

FUNDING AGREEMENT BETWEEN THE CITY OF DELRAY BEACH AND THE DELRAY PUBLIC LIBRARY ASSOCIATION, INC.

THIS AGREEMENT is made this 2nd day of May, 2023 by and between the **CITY OF DELRAY BEACH**, a Florida Municipal Corporation (hereinafter referred to as the “**City**”), and the **DELRAY BEACH PUBLIC LIBRARY ASSOCIATION, INC.**, a Florida not-for-profit corporation, (hereinafter referred to as the “**Library**”).

WITNESSETH:

WHEREAS, the City Commission of the City of Delray Beach, recognizes the importance of providing a public library and has been providing funding through a partnership with the Library since xxx; and

WHEREAS, the City funds the Library to meet the public obligation of providing library services to benefit the community. If the City did not fund the Library, the City would no longer be exempt from the Palm Beach County Library Taxing District, which currently imposes a tax at a millage rate of .5491, which equates to approximately \$8.3 million in additional taxes; and

WHEREAS, in continuing its commitment to enrich the lives of its residents and the public at large, the City has committed to providing funding to the Library for its operating budget; and

WHEREAS, the Delray Beach Public Library Association, Inc., (“Library”) is a 501(c)(3) non-profit corporation that was organized for the purpose of providing public library services through its collections, programming, and technology; and

WHEREAS, it is the stated mission of the Library to “enrich the lives of the individuals of Delray Beach’s diverse communities and provide support to local businesses by creating and sustaining superior public library services through responsive staff, dynamic collections, effective programming, appropriate technology, and access to global information”; and

WHEREAS, the City desires to provide annual funding to the Library, subject to annual appropriations, pursuant to the terms and conditions of this Agreement, in order to assist the Library with activities that further the City's goals with respect to providing public library services; 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, 2026.

3. Prior to the adoption of the City's budget, a workshop with the City Commission will be scheduled to discuss funding requests for the upcoming fiscal year. The City shall provide funding to the Library, on an annual basis, ("Funding Amount") in accordance with Paragraph 6 of this Agreement. The Funding Amount is to be used by the Library to provide programming services that support the mission of the Library in accordance with the Performance Standards described in Exhibit "A".

4. In addition to the Funding Amount, the City shall annually remit to the County payment for all on-site operation and maintenance costs of the Parking Facilities ("Parking Facilities Payment") as described in paragraphs 10.02, 10.021, and 10.022 of the Agreement between the City, the Library and the Community Redevelopment Agency ("CRA") dated November 12, 2002. The City shall satisfy all outstanding invoices related to the Parking Facilities Payment for FY 17,

FY 21, and FY 22 totaling \$101,267.84. In the event that the Library is invoiced by the County for these costs, the Library shall immediately forward said invoice to the City for payment.

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

(a) The Library'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) The Library's annual budget.

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

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

6. 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, the Library 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 the Library during the preceding fiscal year; (b) the number of persons who participated in activities and programs held by the Library during the preceding fiscal year; and (c) a written statement signed by

the Library which sets forth its status on meeting the Performance Standards, and which of such Performance Standards were not met, all with appropriate explanation.

7. The Library acknowledges that failure to timely provide the submissions described in Paragraphs 5 and 6 may result in the City terminating this Agreement in accordance with Paragraph 11 below and may negatively impact the City's funding of the Library's programs in the future.

8. The Library recognizes that payments under this Agreement are made with public funds, including tax dollars. Accordingly, the Library shall make its best efforts to 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. Notwithstanding the foregoing, the City acknowledges that due to the unique character of some of the Library's vendors, it may not be possible to achieve the stated competition and pricing goals.

9. The Library 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. The Library 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. The Library 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.

10. Both the City and the Library agree that the Library shall at all times act as an independent contractor in the performance of its duties under this Agreement. Accordingly, the Library shall be responsible for the payment of all taxes including Federal and State taxes arising out of the Library'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.

11. If the City determines, in its sole and absolute discretion, that the Library is not achieving the Performance Standards or is otherwise not furthering the City's goals, policies, and objectives, the City shall provide written notice to the Library of such deficiency(ies), and the Library shall have fourteen (14) days from receipt of the notice to cure the deficiency(ies) to the satisfaction of the City. Should the Library 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 the Library.

12. 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.

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. Neither the City nor the Library shall assign or transfer any rights or interest in this Agreement.

15. The Library 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.

16. 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.

