# AMENDMENT NO. 2 TO THE INTERLOCAL AGREEMENT BETWEEN THE CITY OF DELRAY BEACH AND THE DELRAY BEACH DOWNTOWN DEVELOPMENT AUTHORITY

This AMENDMENT NO. 2 to the INTERLOCAL AGREEMENT BETWEEN THE CITY OF DELRAY BEACH AND THE DELRAY BEACH DOWNTOWN DEVELOPMENT AUTHORITY dated February 27. 2023 (hereinafter "Agreement") by and between the City Of Delray Beach, Florida, a Florida Municipal Corporation, whose address is 100 NW 1st Avenue, Delray Beach, Fl. 33444 (hereinafter "City") and the Delray Beach Downtown Development Authority, a dependent taxing authority, whose address is 350 SE 1st Street, Delray Beach, Fl 33483 (hereinafter "DDA"), is made and entered into as of the 17th day of October, 2023 (the "Effective Date").

#### RECITALS

WHEREAS, the City and the DDA (collectively, the "Parties") entered into an interlocal agreement wherein the DDA manages and operates the OSS Campus located at 51 N. Swinton Avenue, Delray Beach, FL: and

WHEREAS, the Agreement was amended on March 31, 2023 to remove the ability to terminate the Agreement without cause during the initial term; and

**WHEREAS**, the parties now desire to remove the Crest Theater from the Licensed Area as defined in the Agreement; and

WHEREAS, the parties further desire to update the management fee pursuant to the budgetary appropriation approved by the City Commission for the 2023-2024 fiscal year; and

WHEREAS, the parties agree that this Amendment No. 2 is in the best interest of the Parties.

**NOW, THEREFORE**. for and in consideration of the mutual covenants and agreements set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

- 1. The above recitals are true and correct and are incorporated herein.
- 2. Paragraph 2 of the Agreement is deleted in its entirety and replaced with the following:

License to use the Old School Square Campus. As part of this Agreement, the City grants the DDA a license to utilize the Old School Square Campus, which includes the Cornell Museum, the Concession Building, the Field House, the Loggia, the Pavilion, the East Lawn, the North Lawn, the Old School Square Perimeter, and all easements, rights of way, and other appurtenances used in connection with beneficial use and enjoyment of the Property (hereinafter referred to collectively as "the Licensed Area," the "Property" or the "OSS Campus"), attached hereto and incorporated herein as Exhibit "A". The Crest Theater, its classrooms, and the commercial kitchen are specifically excluded from the Licensed Area and from this Agreement. The DDA shall be permitted

to use the Licensed Area for the administration, setup, operation, maintenance, programming of activities, exhibitions, and special events for the use and enjoyment of City's residents and the public at large and to provide all other services, as further described in Exhibit B "Operating Commitments" in order to encourage economic development and promotion of the Downtown area of the City. No right, title, or interest in the real property is conveyed by this Agreement.

- 3. Exhibit "A," to the Agreement is replaced with a new Exhibit "A," attached hereto and incorporated herein.
- 4. Paragraph 6 of the Agreement is deleted in its entirety and replaced with the following:

#### Fees.

- a. No later than October 15, 2023, the City shall pay the DDA a management fee of Two Hundred Fifty Thousand Dollars (\$250,000.00) for the administration, setup, operation, maintenance, and programming of activities, exhibitions, and special events on or at the OSS Campus to be provided by the DDA.
- b. No later than January 1, 2024, April 1, 2024, and July 1, 2024, the City shall pay the DDA a management fee of Two Hundred Fifty Thousand Dollars (\$250,000.00) for the administration, setup, operation, maintenance, programming, of activities, exhibitions, and special events on or at the OSS Campus to be provided by the DDA.
- c. The management fee for each year of this Agreement, including any additional term(s) shall be determined by the City during the City's regular budget process. The DDA shall participate in the City's regular budget process and submit a proposed annual budget/ funding request for each fiscal year of the Agreement, including any renewal term. The DDA shall present its request to the City Commission at a workshop meeting to be scheduled annually in the month of May.
- d. The DDA's annual budget/funding request for each fiscal year shall include a revenue-sharing plan for the upcoming fiscal year, in which the DDA shall agree to pay to the City a percentage of all profits derived from activities managed by DDA in connection with this Agreement during the upcoming fiscal year to be used for programming costs for the OSS Campus. The DDA shall provide proof of its revenues along with requisite documentation in support thereof in its quarterly reports to the City. The City Manager in his sole discretion shall determine the manner for remittance of said revenues to the City as well as the disbursement of said funds.
- e. In the event the DDA decides to operate the gift shop located in the Cornell Museum, such operation shall be done in accordance with all applicable laws. The inventory, display, and management of the gift shop shall be under the sole control of the DDA. Collection and remittance to the Department of Revenue of any/all applicable sales tax shall be the responsibility of DDA.

5. <u>Ratifications</u>. The terms and provisions set forth in this Amendment No. 2 shall modify and supersede all inconsistent terms and provisions set forth in the Agreement and Amendment No. 1. The terms and provisions of the Agreement, as expressly modified and superseded by its amendments, are ratified and confirmed and shall continue in full force and effect, and shall continue to be legal, valid, binding and enforceable obligations of the parties.

IN WITNESS THEREOF, the Parties have caused this Amendment No. 2 to be executed as of the date first set forth above.

ATTEST:  Loten Chso  Katerri Johnson, City Clerk	CITY OF DELRAY BEACH, FLORIDA  Shelly Petrolia, Mayor
Approved as to Form and Legal Sufficiency:  Lynn Gelin, City Attorney	
SEAL STANDARDA	DELRAY BEACH DOWNTOWN DEVELOPMENT AUTHORITY  By:  Print Name: Blinn Rosan  Title: Laimon of the DDA Board
STATE OF Flori du COUNTY OF Palm Beach  The foregoing instrument was acknow notarization. this 16  Brian Rosen authority) for DDA	ledged before me by means of physical presence or □ online day of <u>October</u> , 2023, by (name of person), as <u>Chailman</u> (type of (name of party on behalf of whom instrument was executed).
Personally known OR Produced I  Type of Identification Produced  MAXWELL SIMON ZENCAS Notary Public State of Flo Commission z htm 16910  Max Comm. Expires Aug 24  Max Max Comm. Expires Aug 24  Max Com	Notary Public – State of Florida Notary Public – State of Florida

#### Exhibit A Licensed Area



## AMENDMENT NO. 4 TO THE INTERLOCAL AGREEMENT BETWEEN THE CITY OF DELRAY BEACH AND THE DELRAY BEACH DOWNTOWN DEVELOPMENT AUTHORITY

This AMENDMENT NO. 4 to the INTERLOCAL AGREEMENT BETWEEN THE CITY	<b>YOF</b>
DELRAY BEACH AND THE DELRAY BEACH DOWNTOWN DEVELOPMENT AUTHOR	YTU
dated February 27, 2023 (hereinafter "Agreement") by and between the City of Delray Beach, Flori	da, a
Florida Municipal Corporation, whose address is 100 NW 1st Avenue, Delray Beach, FL, 3	3444
(hereinafter "City") and the Delray Beach Downtown Development Authority, a dependent to	axing
authority, whose address is 350 SE 1st Street, Delray Beach, FL 33483 (hereinafter "DDA"), is made	e and
entered into as of the day of, 2025.	

