

**INTERLOCAL GRANT AGREEMENT
BY AND BETWEEN**

**CITY OF DELRAY BEACH
AND
SOLID WASTE AUTHORITY OF PALM BEACH COUNTY**

(Blighted and Distressed Property Clean-Up and Beautification Grant)

THIS INTERLOCAL GRANT AGREEMENT hereinafter (the "Grant") is made and entered into this ____ day of _____, 2019, by and between the Solid Waste Authority of Palm Beach County, a dependent special district created pursuant to Chapter 2001-331, Laws of Florida, as amended, hereinafter (the "Authority") and City of Delray Beach, a Florida Municipal corporation, hereinafter (the "Applicant"), by and through its duly authorized Board.

WITNESSETH:

WHEREAS, Section 163.01, Florida Statutes, authorizes local governments to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage and thereby to provide services and facilities that will harmonize geographic, economic, population and other factors influencing the needs and development of local communities; and

WHEREAS, the Authority's Governing Board has appropriated in the Authority's adopted 2018/2019 fiscal year budget funds for Blighted and Distressed Property Clean-up and Beautification Grants; and

WHEREAS, this Grant is intended to assist in the cleanup and beautification of distressed, blighted, or otherwise impacted public properties within both the unincorporated and incorporated areas of Palm Beach County; and

WHEREAS, this Grant is provided as an incentive to improve the quality of life and provide a safer, healthier and more aesthetically pleasing environment for the residents of Palm Beach County; and

WHEREAS, the Applicant owns and controls the property that is the subject of this Grant with Parcel Control Nos. 12-43-46-20-01-026-0040, 12-43-46-20-27-001-0190, 12-43-46-20-28-007-0010, 12-43-46-20-34-001-0000, 12-43-46-20-35-012-0000, 12-43-46-20-57-001-0000, 12-43-46-20-63-000-0000, 12-43-46-20-65-000-0000, and 12-43-46-20-66-001-0000, located within the municipal boundaries of the Applicant and referred to hereinafter as (the "Property"); and

WHEREAS, the Property is in a state of disrepair, is visible to the surrounding community, and attracts nuisances, including illegal dumping, littering and criminal activity to the detriment of the surrounding community; and

WHEREAS, the Applicant wishes to beautify the Delray Beach Memorial Gardens at 800 South West 8th Avenue (the “Project”); and

WHEREAS, the Authority is the agency responsible for providing solid waste disposal and recycling programs for Palm Beach County and desires to assist the Applicant by defraying the cost of the demolition, disposal and hauling, and improvement activities associated with the Project through the provision of this Grant.

NOW, THEREFORE, in consideration of the mutual terms, conditions, promises, covenants, and obligations set forth herein, the Authority and Applicant agree as follows:

1. Incorporation of Facts

The facts and background set forth above in the Preamble to this Agreement are true and correct and incorporated into and made a part of this Grant.

2. Purpose

The purpose of this Grant is to set forth the respective duties, rights and obligations of the parties relating to the Authority’s provision of this Grant and the Applicant’s performance of the Project.

3. Contract Representatives and Monitors

The Authority’s Contract Representative and Monitor during the execution of the Project shall be John Archambo, Director of Customer Relations, or his designee, whose telephone number is (561) 697-2700. The Applicant’s Contract Representative and Monitor shall be Ferline F. Mesidort, or her designee, whose telephone number is (561) 243-7280.

4. The Project

A. Delray Memorial Beach Gardens Project, Applicant will remove and replace the damaged sections of fence, refurbish the fountain and install updated landscaping.

B. The Applicant will provide for regular maintenance.

5. Effective Date and Term

This Grant shall take effect upon execution by the parties and shall remain in full force and effect until March 30, 2020.

6. Conduct of the Project

A. The Applicant shall be solely responsible for all aspects of the Project, including but not limited to securing funding, securing all permits and approvals, procuring all labor and materials, and maintaining the property consistent with the intent of this Grant for its full term.

B. The Authority shall, without exception, solely be responsible for providing funding in the amounts and upon the milestones identified herein.

