

**CITY OF ORLANDO
FUNDING AGREEMENT FOR FISCAL YEAR 2015 TO 2016
WITH THE HOLOCAUST MEMORIAL RESOURCE AND EDUCATION
CENTER OF FLORIDA**

THIS FUNDING AGREEMENT, (“Agreement”) made and entered into this ____ day of _____, 2014, by and between the **CITY OF ORLANDO, FLORIDA**, a municipal corporation organized and existing under the laws of the State of Florida, (“the City”), and **The Holocaust Memorial Resource and Education Center, Inc.** (“Holocaust Center”).

WITNESSETH THAT:

WHEREAS, the City has proposed to fund the Holocaust Center’s “UpStander: Stand Up to Bullying” instructional program to be implemented for students at all nine OCPS middle schools within the Orlando city limits and personnel to provide such services and programs as are set forth on **Exhibit “A”** attached hereto and incorporated herein by this reference; and

WHEREAS, the City has determined that there is a public need for such a program and that a valid public purpose in promoting a more respectful and tolerant school climate in city middle schools would be served by funding the program; and

WHEREAS, in order to serve the public need and in furtherance of the public purpose, the City has appropriated funds to be granted to the Holocaust Center for the UpStanders Program, and

WHEREAS, the parties mutually desire to enter into this Agreement whereby The Holocaust Center will receive and disburse the aforementioned funds of the City for the purpose of providing the program in accordance with the terms and conditions set forth herein; and

WHEREAS, the Holocaust Center will make available the necessary qualified and trained personnel, facilities, materials and supplies to provide the program set forth in this Agreement;

NOW, THEREFORE, in consideration of the premises and of the mutual covenants contained herein, and other good and valuable consideration, the parties hereby agree as follows:

1. **INCORPORATION OF PREAMBLE.** The preamble of this Agreement set forth above is true and correct and is incorporated herein by this reference as if fully set forth below.

2. **FUNDING; PERFORMANCE OF SERVICES.** The City plans to appropriate, for the period commencing December 1, 2014 and ending May 1, 2016, the total sum of one hundred thousand dollars (\$100,000.00) to be administered and disbursed by the Holocaust Center solely for implementing the UpStanders program as set forth herein (“Funds”). Funds for the initial program year (\$50,000) have been appropriated by the City. The Holocaust Center hereby agrees to provide the program in accordance with the terms and conditions set forth in this Agreement.

3. **PAYMENTS.** The City's contribution shall be made to the Holocaust Center in two (2) annual payments of fifty thousand dollars (\$50,000.00) (the "Funds") unless otherwise approved and authorized in writing by the Chief Administrative Officer and the Chief Financial Officer of the City, or their designees. All payments by the City shall be contingent upon: (a) receipt and approval by the City of the progress and financial reports specified in Paragraph 4 below; (b) inclusion of the audit provisions set forth in Paragraph 7 below in any sub-recipient agreements; and (c) compliance by the Holocaust Center with any and all requirements, terms and conditions contained in this Agreement, including the provision of the program by the Holocaust Center and (d) funding appropriation by the City for the second year of this Agreement. Contingent upon all requirements having been met, the first payment of fifty thousand dollars (\$50,000) will be disbursed on or about the 16th day of December, 2014 and, if funded, the second payment of fifty thousand dollars (\$50,000) will be made on or about the 1st day of December, 2015. Any Funds received by the Holocaust Center which are not expended by the Holocaust Center to provide or perform the program set forth herein during the term of the agreement, shall be repaid to the City, unless an extension of time for such expenditure is granted by the City's Director of Strategic Partnerships ("DSP") in writing.

4. **PROGRESS AND FINANCIAL REPORTING.** The Holocaust Center agrees to submit progress and financial reports on a semiannual basis to the DSP in form and content reasonably acceptable to the DSP in accordance with the schedule set forth on Exhibit "B" attached hereto and incorporated herein by this reference. At a minimum, subject to requests for additional information by the DSP, such progress reports shall include an evaluation of the program services and must indicate the number of students served. Moreover, the semiannual reports shall detail the program services provided during the period and shall identify expenditures including information on what was purchased and the amounts as well as any salary disbursements made with the Funds. A summative evaluation will be provided by January 15, 2017. Failure to comply with the requirement for submission of such reports in form and content acceptable to the DSP shall constitute grounds for termination of this Agreement and may result in the ineligibility of the Holocaust Center to receive future contributions or contracts from the City.