#### **RECITALS**

WHEREAS, the City and the DDA (collectively, the "Parties") entered into an interlocal agreement wherein the DDA manages and operates the OSS Campus located at 51 N. Swinton Avenue, Delray Beach, FL; and

WHEREAS, the Agreement was amended on March 31, 2023 to remove the ability to terminate the Agreement without cause during the initial term; and

WHEREAS, the Agreement was further amended on October 17, 2023 to remove the Crest Theater from the Licensed Area and to update the management fee pursuant to the budgetary appropriation approved by the City Commission for the 2023-2024 fiscal year; and

**WHEREAS**, the Agreement was further amended on \_\_\_\_\_\_, 2024 to update the management fee pursuant to the budgetary appropriation approved by the City Commission for the 2024-2025 fiscal year; and

WHEREAS, the parties desire to amend the Agreement to include clarification for the use of the Pavilion Storage Facility Room at Old School Square; and

WHEREAS, the Pavilion Storage Facility Room at Old School Square was designated as the primary storage area for Amphitheatre stage, for other equipment used throughout the campus which includes the Cornell Museum, the Vintage Gym and Crest Building; and

WHEREAS, the Pavilion Storage Facility Room at Old School Square is the only secure storage for fine art and museum items due to the lack of proper storage within the museum itself; and

WHEREAS, the DDA believes that Pavilion Storage Facility Room at Old School Square should continue to function as a storage space for the entire facility, including but not limited to, the large freezer and pantry for the kitchen along with other items for the Crest Theater; and

WHEREAS, while the Pavilion Storage Facility Room at Old School Square was never intended to function as a classroom or studio space as it is attached to the Pavilion Stage itself which is part of the DDA operational responsibility; the City is advancing a classroom/studio space without the assent of the DDA; and

WHEREAS, the DDA requires changes to the functional space in the Pavilion Storage Facility Room at Old School Square in order to fulfill its duties, obligations and intent of this Interlocal Agreement; and

WHEREAS, the DDA will be severely limited in its ability to perform under this Interlocal Agreement without the minimum space that it is requesting in the Pavilion Storage Facility Room at Old School Square; and

WHEREAS, the Parties agree that this Amendment No. 4 is in the best interest of the City of Delray Beach.

**NOW, THEREFORE**, for and in consideration of the mutual covenants and agreements set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

- 1. The above recitals are true and correct and are incorporated herein.
- 2. Paragraph 2 of the Agreement is deleted in its entirety and replaced with the following:

License to use the Old School Square Campus. As part of this Agreement, the City grants the DDA a license to utilize the Old School Square Campus, which includes the Cornell Museum, the Concession Building, the Field House, the Loggia, the Pavilion, the East Lawn, the North Lawn, the Old School Square Perimeter, and all easements, rights of way, and other appurtenances used in connection with beneficial use and enjoyment of the Property (hereinafter referred to collectively as "the Licensed Area." the "Property" or the "OSS Campus"), attached hereto and incorporated herein as Exhibit "A". The DDA shall have use of the Pavilion Storage Facility Room at Old School Square as delineated and depicted on the Exhibit "A-1". Any temporary or permanent wall erected by the City in the Pavilion Storage Facility Room shall be 12ft from the south wall and be 32ft from the north door (adjacent to the proposed sink area). The DDA needs the set aside space to accommodate the growth in the campus as it relates to activities at the OSS Campus. The accessible space will be needed for items including, but not limited to, chairs, tables, linens, temporary walls, benches, lights, décor, fencing materials. The Crest Theater, its classrooms, and the commercial kitchen are specifically excluded from the Licensed Area and from this Agreement. The DDA shall be permitted to use the Licensed Area for the administration, setup, operation, maintenance, programming of activities, exhibitions, and special events for the use and enjoyment of City's residents and the public at large and to provide all other services, as further described in Exhibit B "Operating Commitments" in order to encourage economic development and promotion of the Downtown area of the City. No right, title, or interest in the real property is conveyed by this Agreement.

- 3. Exhibit "A," to the Agreement is replaced with a new <u>Composite</u> Exhibit "A," attached hereto and incorporated herein.
- 4. Ratifications. The terms and provisions set forth in this Amendment No. 4 shall modify and supersede all inconsistent terms and provisions set forth in the Agreement, Amendment No. 1, Amendment No. 2, and Amendment No. 3. The terms and provisions of the Agreement, as expressly modified and superseded by its amendments, are ratified and confirmed and shall continue in full force and effect, and shall continue to be legal, valid, binding and enforceable obligations of the parties.

[Remainder of Page Intentionally Left Blank]

IN WITNESS THEREOF, the Parties have caused this Amendment No. 3 to be executed as of the date first set forth above.

ATTEST:	CITY OF DELRAY BEACH, FLORIDA
Alexis Givings, City Clerk	Thomas F. Carney, Jr., Mayor
Approved as to Form and Legal Sufficiency:	
Lynn Gelin, City Attorney	
	DELRAY BEACH DOWNTOWN DEVELOPMENT AUTHORITY
	By:
	Printed Name:
	Title:
STATE OF FLORIDA	
COUNTY OF PALM BEACH	
online notarization, this	(name of person), as (type of
authority) for(name	ne of party on behalf of whom instrument was executed).
Personally known	OR Produced Identification
Type of Identifica	ation Produced
	Notary Public – State of Florida

#### Liliana Fino

Subject:

FW: DDA/City relationship

----- Original message -----

From: "Dr. Alan Costilo" <alanc@bigalssteaks.com>

Date: 9/22/25 6:30 PM (GMT-05:00)

To: Laura Simon < lsimon@downtowndelraybeach.com >

Cc: "'Quentin E. Morgan'" < amorgan@gorencherof.com >, Avalon Gallery Mavis Benson

<avalor gallery@bellsouth.net>
Subject: DDA/City relationship

#### Laura

My letter of September 8th to you and Quentin discussed my concerns about conversations between the city attorney and the DDA attorney regarding the old school square and the DDA rights under the ILA and the ILA second amendment. I had wanted to address the board with these concerns at the upcoming OSS workshop.... but the time delay in having the workshop has added to these concerns.

While we are doing nothing, the city is continuing to usurp and alter the space allotted to us under our second amendment. All this against your many verbal demands and written demands, the city manager has forged ahead to use space that is rightfully ours. And what's more, our attorney refuses to act to protect our rights even though he has acknowledged that they exist. Further, I believe our attorney has not made the board members aware of our rights under the second amendment regarding the space the city has wrongfully taken, and I believe the attorney is not advising our board properly as to our choices.

Because of the Sunshine laws, I cannot speak to our board members with the alarm that I believe they would share if they rightfully knew the entire situation.

I implore you to act at once to make the board members aware of all the implications and ramifications of the city's actions and our attorney's lack of resolve and poor judgment in this matter.

