

**INTERLOCAL AGREEMENT BETWEEN THE DELRAY BEACH DOWNTOWN
DEVELOPMENT AUTHORITY AND THE DELRAY BEACH COMMUNITY
REDEVELOPMENT AGENCY FOR FUNDING OF ART AND JAZZ ON THE AVENUE**

THIS INTERLOCAL AGREEMENT FOR FUNDING OF ART AND JAZZ ON THE AVENUE (“Agreement”), is made this ____ day of _____, 2023, by and between the **DELRAY BEACH DOWNTOWN DEVELOPMENT AUTHORITY**, a dependent taxing authority created pursuant to Chapter 189, Florida Statutes (hereinafter referred to as “**DDA**”), and the **DELRAY BEACH COMMUNITY REDEVELOPMENT AGENCY**, a public body corporate and politic, duly created and operated pursuant to Chapter 163, Florida Statutes (hereinafter referred to as the “**CRA**”).

W I T N E S S E T H :

WHEREAS, Section 163.387(6)(c)(9), Florida Statutes, authorizes the expenditure of CRA funds on “[e]xpenses that are necessary to exercise the powers granted under Section 163.370, as delegated under Section 163.358”; and

WHEREAS, Section 163.370(2)(b) provides that the CRA shall have all the powers necessary or convenient to carry out and effectuate the purposes and provisions to disseminate community redevelopment information; and

WHEREAS, the Delray Beach CRA Redevelopment Plan (“Redevelopment Plan”), Part Two, Section (III)(C), pp. 16-18, identifies various efforts and projects by the CRA to redevelop the West Atlantic Avenue Commercial Corridor; and

WHEREAS, the Redevelopment Plan, Part Three, Section (I)(C), pp. 26-27, identifies several needs of the West Atlantic Avenue Commercial Corridor including maintaining a positive image at this entrance to the city center, increasing pedestrian and

bicycle activity, improving pedestrian relationship with other uses on West Atlantic Avenue, and continued beautification of West Atlantic Avenue and side streets, etc.; and

WHEREAS, the Redevelopment Plan, Part Four, Section (II)(A)(#1.1), pp. 56 - 63, recognizes the West Atlantic Avenue Redevelopment Plan, adopted by the City of Delray Beach in 1995, which encompasses the recommendations from the community stakeholders and project objectives including promoting businesses, development of programs and events and projects which attract new customers to Atlantic Avenue, create safer conditions for consumers, residents and businesses, beautifying the West Atlantic Avenue corridor, etc.; and

WHEREAS, on September 29, 2022, the **CRA** Board of Commissioners adopted Resolution No. 2022-09 adopting the **CRA** Annual Budget for Fiscal Year 2022-2023 (“Annual Budget”); and

WHEREAS, the **CRA’s** Annual Budget allocates funds for an event known as Art and Jazz on the Avenue (“Event”); and

WHEREAS, the **CRA** Board finds that utilizing the services and programs provided by the **DDA** further the goals and objectives of the **CRA** by allowing the **CRA** to disseminate community redevelopment information and as contained in the **CRA’s** Redevelopment Plan by attracting visitors to and promoting economic development activity within the downtown area. As such, utilizing the services and programs provided by the **DDA** is in the best interest of the **CRA**; and

WHEREAS, the **CRA** will provide funding to the **DDA**, pursuant to the terms and conditions of this Agreement, to assist the **DDA** with activities that address the goals and objectives contained in the **CRA’s** Redevelopment Plan; 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 district as a prosperous downtown area.

WHEREAS, 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, DDA's production of the Event, with additional funding assistance from the CRA, furthers the goals and objectives of the DDA.

WHEREAS, the **CRA** finds that this Agreement serves a municipal and public purpose, is consistent with the **CRA's** Redevelopment Plan, and conforms with the requirements of Florida law.

NOW THEREFORE, in consideration of the promises, mutual covenants, provisions and undertakings hereinafter contained and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. The foregoing "Whereas" clauses are hereby ratified as being true and correct, and incorporated herein.
2. **FUNDING:** The **CRA** agrees to pay the **DDA** an amount not to exceed **Thirty-Four Thousand and 00/100 Dollars (\$34,000.00)** ("Funding Amount"), for the purpose of providing the Art and Jazz on the Avenue event located in the **CRA** district on West Atlantic Avenue (West 3rd Avenue – West 6th Avenue) ("Event") for Fiscal Year

2022-2023 and as detailed in the Event Plan and Budget which is incorporated herein by reference and made apart hereof, attached as **Exhibit “A”**.