- C. Applicant agrees that it shall endeavor to complete the Project within 12 months from the date of execution of this Grant. The Applicant may request an extension(s) beyond this period for the purpose of completing the Project. The Authority agrees it may not unreasonably refuse Applicant's request for an extension(s) as long as the Applicant is diligently pursuing the completion of the Project.
- D. Prior to commencement of the Project, Applicant shall submit a final project schedule to include starting and completion dates. The Authority shall review all documents within five (5) business days of receipt. If the Authority does not respond within the five (5) day period, then the Applicant may proceed as if the Authority had no comments or objections.

7. Funding

The Authority shall disburse funds in the amount of \$130,446.25 as follows:

- A. Upon execution of this Agreement, the Authority shall disburse a check equal to 50% of the total amount listed above.
- B. Upon completion and approval of the Project by the Authority, the remaining 50% of total shall be disbursed within 10 days of written request by Applicant.

Applicant is solely responsible for providing all other funds necessary to complete the Project. The Authority shall not have an obligation to provide additional funding beyond the dollar amount set forth in this Agreement.

8. Ownership and Maintenance of the Project

Applicant hereby represents and warrants that it is the fee simple owner of the Property and that the Property is unencumbered and free and clear of other interests, of any type or character. In the event any liens or encumbrances are filed or recorded against the Property, the Applicant shall immediately take all necessary steps, at its sole cost and expense, to clear and remove all such liens, interests or encumbrances. The Applicant represents and warrants that it has full legal authority to enter into this Grant. The Applicant further warrants that it has the financial ability to maintain the Property as specifically intended and required under this Grant.

- A. The Applicant shall be solely responsible for all necessary costs, expenses, fees, charges, and all other liabilities of any type related to the execution and maintenance of the Project consistent with the intent of this Grant.
- B. The Applicant shall maintain the Property for the entire duration of this Grant Agreement in order to prevent the Property from reverting back to its previous state. In its application, Applicant provided a plan for maintaining the property consistent with the intent of this Grant and the Applicant will faithfully execute that plan.
- C. The rights and duties arising under this Grant shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns. However,

this Grant shall not be assigned without the prior written consent of the Authority, and any such assignment without the prior written consent of the Authority shall constitute grounds for termination of this Grant for cause.

9. Access and Audit

Each party will maintain all books, records, accounts, and reports associated with this Grant for a period of not less than five (5) years after the later of the date of termination or expiration of this Agreement. All said records will be available to the other upon request. In the event claims are asserted or litigation is commenced related to or arising out of the performance of this Agreement, each party agrees that it will maintain all records relating to the Project and the Property until the other party has disposed of all such litigation, appeals, claims, or exceptions related thereto.

10. License and Permit

The Applicant hereby grants to the Authority an irrevocable license and permit to access the Property, surrounding roadways, walkways, and any other means of ingress and egress to the Property for the purpose of ensuring compliance with this Grant for the duration of this Grant. The Parties each acknowledge that good and valuable consideration has been received to maintain such irrevocable license for the duration of this Grant.

11. Insurance

- A. Without waiving the right to sovereign immunity as provided by Section 768.28, F.S., each party acknowledges that it is either insured or self-insured for General Liability and Automobile Liability under Florida's sovereign immunity statutes with coverage limits of \$200,000 Per Person and \$300,000 Per Occurrence, or such other sovereign immunity waiver limits that may change as set forth by the State Legislature at the time of such occurrence.
- B. The Applicant agrees to maintain or to be self-insured for Workers' Compensation & Employers' Liability insurance in accordance with Chapter 440, Florida Statutes.
- C. When requested, each party shall provide to the other, an affidavit or Certificate of Insurance evidencing insurance, self-insurance and/or sovereign immunity status.
- D. Compliance with the foregoing requirements shall not relieve either party of its liability and other obligations under this grant.
- E. The Applicant agrees to include no less than the above-stated insurance requirements as to type of coverage and dollar amount so as to meet the minimum requirements set forth above in all contracts related to the construction, use, or maintenance of the Project and the Property, and shall establish and maintain such coverage as a requirement for the issuance of any permit, license, or right to use or occupy the Project and Property unless this requirement is expressly waived in writing by the Authority's Contract Representative and Monitor with the approval of Authority's Department of Risk Management.

12. Public Entity Crimes

Each party shall comply with Section 287.133(2)(a), F.S., as amended, which provides in pertinent part as follows:

A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, F.S. for Category Two for a period of thirty-six (36) months from the date of being placed on the convicted vendor list.

