

**FUNDING AGREEMENT BETWEEN THE CITY OF DELRAY BEACH AND
EXPANDING AND PRESERVING OUR CULTURAL HERITAGE , INC. (EPOCH)**

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**”), and **EXPANDING AND PRESERVING OUR CULTURAL HERITAGE, INC.**, a Florida not-for-profit corporation, (hereinafter referred to as “**EPOCH**”).

W I T N E S S E T H:

WHEREAS, on February 7, 1995, the City Commission of the City of Delray Beach, recognizing the importance of maintaining and preserving significant historic properties in Delray Beach, designated the Solomon D. Spady House (hereinafter referred to as “Spady House”) to the Local Register of Historic Places; and

WHEREAS, the Spady House exemplifies the historical, cultural, and social trends in Delray Beach from 1922-1957 and provides insight into life of one of the most prominent African American educators and community leaders in Delray Beach, Solomon D. Spady; and

WHEREAS, EPOCH was founded in 1996 and serves to operate the Spady Cultural Heritage Museum located in the Spady House; and

WHEREAS, the Spady Cultural Heritage Museum is dedicated to preserving the history of Black Americans through exhibits, archives, lectures, and various programs; and

WHEREAS, the City Commission of Delray Beach, Florida, desires to support collaborative initiatives designed to collect, preserve, and share the information about the historical and cultural influences of Florida’s early black communities; and

WHEREAS, the CITY desires to provide annual funding to EPOCH for (5) years, pursuant to the terms and conditions of this Agreement, in order to assist EPOCH with activities that further

the City's goals with respect the historic and cultural preservation of Florida's early black communities; and

WHEREAS, the CITY finds that this Agreement serves a municipal and public purpose, is consistent with the CITY's goals, policies, and objectives, 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, 2026.

3. Within 90 days of execution of this Agreement, the CITY shall provide to EPOCH funding in the amount of \$31,000.00. This amount represents the first annual funding amount. For the subsequent funding years covered by the Agreement, CITY shall provide funding to EPOCH in an amount not to exceed Thirty-One Thousand and 00/100 Dollars (\$31,000.00) per year (the "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 EPOCH to provide programming services that support the mission of EPOCH in accordance with the Performance Standards described in Exhibit "A".

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

(a) EPOCH'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) EPOCH's annual budget for its 2021-22 fiscal year and for its 2020-21 fiscal year.

(c) A recent compilation report of EPOCH's business operations, including EPOCH's annual income tax returns, IRS Form 990, 990-T or equivalent.

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

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

6. EPOCH acknowledges that failure to timely provide a compilation report 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 EPOCH programs in the future.

7. EPOCH recognizes that payments under this Agreement are made with public funds, including tax dollars. Accordingly, EPOCH 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. EPOCH 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. EPOCH 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. EPOCH 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 EPOCH agree that EPOCH shall at all times act as an independent contractor in the performance of its duties under this Agreement. Accordingly, EPOCH shall be responsible for the payment of all taxes including Federal and State taxes arising out of EPOCH'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 EPOCH 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 EPOCH of such deficiency(ies), and EPOCH shall have fourteen (14) days from receipt of the notice to cure the deficiency(ies) to the satisfaction of the CITY. Should EPOCH fail to cure such deficiency(ies) to the satisfaction of the CITY, the CITY has the right to terminate the Agreement immediately after delivery of written notice to EPOCH.

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

14. EPOCH 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

EPOCH: Charlene Farrington
Spady Cultural Heritage Museum
170 NW 5th Avenue
Delray Beach, FL 33444

17. IF EPOCH HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO EPOCH 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 OR VIA E-MAIL AT CITYCLERK@MYDELRAYBEACH.COM.

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

- (i) Keep and maintain all records that ordinarily and necessarily would be required by the City.
- (ii) 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.
- (iii) Ensure that public records that are exempt or confidential and exempt from public records disclosure are not disclosed except as authorized by law.
- (iv) Meet all requirements for retaining public records and transfer, at no cost, to the City all records in possession of the EPOCH 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 EPOCH.
- (v) If EPOCH 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. EPOCH 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 EPOCH and its subcontractors and lower tier subcontractors. EPOCH understands and agrees that in addition to all other remedies and consequences provided by law, the failure of EPOCH 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 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 EPOCH.

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.

23. By entering into this Agreement EPOCH acknowledges its obligation to comply with the provisions of Section 448.095, Fla. Stat., "Employment Eligibility." EPOCH affirms and represents it is 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 by EPOCH, EPOCH 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 EPOCH.

[Remainder of Page Intentionally Left Blank]

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

ATTEST:

CITY OF DELRAY BEACH

Chevelle Nubin, CITY Clerk

By: _____
Shelly Petrolia, Mayor

Approved as to form and legal sufficiency:

Lynn Gelin, City Attorney

ATTEST:

**EXPANDING AND PRESERVING OUR
CULTURAL HERITAGE , INC.**

Print Name: _____

By: _____

Print Name: _____

Title: _____

(SEAL)

STATE OF FLORIDA
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this ____ day of _____, 20__, 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 Florida

EXHIBIT “A”

Performance Standards

1. EPOCH shall manage and operate the Spady Cultural Heritage Museum located at 170 NW 5th Avenue, Delray Beach, Florida.
2. EPOCH shall keep and maintain the Spady Cultural Heritage Museum open to the public on a regular, year-round basis.
3. EPOCH shall provide guided tours and educational programming to visitors, especially targeting those in underserved populations.
4. EPOCH shall maintain and operate exhibits intended to recognize the achievements of African Americans in Delray Beach, Palm Beach County, and throughout the State of Florida.
5. EPOCH shall host an annual Martin Luther King breakfast highlighting the legacy of Dr. King and featuring guest speakers.
6. EPOCH shall produce community forums to encourage open dialogue about race relations, diversity, and inclusion.