5. **NONDISCRIMINATION.** The Holocaust Center agrees that it shall not unlawfully discriminate in the provision of the UpStanders Program services. The Holocaust Center shall provide the program without regard to race, color, creed, sex, sexual orientation, gender identity, age, national origin, disability or marital status and in compliance with federal, state and local anti-discrimination laws. The Holocaust Center shall not use any portion of the Funds for religious instruction, worship, proselytizing, or any other unauthorized purpose.

6. **ACCOUNTING AND AUDIT.** If requested by the City in writing, the Holocaust Center will submit copies of any portions of its audited annual financial statements relating to the UpStanders Program to the City. All such records shall be open to inspection and audit by the City during normal business hours during the term of this Agreement. Additionally, the Holocaust Center will maintain its books and records related to the UpStanders Program provided utilizing the Funds, and the City will be entitled to audit such books and records, for a period of five (5) years from the date of the last payment under this Agreement. Any cost incurred by the Holocaust Center as a result of an audit shall be the sole responsibility of, and shall be borne by, the

Holocaust Center. In addition, should the Holocaust Center provide any or all of the Funds to sub-recipients, then, and in that event, the Holocaust Center shall include in its written agreements with such sub-recipients a requirement that records of the sub-recipient be open to inspection and audit by the City or the City's designee to the same extent as those of the Holocaust Center.

7. **TERMINATION.** This Agreement may be terminated by either party for any reason, upon providing the other party thirty (30) days prior written notice of its intent to terminate. The parties shall be responsible for its respective obligations under the Agreement through the date of termination. Said notice shall be delivered in the manner set forth in Paragraph 18 below. The termination of this Agreement shall not relieve the Holocaust Center from any obligations under this Agreement with respect to funds paid to the Holocaust Center prior to termination and City agrees that if this Agreement is so terminated, City shall pay the Holocaust Center for all costs incurred and non-cancellable obligations it has made for the UpStanders Program.

8. **INDEMNIFICATION.** Each party to this Agreement will be responsible for claims, losses, liabilities, damages, and expenses brought or asserted by non-parties to this Agreement arising out of each party's own performance or non-performance of its respective tasks, duties, and obligations that are the subject of this Agreement, and neither party will be responsible for claims, losses, liabilities, damages, and expenses brought or asserted by non-parties to this Agreement arising out of the other party's performance or non-performance of its respective tasks, duties, and obligations that are the subject of this Agreement. This recognition by the parties hereto is intended to be consistent with the State of Florida's waiver of sovereign immunity pursuant to section 768.28, Florida Statutes, and as interpreted by the Florida Supreme Court in Florida Dept. of Natural Resources v. Garcia, 753 So. 2d 72, 77 - 78 (Fla. 2000), and it does not alter said waiver nor extend the liability of the City party beyond the limits established in section 768.28, Florida Statutes.

In no event shall the Holocaust Center be responsible or liable for any loss, claim or damage arising out of the acts or omissions of the City or taken or made by any party at the direction of the City or its personnel.

Nothing in this Agreement shall be deemed a waiver of, or limitation of the City's sovereign immunity protections and limitations of liability pursuant to Florida law. Any indemnity or assumption of liability by the City hereunder shall be subject to the City's rights to sovereign immunity and any other limitations of liability provided the City pursuant to Florida law. In no event shall the City be responsible or liable for any loss, claim or damage arising out of the acts or omissions of the Holocaust Center or taken or made by any party at the direction of the Holocaust Center or its personnel.

9. **NO WAIVER.** Continued performance by either party after a default or violation of any of the terms, covenants or conditions herein shall not be deemed a waiver of any right to terminate this Agreement or elect any other remedy or action, nor shall it be construed or act as a waiver for any subsequent default.

10. **CONSTRUCTION; SEVERABILITY.** This Agreement shall be construed in accordance with the laws of the State of Florida. It is agreed to by the parties that if any covenant, condition or provision contained in this Agreement is held to be invalid by any court of competent

jurisdiction, such invalidity shall not affect the validity of any other covenants, conditions or provisions contained herein.

11. **NONASSIGNABILITY.** The Holocaust Center may not assign its rights or obligations under this Agreement without the prior written consent of the City's DSP, which assignment may be agreed to, denied, or conditioned in part or in whole as the DSP deems appropriate in her sole discretion. A successor to the Holocaust Center does not automatically have any rights to the Funds disbursed under this Agreement by its position as a successor. A successor to the Holocaust Center must receive prior approval from the DSP before it can receive Funds. Failure to comply with this section may result in immediate termination of this Agreement.

