

6.3 **Newsletter.** City will coordinate with DDA and CRA for key messaging updates and outreach. City will include marketing and event information for the Flagler Shore Project in the City's newsletter.

6.4 **Press Releases.** City will be responsible for all press releases related to the Flagler Shore Project.

6.5 **Maintenance.** City (Engineering Department) shall repair or replace any Maintenance of Traffic items are missing or need repair, including signage, flashers and traffic signals, along with other MOT components. City shall continue to provide its customary maintenance services within the License Area.

6.6 **Tropical Storm.** In the event of a tropical storm, hurricane or other weather event, City shall remove and store the Flagler Shore Project furnishings and planters and shall re-install the furnishings and planters after the storm.

6.7 **Police.** City will provide an enhanced police and/or security presence within the License Area during the Term of this Agreement.

7. **DDA OBLIGATIONS.**

7.1 **Programming.** The DDA shall develop an event programming plan for the Flagler Shore project, in accordance with the requirements of Article 4 of this Agreement, for review and comment by the City and CRA.

7.2 **New Landscaping and Plants.** The DDA will submit plans for new landscaping and plant material to enhance the License Area as part of the Flagler Shore project to CRA for review and approval. Upon approval of the new plant material by the CRA, the DDA will contract for installation of the new landscaping. The CRA shall be responsible for funding and payment for the new landscaping. The DDA shall coordinate maintenance for new landscaping installed and shall obtain replacement, if necessary, for any new plant material installed for the Flagler Shore project.

7.3 **Flagler Shore Project Logo.** The DDA shall prepare a Flagler Shore Project logo for review and comment by the City and CRA. DDA shall authorize the City and CRA to utilize the Flagler Shore Logo in all marketing, advertising and outreach for the Flagler Shore Project.

7.4 **Pamphlets.** As set forth in Section 5.5, the DDA shall be responsible for the design of a marketing flyer and mailer.

7.5 **On-Site Signage.** As set forth in Section 5.6, the DDA shall be responsible for the design of on-site signage and promotion of the Flagler Shore project.

7.6 **Postcards.** As set forth in Section 5.7, the DDA shall design postcards to promote certain events for the Flagler Shore Project.

7.7 **Site Monitoring.** DDA shall monitor the License Area and shall notify the appropriate Party of any needed repairs: CRA shall be notified if any furnishings or planters are

missing or damaged. City shall be notified if any plants are in distress or if any Maintenance of Traffic items are missing or need repair.

8. CRA OBLIGATIONS.

8.1 **Site Preparation.** CRA shall procure benches, tables, chairs, plants, pots and additional urban furniture to enhance the License Area for the Flagler Shore Project. CRA shall install the benches, tables, chairs, potted plants, additional urban furniture, and shall install the signage, flashers and traffic signals, as directed by City.

8.2 **Programming.** The CRA may review and provide comments to DDA regarding the DDA's programming plan.

8.3 **Website.** The CRA shall develop, implement and manage a website for the Flagler Shore Project.

8.4 **Postcards.** As set forth in Section 5.7, the CRA shall create and distribute mutually agreed upon postcards to promote certain events for the Flagler Shore project.

8.5 **Pamphlets.** As set forth in Section 5.5, the CRA shall be responsible for the printing and distribution of all mutually agreed upon pamphlets and marketing materials for the Flagler Shore Project.

8.6 **On-Site Signage.** As set forth in Section 5.6, the CRA shall be responsible for printing of all mutually agreed upon on-site signage.

8.7 **New Landscaping and Plants.** The CRA shall be responsible for funding and payment for the new landscaping installed for the Flagler Shore project.

8.8 **Maintenance.** CRA shall repair or replace any furnishings or planters that are missing or damaged during the Term of this Agreement.

8.9 **Removal.** CRA shall ensure that all benches, tables, chairs, potted plants, additional urban furniture items and any other items supplied and installed by the CRA for the Flagler Shore project are removed from the License Area no later than February 28, 2018, unless this date is extended in writing by the City.

9. ADDITIONAL TERMS.

9.1 **Non-Discrimination.** The Parties agree that no person shall, on the grounds of race, color, religion, sex, gender identity or expressions, genetic information, national origin, age, disability, familial status, marital status or sexual orientation, be excluded from the benefits of or be subjected to any form of discrimination under any activity carried out by the performance of this Agreement or the Flagler Shore Project.

9.2 **Americans with Disabilities Act.** All Parties shall comply with Americans with Disabilities Act in the installation of furnishings and hardscape and the programming of events for the Flagler Shore Project.