3. **PAYMENTS:** The payment shall be subject to the **DDA** providing timely reports as further provided in this Agreement. The funds are to be used by the **DDA** for the purposes of providing the Art and Jazz on the Avenue event located in the **CRA** district on West Atlantic Avenue (West 3rd Avenue – West 6th Avenue) for Fiscal Year 2022-2023 pursuant to Exhibit “A”. **CRA** shall reimburse **DDA** for CRA approved expenses as described in Exhibit A upon receipt of proper documentation. The **CRA** has the right to withhold payments until receipt of documentation from the **DDA**, and until the **CRA** receives free access to all additional information and/or documentation from the **DDA** that the **CRA** deems necessary, in its sole and absolute discretion, to analyze the **DDA's** financial position, performance, and expenditure of funds in accordance with this Agreement.

4. **FUNDING AVAILABILITY:** The **CRA's** obligation to pay under this Agreement is contingent upon the **CRA** having received tax increments funds pursuant to Chapter 163, Part III, Florida Statutes and that the Funding Amount has been budgeted and appropriated by the **CRA's** Board of Commissioners.

5. **EVENT PLAN AND BUDGET:** Prior to the issuance of the payments by the **CRA**, as specified in this Agreement, **DDA** shall provide the **CRA** with a comprehensive event plan and budget (“Event Plan and Budget”) for the Event for **CRA** approval. The Event Plan and Budget is incorporated herein by reference and made apart hereof, attached as **Exhibit “A”**.

6. **REPORTS:** In addition, the **DDA** shall provide a post-event performance report to the **CRA** no later than July 1, 2023. The post-event performance report shall include metrics such as number of attendees, number of vendors, public relations value, number of impressions, website hits, and copies of articles, marketing collateral, and social media marketing used for the events. In addition, the **DDA** is required to present an update on the Event to the **CRA** Board upon request.

7. **MEDIA/PUBLIC RELATIONS:** The **DDA** shall insure that all **DDA** generated publicity, public relations, advertisements, and signs clearly recognize the **CRA** for the support of all activities conducted with the funds provided by the **CRA** and include the **CRA's** logo, **CRA's** QR Code, and **CRA** community redevelopment information. The **CRA** shall provide the aforementioned **CRA's** logo, **CRA's** QR Code and **CRA** community redevelopment information to the **DDA** within 30 days of the effective date of this Agreement. All news releases, print advertising, radio and television advertising generated or participated in by the **DDA**, and any interviews given by **DDA** staff or Board members regarding the Event must clearly recognize the **CRA** for the support of all activities conducted with the funds provided by the **CRA**. For digital advertisements on electronic social medial advertising channels, the **DDA's** landing page shall be set up to permit users to click through the digital advertisement to go directly to the **CRA's** website. All signs or other advertising materials used to publicize **CRA** funded activities, including use of the **CRA's** logo or **CRA's** QR code, must be approved by the **CRA** prior to being utilized. Upon request by the **CRA**, the **DDA** shall provide proof of the use of the **CRA's** logo, **CRA's** QR code, and **CRA** community redevelopment information as required by

this section for the Event funded pursuant to this Agreement. The CRA's Executive Director or designee may agree to waive or revise any of the requirements in this section.

8. GOALS AND OBJECTIVES: If the **CRA** determines, pursuant to the **CRA's** Redevelopment Plan, that the **DDA** is not achieving the impacts and outcomes as stated in the "Whereas" clauses above, or is otherwise not furthering the **CRA's** goals and objectives, the **CRA** shall provide written notice to the **DDA** of such deficiency(ies), and the **DDA** shall have fourteen (14) days from the effective date of the notice to cure the deficiency(ies) to the satisfaction of the **CRA**. Should the **DDA** fail to cure such deficiency(ies) to the satisfaction of the **CRA**, the **CRA** Board has the right to terminate the Agreement immediately after delivery of written notice to **DDA**. Furthermore, the **CRA** may, in its sole and absolute discretion, cease future payments, and recoup all funds already disbursed under this Agreement. The **CRA's** Board shall have sole and absolute discretion with respect to the determination as to whether **DDA** is furthering the **CRA's** goals and objectives. Funds which are to be repaid to the **CRA** pursuant to this Section are to be repaid by delivering to the **CRA** a certified check for the total amount due within ten (10) days of the **CRA's** demand. In no way shall the **CRA** be subjected to any liability or exposure for the termination of this Agreement under this Section.

