

**FUNDING AGREEMENT BETWEEN THE CITY OF DELRAY BEACH AND
THE FRIENDS OF SANDOWAY HOUSE NATURE CENTER, INC.**

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 **THE FRIENDS OF SANDOWAY HOUSE NATURE CENTER, INC.**, a Florida not-for-profit corporation, (hereinafter referred to as “**SANDOWAY**”).

W I T N E S S E T H:

WHEREAS, on December 3, 1996, the City Commission of the City of Delray Beach, recognizing the importance of maintaining and preserving significant historic properties in Delray Beach, designated the Sandoway House to the Local Register of Historic Places; and

WHEREAS, the Sandoway House exemplifies the historical, political, and social trends in Delray Beach during the Great Depression and provides insight into life in that era for its visitors; and

WHEREAS, SANDOWAY is a Florida not-for-profit corporation that was formed in 1995 to restore and preserve the Sandoway House and thereafter, use as a nature museum; and

WHEREAS, SANDOWAY provides education regarding Florida’s ecosystems through its hands on experiences and various exhibits located throughout the Sandoway House; and

WHEREAS, the City Commission of Delray Beach, Florida, desires to further the preservation of its historical structures through educational programming and to support organizations that educate the community on Florida’s ecosystems and inhabitants; and

WHEREAS, the CITY desires to provide funding to SANDOWAY for five (5) years, pursuant to the terms and conditions of this Agreement, in order to assist SANDOWAY with activities that further the City’s goals with respect to historic preservation, conservation, and education; 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. The CITY shall provide funding to SANDOWAY, on an annual basis, in an amount not to exceed Twenty-One Thousand and Two Hundred Dollars (\$21,200) per year (the "Funding Amount"). The Funding Amount is to be used by SANDOWAY to provide programming services that support the mission of SANDOWAY in accordance with the Performance Standards described in Exhibit "A". Payment of the annual amount for the initial year shall be made within 90 days of execution of this Agreement.

4. Within one hundred and eighty (180) days after execution of this agreement, SANDOWAY shall submit the following reports to the CITY in a form reasonably acceptable to the CITY and which shall confirm that the SANDOWAY has operated and shall continue to operate in such a manner as to meet the Performance Standards described in Exhibit "A":

(a) SANDOWAY's annual business plan which shall contain the following information: operations, business structure, fundraising and capital development plan and five year strategic plan;

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

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

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

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

6. SANDOWAY 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 SANDOWAY programs in the future.

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

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

14. SANDOWAY 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

SANDOWAY: Danica Sanborn
The Friends of Sandoway House Nature Center
142 S. Ocean Blvd.
Delray Beach, FL 33483

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

(a) SANDOWAY shall comply with all public records laws in accordance with Chapter 119, Florida Statutes. In accordance with state law, SANDOWAY 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 SANDOWAY 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 SANDOWAY.
- (v) If SANDOWAY 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. SANDOWAY 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 SANDOWAY and its subcontractors and lower tier subcontractors. SANDOWAY understands and agrees that in

addition to all other remedies and consequences provided by law, the failure of SANDOWAY 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 SANDOWAY.

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 appropriating the Funding Amount in its approved annual budget subject to its sole and absolute discretion.

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

23. By entering into this Agreement SANDOWAY acknowledges its obligation to comply with the provisions of Section 448.095, Fla. Stat., "Employment Eligibility." SANDOWAY 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 SANDOWAY, SANDOWAY 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 SANDOWAY.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the City and the Friends of Sandoway House Nature Center, Inc. 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: **THE FRIENDS OF SANDOWAY
HOUSE NATURE CENTER, INC.**

By: _____ By: _____

Print Name: _____ Print Name: _____

Title: _____ 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 FY 2021-2022

1. SANDOWAY shall manage and operate the Sandoway Discovery Center located at 142 S. Ocean Boulevard, Delray Beach, Florida.
2. SANDOWAY shall keep and maintain the Sandoway Discovery Center open to the public on a regular, year-round basis.
3. SANDOWAY shall provide guided tours and educational programming to visitors, especially targeting those in underserved populations.
4. SANDOWAY shall maintain and operate exhibits including, but not limited to, shark feedings, stingray touch tanks, the Yvonne S. Templeton Shell Room Gallery, the Microscope Room, The Reptile and Amphibian Room and the Children’s Library.
5. SANDOWAY shall operate outreach, field trip, and school-related programs.