



Interoffice Memorandum

REAL ESTATE MANAGEMENT ITEM 2

DATE: September 13, 2023

TO: Mayor Jerry L. Demings
-AND-
County Commissioners

FROM: Mindy T. Cummings, Manager
Real Estate Management Division *MTC*

CONTACT PERSON: **Mindy T. Cummings, Manager**

DIVISION: **Real Estate Management Division**
Phone: (407) 836-7090

ACTION REQUESTED: Approval and execution of Agreement for the Horizon West Library Demolition Fund by the Orange County Library District and Orange County, and authorization for the Manager of the Real Estate Management Division to furnish notices or perform other actions, as required, or allowed by the Agreement, as needed.

PROJECT: Horizon West Library Lease – Sportsplex Lease
Lease File #4033A

District 1

PURPOSE: To provide for an agreement that governs the administration of certain demolition funds pursuant to the Horizon West Library Lease – Sportsplex Lease.

ITEMS: Agreement

APPROVALS: Real Estate Management Division
County Attorney's Office

REMARKS: On July 26, 2022, the Board entered into a Lease Agreement (Lease) with Orange County Library District (Library). The Lease stipulated that Orange County Comptroller hold demolition funds pursuant to an Escrow Agreement within the Lease. However, the parties indicated could not come to an agreement regarding the allocation of interest. To resolve this issue, Lease is being subsequently amended in Sections 2.2, 6.5 and 10.4 and a new Section 2.2.3 is being added. These amendments clarify how the demolition fund will be held, the requirement that Library provide financial statements and reports for the Demolition Fund quarterly to the County, and how the funds from the Demolition Fund will be utilized and replenished.

Upon execution of this Agreement, Library is required to deposit the amount of \$250,000 dollars into the Demolition Fund in accordance with the terms of the Agreement.

APPROVED
BY ORANGE COUNTY BOARD
OF COUNTY COMMISSIONERS
SEP 26 2023

**AGREEMENT
for the
HORIZON WEST LIBRARY DEMOLITION FUND**

THIS AGREEMENT is made and entered into as of the date of latest execution (“Effective Date”), by the **Orange County Library District**, an independent special taxing district under the laws of the State of Florida (“Library”) and **Orange County**, a charter county and political subdivision of the State of Florida (“County”) with all parties’ mailing addresses as noted in Section 6, hereinbelow.

W I T N E S S E T H:

WHEREAS, the City of Orlando (“City”) and County own, as tenants in common, approximately 215 acres of real property in the Horizon West Community of Orange County, Florida (“Property”); and

WHEREAS, the City and County previously entered into a lease agreement related to Water Conserv II Property for Sportsplex Park With Option to Purchase a Portion thereof with an effective date of August 28, 2007 (“Sportsplex Lease”) pursuant to which, among other things, the City leases to the County its undivided 50% interest in the Property for the County’s use of a portion of the Property for the design, construction, operation and maintenance of public recreation complexes thereon; and

WHEREAS, the City and the County have amended the Sportsplex Lease to allow for a public library as a permitted use and the City has consented to the County subleasing a portion of the Property to the Library for use as a public library; and

WHEREAS, County and Library have entered into that certain Horizon West Branch Library Lease Agreement approved by the Orange County Board of County Commissioners on July 26, 2022, as may be amended (collectively “Lease”) for use of a portion of the Property for the construction of a Library Building, parking and associated infrastructure; and

WHEREAS, Library will establish a Demolition Fund to offset the cost of demolishing the Improvements within the Library Building Envelope at the end of the term of the Lease or as otherwise provided for in the Lease.

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, the parties hereto represent, warrant, covenant, and agree as follows:

1. **Recitals**. The above recitals are true and correct and are incorporated herein by this reference.
2. **Demolition Fund**. No later than ninety (90) days after the Effective Date of the Lease, Library shall deposit \$250,000.00 in an interest bearing investment account (the “Demolition Fund”). The Demolition Fund shall be invested in either: 1) a FDIC insured account;

2) a Florida Safe or Florida Prime local government investment pool (“LGIP”); or 3) 5-year U.S. Treasury Notes. The Demolition Fund shall be used to offset the cost of demolishing the improvements within the Library Building Envelope at the end of the Term of the Lease. The County shall be named as a beneficiary of the Demolition Fund account if applicable to the type of investment vehicle selected. In the event the County cannot be named a beneficiary of the investment vehicle selected for the Demolition Fund, Library shall provide other written assurance satisfactory to the County that the Demolition Fund is for the benefit of the County. Any interest earned will be retained in the Demolition Fund. At no time shall the amount in the Demolition Fund be less than \$250,000.00.

3. **County Claim(s) on Demolition Funds.** County may direct and require the Library use all or a portion of the Demolition Funds, as it deems necessary, in the following circumstances and subject to the following conditions:

A. If County undertakes any maintenance or repair work on any portion of the Property and it is determined that such maintenance or repair work is made necessary by the negligence or willful act or omission of Library or any of its employees or agents, or that the maintenance or repair work is, under the terms of the Lease, otherwise the responsibility of Library, then Library will pay County’s internal and external cost therefor, plus overhead and interest as provided for in the Lease. Irrespective of County’s election to utilize the Demolition Funds for such repairs, the Library may utilize the Demolition Funds for such repairs and thereafter, the Library shall replenish the Demolition Funds in accordance with the Lease.