Dr. Alan Costilo

CEO / Co-Founder Big Al's Steaks
Delray Beach, FL 33483

(561) 819-1888 store

(561) 221-4604 cell

Alan@BigAlsSteaks.com

450 E. Atlantic Avenue

### INTERLOCAL AGREEMENT BETWEEN THE CITY OF DELRAY BEACH AND THE DELRAY BEACH DOWNTOWN DEVELOPMENT AUTHORITY

THIS INTERLOCAL AGREEMENT (hereinafter referred to as the "Agreement") dated as of the 27th day of February, 2023, (hereinafter referred to as the "Effective Date") is made by and between the City of Delray Beach, a Florida municipal corporation (hereinafter referred to as "City"), whose address is 100 NW 1<sup>st</sup> Avenue, Delray Beach, FL 33444 and the Delray Beach Downtown Development Authority, a dependent taxing authority (hereinafter referred to as the "DDA"), whose address is 350 SE 1<sup>st</sup> Street, Delray Beach, FL 33483.

WHEREAS, the City acquired fee simple title to that certain parcel of real estate together with the improvements thereon commonly referred to as "Old School Square", located at 51 N. Swinton Avenue, Delray Beach, FL, (hereinafter referred to as the "OSS Campus") pursuant to a Special Warranty Deed dated March 15, 1989 (hereinafter referred to as the "Deed"); and

WHEREAS, the City, pursuant to the restrictions listed on the Deed, is required to provide artistic, educational, recreational, and cultural activities on the OSS campus; and

WHEREAS, the City desires for the OSS campus to be the City's cultural and civic hub providing an artistic experience while preserving the OSS Campus as a National Historic Site; and

WHEREAS, the DDA desires to assist the City in managing and operating the OSS campus to; and

WHEREAS, the City desires to enter into an agreement with the DDA for the management and operation of the OSS Campus and the DDA is willing to manage and operate the OSS Campus subject the terms and conditions set forth herein; and

WHEREAS, Section 2(b), Article VIII of the Florida Constitution, enables municipalities to have the government, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal function, and render municipal services; and

WHEREAS, pursuant to Section 6, Chapter 2003-314, Laws of Florida, it is the purpose of the DDA to participate actively in plans and programs to encourage economic development and promote the downtown area of the City as a prosperous downtown area. As such, the DDA is authorized to participate in the implementation of downtown development plans, including the licensing, operation, and management public facilities, including City property, and to undertake any activities related to the downtown area that the City assigns to the DDA.

WHEREAS, the DDA's mission is to grow, strengthen, and enhance the economic vitality of Downtown Delray Beach by facilitating business development, fostering business relations, planning and advertising public and private events, and marketing the downtown district; and

WHEREAS, the DDA desires collaborate with the City to re-open the OSS Campus and to operate and manage it in such a manner as to activate the various indoor and outdoor spaces

therein with exciting and innovative programming for the public while maintaining a supportive business environment for new and existing businesses in the City's downtown area.

WHEREAS, the City Commission finds that the artistic, educational, recreational, and cultural activities and services referenced herein will assist the City in performing its municipal functions and rendering municipal services to its residents and public at large; and

WHEREAS, services or commodities provided by other governmental agencies, other public entities, universities and colleges or political subdivisions are specifically exempt from the competitive process pursuant to the City's Purchasing Policies and Procedures; and

**WHEREAS**, the City Commission finds that entering into this Agreement is in the best interests of the City.

**NOW, THEREFORE,** in consideration of the mutual promises contained herein and other good and valuable consideration of which the parties hereto acknowledge, the parties agree as follows:

- 1. <u>Incorporation of Whereas Clauses.</u> The Parties incorporate by reference the Whereas clauses set forth above as if fully set forth herein.
- 2. License to use the Old School Square Campus. As part of this Agreement, the City grants the DDA a license to utilize the Old School Square Campus, which includes the Cornell Museum, the Crest Theatre, the Concession Building, the Field House, the Loggia, the Pavilion, the East Lawn, the North Lawn, the Old School Square Perimeter, and all easements, rights of way, and other appurtenances used in connection with beneficial use and enjoyment of the Property (hereinafter referred to collectively as "the Licensed Area," the "Property" or the "OSS Campus"), attached hereto and incorporated herein as Exhibit "A". The DDA shall be permitted to use the Licensed Area for the administration, setup, operation, maintenance, programming of activities, exhibitions, and special events for the use and enjoyment of City's residents and the public at large and to provide all other services, as further described in Exhibit B "Operating Commitments" in order to encourage economic development and promotion of the Downtown area of the City. No right, title, or interest in the real property is conveyed by this Agreement.
- 3. Agreement Term, Renewal. The Initial term of this Agreement will begin on the Effective Date of this Agreement and end September 30, 2024, unless terminated earlier in accordance with Sections 11 or 12 hereunder. The Agreement will automatically renew for two additional five (5) year terms unless either Party provides the written notice of its intent not to renew the Agreement at least 180 days before the end of each term.
- 4. The City's Obligations Under the Agreement.
  - a. The City shall cooperate with the DDA to ensure the accomplishment and advancement of the City's mission for the OSS campus to be the City's cultural and

- civic hub providing an artistic experience while preserving the OSS Campus as a National Historic Site.
- b. The City shall be responsible for the prompt payment of all utilities provided to the OSS Campus as the same become due, including charges for electricity, water, sewer, gas, and refuse removal.
- c. Except as provided in Section 4.d., the City shall maintain the OSS Campus, at no cost to the DDA, by providing regular maintenance and repairs of the buildings and grounds as described in the OSS Campus Maintenance Plan attached hereto as Exhibit C. The OSS Campus Maintenance Plan may be amended from time to time upon agreement of the City Manager and the Executive Director of the DDA.
- d. The City agrees to use its best efforts to respond to and complete requests from the DDA to perform repairs to facilities on the OSS Campus in a timely manner. The Director of Public Works shall act as Liaison between the DDA and City for coordination of repairs and maintenance. All requests for repair and maintenance shall be submitted in writing to the Director of Public Works Department both by email and through the City's online program for submission of work orders.
- e. The City shall not be obligated, bound, or indebted for any transaction, function or activity of the DDA, except as may be approved during the City's annual budgeting process or as otherwise provided herein.
- f. The City shall manage, operate, and maintain City-sponsored events as defined in the City's Special Events Policy. The Director of Parks and Recreation shall act as Liaison between the DDA and City for coordination of any outdoor events, activities, and art installations occurring on or at the OSS Campus.
- g. The City, upon reasonable prior written notice to the DDA, and provided that any such use by the City does not interfere with or interrupt the DDA programming or exhibits, shall have the right to use the OSS Campus at no rental charge to the City. The City will assume clean up responsibilities for its use of the Property, and restore the Property to the same condition it was in prior to City's use thereof. City shall notify DDA of a cancellation of such use as soon as practicable. Any expenses related to DDA or other required personnel incurred by the DDA as a result of the City's use of the OSS Campus outside of standard operating hours will be reimbursed to the DDA by the City.