12. **THIRD PARTY BENEFICIARY.** This Agreement is solely for the benefit of the parties signing hereto and neither right, nor any cause of action shall accrue to or for the benefit of any third party.

13. **NO JOINT VENTURE.** It is mutually understood and agreed that nothing contained in this Agreement is intended to or shall be construed as creating, or shall in any way create or establish a relationship as partners or joint venturers between the parties hereto or constitute the Holocaust Center as the agent or representative of the City for any purpose or in any manner whatsoever.

14. **VENUE.** Exclusive venue in any action to construe or enforce the provisions of this Agreement shall be in the Circuit Court of and for Orange County, Florida and shall be governed by the laws of the State of Florida. The Holocaust Center agrees to notify the City in writing within ten (10) business days of the occurrence of any incident or action such as, but not limited to, lawsuits, injuries, or allegations of abuse or neglect filed against the Holocaust Center, related to the UpStanders Program services provided under this Agreement.

15. **CREDITS.** The Holocaust Center will give written credit to the City as a sponsor/financial supporter in all acknowledgements, brochures, catalogues, invitations, press releases, printed materials, and all other marketing, promotions and advertising related to the Services. The form and manner of such written credit shall be mutually agreed to by the parties, however it is understood that the Holocaust Center shall not be required to incur any costs or expenses for such credit. This provision may be waived by the DSP.

16. **INSURANCE.** The Holocaust Center will have in force during the term of this Agreement all insurance policies required by law. The parties hereto acknowledge that the Holocaust Center may be self-insured.

17. **ENTIRE AGREEMENT.** This Agreement, including any Exhibits hereto, contains all the terms and conditions agreed to by the parties. No other agreement, oral or written, regarding the subject matter of this Agreement shall be deemed to exist or to bind either party hereto.

18. **NOTICE.** Any and all notices to be delivered hereunder shall be in writing and shall be deemed to be delivered:

- (i) When hand delivered to the person hereinafter designated,
- (ii) On the date of deposit in the United States Mail, return receipt requested, or
- (iii) On the date such notice is given into the possession of a national delivery company, including but not limited to Federal Express, for delivery requiring signature acceptance, addressed to a party at the address set forth below, or at such other address as the applicable party shall have specified, from time to time, by written notice to the other party delivered in accordance herewith. The Director of Strategic Partnerships shall have full authority to send all notices related to this Agreement on behalf of the City. The parties' addresses are as follows:

City: City of Orlando
Attention: Kathleen DeVault
Director of Strategic Partnerships
P.O. Box 4990
Orlando, Florida 32802-4990

Holocaust Center: Holocaust Memorial Resource and Education Center
UpStanders Program
851 N. Maitland Ave.
Maitland, FL 32751

Signatures on Following Pages

IN WITNESS WHEREOF, the parties hereto have executed these presents and have set their hands and seals the day and year first above written.

CITY OF ORLANDO, FLORIDA

By: _____
Mayor/Pro Tem

ATTEST:

City Clerk

Approved as to Form and Legality,
for the use and reliance of the
City of Orlando, Florida only.

_____, 2014.

Chief Assistant City Attorney
City of Orlando, Florida

**THE EXECUTIVE DIRECTOR for and on behalf
of THE HOLOCAUST MEMORIAL RESOURCE
AND EDUCATION CENTER OF FLORIDA,
INC.**

By: _____
Pamela Kancher
Executive Director

Witnessed
by:

EXHIBIT "A"

UPSTANDERS PROGRAM SCOPE OF SERVICES FOR FISCAL YEAR 2014-2016

PROGRAM(S) FOR WHICH FUNDING IS REQUESTED:

1. PROGRAM/CITY RESPONSIBILITIES:

- a. The City will fund the Holocaust Center's UpStanders Program as outlined on Exhibit "C" attached to provide supplemental Holocaust and bullying prevention education for two consecutive years ("Program") and will coordinate with the Holocaust Center and OCPS to ensure the effectiveness of the program;
- b. The Program shall be available to eligible Orange County Public School students ("Students") at all nine middle schools within Orlando city limits. (the "Schools");
- c. The City and the Holocaust Center agree to work with Orange County Public Schools ("OCPS") to coordinate efforts to provide for the educational needs of Students enrolled in the Program; and
- d. Subject to the requirements of applicable law, the Holocaust Center's instructional staff and designated OCPS instructional personnel are permitted to exchange information in student records only in connection with administration of the Program. Personnel receiving such information shall use the information only for official purposes connected with the Program and shall maintain the confidentiality of such information at all times in compliance with, and subject to, applicable law.

