

**FUNDING AGREEMENT BETWEEN THE CITY OF DELRAY BEACH AND THE
GREATER DELRAY BEACH CHAMBER OF COMMERCE**

THIS AGREEMENT is made this ____ day of _____, 2018 by and between the **CITY OF DELRAY BEACH**, a Florida Municipal Corporation (hereinafter referred to as the “**CITY**”), and the **GREATER DELRAY BEACH CHAMBER OF COMMERCE**, (hereinafter referred to as the “**CHAMBER**”).

W I T N E S S E T H:

WHEREAS, the CITY desires to provide support to the economic community with the City of Delray Beach; and

WHEREAS, the CITY finds that this Agreement serves a municipal and public purpose, is consistent with the CITY’s Comprehensive Plan and Code of Ordinances and conforms to the requirements of Florida law.

NOW, THEREFORE, in consideration of the mutual covenants and promises herein contained, the parties hereby agree as follows:

1. The recitations set forth above are true and correct and incorporated herein by reference.
2. The term of this Agreement shall commence on October 1, 2018 until January 31, 2019. Thereafter, this Agreement shall continue on a month to month basis until terminated by either party in accordance with the provisions of paragraph 10 below.
3. No later than the fifth day of each month, the CITY shall provide to CHAMBER funding in an amount not to exceed Ten Thousand Four Hundred and Seventeen and 00/100 Dollars \$10,417.00 per month (“Funding Amount”). The Funding Amount is to be used by CHAMBER to provide Hometown Event marketing, Destination marketing and administrative costs.

4. Within Fifteen Days after execution of this Agreement, CHAMBER shall submit the following reports to the CITY in a form reasonably acceptable to the CITY, and which shall confirm that the CHAMBER has operated and shall continue to operate in such a manner as to meet the Performance Standards described in Exhibit "A":

- (a) CHAMBER's annual business plan which shall contain the following information: operations, business structure, fund raising and capital development plan and five-year strategic plan;
- (b) CHAMBER's annual budget for its 2018-19 fiscal year and for its 2017-18 fiscal year.
- (c) The most recent audit of CHAMBER's business operations, including management letters, responses to management letters (if any) and CHAMBER's annual income tax returns, IRS Form 990, 990-T or equivalent.
- (d) An outreach and diversity plan relating to CHAMBER's services, which includes specific goals in appointments to CHAMBER's governing board to reflect the diversity of the community it serves.

5. Prior to the issuance of the monthly Funding Amount for each subsequent month of this Agreement, CHAMBER shall submit to the CITY its report 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 CHAMBER during the preceding month; (b) the number of persons who participated in activities and programs held by CHAMBER during the preceding month; and (c) a written statement signed by CHAMBER which sets forth its status on meeting the Performance Standards, and which of such Performance Standards were not met, all with appropriate explanation.

6. CHAMBER acknowledges that failure to timely provide an audit and a monthly report to the CITY as described in Paragraph 5 may result in the City terminating this Agreement in accordance with Paragraph 10 below and may negatively impact the CITY's funding of CHAMBER programs in the future.

7. CHAMBER recognizes that payments under this Agreement are made with public funds, including tax dollars. Accordingly, CHAMBER shall purchase goods and services in a manner to provide, to the maximum extent practicable, open and free competition in order to obtain the most reasonable pricing.

8. CHAMBER hereby gives the City, through any authorized representative, upon reasonable notice, access to and the right to examine all records, books, papers, or documents relating to the funding provided pursuant to this Agreement. CHAMBER hereby agrees to maintain books, records and documents in accordance with accounting procedures and practices which sufficiently and properly reflect all expenditures of funds provided by the CITY under this Agreement. CHAMBER hereby agrees that if it has caused any funds to be expended in violation of this Agreement, it shall be responsible to refund such monies in full to the CITY, or if this Agreement is still in force, any subsequent request for payment shall be withheld by the CITY.

9. Both the CITY and CHAMBER agree that CHAMBER shall at all times act as an independent contractor in the performance of its duties under this Agreement. Accordingly, CHAMBER shall be responsible for the payment of all taxes including Federal and State taxes arising out of CHAMBER's activities in accordance with this Agreement including by way of illustration but not limitation, Federal income tax, Social Security tax, Unemployment Insurance taxes, and any other taxes or business license fees as may be lawfully required.