#### 5. Responsibilities of DDA.

- a. The DDA shall utilize its best efforts to assist the City in achieving its mission for the OSS campus to be the City's cultural and civic hub providing an artistic experience and to encourage economic development and promotion of the Downtown. DDA shall not undertake any actions that negatively impact the designation of the OSS Campus as a National Historic Site.
- b. The Executive Director of the DDA shall serve as liaison between the public and the City Manager or designee.

- c. The Executive Director shall make all records, reports, financial statements, and other necessary documents related to DDA's obligations hereunder available to the City Manager.
- d. The DDA shall be responsible for the operation and management of the following activities occurring on or at the OSS Campus including, but not limited to: event programing, planning, marketing, and managing special events and activities; commercial operations including sale of food and goods and the subleasing of space in OSS Campus; managing art collections, including acquisition of art and other objects; planning and managing exhibitions; and all other activities in connection with the DDA's management and operation of the OSS Campus on behalf of the DDA and the City pursuant to this Agreement. DDA shall be required to obtain a Special Events permit from the City for DDA-managed Special Events, as required by the City's Special Events Policy.
- e. No alterations to the OSS Campus shall be made by the DDA without the prior written consent of the City Commission, except as provided herein. For the purposes of this section "alterations" shall mean any changes to the OSS Campus, including installation or removal of fixtures, painting, remodeling, renovation, rehabilitation, or reconstructions of structural parts or elements of the OSS Campus. The DDA shall obtain the written consent of the City Manager, or designee, for alterations to the OSS Campus totaling less than \$65,000. The City Manager, in his or her sole discretion, may determine that, due to the nature of the proposed alterations, City Commission approval is required. Alterations greater than \$65,000 shall require the prior approval of the City Commission. The DDA shall be responsible for obtaining all permits, licenses and other authorizations required. All alterations, when completed, shall be of such a nature as not to (i) reduce or otherwise adversely affect the value of the OSS Campus; (ii) diminish the general utility or change the general character thereof; or (iii) adversely affect the mechanical, electrical, plumbing, security, or other such systems of the OSS Campus.
- f. The DDA shall provide quarterly reports to the City as further described in Section 8 of this Agreement.
- g. The DDA shall maintain the exhibits and art installations on display at the OSS Campus in a clean and exhibition-worthy condition.
- h. The DDA shall ensure that any art collections on display at the OSS Campus are lawfully held, protected, secure, unencumbered, cared for and preserved. All decisions made with respect to art collections on display at the OSS Campus including but not limited to maintenance, preservation, storage, public display and exhibition, accession or de-accession shall be the sole responsibility of the DDA and managed in accordance with standards of practice set forth by the American

Alliance of Museums. The DDA shall be responsible for the costs related to the care and stewardship of art collections on display at the OSS Campus.

- i. The DDA shall set its own fee schedules for Special Events and activities managed and operated by the DDA, except as follows. Admission to exhibitions held at the Museum shall be free to the public. Any donations collected at an exhibition held at the Museum may be used to offset DDA's costs related to the marketing, installation, and removal of Museum exhibitions. All fee schedules shall be as approved by the DDA Board prior to the start date of the activity or special event.
- j. The DDA shall be responsible for marketing and advertising its activities, exhibitions, and special events held on or at the OSS Campus. DDA shall provide the City Manager or designee with a copy of all marketing plans and advertising samples for such activities, exhibitions, and special events. The City agrees to share all marketing and advertising materials for City-sponsored events held on or at the OSS Campus with the DDA.
- k. DDA shall be responsible for re-branding the OSS Campus subject to approval by the City Commission.
- 1. The DDA shall manage, oversee and program the OSS Campus as described in Exhibit "B" subject to the City's budgeted programming for fiscal year 2022-2023.
- m. The City shall continue to manage and operate all rentals of the Field House for the period up to and including September 30, 2023. The City shall notify the DDA in advance of approving rentals of the Field House during this time. As of October 1, 2023, the DDA shall be responsible for managing and operating all rentals of the Field House.
- n. The DDA shall be responsible for obtaining a permit for DDA Special Events taking place on the OSS Campus pursuant to the City's Special Events policy. "Special Event" is defined as a large-scale event that requires services that are regularly provided by the City, such as health, fire, and police. The parties shall coordinate and ensure that City-sponsored events held on the OSS Campus do not interfere with or interrupt the DDA programming or exhibits. Starting no later than April 1, 2023, DDA shall be responsible for accepting all third-party applications for Special Events taking place on or at the OSS Campus. DDA shall assist third-parties with obtaining a Special Event permit from the City and ensuring a Special Event permit is obtained at least 30 days prior to an event.

#### 6. Fees.

a. No later than 15 days after the Effective Date of this Agreement, the City shall pay the DDA a management fee of Five Hundred Thousand Dollars (\$500,000.00) for the administration, setup, operation, maintenance, and programming of activities, exhibitions, and special events on or at the OSS Campus to be provided by the DDA.

- b. No later than April 1, 2023, the City shall pay the DDA a management fee of Two Hundred Fifty Thousand Dollars (\$250,000.00) for the administration, setup, operation, maintenance, programming, of activities, exhibitions, and special events on or at the OSS Campus to be provided by the DDA.
- c. No later than July 1, 2023, the City shall pay the DDA a management fee of Two Hundred Fifty Thousand Dollars (\$250,000.00) for the administration, setup, operation, maintenance, programming, of activities, exhibitions, and special events on or at the OSS Campus to be provided by the DDA. Thereafter, the management fee for each year of this Agreement, including any additional term(s) shall be determined by the City during the City's regular budget process. The DDA shall participate in the City's regular budget process and submit a proposed annual budget/ funding request for each fiscal year of the Agreement, including any renewal term. The DDA shall present its request to the City Commission at a workshop meeting to be scheduled annually in the month of May.
- d. During the Initial Term of this Agreement, all revenues generated by Special Events and other commercial activities managed by the DDA in connection with this Agreement shall be used to offset the costs and expenses of administration, setup, operation, maintenance, programming, of activities, exhibitions, and DDA Special Events on or at the OSS Campus. Thereafter, the DDA's annual budget/funding request for each fiscal year shall include a revenue-sharing plan for the upcoming fiscal year, in which the DDA shall agree to pay to the City a percentage of all profits derived from activities managed by DDA in connection with this Agreement during the upcoming fiscal year to be used for programming costs for the OSS Campus. The DDA shall provide proof of its revenues along with requisite documentation in support thereof in its quarterly reports to the City. The City Manager in his sole discretion shall determine the manner for remittance of said revenues to the City as well as the disbursement of said funds.
- e. In the event the DDA decides to operate the gift shop located in the Cornell Museum, such operation shall be done in accordance with all applicable laws. The inventory, display, and management of the gift shop shall be under the sole control of the DDA. Collection and remittance to the Department of Revenue of any/all applicable sales tax shall be the responsibility of DDA.
- 7. Submission of Business Plan. No later than July 31, 2023, the DDA shall present to the City Commission a business plan (hereinafter referred to as the "Plan") at a City Commission workshop meeting, outlining its strategy for operations and programming for the OSS Campus. The Plan shall provide information including but not limited to the operations, business structure, a fundraising plan, along with a five-year strategic plan. The plan will also detail outreach and diversity efforts with specific goals related to programming and outreach to reflect the diversity of the community the OSS Campus serves.

