

**AGREEMENT BETWEEN THE CITY, THE GREATER DELRAY BEACH CHAMBER
OF COMMERCE, AND THE DELRAY BEACH DOWNTOWN DEVELOPMENT
AUTHORITY**

THIS AGREEMENT is made this ____ day of _____, 2021 by and between the **CITY OF DELRAY BEACH**, a Florida Municipal Corporation (hereinafter referred to as "City"), **THE GREATER DELRAY BEACH CHAMBER OF COMMERCE, Inc.**, a Florida Not for Profit Corporation, (hereinafter referred to as "Chamber"), and **THE DELRAY BEACH DOWNTOWN DEVELOPMENT AUTHORITY** (hereinafter referred to as "DDA") (collectively, the "parties").

W I T N E S S E T H:

WHEREAS, the City is a Florida municipal corporation and has the home rule power to enter into agreements as herein provided; and

WHEREAS, the Chamber's mission is to strengthen and advocate for the business interests of Delray Beach; and

WHEREAS, the DDA is a body corporate and agency of the City codified pursuant to Ch. 2003-314, Laws of Florida, and performance by the DDA of its duties and exercises of its authority are municipal functions; and

WHEREAS, the DDA is responsible for marketing and promoting the downtown district through social media, print, television, digital media, and public relations, as well as merchant programs and events; and

WHEREAS, the DDA has successfully marketed the district and has initiated a rebound marketing program in response to the COVID 19 pandemic, which serves as the exemplar program; and

WHEREAS, the parties desire to work cooperatively in expanding the existing DDA tourism marketing program to a City-wide tourism marketing program ("the Program"), and as such agree to meet on a regular basis to review and implement the Program; and

WHEREAS, the Chamber finds that this agreement furthers its mission to strengthen and advocate for the business interests of Delray Beach; and

WHEREAS, the City finds that this Agreement serves a municipal and public purpose as a city-wide tourism marketing program is consistent with the City's Comprehensive Plan and Code of Ordinances and conforms to the requirements of Florida law; and

WHEREAS, the DDA finds that this Agreement serves a municipal and public purpose and encourages economic development and promotion of Downtown Delray Beach as a prosperous downtown area.

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

1. **Recitals.** The recitations set forth above are true and correct and incorporated herein by reference.

2. **Term.** This term of this Agreement shall commence upon the date of the duly executed Agreement and shall remain in effect for a term of three (3) years, unless terminated earlier in accordance with terms set forth herein. Upon mutual agreement of the City, the DDA, and the Chamber, the Agreement may be renewed for up to two (2) additional years.

3. **Financial and Other Support.** The Parties to this Agreement agree to cooperatively provide financial and other support in expanding the existing DDA tourism marketing program to a City-wide marketing program for the benefit of the City of Delray Beach. The Parties shall use their best efforts to collaborate with each other to ensure that the Program is properly implemented. The Parties agree that no later than September 30th of each year, their respective governing bodies shall consider the approval of an annual amendment to this Agreement to provide Tourism Cooperative efforts for the following fiscal year.

A. City— The City may provide funding to the DDA or the Chamber to be utilized for Destination Marketing pursuant to the City's annual budget process. Any annual funding to be provided by the City to the DDA pursuant to this Agreement shall be budgeted or ear-marked prior to October 1 of each respective year during the term of this Agreement, and by that date the City shall clearly communicate the total amount of funding, if any, to be provided by the City to the Program for that respective fiscal year. The City may also provide direct financial support for the Tourism Master Plan submitted by Tourism Strategic Solutions. The City may also provide design and promotional support for the Program.

B. Chamber— The Chamber agrees to contribute the URL visitdelraybeach.org., and the social media sites: [FB/downtowndelraybeach](https://www.facebook.com/downtowndelraybeach) and [Instagram/visitdelraybeach](https://www.instagram.com/visitdelraybeach) for the benefit of the Program administered by the DDA. The Chamber also agrees to leverage the use of it's URL "delraybeach.com" for further distribution of the Program messaging related to Destination Marketing for the City of Delray Beach. The Chamber

agrees to remove or modify any postings, articles, or elements in any form of the above-described website and social media pages upon request if there is consensus of at least two parties that the content is unsatisfactory for the proper performance of the Program. The Chamber may also assist the Program by securing collaborative financial support from tourism businesses to leverage opportunities including but not limited to; ThePalmBeaches.com and VisitFlorida.com.

C. DDA— The DDA agrees to initiate and implement the Marketing Plan attached hereto as Exhibit “A”. The DDA shall provide each party with a report on a quarterly basis, no later than October 25th, January 25th, April 25th, and July 25th for each fiscal year, related to funding provided by either party to the DDA. The reports provided by the DDA shall be in writing and detail how the DDA expended the funds in relation to the marketing and promotion of Delray Beach.

4. **Termination.** A party may terminate its participation under the terms of this Agreement by giving 60 days written notice to the parties; provided however, the party(ies) who terminate shall pay the amount that it budgeted for the fiscal year and shall not be entitled to any refund.

5. **Insurance.** If the DDA enters into written contracts with a contractor for services provided pursuant to this Agreement, the DDA shall require the contractor to provide insurance in amounts acceptable to the DDA, Chamber, and the City. The Contractor shall be required to name the City, DDA, and the Chamber as additional insureds.

