	City Manager
Grants Administrator	P.O. Box 1480
P.O. Box 1480	Fort Pierce, FL 34954
Fort Pierce, FL 34954	

**RECIPIENT**

Name:	<b>MARTIN LUTHER KING, JR. COMMEMORATIVE COMMITTEE, INC. OF SAINT LUCIE COUNTY, FLORIDA, INC.</b>
Address:	PO Box 3173 Fort Pierce, FL 34948

17. This Agreement shall be governed by the laws of the State of Florida and venue shall be in St. Lucie County, Florida.

18. Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to be inserted herein and if through mistake or otherwise any such provision is not inserted or is not correctly inserted, then upon the application of either party this Agreement shall forthwith be physically amended to make such insertion or correction.

19. RECIPIENT warrants and represents that all of its employees are treated equally during employment without regard to race, creed, religion, color, age, sex, family status, national origin or handicap. RECIPIENT warrants and represents that is shall not deny assistance to exclude any person from participation any person or entity based on race, creed, religion, color, age, sex, family status, national origin or handicap.

20. RECIPIENT warrants that it will establish and adopt policies and safeguards to prohibit members, officers, and employees from using positions for a purpose that is or gives the appearance of being motivated by a desire for private gain, whether for themselves or those with whom they have business, family, or other ties.

21. RECIPIENT warrants and represents that all of its employees are treated equally during employment without regard to race, creed, religion, color, age, sex, family status, national origin or handicap. RECIPIENT warrants and represents that is shall not deny assistance to exclude any person from participation any person or entity based on race, creed, religion, color, age, sex, family status, national origin or handicap.

22. RECIPIENT warrants that it will establish and adopt policies and safeguards to prohibit members, officers, and employees from using positions for a purpose that is or gives the appearance of being motivated by a desire for private gain, whether for themselves or those with whom they have business, family, or other ties.

23. This Agreement incorporates and includes all prior negotiations, correspondence, conversations, agreements, and understandings applicable the matters contained herein and the parties agree that there are no commitments, agreements, or understandings concerning the subject matter in this Agreement that are not contained in this Agreement. Accordingly it is agreed that no deviation from the terms herein shall be allowed. Any modification or alteration of this Agreement shall be by written document executed with the formality and of equal dignity herewith.

24. Without the written consent of the CITY this Agreement is not assignable by RECIPIENT.

25. If any term or provision herein or the application thereof shall be held invalid or unenforceable as to any person or circumstance, then the application of such term or provision to other persons or circumstances shall not be affected, and every other term and provision of this Agreement shall be deemed valid and enforceable to the extent permitted by law.

IN WITNESS WHEREOF, the CITY and the RECIPIENT, have executed this Agreement as of the date first about written.

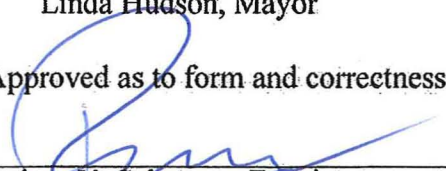
**CITY OF FORT PIERCE, FLORIDA**

Attestation:

By: \_\_\_\_\_  
Linda Hudson, Mayor

By: \_\_\_\_\_  
Linda Cox, City Clerk

Approved as to form and correctness:

  
\_\_\_\_\_  
Robert V. Schwerer, Esquire  
City Attorney

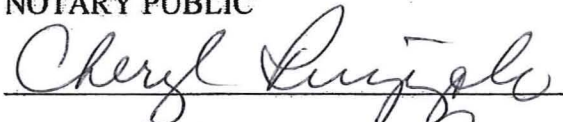
**RECIPIENT: MARTIN LUTHER KING, JR.  
COMMEMORATIVE COMMITTEE, INC.  
OF SAINT LUCIE COUNTY, FLORIDA,**

By:   
Ruth Davis, Second Vice President

**STATE OF FLORIDA  
COUNTY OF ST. LUCIE**

The foregoing instrument was acknowledged before me on this 27<sup>th</sup> day of JAN., 2015 by Ruth Davis, as Second vice President of the **MARTIN LUTHER KING, JR. COMMEMORATIVE COMMITTEE, INC. OF SAINT LUCIE COUNTY, FLORIDA**, has produced the following personally known as identification.

NOTARY PUBLIC

  
\_\_\_\_\_

Name: CHERYL RIZZOLO



My commission expires: \_\_\_\_\_