13. No Third Party Beneficiaries

Except as specifically set forth and as limited herein, this Grant confers no rights on anyone other than the Authority or the Applicant and is not otherwise intended to be a third party beneficiary contract in any respect. Nothing contained in this Agreement shall constitute the Authority's acceptance of any obligation or liability not otherwise imposed under this Grant or by law upon the Authority.

14. Termination

- A. In the event the Applicant fails to comply with any provision of this Grant, the Authority may exercise any and all rights available to it, including termination of this Grant. The Authority will notify the Applicant of its noncompliance and provide the Applicant thirty (30) days or such additional period granted by the Authority to cure the noncompliant event(s) or act(s). In the event the Applicant has not cured the noncompliant act(s) or event(s), or if the Applicant cannot cure the noncompliant act(s) or event(s), the Authority may terminate this Grant. If the Authority terminates this Grant for the Applicant's failure to cure under this provision, the Authority may require the Applicant to repay to the Authority the Grant funds that were provided by the Authority for the Project, or such other lesser sum equivalent to the value of the remaining useful life of the Project, as determined by the Authority in its sole discretion.
- B. The Authority may also terminate this Agreement for convenience, in whole or in part, at any time, by written notice of such termination to the Applicant should the Authority, in its sole discretion, determine that it is necessary to do so for any reason. The Authority shall notify the Applicant of its intent to terminate for convenience at least ninety (90) days in advance of the termination date by delivering notice of such to the Applicant specifying the extent of termination and the effective date. In the event the Authority terminates this Grant for convenience, the Applicant will be relieved of any obligation to repay the funds received from the Authority pursuant to paragraph 7.A above. The Applicant affirms that the benefits promised to it under this

Grant are adequate consideration to support not only its duties and obligations under this Grant, but also support the Authority's right to terminate this Grant for convenience and its limitation of remedies against the Authority to those specifically set forth herein, regardless of the harm, if any, caused by the Authority's termination of this Grant for convenience.

- C. Upon termination of this Grant as set forth herein, both the Authority and Applicant agree and acknowledge that their respective legal or equitable remedies against the other for termination of this grant are expressly limited to those contained in this Grant. Notwithstanding the foregoing, the parties agree to comply with all applicable statutory dispute resolution procedures as provided under Florida law.

15. Office of the Inspector General

Palm Beach County has established the Office of the Inspector General pursuant to, Ordinance No. 2009-049, as amended, which is authorized and empowered to review past, present and proposed County contracts, transactions, accounts and records. The Authority has entered into an agreement with Palm Beach County for Inspector General services. This agreement provides for the Inspector General to provide services to the Authority in accordance with the authority, functions, and powers set out in the Inspector General Ordinance as amended. All parties doing business with the Authority and receiving Authority funds shall fully cooperate with the Inspector General including, but not limited to, providing access to records relating to this Grant. The Inspector General has the power to subpoena witnesses, administer oaths, require the production of records, and audit, investigate, monitor, and inspect the activities of the Applicant, its officers, agents, employees, and lobbyists in order to ensure compliance with the Agreement and detect corruption and fraud. Failure to cooperate with the Inspector General or interference with or impeding any investigation shall be a violation of the Inspector General Ordinance, as amended, and punishable pursuant to Section 125.69, Florida Statutes, in the same manner as a second degree misdemeanor.

16. No Liability or Waiver of Sovereign Immunity

Neither party shall be deemed to have assumed any liability for the negligent or wrongful acts or omissions of the other party. Nothing contained in this Grant shall act or constitute a waiver of either party's sovereign immunity in excess of that waived by the Legislature in Section 786.28, F.S.

17. No Agency Relationship

Nothing contained herein is intended to nor shall it create an agency relationship between the Authority and the Applicant.

18. Remedies and Limitations of Liability

A. This Grant shall be construed by and governed by the laws of the State of Florida. Any and all legal action necessary to enforce the Agreement shall be in a State Court of competent jurisdiction located in Palm Beach County, Florida.

B. The Authority and Applicant both acknowledge that their respective remedies against

the other for termination of this Grant as set forth herein are limited solely to those in this Grant.