9. IMPROPER EXPENDITURE: In the event the **DDA** does not expend funds in accordance with the approved Event Plan and Budget, attached as **Exhibit "A"**, the **CRA** shall provide written notice, pursuant to Section 14 of this Agreement, to the **DDA** of such deficiency(ies), and the **DDA** shall have fourteen (14) days from date of return receipt to cure the deficiency(ies) to the satisfaction of the **CRA**. Should the **DDA** fail to cure such deficiency(ies) to the satisfaction of the **CRA**, the **CRA** shall be entitled to

recoup the portion of the Funding Amount allocated and/or already disbursed to the **DDA**, under the terms of this Agreement. The **CRA** shall have sole and absolute discretion with respect to the determination as to whether **DDA** is expending funds in accordance with its approved Event Plan and Budget.

10. INSPECTION: The **DDA** hereby gives the **CRA**, through any authorized representative, upon reasonable notice, access to and the right to examine all records, books, papers, or documents relating to the funding and financial status provided pursuant to this Agreement. The **DDA** 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 **CRA** under this Agreement in accordance with the Florida Public Record Laws as provided in Chapter 119, Florida Statutes, as may be amended from time to time. The **DDA** hereby agrees that at any time 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 **CRA**, including unlawful and/or unauthorized expenditures discovered after the termination of this Agreement, and if this Agreement is still in force, any subsequent request for payment shall be withheld by the **CRA**. The **CRA** shall have sole and absolute discretion with respect to the determination as to whether **DDA** is expending funds in accordance with this Agreement. Funds which are to be repaid to the **CRA** pursuant to this Section are to be repaid by delivering to the **CRA** a certified check for the total amount due within ten (10) days of the **CRA's** demand.

11. AUDIT RIGHTS. The **CRA** shall have the right at any time to conduct audits including free access of the **DDA's** records pertaining to the Funding Amount, this Agreement, its financial status, performance, and expenditure of funds in accordance with

this Agreement. Such records must be maintained by the **DDA** for a period of seven (7) years. The **DDA** agrees to cooperate with the **CRA** in the performance of these activities. Such audits shall take place at a mutually agreeable date and time. If it is determined, in the **CRA's** sole and absolute discretion, during the course of the audit that the funding under this Agreement was used for unallowable costs, the **DDA** agrees to promptly reimburse the **CRA** for such unallowable payments upon request, including unlawful and/or unauthorized expenditures discovered after the termination of this Agreement. The right of the **CRA** to conduct audits pursuant to this Agreement shall exist for seven (7) years from the completion and/or termination of this Agreement. This Section shall survive expiration or early termination of this Agreement. Funds which are to be repaid to the **CRA** pursuant to this Section are to be repaid by delivering to the **CRA** a certified check for the total amount due within ten (10) days of the **CRA's** demand.

12. **TERMINATION FOR CONVENIENCE:** The **CRA**, in its sole and absolute discretion, reserves the right to terminate this Agreement without cause upon five (5) days written notice to **DDA**. Upon receipt or effectiveness of such notice, the **DDA** shall not receive any additional funds from the Funding Amount from the **CRA**. Furthermore, upon issuing such notice, the **CRA** may, in its sole and absolute discretion, cease all payments to the **DDA**. In no way shall the **CRA** be subjected to any liability or exposure for the termination of this Agreement under this Section.

13. **INDEPENDENT CONTRACTOR:** Both the **CRA** and the **DDA** agree that the **DDA** shall at all times act as an independent contractor in the performance of its duties under this Agreement. Accordingly, the **DDA** shall be responsible for the payment of all taxes including Federal and State taxes arising out of the **DDA'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.

14. NOTICE. All notices, requests, and responses provided for herein shall be in writing. Such documents shall be given by deposit in the custody of the United States Postal Service, by registered or certified mail (postage prepaid), return receipt requested, and notice shall be deemed effective on the third (3rd) business day after mailing. The **CRA** and **DDA** designate the following as the appropriate people and places for delivering notices and other documents:

CRA: Renée A. Jadusingh, Esq., Executive Director
The Delray Beach Community Redevelopment Agency
20 N. Swinton Avenue
Delray Beach, FL 33444
Telephone No.: (561) 276-8640
Facsimile No.: (561) 276-8558

Email Copy to: Kim Phan, Esq., Legal Advisor
Kimp@mydelraybeach.com

DDA: Laura Simon, DDA Executive Director

350 SE 1st Street
Delray Beach, Florida 33483
Telephone No.: (561) 243-1077

Both parties reserve the right to designate a different representative in the future, or to change the address for notice, by providing written notice to the other party of such change.

