

**FUNDING AGREEMENT BETWEEN THE CITY OF DELRAY BEACH AND THE
COMMUNITY CHILD CARE CENTER OF DELRAY BEACH, 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 **COMMUNITY CHILD CARE CENTER OF DELRAY BEACH, INC., D/B/A ACHIEVEMENT CENTERS FOR CHILDREN AND FAMILIES**, a Florida not-for-profit corporation, (hereinafter referred to as “**ACCF**”).

W I T N E S S E T H:

WHEREAS, the CITY desires to support collaborative initiatives that provide educational and developmental opportunities for under-privileged youth using positive role models to create ongoing and caring relationships; and

WHEREAS, ACCF was organized under the laws of the State of Florida as a non-profit corporation for the purpose of serving low-income children and families in Delray Beach. ACCF’s mission is to ensure school readiness, provide skill building opportunities, promote academic achievement and support healthy lifestyles; and

WHEREAS, ACCF provides affordable childcare, afterschool and summer programs that allow families to work while receiving quality services and support, increasing their overall stability and building the family’s capacity; and

WHEREAS, in conjunction with the children’s programs, ACCF provides Family Strengthening programs that aim to increase parents’ knowledge, skills and confidence in order to build strong family bonds and strengthen the community; and

WHEREAS, the CITY desires to provide funding to ACCF for five years, pursuant to the terms and conditions of this Agreement, in order to assist ACCF with activities to further the City’s goal of fostering the development of youth in the community, strengthening families, and

providing a positive, safe, educational environment utilized by children during the times when children are not in school; and

WHEREAS, the CITY finds that this Agreement serves a municipal and public purpose, is consistent with the CITY's goals for families and education, and conforms with 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 ACCF on an annual basis, in an amount not to exceed Eighty-One Thousand and 00/100 Dollars (\$81,000.00) per year (the "Funding Amount") for the term of this agreement. The Funding Amount is to be used by ACCF to provide programming services that support the mission of ACCF in accordance with the Performance Standards and Programs and Services Outcomes described in Exhibit "A". Each subsequent year of this Agreement and 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. Payment of the annual amount for the initial year of this Agreement shall be made within 90 days of execution of this Agreement. Payment of the Funding Amount for subsequent years of this Agreement shall be made in accordance with Paragraph 5.

4. Within One Hundred and Eighty Days after execution of this Agreement, ACCF shall submit the following reports to the CITY in a form reasonably acceptable to the CITY and

which shall confirm that ACCF has operated and shall continue to operate in such a manner as to meet the Performance Standards and Programs and Services Outcomes described in Exhibit “A”:

(a) ACCF’s annual business plan which shall contain the following information: operations, business structure, fundraising and capital development plan and five-year strategic plan.

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

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

(d) An outreach and diversity plan relating to ACCF’s services, which includes specific goals in hiring, procurement, programming, customer outreach, and in appointments to ACCF’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, ACCF shall submit to the CITY a 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 ACCF during the preceding fiscal year; (b) the number of persons who participated in activities and programs held by ACCF during the preceding fiscal year; and (c) a written statement signed by ACCF which sets forth its status on supporting its out-of-school programs outlined in Exhibit “A”, and which of such programs were not supported, all with appropriate explanation.

6. ACCF acknowledges that failure to timely provide an audit 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 ACCF programs in the future.

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

of the CITY. Should ACCF 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 ACCF.

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

14. ACCF 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

ACCF: Stephanie Seibel
The Achievement Centers for Children & Families
345 NW 5th Ave
Delray Beach, FL 33444

17. IF ACCF HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO ACCF'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: CITYCLERK@MYDELRAYBEACH.COM.

(a) ACCF shall comply with all public records laws in accordance with Chapter 119, Florida Statutes. In accordance with state law, ACCF 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 ACCF 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 ACCF.
- (5) If ACCF 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. ACCF 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 ACCF and its subcontractors and lower tier subcontractors. ACCF understands and agrees that in addition to all other remedies and consequences provided by law, the failure of ACCF 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 ACCF.

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 ACCF acknowledges its obligation to comply with the provisions of Section 448.095, Fla. Stat., "Employment Eligibility." ACCF 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 ACCF, ACCF 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 ACCF.

24. The ACCF shall provide certificates of insurance to the CITY evidencing its insurance coverage and naming the CITY as an additional insured. Such insurance shall be in an amount and form that is acceptable to the CITY and shall be delivered to the CITY prior to the distribution to the ACCF of any funding as referenced herein. If the ACCF fails to provide the certificates of insurance in a form acceptable to the CITY, the CITY may immediately terminate this Agreement.

25. The ACCF, shall at all times hereafter indemnify, hold harmless, and at the CITY Attorney's option, defend or pay for an attorney selected by the CITY Attorney to defend the CITY, its officers, agents, servants, and employees from and against any and all causes of action, demands, claims, losses, liabilities and expenditures of any kind, including attorney fees, court costs, and expenses, caused or alleged to be caused by any intentional, negligent, or reckless act of, or omission of, the ACCF, its employees, agents, servants, or officers, or accruing, resulting from, or related to the subject matter of this Agreement or Exhibit A including, without limitation, any and all claims, losses, liabilities, expenditures, demands, or causes of action of any nature whatsoever resulting from injuries or damages sustained by any person or property. In the event any lawsuit or other proceeding is brought against the CITY by reason of any such claim, cause of

action, or demand, the ACCF shall, upon written notice from the CITY, resist and defend such lawsuit or proceeding by counsel satisfactory to the CITY or, at the CITY's option, pay for an attorney selected by the CITY Attorney to defend the CITY. The obligations of this section shall survive the expiration or earlier termination of this Agreement. Nothing contained herein is intended nor shall be construed to waive the CITY's rights and immunities under the common law or Section 768.28, Florida Statutes, as amended from time to time.

26. CITY shall not be responsible for its failure to make the premises available or to provide the facilities and services described herein, where such performance is rendered impossible and impractical due to strikes, walk-outs, acts of God, inability to obtain labor, materials or services, government restriction (other than CITY), enemy action, civil commotion, fire, unavoidable casualty, utility disruptions or blackouts, or similar causes or any other causes beyond the control of CITY.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties to this Agreement set their hands and seals 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

**COMMUNITY CHILD CARE CENTER
OF DELRAY BEACH, INC.**

By: _____
Print Name: _____

(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