- 8. Quarterly Reporting Requirements. No later than 30 days prior to the issuance of the City's quarterly management fee, and beginning June 1, 2023, the DDA shall submit to the CITY its quarterly report according to the schedule attached as Exhibit D, in a form reasonably acceptable to the CITY, which shall include the following: (a) a description of the principal activities, programs and services offered and provided by DDA at the OSS Campus during the preceding quarter; (b) the number of persons who participated in activities and programs held by DDA during the preceding quarter; (c) a written statement signed by DDA which sets forth its status on meeting the Operating Commitments, and which of such Operating Commitments were not met, all with appropriate explanation as defined Exhibit B of the Agreement; and (d) proof of revenues and expenses. The DDA specifically acknowledges that its failure to timely provide quarterly reports to the City as described herein may result in the City withholding quarterly payments until such time as the DDA comes into compliance. The City will notify the DDA in writing and give the DDA 7 days to cure prior to withholding any payments.
- Condition of the Licensed Area. At all times during the term of the Agreement, the DDA shall maintain the Licensed Area in a neat, clean, and orderly manner. Substandard vendor equipment and furnishings are prohibited.
- 10. **Operating Commitments.** In operating the Licensed Area, DDA will use its best efforts to meet the operating commitments listed in Exhibit "B".

#### 11. Insurance.

- a. <u>City's Insurance</u>. The DDA acknowledges that the City is a Florida Municipal Corporation, is insured through the Florida League of Cities, and that so long as the OSS Campus is owned by the City, the City shall have no obligation to obtain separate insurance. The DDA shall have no rights in any policy or policies maintained by the City and shall not be entitled to be a named insured thereunder.
- b. The DDA's Insurance. The DDA shall carry and maintain, at its sole cost and expense, as well as provide proof of upon request by the City, the following types of insurance, in the amounts specified and in the form hereinafter provided for:
  - 1. Workers' Compensation Insurance. The DDA shall, during the term of this Agreement, provide and maintain in accordance with statutory requirements of the State of Florida workers compensation insurance or employee's liability insurance to protect against on-the-job injury or illness which may not fall within the provisions of the Florida State's Workers' Compensation Law. The limits shall be no less than Five Hundred Thousand Dollars (\$500,000) for each accident, and an occupational disease limit of Five Hundred Thousand Dollars (\$500,000) per employee/Five Hundred Thousand Dollars (\$500,000) aggregate.

- 2. Commercial General Liability and Property Damage. The DDA shall maintain a Commercial General Liability policy applying to the use and occupancy of the interior of the Museum, with limits of liability not less than One Million Dollars (\$1,000,000.00) per occurrence and Two Million Dollars (\$2,000,000) general aggregate for Bodily Injury and Property Damage. Such policy shall specifically name the City as an additional insured. The DDA's Commercial General Liability policy shall not provide for a deductible in excess of Two Thousand Dollars (\$2,000) without the prior written approval of the City.
- 3. Property Insurance. The DDA, at its sole expense, shall maintain a personal property insurance policy on all personal property, furniture and fixtures of the DDA.
- 4. The DDA must maintain, at its sole expense, Fine Arts Insurance for the Museum collections and all art loans to the DDA to the extent not covered under its General Commercial liability policy, for all times that such work in installed or stored on the Property.

#### 12. Termination for Default.

- a. <u>Default by the DDA</u>. If the DDA is in material default of its obligations, the City will notify the DDA in writing and give the DDA thirty (30) calendar days to cure such default and the opportunity to cure within thirty (30) calendar days, if feasible, or such other reasonable amount of time if the DDA has commenced good faith efforts to cure and such cure is completed timely and to the City's reasonable satisfaction, in which case no default shall be considered to have occurred. The City shall have the right to immediately terminate this Agreement if the DDA fails to cure the default within the requisite time period.
- b. <u>Default by the City</u>. If the City is in material default of this Agreement, the DDA will notify the City in writing and give the City thirty (30) calendar days to cure such default and the opportunity to cure within thirty (30) calendar days, if feasible, or such other reasonable amount of time if the City has commenced good faith efforts to cure and such cure is completed timely and to the DDA's reasonable satisfaction, in which case no default shall be considered to have occurred. The DDA shall have the right to immediately terminate this Agreement if the City fails to cure the default within the requisite time period and shall reimburse the City for any unused portion of the management fees paid to the DDA pursuant to Section 6 of this Agreement.
- 13. <u>Termination Without Cause</u>. Either Party may terminate this Agreement without cause by providing written notice to the other Party 180 days in advance.

- 14. <u>Assignment.</u> This Agreement may not be assigned without prior approval of the City Commission.
- 15. **Right of Inspection**. The City shall have the right to enter upon the OSS Campus for the purpose of inspection, serving or posting notices, making any necessary repairs, complying with laws, ordinances or regulations, including, but not limited to, protecting the OSS Campus or any other lawful purpose.
- 16. <u>Liens, Waste</u>. The DDA shall not permit and shall have no right to cause any liens, encumbrances of any nature of kind to stand against the OSS Campus in connection with any work performed by or at the direction of the DDA. The DDA shall not keep, use, sell or offer for sale at the OSS Campus any article which may be prohibited by the standard form of fire insurance policies or other applicable provisions of law. The DDA shall not suffer or permit any waste upon the OSS Campus.
- 17. Removal of the DDA's Property. At or before the expiration or termination of this Agreement, at its expense, the DDA shall remove from the OSS Campus all of its property (except such items thereof as the City shall have expressly permitted to remain, which property shall become the property of the City), and the DDA shall repair any damage to the OSS Campus resulting from any installation and/or removal of the DDA's Property, and shall restore the OSS Campus to the same physical condition and layout as existed at the time the DDA entered into this Agreement, reasonable wear and tear excepted. The City may request the DDA to pay to the City the cost of repairing any damage to the OSS Campus resulting from any installation and/or removal of the DDA's property and the cost of restoring the OSS Campus to the same physical condition and layout as existed at the time the DDA entered into this Agreement, reasonable wear and tear excepted. No item accessioned into the Museum collection or loaned to the DDA for exhibition at the Museum will become property of the City under any circumstances.
- 18. <u>Notice</u>. Notices to any person or entity shall be given in writing and delivered in person or mailed, by certified or registered prepaid U. S. Mail, return receipt requested, or by electronic mail, or by a reputable overnight courier service (such as FEDEX), to the person's or entity's representative set forth below (as may be changed by notice from time to time) at the address set forth below:

Notices to the City shall be sent to:

City of Delray Beach 100 N. W. 1<sup>st</sup> Avenue Delray Beach, Florida 33444 Attention: City Manager

With a copy to:

City of Delray Beach

100 N. W. 1<sup>st</sup> Avenue Delray Beach, Florida 33444 Attention: City Attorney

Notices to the DDA shall be sent to:

Delray Beach Downtown Development Authority 350 SE 1<sup>st</sup> Street Delray Beach, Florida 33483 Attention: Executive Director