2. OCPS RESPONSIBILITIES

The Holocaust Center will work directly with the Designated Contact at each of the nine OCPS schools at which the program is being implemented to ensure that the OCPS schools:

- a. Provide all the necessary space and equipment for assemblies for the operation of the Program at the School;
- b. Assist the Holocaust Center in its implementation of the educational curriculum for the Program to address the educational needs of the Students;
- c. Attend all core Program events;
- d. Provide OCPS guidance personnel to supervise Students during Programs;

- e. Obtain evaluation of the Students' attitudes via an online survey link provided by the Holocaust Center both before and after Program implementation;
- f. Provide buses for transportation to the Holocaust Center during the field trip phase of the Program;
- g. Assist the Holocaust Center's instructors in complying with the Jessica Lunsford Act by refraining from performing services hereunder involving direct contact with any Student, unless first filing a complete set of fingerprints for each OCPS employee, agent, officer, invitee or licensee who may have contact with the Student. The fingerprints shall be taken by an authorized law enforcement officer and such fingerprints shall be submitted to the Department of Law Enforcement for State processing and to the Federal Bureau of Investigation for Federal processing. No person found to have been convicted of a crime involving moral turpitude or drug possession or use or who may be objected to by OCPS for any reason whatsoever shall provide services to be furnished hereunder;
- g. Adhere to and comply with all Federal and State regulations and laws regarding safety as well as any other applicable regulations, laws, ordinances, permits, rules, policies and guidelines;
- h. Meet with the City's Program designee and the Holocaust Center's UpStanders Program coordinator as mutually agreed to by the parties to discuss any problems or changes that may occur.

3. HOLOCAUST CENTER RESPONSIBILITIES:

- a. The Holocaust Center shall implement its UpStanders Program as outlined on the attached document to provide supplemental Holocaust and bullying prevention education for two consecutive years ("Program") to selected students at the School.
- b. The Holocaust Center shall provide City with a semiannual report as outlined in Exhibit "B" attached.
- c. The Holocaust Center shall supply all required materials and instructors necessary for the implementation of the Program.
- d. The Holocaust Center shall coordinate the implementation of the Program with the Assistant Principal of each School as outlined in section 2 above.
- e. The Holocaust Center shall cooperate with the School to ensure compliance with all applicable background check requirements for any of its personnel or contractors having direct contact with any Students.
- f. The Holocaust Center shall cooperate and coordinate with School instructional personnel in providing evaluation of the Students' attitudes.

g. Adhere to and comply with all Federal and State regulations and laws regarding safety as well as any other applicable regulations, laws ordinances, permits, rules, policies and guidelines.

h. Meet with the City's Program designee and the UpStanders program coordinator as mutually agreed to by the parties to discuss any problems or changes that may occur.

EXHIBIT "B"

SEMIANNUAL REPORT SCHEDULE

Semiannual progress and financial reports for the reporting periods indicated are due to the City's DSP on the due date specified. Progress reports should include information on the amount of Funds expended and the Services provided to City of Orlando students with Funds in accordance with the requirements contained in Paragraph 4 of the Agreement. As required by the terms of the Funding Agreement, the Holocaust Center will provide documentation supporting expenditures associated with or related to the Funds.

<u>Reporting Period</u>	<u>Due Date</u>	
Dec. 1 2014 to June 31, 2015	July	15, 2015
July. 1 to Nov. 30, 2015	Jan.	15, 2016
Dec. 1, 2015 to June 30, 2016	July	15, 2016
Executive Summary	Jan	15, 2017

Reports may be sent by regular mail, e-mail or fax to:

City of Orlando

ATTN: Kathleen DeVault

P. O. Box 4990

Orlando, Florida 32802-4990

E-MAIL: kathleen.devault@cityoforlando.net

FAX: (407) 246-2848

The Holocaust Center acknowledges and understands that the semiannual reports required by this Agreement are a material provision of the Agreement and that the failure of the Holocaust to submit a semiannual report when due shall constitute grounds by the City, in its discretion and in addition to any other right or remedy available to the City, to refuse to make any additional disbursements of Funds to the Holocaust Center until such report is filed in form and content acceptable to the City.