15. PUBLIC RECORDS. The **CRA** is a public agency subject to Chapter 119, Florida Statutes. The **DDA** shall comply with all public records laws in accordance with Chapter 119, Florida Statutes. In accordance with state law, **DDA** agrees to:

- a. Keep and maintain all records required by the **CRA** to perform the service.
- b. Upon request from the **CRA's** custodian of public records, provide the **CRA** with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.
- c. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the **DDA** does not transfer the records to the **CRA**.
- d. Upon the termination of this Agreement, the **DDA** shall transfer, at no cost to the **CRA**, all public records in possession of the **DDA** and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the **DDA** keeps and maintains public records upon completion of the contract, the **DDA** shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the **CRA**, upon request from the **CRA's** custodian of public records in a format that is compatible with the information technology systems of the **CRA**. All records shall be transferred to the **CRA** prior to final payment being made by the **CRA**.

e. If **DDA** does not comply with this section, the **CRA** shall enforce the contract provisions in accordance with the contract and may unilaterally cancel this contract in accordance with state law.

**IF THE DDA HAS QUESTIONS REGARDING THE
APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO
THE DDA'S DUTY TO PROVIDE PUBLIC RECORDS
RELATING TO THIS CONTRACT, CONTACT THE
CUSTODIAN OF PUBLIC RECORDS AT**

**KIM N. PHAN, ESQ.
561-276-8640
KIMP@mydelraybeach.com
20 North Swinton Avenue
Delray Beach, Florida 33444**

16. GOVERNING LAW AND VENUE. 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.

17. ATTORNEY'S FEES: If any legal action or other proceeding is brought for the enforcement of this Agreement, compliance, or because of an alleged dispute, breach, default or misrepresentation in connection with any provisions of this Agreement, the successful or prevailing party or parties shall be entitled to recover reasonable attorneys' fees, court costs and all expenses (including taxes) even if no taxable as court costs (including, without limitation, all such fees, costs and expenses incident to appeals), incurred in that action or proceeding, in addition to any other relief to which such party or parties may be entitled, provided, however, that this clause pertains only to the parties to this Agreement.

18. SEVERABILITY: 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.

19. ENTIRE AGREEMENT: 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. Any amendments to this Agreement may be approved by the CRA's Executive Director and the DDA Executive Director. All amendments to this Agreement shall be in writing, signed by both parties.

20. ASSIGNMENT: Neither the **DDA** nor the **CRA** shall assign or transfer any rights or interest in this Agreement.

21. This Agreement shall not be valid until signed by the **CRA** Chair.

[Space Intentionally Left Blank; Signature Page to Follow]

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed on the day and year first above written.

DOWNTOWN DEVELOPMENT AUTHORITY
OF DELRAY BEACH

By: _____
Mavis Benson, Chairman

DELRAY BEACH COMMUNITY
REDEVELOPMENT AGENCY

By: _____
Shirley E. Johnson, Chair

ATTEST:

Renée A. Jadusingh, Esq.
CRA Executive Director

I HEREBY CERTIFY THAT I HAVE
APPROVED THIS AGREEMENT
AS TO FORM:

Kim N. Phan, Esq., Legal Advisor

EXHIBIT “A” Event Plan and Budget

Art & Jazz on the Avenue May 24, 2023 6pm – 9:30pm

The Art and Jazz on the Avenue will take place on West Atlantic Avenue from NW 3rd Ave to NW 6th Avenue. The avenue will be closed to vehicular traffic from 2pm – 11pm. This special event will welcome locals and visitors to enjoy an evening of visiting the local businesses, local art and specialty vendors, and dance to great entertainment. This is one of 4 Art and Jazz on the Avenue events produced by the DDA in FY22-23.

The event includes:

- 20-24 vendor tents to include local businesses and artists and non profit partners
- Two stages to include 4 local bands
- Live muralists
- Vintage cars
- Line dancing
- Food vendors and streeteries
- Children’s activities

The DDA markets and advertises this event throughout the county through all mediums which include print, digital, email and social media. The DDA creates and implements the marketing as well as onsite social media efforts reaching over one million impressions.

TOTAL BUDGET:

City Services: \$12,000

Sound and Lighting: \$7,000

Tents, Stage, Tables, Chairs: \$15,000

Entertainment & Artists: \$8,000

Marketing/Ad: \$1,000

Total: \$43,000

CRA APPROVED EXPENSES:

City Services: \$12,000

Sound and Lighting: \$7,000

Tents, Stage, Tables, Chairs: \$15,000

Total: \$34,000