- 19. **No Discrimination**. The DDA, for itself, its successors- in- interest, and assigns, as part of the consideration hereof, does hereby covenant and agree that no person on the basis of race, color, age, religion, sex, national origin, or sexual orientation shall be subjected to discrimination, concerning the provision of services provided by the DDA hereunder.
- 20. <u>Applicability of City Ordinances</u>. Anything not covered by this Agreement is subject to the applicable provisions of the City's Land Development Regulations, Code of Ordinances, and any other City ordinances now existing or hereafter adopted.
- 21. <u>Conflicts.</u> In case of any conflict between a provision of this Agreement and an Exhibit, this Agreement shall govern.
- 22. <u>Integration</u>. This Agreement, including referenced Exhibits, represents the entire agreement of the parties with respect to the subject matter hereof. No representations, warranties, inducements, or oral agreements have been made by either party except as expressly set forth herein, or in other contemporaneous written agreements.
- 23. <u>Public Records.</u> The Parties are public agencies subject to Chapter 119, Fla. Stat. The Parties shall comply with all public records laws in accordance with Chapter 119, Fla. Stat. In accordance with state law, the Parties agrees to:

Keep and maintain all records that ordinarily and necessarily would be required by the Parties.

- a. Provide the public with access to public records on the same terms and conditions that the Parties would provide for the records and at a cost that does not exceed the costs provided in Chapter 119, Fla. Stat. or as otherwise provided by law.
- b. Ensure that public records that are exempt or confidential and exempt from public records disclosure are not disclosed except as authorized by law.
- c. Meet all requirements for retaining public records and transfer, at no cost, to the Parties all records in possession of the Parties at the termination of this Agreement and destroy any public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the Parties in a format that is compatible with the information

- technology systems of the Parties. All records shall be transferred to the Parties prior to final payment being made to the Parties.
- d. If either Party does not comply with this section, the non-breaching Party shall enforce the Agreement provisions in accordance with this Agreement and may unilaterally cancel this Agreement in accordance with state law.
- 24. <u>E-Verify</u>. By entering into this Agreement, both parties acknowledge the obligation to comply with the provisions of Section 448.095, Fla. Stat., "Employment Eligibility." Both parties affirm and represent registration with the E-Verify system, utilizing same, and will continue to utilize same as required by law. Compliance with this section includes, but is not limited to, utilization of the E-Verify System to verify the work authorization status of all newly hired employees and requiring all subcontractors to provide an affidavit attesting that the subcontractor does not employ, contract with, or subcontract with, an unauthorized alien. Failure to comply with this section will result in the termination of this Agreement, or if your subcontractor knowingly violates the statute, the subcontract must be terminated immediately. Any challenge to termination under this provision must be filed in the Circuit Court no later than 20 calendar days after the date of termination. If terminated for a violation of the statute by DDA, DDA may be prohibited from conducting future business with the City or awarded a solicitation or contract for a period of 1 year after the date of termination. All costs incurred to initiate and sustain the aforementioned programs shall be the responsibility of the DDA.
- 25. <u>Inspector General.</u> Both parties are aware that the Inspector General of Palm Beach County has the authority to investigate and audit matters relating to the negotiation and performance of this Agreement and may demand and obtain records and testimony from both parties, and its sub licensees and lower tier sub licensees. Both Parties understand and agree that in addition to all other remedies and consequences provided by law, the failure of the parties or its sub licensee or lower tier sub licensees to fully cooperate with the Inspector General when requested may be deemed by either party as a material breach of this Agreement justifying its termination.
- 26. Governing Law and Venue. This Agreement shall be construed in accordance with the City of Delray Beach's Code of Ordinances and the laws of the State of Florida. Any dispute relating to this Agreement shall only be filed in a court of competent jurisdiction in Palm Beach County, Florida, and each of the parties to this Agreement submits itself to the jurisdiction of such court. It is hereby understood and agreed that in the event any lawsuit in the judicial system, federal or state, is brought to enforce compliance with this contract or interpret same, or if any administrative proceeding is brought for the same purposes, each party shall pay their own attorney's fees and costs, including appellate fees and costs.
- 27. **Fiscal Funding.** The continuation of this Agreement beyond the end of any fiscal year shall be subject to both the appropriation and the availability of funds in accordance with Florida law.

- 28. Liability and Indemnity. Each Party shall be liable for its own actions and negligence, and to the extent permitted by law, the Parties and their respective officers and employees shall not be deemed to assume any liability for the acts, omissions and negligence of the other, except that City shall indemnify, defend and hold harmless the DDA, its officers and employees for any and all claims and lawsuits by third parties regarding DDA's right to use OSS Campus, its name, or likeness. Nothing herein shall constitute, or be construed as, a waiver of sovereign immunity beyond the limits set forth in Florida Statute, Section 768.28, or of any defense available to the Parties as set forth in Florida Statutes, Section 768.28 or any other provisions of Florida law. This Section shall survive the termination or expiration of this Agreement.
- 29. Waiver of Jury Trial. THE DDA AND THE CITY HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVE THE RIGHT ANY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH THIS AGREEMENT AND ANY AGREEMENT EXECUTED IN CONJUNCTION HEREWITH OR THEREWITH, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY.
- 30. <u>Independent Contractor</u> It is expressly agreed that the Parties shall be independent contractors and that the relationship between the Parties shall not constitute a partnership, joint venture or agency. Neither Party shall have the authority to make any statements, representations or commitments of any kind, or to take any action, which shall be binding on the other Party, without the prior consent of such other Party.
- 31. <u>Third-party beneficiaries</u>. The Parties do not intend to directly or substantially benefit a third party by this Agreement. Therefore, the Parties agree 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 any of the Parties based upon this Agreement.
- 32. <u>Modification</u>. This Agreement may not be changed, altered, or modified except by an instrument in writing signed by the Parties hereto.
- 33. <u>Uncontrollable Forces</u>. Neither Parties shall be considered to be in default of the Agreement if delays in or failure of performance shall be due to Uncontrollable Forces, the effect of which, by the exercise of reasonable diligence, the non performing party could not avoid. The term "Uncontrollable Forces" shall mean any event which results in the prevention or delay of performance by a party of its obligations under the Agreement and which is beyond the reasonable control of the non performing party. It includes, but is not limited to fire, earthquakes, storms, lightning, epidemic, pandemic, war, riot, civil disturbance, sabotage, and governmental actions.
- 34. <u>Severability</u>. If any part of this Agreement shall be declared unlawful or invalid, the remainder of the Agreement will continue to be binding upon the parties so long as the rights and obligations of the Parties contained in this Agreement are not materially prejudiced and

the intentions of the Parties can continue to be achieved. To that end, this Agreement is declared severable.

[Remainder of Page Intentionally Left Blank]

**IN WITNESS WHEREOF,** the City of Delray Beach and the Delray Beach Downtown Development Authority executed this Agreement as of the day and year first above written.