- C. The Authority's remedies against the Applicant shall be limited to the recovery of any sums of money provided to it under this Grant. The Authority shall have no further or additional liability to the Applicant or any other person or entity arising from, or related in any way to this Grant, and in no event shall the Applicant's liability to the Authority, for any reason, exceed the total amount of this Grant.
- D. The Applicant's remedies against the Authority shall be limited to the sum of money the Applicant has actually received from the Authority under this Grant to complete the Project. In the event the Applicant incurs any liability, contractual or otherwise, beyond the amount of this Grant, the Applicant shall be solely liable for any such amount. In no event shall the Authority's liability to the Applicant for any reason, exceed the total amount of this Grant.

19. Enforcement Costs

To the extent that enforcement of the Grant becomes necessary by either the Authority or the Applicant, each party shall bear their own attorney's fees, taxable costs, or any other costs related to such enforcement, including any form of alternative dispute resolution.

20. Notice

All written notices required under this Agreement shall be in writing and hand delivered or sent by certified mail, return receipt requested, and if sent to the Authority shall be mailed to:

John Archambo, Director
Customer Information Services
7501 N. Jog Road
West Palm Beach, FL 33412

with copies to:

County Attorney's Office
301 North Olive Avenue
Suite 601
West Palm Beach, FL 33401

and, if sent to the Applicant shall be mailed to:

Feriline F. Mesidort
City of Delray Beach
100 North West 1st Avenue
Delray Beach, FL 33444

with copies to:

City Attorney's Office
200 North West 1st Avenue
Delray Beach, FL 33444

Each party may change its address upon notice to the other.

21. No Waiver

No waiver of any provisions of this Grant, or any amendment hereto, shall be effective unless it is in writing, signed by the party against whom it is asserted. Any such written waiver shall only be applicable to the specific instance to which it relates and shall not be deemed a continuing or future or continuing waiver.

22. Captions

The captions and section designations herein set forth are for convenience only and shall have no substantive meaning.

23. Joint Preparation

The preparation of this Grant has been a joint effort of the parties, and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.

24. Severability

Should any section, paragraph, sentence, clause, or provision hereof be held by a court of competent jurisdiction to be invalid, such shall not affect the remaining portions of this Agreement.

25. Entirety of Contract and Modifications

The Authority and Applicant agree that this Grant sets forth the entire agreement and understanding between the parties of their respective rights or obligations hereunder, including the intent of this Grant. There are no promises or understandings other than those stated herein. No modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and equality of dignity herewith.

26. Survivability

Provisions of this Grant which are of a continuing nature or impose obligations which extends beyond the term of this Grant shall survive its expiration or earlier termination.

27. Filing

A copy of this Agreement shall be filed with the Clerk and Comptroller of the Circuit Court in and for Palm Beach County.

28. Commercial Nondiscrimination Policy

As a condition of entering into this agreement, the Applicant represents and warrants that

it will comply with the Authority's Commercial Nondiscrimination Policy as described under Section 6.3 of the Authority's Purchasing Manual that is incorporated herein by specific reference. As part of such compliance, the Applicant shall not discriminate on the basis of race, color, national origin, religion, ancestry, sex, age, marital status, familial status, sexual orientation, gender identity or expression, disability, or genetic information in the solicitation, selection, hiring or commercial treatment of subcontractors, vendors, suppliers, or commercial customers, nor shall the Applicant retaliate against any person for reporting instances of such discrimination. The Applicant shall provide equal opportunity for subcontractors, vendors and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the Authority's relevant marketplace in Palm Beach County. The Applicant understands and agrees that a material violation of this clause shall be considered a material breach of this agreement and may result in termination of this agreement, disqualification or debarment of the company from participating in Authority contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party.

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IN WITNESS WHEREOF, the Solid Waste Authority of Palm Beach County and City of Delray Beach have hereunto set their hands the day and year above written.

ATTEST:

**SOLID WASTE AUTHORITY OF
PALM BEACH COUNTY**

By: _____
Sandra Vassalotti, Clerk to the Board

By: _____
Daniel Pellowitz, Executive Director

(SEAL)

APPROVE AS TO LEGAL SUFFICIENCY

APPROVE AS TO TERMS AND CONDITIONS

By: _____
Howard J. Falcon, III
General Counsel

By: _____
John Archambo
Director, Customer Information Services

WITNESSES:

CITY OF DELRAY BEACH

Witness Signature

By: _____
Signature

Print Witness Name

Print Name

Witness Signature

Title

Print Witness Name

(SEAL)

Approved by the Solid Waste Authority Board on _____, 2019, Item _____

Approved by the City of Delray Beach on _____, 2019 Item _____