

**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 _____ 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 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. **Ratifications.** 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:

Katerri Johnson, City Clerk

CITY OF DELRAY BEACH, FLORIDA

Shelly Petrolia, Mayor

Approved as to Form and Legal Sufficiency:

Lynn Gelin, City Attorney

**DELRAY BEACH DOWNTOWN
DEVELOPMENT AUTHORITY**

By: _____

Print Name: _____

Title: _____

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this _____ day of _____, 2023, by _____ (name of person), as _____ (type of authority) for _____ (name of party on behalf of whom instrument was executed).

Personally known _____ OR Produced Identification _____

Type of Identification Produced _____

Notary Public – State of _____