

**FUNDING AGREEMENT BETWEEN THE CITY OF DELRAY BEACH AND THE
DELRAY BEACH HISTORICAL SOCIETY, INC.**

THIS AGREEMENT is made this 8th day of December, 2016 by and between the **CITY OF DELRAY BEACH**, a Florida Municipal Corporation (hereinafter referred to as "**CITY**"), and **DELRAY BEACH HISTORICAL SOCIETY, INC.**, a Florida not-for-profit corporation, (hereinafter referred to as "**DBHS**").

WITNESSETH:

WHEREAS, on March 10, 1987, the City Commission of Delray Beach, recognizing the importance of maintaining and preserving significant historic properties in Delray Beach, adopted Ordinance 13-87, which created the Historic Preservation Chapter of the Code of Ordinances; and,

WHEREAS, in continuing its commitment to historic preservation, in 2006, the City Commission adopted Ordinance No. 72-06, Individually Designated Historic Structures and Structures in Historic Districts, to recognize, preserve and protect the historical structures and districts located within the City of Delray Beach; and

WHEREAS, the City of Delray Beach, in its Comprehensive Plan, has identified the need to protect the City's historic resources by requiring adherence to the Historic Preservation chapter of the City's Code of Ordinances and applicable Land Development Regulations and by requiring neighborhood surveys every five (5) years to identify and evaluate potential historic resources; and

WHEREAS, the City Commission of Delray Beach, Florida, desires to continue developing a plan for the preservation of historical structures and sites through educational programming, record keeping and designation of additional structures and districts within Delray Beach; and

WHEREAS, the Delray Beach Historical Society ("DBHS") is a Florida not-for-profit corporation which was organized for the purpose of collecting, preserving, cataloging, displaying, and using for educational purposes, material and data pertaining to the history of Florida and of the City of Delray Beach, as now or hereafter constituted. It is the stated goal of DBHS to preserve and perpetuate historic spots and places and to promote public interest in, and further in every way interest in the historic past of Florida and Delray Beach; and,

WHEREAS, the CITY desires to provide annual funding to DBHS for five years, subject to annual appropriations, pursuant to the terms and conditions of this Agreement, in order to assist DBHS with activities that further the City's goals with respect to historic preservation; 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 upon execution by both parties. The Agreement shall continue in full force and effect until September 30, 2021.

3. Within 90 days of execution of this Agreement, the CITY shall provide to DBHS funding in the amount of Five Thousand and 00/100 Dollars (\$5,000.00). This amount represents the first annual funding amount. For the subsequent funding years

covered by the Agreement, the CITY shall provide funding to DBHS, on an annual basis, in an amount not to exceed Fifty Thousand and 00/100 Dollars (\$50,000) per year ("Funding Amount"). Payment of the Funding Amount for subsequent years of this Agreement shall be made in accordance with Paragraph 5. The Funding Amount is to be used by DBHS to provide programming services that support the mission of DBHS in accordance with the Performance Standards described in Exhibit "A".

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

(a) DBHS'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) DBHS's annual budget for its 2016-17 fiscal year and for its 2015-16 fiscal year.

(c) The most recent audit of DBHS's business operations, including management letters, responses to management letters (if any) and DBHS's annual income tax returns, IRS Form 990, 990-T or equivalent.

(d) An outreach and diversity plan relating to DBHS's services, which includes specific goals in appointments to DBHS's governing board to reflect the diversity of the community it serves.

5. No later than August 1st of each subsequent year of this Agreement and prior to budget approval and appropriation of the Funding Amount for each subsequent year of this Agreement, DBHS shall submit to the CITY its audit from the prior fiscal year and an annual 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 DBHS during the preceding fiscal year; (b) the number of persons who participated in activities and programs held by DBHS during the preceding fiscal year; and (c) a written statement signed by DBHS which sets forth its status on meeting the Performance Standards, and which of such Performance Standards were not met, all with appropriate explanation.

6. DBHS acknowledges that failure to timely provide an audit and an annual 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 DBHS programs in the future.

7. DBHS recognizes that payments under this Agreement are made with public funds, including tax dollars. Accordingly, DBHS 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. DBHS 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. DBHS 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. DBHS 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 DBHS agree that DBHS shall at all times act as an independent contractor in the performance of its duties under this Agreement. Accordingly, DBHS shall be responsible for the payment of all taxes including Federal and State taxes arising out of DBHS'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 DBHS is not achieving the Performance Standards or is otherwise not furthering the CITY's goals, policies, and objectives with respect to historic preservation, the CITY shall provide written notice to the DBHS of such deficiency(ies), and DBHS shall have fourteen (14) days from receipt of the notice to cure the deficiency(ies) to the satisfaction of the CITY. Should the DBHS fail to cure such deficiency(ies) to the satisfaction of the CITY, the CITY has the right to void the Agreement immediately after delivery of written notice to DBHS.

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 DBHS shall assign or transfer any rights or interest in this Agreement.

14. DBHS 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

DBHS: Winnie Edwards
Delray Beach Historical Society
3 Northeast 1st Street
Delray Beach, FL 33444

17. (a) IF DBHS HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO DBHS'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:
publicrecordsrequest@mydelraybeach.com.