9.3 **Liability.** No Party shall be deemed to assume any liability for the negligent or wrongful acts or omissions of another party. Nothing contained herein shall be construed as a waiver by a party of sovereign immunity or the liability limits established in Section 768.28 of the Florida Statutes.

9.4 **Individual Members of CRA, DDA and City Not Liable.** No covenants, stipulation, obligation or agreement contained herein shall be deemed to be a covenant, stipulation, obligation or agreement of any present or future member of the governing body or agent or employee of the City or the CRA or the DDA in its, his, her, or their individual capacity, and neither the members of the governing body of the City or the CRA or the DDA, nor any official executing this Agreement, shall be liable personally, or shall be subject to any accountability, by reason of the execution by the City or the CRA or the DDA of this Agreement or any act pertaining hereto.

9.5 **No General Obligation.** Nothing contained in this Agreement shall constitute or create a lien or be construed or deemed to constitute or create a lien, either legal or equitable, on any of the City's or the CRA's or the DDA's revenues or funds. No person shall ever have the right to compel any exercise of the ad valorem taxing power of the City to make the payments herein provided against any property of the City or the CRA or DDA, nor shall this Agreement constitute a charge, lien or encumbrance, either legal or equitable, upon any property or funds of the City or the CRA or DDA, except as expressly herein provided.

9.6 **Notices.** Any formal notices required by this Agreement shall be in writing and shall be (as elected by the party giving such notice) hand delivered, or alternatively, may be sent by U.S. certified mail, return receipt requested. Notices shall be provided to the following:

As to the City:

City of West Palm Beach
City Hall – 401 Clematis Street (33401)
Post Office Box 3366
West Palm Beach, Florida 33402-3366
Attention: City Administrator

with a copy to: City Attorney's Office

As to the CRA:

West Palm Beach Community Redevelopment Agency
City Hall – 401 Clematis Street (33401)
Post Office Box 3366
West Palm Beach, Florida 33402-3366
Attention: Executive Director

As to the DDA:

West Palm Beach Downtown Development Authority
301 Clematis Street, Suite 200
West Palm Beach, Florida 33401
Attn: Raphael Clemente, Executive Director

The effective date of any notice shall be the date of delivery of the notice.

9.7 **Public Records.** Each Party shall comply with Chapter 119, Florida Statutes, regarding public records. Each Party shall keep and maintain all documents, records, correspondence, computer files, emails, and/or reports related to this Agreement. If a request to inspect or copy public records relating to this Agreement is made to a Party which does not possess the requested records, the Party shall immediately notify the appropriate Party and the City (if City is not the appropriate Party) of the request, and the appropriate Party shall provide the records to the City or allow the records to be inspected or copied within a reasonable time at the cost that would not exceed the cost allowed by law. All records stored electronically must be provided to the City, upon request, in a format that is compatible with the information technology systems of the City. Upon completion of the Agreement, each Party shall keep and maintain all public records in accordance with all applicable requirements for retaining public records. Each Party shall ensure that public records that are exempt or confidential and exempt from public records disclosure are not disclosed. Records that are exempt or confidential and exempt from public records disclosure requirements may include plans, drawings and records related to the physical security of City property, security systems or utility systems and shall not be disclosed, except as authorized by law and specifically authorized by City.

THE CITY CLERK IS THE CITY'S CUSTODIAN OF PUBLIC RECORDS, AND MAY BE CONTACTED AT:

Office of the City Clerk
City of West Palm Beach
401 Clematis Street
West Palm Beach, FL 33401
561-822-1210
CityClerk@wpb.org

10. **MISCELLANEOUS.**

10.1 **Assignment.** This Agreement may not be assigned or transferred by any Party.

10.2 **Compliance with Laws.** In the performance of this Agreement, the Parties hereto shall comply in all materials respects with all applicable federal and state laws and regulations and all applicable county and City ordinances and regulations.

10.3 **Governing Law/Venue.** This Agreement shall be construed and interpreted, and the rights of the parties hereto determined, in accordance with Florida law. The parties agree that proper venue for any suit concerning this Agreement shall be Palm Beach County, Florida, or the Federal Southern District of Florida. TO ENCOURAGE PROMPT AND EQUITABLE RESOLUTION OF ANY LITIGATION, EACH PARTY HEREBY WAIVES ITS RIGHTS TO A TRIAL BY JURY IN ANY LITIGATION RELATED TO THIS AGREEMENT.

10.4 **Modifications.** This Agreement may not be modified or terminated except by written agreement duly signed by the parties.

10.5 **No Third Party Rights.** This Agreement is solely for the benefit of the City and the CRA and no third party shall be deemed to have any rights hereunder.