17. 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

Library: Mykal Banta, Executive Director
Delray Beach Public Library Association, Inc.
100 West Atlantic Avenue
Delray Beach, FL 33444

18. (a) **IF THE LIBRARY HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE LIBRARY'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) The Library shall comply with all applicable public records laws in accordance with Chapter 119, Florida Statutes. In accordance with state law, the Library 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 Library 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 Library.
- (5) If the Library does not comply with this section, the City may exercise the enforcement provisions outlined in FS 119.07.
- (6) Notwithstanding anything in this Agreement to the contrary, the City acknowledges and understands that this Agreement is also subject to Chapter 257, Florida Statutes. As such, certain registration and

circulation records are exempt from the provisions of Florida Statute 119.07.

19. The Library 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 Library and its subcontractors and lower tier subcontractors. The Library understands and agrees that in addition to all other remedies and consequences provided by law, the failure of the Library or its subcontractor or lower tier subcontractors to fully cooperate with the Inspector General when requested may be deemed by the Library to be a material breach of this Funding Agreement justifying its termination.

20. 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.

21. This Agreement constitutes the entire agreement between the parties and shall supersede all prior oral and written funding agreements by the City to the Library.

22. 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.

23. This Agreement shall not be valid until signed by the City.

[Remainder of Page Intentionally Left Blank]

IN WITNESS THEREOF, the Parties have caused this Agreement to be executed as of the date first set forth above.

ATTEST:

Katerri Johnson
Katerri Johnson, City Clerk

CITY OF DELRAY BEACH, FLORIDA

Terrence Moore
Terrence Moore, City Manager

Approved as to Form and Legal Sufficiency:

Lynn Gelin
Lynn Gelin, City Attorney



DELRAY BEACH PUBLIC LIBRARY ASSOCIATION, INC.

By: Mykal Banta

Print Name: Mykal Banta

Title: EX. DIR.

STATE OF Florida
COUNTY OF Palm Beach

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this 21 day of April, 2023, by Mykal Banta (name of person), as Exec. Director (type of authority) for Delray Beach Public Library (name of party on behalf of whom instrument was executed).

Personally known OR Produced Identification
Type of Identification Produced _____



Loanis Menendez-Cuesta
Notary Public - State of Florida

RESOLUTION NO. 95-23

A RESOLUTION OF THE CITY OF DELRAY BEACH, FLORIDA APPROVING AN AGREEMENT WITH THE DELRAY BEACH PUBLIC LIBRARY ASSOCIATION, INC., TO PROVIDE FUNDING FOR SERVICES AND PROGRAMMING; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT AND TAKE ALL ACTIONS NECESSARY TO EFFECTUATE THIS AGREEMENT; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

WHEREAS, the City of Delray Beach (hereinafter referred to as the "City") is authorized to enter into agreements to provide services and programming in accordance with its Charter; and

WHEREAS, the City desires to provide funding that would allow the Delray Beach Public Library Association, Inc., to provide library services and related programming within the City of Delray Beach; and

WHEREAS, the City desires to enter into a funding agreement with the Delray Beach Public Library Association, Inc., to provide these services and related programming; and

WHEREAS, the City Commission finds that this Funding Agreement serves a municipal purpose and deems approval of this Resolution to be in the best interest of the health, safety, and welfare of the residents and citizens of the City of Delray Beach and the public at large.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AS FOLLOWS:

Section 1. The foregoing recitals are hereby affirmed and ratified.

Section 2. The City Commission of the City of Delray Beach has reviewed and hereby approves the Funding Agreement between the City and the Greater Delray Beach Public Library Association, Inc., which is attached to this Resolution and incorporated herein as "Exhibit A".

Section 3. The City Commission authorizes the City Manager to execute the Funding Agreement and any amendments and/or renewals thereto, and take any other actions necessary to effectuate the intent of this resolution.

Section 4. This Resolution shall become effective immediately upon adoption.

PASSED AND ADOPTED in regular session on the 2nd day of May, 2023.

ATTEST:

Katerri Johnson
Katerri Johnson, City Clerk

Shelly Petrolia
Shelly Petrolia, Mayor

Approved as to Legal Form and Sufficiency:

Lynn Gelin
Lynn Gelin, City Attorney





CITY OF DELRAY BEACH
 CITY ATTORNEY'S OFFICE
 200 NW 1ST Avenue, Delray Beach, FL 33444
 561-243-7090



LEGAL REVIEW FORM

This form is to be used solely for the legal review of documents not including procurement agreements. Procurement Agreements are reviewed under a separate cover. This form shall only be completed by a member of the City Attorney's Office.

Date of Review: 4-24-23

Document Name: *Funding Agreement for Library*

Document Type:

Submitted by: J. Oris

This document is approved as to form and legal sufficiency.

These documents are approved as to form and legal sufficiency; however, the undersigned made the following change(s):

This document is not approved as to form and legal sufficiency for the following reason(s):

_____.

s//Lynn Gelin, Esq.
 City Attorney

Copy to:

___ City Attorney's Office (with a copy of the approved document)