(b) DBHS shall comply with all public records laws in accordance with Chapter 119, Florida Statutes. In accordance with state law, DBHS 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 DBHS 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 DBHS.
- (5) If DBHS 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. DBHS 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 DBHS and its subcontractors and lower tier subcontractors. DBHS understands and agrees that in addition to all other remedies and consequences provided by law, the failure of DBHS

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 DBHS.

21. The parties acknowledge that CITY's performance and payment pursuant to this Agreement beyond the initial one (1) year term 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.

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ATTEST:

CITY OF DELRAY BEACH

Kimberly Lynn, Acting City Clerk
Chevelle Nubin, CITY Clerk

By: Cary D. Glickstein, Mayor

Approved as to form and legal sufficiency:

[Signature]
City Attorney

ATTEST:

DELRAY BEACH HISTORICAL SOCIETY

Winnie Edwards
Print Name: Winnie Edwards

By: [Signature]
Print Name: W. Howard Ellingsworth
Title: President

(SEAL)



THOMAS A. SMITH
MY COMMISSION #GG 7314 EXPIRES
August 31, 2020

STATE OF FLORIDA
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 6th day of December, 2016, by W. Howard Ellingsworth as President (name of officer or agent, title of officer or agent), of DeRay Beach Historical Society (name of corporation acknowledging), a Florida (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.

[Signature]
Notary Public – State of Florida

EXHIBIT "A"
Performance Standards

1. DBHS shall manage and operate the historical resources located at 3 NE 1st Street, Delray Beach, Florida, including, but not limited to Cason Cottage Historic House Museum, The 1926 Florida Bungalow, and the Ethel Sterling Williams History Learning Center & Archives in a manner that furthers to goals of the City with respect to historic preservation.

2. DBHS shall keep and maintain the Ethel Sterling Williams History Learning Center & Archive Building open to the public on a regular, year-round basis in accordance with the Tri-Party Agreement between the CITY, DBHS, and Palm Beach County, attached as Exhibit "B" of this Agreement.

3. DBHS shall archive acceptable materials in accordance with the DBHS Acquisitions Policy, attached as Exhibit "C" of this Agreement and store said archives using professional and industry standard preservation and conservation materials to ensure sustainability.

4. DBHS shall provide an archivist responsible for fulfilling research requests and receiving donated items for the purpose of expanding the archival collection of the DBHS.

5. DBHS shall produce a minimum of one major exhibit per year, each accompanied by an educational component such as lectures, workshops or auxiliary events.

6. DBHS shall provide tours and educational programming to visitors and students with a programmatic emphasis toward community groups and underserved populations who would not otherwise be able to participate in the programs. DBHS shall endeavor to serve at least 3,500 visitors per year.

EXHIBIT "B"
**Tri-Party Agreement between the City, DBHS, and Palm Beach County for the Ethel
Sterling Williams History Learning Center & Archive Building**

EXHIBIT "C"
Acquisition Policy as of April 2016

The express purpose of the Delray Beach Historical Society Archives is to collect, accept, arrange, and conserve records, manuscripts, photographs, other paper items, recordings, and artifacts with a strong connection to the history of Delray Beach.

Such material may include books, pamphlets, letters, speeches, maps, plats, surveys, portraits, photographs, relics, pictorial illustrations of Delray Beach scenery, and any other ephemera that document the history of Delray Beach.

Acceptable material must be of a size and condition making it possible for the Delray Beach Historical Society to conserve, protect, and store it. In certain cases, items relating to the history of Palm Beach County and the State of Florida may also be collected.

Delray Beach Collections & Themes Include:

- Advertisements
- Area Maps
- Artwork
- Artists & Writers Colony Period
- Architecture & Buildings
- Agriculture & Farming
- Business, Industry, & Banking
- Cason Cottage
- Churches & Cemeteries
- City Directories & Calendars
- City Government, Clubs, & Organizations
- City Preservation Materials
- Delray Beach School Yearbooks
- Ethnic and Cultural Groups
- African-American Pioneers
- European (esp. German)-American Settlers
- Haitian Immigrants
- Japanese (Yamato) Settlers & Immigrants
- Seminole Tribe of Florida
- Civil Rights

- Festivals & Celebrations
- Medical Facilities
- Media Coverage (Newspapers)
- Monuments & Markers
- Natural History
- Conservation
- Dune Restoration
- Hurricanes
- Intracoastal Waterway
- Notable People & Families
- Founders
- Politicians
- Postal Service
- Pre-Settlement Period (pre-1890s)
- Rare Books
- Linton Settlement
- Delray/Delray Beach
- Palm Beach County
- Tourism & Recreation
- Atlantic Avenue
- Beaches
- Fishing
- Historic Homes
- Hotels & Restaurants
- Parks
- Sports & Recreation Facilities
- Surfing
- Transportation
- Florida East Coast (FEC) Railroad
- Marine/Nautical, Shipwrecks
- Roads & Bridges
- Seaboard Air Line Railway Station
- Wars & Battles
- Spanish-American War
- World War I
- World War II
- Vietnam War
- Conflicts in the Middle East
- Influence on life in Delray/Delray Beach