ATTEST:	CTTY OF DELRAY BEACH
Latern Jhusan Katerri Johnson, City Clerk	By: Shelly Petrolia, Mayor
Approved as to form and legal sufficiency:  Lynn Gelin, City Attorney	
	DOWNTOWN DEVELOPMENT AUTHORITY  By: Manual Marie Marie LR. Berson
(SEAL)	Title: De Chau
COUNTY OF Palm Beach	
or online notarization, this Maris Benson	dged before me by means of physical presence day of Jebruary, 2023 by (name of person), as DDA Chair (type of of party on behalf of whom instrument was
Personally known OR Produced Identificat  Type of Identification Produced    PL DL	Severy A. Slarvog - Graikowsk Drary Public - State of Florida

## EXHIBIT A Licensed Area



## EXHIBIT B Operating Commitments

In exchange for its license to use the Old School Square Campus, DDA commits to providing the following events and services.

A. Fiscal Year 2022-2023 (From Effective Date of Agreement to September 30, 2022)

#### **Special Events**

This category shall include concerts, festivals, fundraising events or other large-scale events that require paid admission that require services that are regularly provided by the City, such as health, fire, and police:

- Fashion Event in conjunction with Museum Exhibition
- Culinary Events dining experiences and chef showcase
- Large scale concerts and festivals Summer Series
- Art Fest live art performances
- Summer series in collaboration with area cultural facilities

\*DDA budgeted events: (4 – Oct., Jan., May, July) Art and Jazz on the Avenue Events, Savor the Avenue, Restaurant Month, Shop Small event, First Friday Art Walk activations, Mother's Day Orchid Giveaway Note: Delray Beach Fashion Week was not budgeted to take place in 2023

#### **Exhibitions**

This category shall include exhibitions at the Cornell Art Museum that do not require paid admission.

- "Surfing Florida, A Photographic History" and Love Delray Exhibition
- Spring Art Exhibition
- Delray Elementary School History (includes activities)
- Summer Exhibition curated by Cultural Arts Team

#### Activities

This category shall include small-scale activities that do not require paid admission, and that do not require services regularly provided by the City:

- Outdoor Temporary Art Installations
- Pop up music
- Outdoor games (ping pong, corn hole, bocce ball)
- Movies or Yoga in the park

#### Other services to be provided by the DDA

- Marketing and Advertising for campus and events
- · Rebranding of OSS Campus facilities

#### B. Fiscal Year 2023-2024

To be determined during the FY 2023-2024 budgeting process.

### EXHIBIT C OSS Campus Maintenance Schedule

- A. Routine Building Maintenance: City shall provide routine building maintenance for the OSS Campus, including Cornell Art Museum, the Crest Theater, the Concession Building, and the Field House. Such maintenance shall consist of:
  - 1. Routine janitorial service consisting of the following one daily general cleaning of all interior public common areas including trash and rubbish removal;
  - 2. Window cleaning service consisting of one monthly cleaning of all interior and exterior windows; and
  - 3. Pest control consisting of monthly preventative maintenance and pest elimination.
- B. Routine Grounds Maintenance: City shall provide routine maintenance of the grounds of the OSS Campus adjacent to the buildings, including the Loggia, the Pavilion, the East Lawn, the North Lawn, the Old School Square Perimeter, lighting and parking areas therein. Such maintenance shall consist of:
  - 1. Hourly inspection and cleaning as required of the exterior public bathrooms;
  - 2. Daily inspection and removal leaves and debris of the walkways, sidewalks, driveways, and parking areas;
  - 3. Daily trash can maintenance and collection; and
  - 4. Weekly lawn, tree and flower bed care, including weed control, weed removal, mowing, trimming, and general upkeep.
- C. **Building Repairs**: City shall provide all repairs, alterations, replacements, preventative maintenance, and requested maintenance all interior and exterior doors, windows, plumbing, water and sewage facilities, alarm systems, lighting fixtures, including light bulbs, electrical equipment, heating and air conditioning equipment.
- D. **Ground Repairs**: City shall provide all repairs, alterations, replacements, preventative maintenance and requested maintenance of all walkways, sidewalks, driveways, parking areas, benches, lighting fixtures, and landscaping.

#### **EXHIBIT D**

## Reporting Schedule (For Initial Term of the Agreement)

Quarterly report due	Reporting period	Quarterly fee received
		Agreement Effective date
		April 1, 2023
June 1, 2023	FY22-23 Q2: January 1 to March 30	July 1, 2023
September 1, 2023	FY22-23 Q3: April 1 to June 30	October 1, 2023
December 1, 2023	FY22-23 Q4: July 1 to September 30	January 1, 2024
March 1, 2024	FY23-24 Q1: October 1 to December	April 1, 2024
	31	
June 1, 2024	FY23-24 Q2: January 1 to March 30	July 1, 2024

#### AMENDMENT NO. 1

### TO THE INTERLOCAL AGREEMENT BETWEEN THE CITY OF DELRAY BEACH AND THE DELRAY BEACH DOWNTOWN DEVELOPMENT AUTHORITY

This AMENDMENT NO. 1 to the INTERLOCAL AGREEMENT BETWEEN THE CITY OF DELRAY BEACH AND THE DELRAY BEACH DOWNTOWN DEVELOPMENT AUTHORITY dated February 27, 2023 (hereinafter "Agreement") by and between the City Of Delray Beach, Florida, a Florida Municipal Corporation, whose address is 100 NW 1st Avenue, Delray Beach, Fl, 33444 (hereinafter "City") and the Delray Beach Downtown Development Authority, a dependent taxing authority, whose address is 350 SE 1st Street, Delray Beach, Fl 33483 (hereinafter "DDA"), is made and entered into as of the 3 184 day of March, 2023 (the "Effective Date").

#### RECITALS

WHEREAS, the City and the DDA (collectively, the "Parties") entered into an interlocal agreement wherein the DDA manages and operates the OSS Campus located at 51 N. Swinton Avenue, Delray Beach, FL; and

WHEREAS, the initial term of the Agreement commenced on February 27, 2023, and is scheduled to conclude on September 30, 2024; and

WHEREAS, at its March 28, 2023 special meeting, the City Commission voted to amend the Agreement to remove the ability to terminate the Agreement without cause during the initial term; and

WHEREAS, the parties agree that this Amendment No. 1 is in the best interest of the Parties.

**NOW, THEREFORE**, for and in consideration of the mutual covenants and agreements set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

- 1. The above recitals are true and correct and are incorporated herein.
- 2. Paragraph 13 of the Agreement is amended as follows:

Termination Without Cause. After the Initial term of the Agreement concludes on September 30, 2024, Either either Party may terminate this Agreement without cause by providing written notice to the other Party 180 days in advance.

3. <u>Ratifications</u>. The terms and provision set forth in this Amendment No. 1 shall modify and supersede all inconsistent terms and provisions set forth in the Agreement. The terms and provisions of the Agreement, as expressly modified and superseded by its amendments, are ratified and confirmed and shall continue in full force and effect, and shall continue to be legal, valid, binding and enforceable obligations of the parties.

IN WITNESS THEREOF, the Parties have caused this Amendment No. 1 to be executed as of the date first set forth above.