10. If the CITY determines, in its sole and absolute discretion, that CHAMBER is not achieving the Performance Standards or is otherwise not furthering the CITY's goals, policies, and objectives, the CITY shall provide 30 days' written notice to the CHAMBER of its intent to terminate this Agreement.

11. No prior or present agreements or representations with regard to any subject matter contained within this Agreement shall be binding on any party unless included expressly in this Agreement. Any modification to this Agreement shall be in writing and executed by the parties.

12. The validity of any portion, article, paragraph, provision, clause, or any portion thereof of this Agreement shall have no force and effect upon the validity of any other part of portion hereof.

13. Neither the CITY nor CHAMBER shall assign or transfer any rights or interest in this Agreement.

14. CHAMBER shall not unlawfully discriminate against any person in its operations and activities or in its use or expenditure of funds in fulfilling its obligations under this Agreement and shall not otherwise unlawfully discriminate in violation of any State or Federal law.

15. This Agreement shall be governed by and in accordance with the Laws of Florida. The venue for any action arising from this Agreement shall be in Palm Beach County, Florida.

16. Notices pursuant to this Agreement shall be given by deposit in the custody of the United States Postal Service, postage prepaid, addressed as follows:

CITY: City Manager
100 NW 1st Avenue
Delray Beach, FL 33444

Copy to: City Attorney
200 NW 1st Avenue
Delray Beach, FL 33444

CHAMBER: Jeb A. Conrad
Greater Delray Beach Chamber of Commerce
140 Northeast 1st Street
Delray Beach, FL 33444

17. (a) IF CHAMBER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO CHAMBER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE

**CUSTODIAN OF PUBLIC RECORDS AT CITY OF DELRAY BEACH, CITY CLERK,
100 N.W. 1ST AVE., DELRAY BEACH, FLORIDA, (561) 243-7050, E-MAIL:
cityclerk@mydelraybeach.com.**

(b) CHAMBER shall comply with all public records laws in accordance with Chapter 119, Florida Statutes. In accordance with state law, CHAMBER agrees to:

- (1) Keep and maintain all records that ordinarily and necessarily would be required by the City.
- (2) Provide the public with access to public records on the same terms and conditions that the City 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.
- (3) Ensure that public records that are exempt or confidential and exempt from public records disclosure are not disclosed except as authorized by law.
- (4) Meet all requirements for retaining public records and transfer, at no cost, to the City all records in possession of the CHAMBER at the termination of the contract 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 City in a format that is compatible with the information technology systems of the City. All records shall be transferred to the City prior to final payment being made to the CHAMBER.
- (5) If CHAMBER does not comply with this section, the City shall enforce the contract provisions in accordance with the contract and may unilaterally cancel this Agreement in accordance with state law.

18. CHAMBER is 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 contract, and may demand and obtain records and testimony from the CHAMBER and its subcontractors and lower tier subcontractors. CHAMBER understands and agrees that in addition to all other remedies and consequences provided by law, the failure of CHAMBER or its subcontractor or lower tier subcontractors to fully cooperate with the Inspector General when

requested may be deemed by the CITY to be a material breach of this Funding Agreement justifying its termination.

19. In no event shall the CITY be liable for any amounts in excess of the amounts stated herein. The parties hereto do not intend to create any rights for third party beneficiaries under this Agreement.

20. This Agreement constitutes the entire agreement between the parties and shall supersede all prior oral and written funding agreements by the CITY to CHAMBER.

21. The parties acknowledge that CITY's performance and payment pursuant to this Agreement is not assured and is contingent upon the CITY, in its sole and absolute discretion, appropriating the Funding Amount in its approved annual budget.

22. This Agreement shall not be valid until signed by the CITY.

[Remainder of Page Intentionally Left Blank]

ATTEST:

CITY OF DELRAY BEACH

Katerri Johnson, City Clerk

By: _____
Shelly Petrolia, Mayor

Approved as to form and legal sufficiency:

R. Max Lohman, City Attorney

ATTEST:

**GREATER DELRAY BEACH
CHAMBER OF COMMERCE**

By: _____

Print Name: _____

Print Name: _____

Title: _____

(SEAL)

STATE OF FLORIDA
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this ____ day of _____, 2018, by _____, as _____ (name of officer or agent, title of officer or agent), of _____ (name of corporation acknowledging), a _____ (state or place of incorporation) corporation, on behalf of the corporation. He/She is personally known to me or has produced _____ (type of identification) as identification.

Notary Public – State of Florida