6. **Third Parties.** Nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or by reason of this Agreement upon any person other than the parties hereto and their respective heirs, successors, legal representatives, and permitted assigns, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third persons to any party to this Agreement, nor shall any provision thereof give any third person any right of subrogation or action over or against any party to this Agreement

7. **Governing Law and Venue.** This Agreement shall be construed in accordance with the City of Delray Beach's Code of Ordinances and the laws of the State of Florida. Any dispute relating to this Agreement shall only be filed in a court of competent jurisdiction in Palm Beach County, Florida, and each of the parties to this Agreement submits itself to the jurisdiction of such court. It is hereby understood and agreed that in the event any lawsuit in the judicial system, federal or state, is brought to enforce compliance with this contract or interpret same, or if any administrative proceeding is brought for the same purposes, each party shall pay their own attorney's fees and costs, including appellate fees and costs.

8. **Responsibilities of the Parties.** Each Party shall be responsible for its own negligence and nothing herein shall be deemed a waiver of sovereign immunity or the limits of liability set forth in Florida Statute Section 768.28.

9. **Access to Records.** The DDA and Chamber hereby gives the other parties to this Agreement, 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. The DDA and Chamber hereby agree 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 other parties under this Agreement in accordance with the Florida Public Record Laws as provided in Chapter 119, Florida Statutes.

10. Public Records. IF ANY PARTY HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE PARTY'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. THE CITY CLERK'S OFFICE MAY BE CONTACTED BY PHONE AT 561-243-7050 OR VIA EMAIL AT CITYCLERK@MYDELRAYBEACH.COM.

a. Parties shall comply with public records laws, specifically to:

- i. Keep and maintain public records required by the parties to perform the service.
- ii. Upon request from the City's custodian of public records, provide the City 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 Florida Statute or as otherwise provided by law.
- iii. 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 Agreement term and following completion of the Agreement if the party does not transfer the records to the City.

iv. Upon completion of the Agreement, transfer, at no cost, to the City all public records in possession of the party or keep and maintain public records required by the City to perform the service. If the party transfers all public records to the City upon completion of the Agreement, the party shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the Agreement, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.

v. If either party does not comply with this section, the City shall enforce the contract provisions in accordance with the contract and may unilaterally cancel this contract in accordance with state law.

11. **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.

12. **Amendments.** This Agreement may not be amended, modified, altered, or changed in any respect, except by a further agreement in writing duly executed by each of the parties hereto.

13. 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.

14. **Assignment.** Neither the City, DDA, or the Chamber shall assign or transfer any rights or interest in this Agreement.

15. **Fiscal Funding.** The continuation of this Agreement beyond the end of any fiscal year shall be subject to both the appropriation and the availability of funds in accordance with Florida law.

16. **E-Verify.** By entering into this Agreement all parties acknowledge their obligation to comply with the provisions of Section 448.095, Fla. Stat., "Employment Eligibility." All parties affirm and represent that they are registered with the E-Verify system, utilizing same, and will continue to utilize same as required by law. Compliance with this section includes, but is not limited to, utilization of the E-Verify System to verify the work authorization status of all newly hired employees and requiring all subcontractors to provide an affidavit attesting that the subcontractor does not employ, contract with, or subcontract with, an unauthorized alien. Failure to comply with this section will result in the termination of this Agreement, or if your subcontractor knowingly violates the statute, the subcontract must be terminated immediately. Any challenge to termination under this provision must be filed in the Circuit Court no later than 20 calendar days after the date

of termination. If terminated for a violation of the statute, the violating party may be prohibited from conducting future business with the City or awarded a solicitation or contract for a period of 1 year after the date of termination. All costs incurred to initiate and sustain the aforementioned programs shall be the responsibility of the violating party.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the City, the DDA, and the Chamber executed this Agreement as of the day and year first above written.

ATTEST:

CITY OF DELRAY BEACH

Katerri Johnson, City Clerk

By: _____
Shelly Petrolia, Mayor

Approved as to form and legal sufficiency:

Lynn Gelin, City Attorney

THE GREATER DELRAY BEACH
CHAMBER OF COMMERCE:

By: David W. Schmidt

Print Name: David W. Schmidt

Title: President/Chair

(SEAL)

STATE OF FLORIDA

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 12th day of July, 2021 by David W. Schmidt (name of person), as President (type of authority) for Greater Delray Beach (name of party on behalf of whom instrument was executed). Chamber of Commerce

Personally known ☒ OR Produced Identification ☐

Type of Identification Produced Carla Crowel
Notary Public – State of Florida



CAROLA CROWEL
Commission # GG 278477
Expires January 18, 2023
Bonded Thru Budget Notary Services

THE DELRAY BEACH DOWNTOWN
DEVELOPMENT AUTHORITY:

By: Peter B. Arns

Print Name: Peter B. Arns

Title: Chairman

(SEAL)

STATE OF FLORIDA

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 7th day of July, 2021, by Peter Gerard (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 Driver License

Carol A. Crowel



CAROL A. CROWEL
Commission # GG 278477
Expires January 18, 2023
Bonded thru Budget Notary Services