ATTEST:	CITY OF DELRAY BEACH, FLORIDA
Katerri Johnson, City Clerk	Shelly Petrolia, Mayor
Approved as to Form and Legal Sufficiency:  Lynn Gelin, City Attorney	
	DELRAY BEACH DOWNTOWN DEVELOPMENT AUTHORITY
	Print Name: Mavis L. R. Prinson
	Title: Char
STATE OF Florida COUNTY OF Falm Beach	
notarization, this 39th da	yed before me by means of physical presence or □ online may of March, 2023, by
Personally known OR Produced Ident	tification
Type of Identification Produced  BEVERLY A SEARVOGEL-GRAIKOWSKI Notary Public - State of Florida Commission # GG 349833 My Comm. Expires Jun 30, 2023	Pour Public - State of Florida



#### CITY OF DELRAY BEACH CITY ATTORNEY'S OFFICE 200 NW 1<sup>ST</sup> Avenue, Delray Beach, FL 33444 561-243-7090



### **LEGAL REVIEW FORM**

This form is to be used solely for the legal review of documents not including procurement agreements. Procurement Agreements are reviewed under a separate cover. This form shall only be completed by a member of the City Attorney's Office.

the City Attorney's Office.	Date of Review:	3/9/23
<b>Document Name</b> : I <sup>st</sup> Amendment to the ILA with the DDA		
Document Type: Interlocal Agreement		
Submitted by: Lynn Gelin		
$_{ m X}$ This document is approved as to form and legal sufficient	ncy.	
These documents are approved as to form and legal suff following change(s):	ficiency; however, the	undersigned made the
This document is <u>not</u> approved as to form and legal suff	iciency for the following	ng reason(s):
	Lynn Gelin, Esq. ty Attorney	
Copy to: City Attorney's Office (with a copy of the approved documents)	ment)	

#### AMENDMENT NO. 3

### TO THE INTERLOCAL AGREEMENT BETWEEN THE CITY OF DELRAY BEACH AND THE DELRAY BEACH DOWNTOWN DEVELOPMENT AUTHORITY

This AMENDMENT NO. 3 to the INTERLOCAL AGREEMENT BETWEEN THE CITY OF DELRAY BEACH AND THE DELRAY BEACH DOWNTOWN DEVELOPMENT AUTHORITY dated February 27, 2023 (hereinafter "Agreement") by and between the City Of Delray Beach, Florida, a Florida Municipal Corporation, whose address is 100 NW 1st Avenue, Delray Beach, Fl, 33444 (hereinafter "City") and the Delray Beach Downtown Development Authority, a dependent taxing authority, whose address is 350 SE 1st Street, Delray Beach, FL 33483 (hereinafter "DDA"), is made and entered into as of the 18th day of 12040 less, 2024.

#### RECITALS

WHEREAS, the City and the DDA (collectively, the "Parties") entered into an interlocal agreement wherein the DDA manages and operates the OSS Campus located at 51 N. Swinton Avenue, Delray Beach, FL; and

WHEREAS, the Agreement was amended on March 31, 2023 to remove the ability to terminate the Agreement without cause during the initial term; and

WHEREAS, the Agreement was further amended on October 17, 2023 to remove the Crest Theater from the Licensed Area and to update the management fee pursuant to the budgetary appropriation approved by the City Commission for the 2023-2024 fiscal year; and

WHEREAS, the parties desire to amend the Agreement to include the management fee and revenue share as approved by the City Commission for the 2024-2025 fiscal year; and

WHEREAS, the parties recognize that the DDA has performed under the ILA to activate the Old School Square Campus ("OSS") at a consistent level of excellence since the inception of the ILA; and

WHEREAS, the DDA requested a management fee of \$1,570,000.00 for the 2024-2025 fiscal year to continue to manage and operate OSS at current levels of services; and

WHEREAS, the City has proposed the management fee of \$800,000.00 as set forth herein; and

WHEREAS, the DDA has informed the City that the reduced funding for the 2024-2025 fiscal year will impact the level of service for OSS; and

WHEREAS, the DDA, despite the reduced funding and the resulting impact on the level of service, has agreed to maintain its consistent quality of service for the activations OSS; and

WHEREAS, the Parties agree that this Amendment No. 3 is in the best interest of the City of Delray Beach.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

- 1. The above recitals are true and correct and are incorporated herein.
- 2. Paragraph 6 of the Agreement is deleted in its entirety and replaced with the following:

#### Fees.

- a. No later than October 15, 2024, the City shall pay the DDA a management fee of Two Hundred Thousand Dollars (\$200,000.00) for the administration, setup, operation, maintenance, and programming of activities, exhibitions, and special events on or at the OSS Campus to be provided by the DDA.
- b. No later than January 1, 2025, April 1, 2025, and July 1, 2025, the City shall pay the DDA a management fee of Two Hundred Thousand Dollars (\$200,000.00) for the administration, setup, operation, maintenance, programming, of activities, exhibitions, and special events on or at the OSS Campus to be provided by the DDA.
- c. The management fee for each year of this Agreement, including any additional term(s) shall be determined by the City during the City's regular budget process. The DDA shall participate in the City's regular budget process and submit a proposed annual budget/ funding request for each fiscal year of the Agreement, including any renewal term. The DDA shall present its request to the City Commission at a workshop meeting to be scheduled annually in the month of May.
- d. Commencing October 1, 2024, the DDA's annual budget/funding request for each fiscal year shall include a revenue-sharing plan for the upcoming fiscal year, in which the DDA shall agree to pay to the City ten percent (10%) of the net revenues derived from activities managed by DDA in connection with this Agreement during the upcoming fiscal year to be used for programming costs for the OSS Campus. The DDA shall provide proof of its revenues along with requisite documentation in support thereof in its quarterly reports to the City. The City Manager in his sole discretion shall determine the manner for remittance of said revenues to the City as well as the disbursement of said funds.
- e. In the event the DDA decides to operate the gift shop located in the Cornell Museum, such operation shall be done in accordance with all applicable laws. The inventory, display, and management of the gift shop shall be under the sole control of the DDA. Collection and remittance to the Department of Revenue of any/all applicable sales tax shall be the responsibility of DDA.
- 3. Ratifications. The terms and provisions set forth in this Amendment No. 3 shall modify and supersede all inconsistent terms and provisions set forth in the Agreement, Amendment No. 1, and Amendment No. 3. The terms and provisions of the Agreement, as expressly modified and

superseded by its amendments, are ratified and confirmed and shall continue in full force and effect, and shall continue to be legal, valid, binding and enforceable obligations of the parties.

[Remainder of Page Intentionally Left Blank]

IN WITNESS THEREOF, the Parties have caused this Amendment No. 3 to be executed as of the date first set forth above.

ATTEST:  Alleri Johnson, City Clerk	Thomas F. Carney, Jr., Mayor
Approved as to Form and Legal Sufficiency:  Lynn Gelin, City Attorney	
SEAL CHILD	DELRAY BEACH DOWNTOWN DEVELOPMENT AUTHORITY  By:  Printed Name:
notarization, this 20 da	ged before me by means of physical presence or online any of September, 2024, by (name of person), as Chair (type of me of party on behalf of whom instrument was executed).  In the second of the sec