B. At the end of the Lease Term and upon County’s written request, Library will, at its expense, demolish and remove the Improvements within the Library Building Envelope within 90 days. The Demolition Fund established at the beginning of the Lease, along with any accumulated interest will be used to off-set the cost of required demolition of the Improvements within the Library Building Envelope. Remaining Demolition Funds, if any, may be withdrawn by the Library from the investment account.

C. If it is determined that Improvements within the Library Building Envelope are damaged to the extent that such Improvements cannot be repaired, then such Improvements will be demolished using proceeds from the Demolition Fund and then rebuilt utilizing insurance proceeds. Thereafter the Library will replenish the Demolition Fund.

4. **Term and Termination.** Unless terminated earlier as provided for in this Section, the term of this Agreement shall commence upon the Effective Date and shall terminate upon the earlier of: (i) the ninetieth (90th) day from the last day of the Lease Term; or (ii) as soon as the demolition of the Improvements within the Library Building Envelope is complete to County’s satisfaction. This Agreement may be terminated earlier upon the mutual written agreement of the parties.

5. **No Liability for Library’s Obligations.** The execution of this Agreement does not relieve Library of its obligations under the Lease, or obligate County to undertake or complete any of Library’s obligations, and does not imply or require that the County assume any liability for the

Library's obligations or any other responsibility of the Library. This provision shall survive the termination of this Agreement.

6. **Notices.** All notices, consents, approvals, waivers, and elections which any party shall be required or shall desire to make or give under this Agreement shall be in writing and shall be sufficiently made or given (i) when mailed by certified mail, postage prepaid, return receipt requested, (ii) by hand delivery to the named individuals representing the party to be notified, or (iii) by private parcel delivery services, or facsimile transmission for which receipt is provided to the notifying party. Notices, including notice of change of address, shall be addressed or transmitted to the addresses set forth below or such other address that a party may designate in the manner prescribed herein:

As to Library: Orange County Library District
Attn: Library Director/CEO
101 East Central Blvd.
Orlando, Florida 32801
powell.steve@ocls.info

With a copy to: GrayRobinson, P.A.
Attn: Heather Ramos
301 East Pine Street, Suite 1400
Orlando, Florida 32801
heather.ramos@gray-robinson.com

Orange County Library District
Attn: Chief Financial Officer
101 East Central Blvd.
Orlando, Florida 32801
shoemaker.kristopher@ocls.info

As to County: Orange County, Florida
Attn: Manager, Real Estate Management Division
400 East South Street, 5th Floor
Orlando, Florida 32801
mindy.cummings@ocfl.net

With a copy to: Orange County, Florida
Attn: Manager, Parks and Recreation Division
4801 West Colonial Drive
Orlando, Florida 32808
matt.suedmeyer@ocfl.net

Orange County, Florida
Attn: County Attorney's Office
201 South Rosaline Avenue, 3rd Floor
P.O. Box 1393
Orlando, Florida 32801-1393

Notices, consents, approvals, waivers, and elections given or made as aforesaid shall be deemed to have been given and received on the date of the mailing, delivery, or transmission thereof as aforesaid.

7. **Governing Law, Venue and Severability.** This Agreement shall be governed by, and be construed and interpreted in accordance with, the laws of the State of Florida, without regard to choice of law rules. Venue for any action arising out of or in connection with this Agreement shall lie in the Circuit Court of the Ninth Judicial Circuit in and for Orange County, Florida. If any one or more of the provisions of this Agreement shall be held invalid or unenforceable, the validity and enforceability of all other provisions of this Agreement shall not be affected thereby. **THE PARTIES HEREBY EXPRESSLY WAIVE TRIAL BY JURY IN ANY ACTIONS.**

8. **Entire Agreement, Modification.** This Agreement contains the entire understanding and agreement between the parties relating to the subject matter hereof, and all prior or extrinsic agreements, understandings, representations and statements, oral or written, concerning the subject matter hereof are merged herein and/or superseded hereby. There are no other agreements, written or oral, between the parties with respect to the subject matter hereof except those contained in this Agreement. Neither party shall be bound by any modification, cancellation, or rescission of this Agreement unless in writing and signed by both parties. Notwithstanding anything contained herein to the contrary, in the event the terms or conditions of this Agreement conflict with, disagree with, or add to any term(s) or condition(s) of the Lease, this Agreement shall be deemed controlling and shall supersede any contradictory provision(s).

9. **Waiver.** The failure of either party to insist in any one or more cases upon the strict performance of any one of the terms, covenants, conditions, or provisions of this Agreement shall not be construed as a waiver or a relinquishment of the other party's right to insist on strict performance of any such term, covenant, condition, or provision in the future.

10. **Binding Agreement.** This Agreement shall be binding upon the parties and their respective successors and assigns.

11. **Counterparts.** This Agreement may be executed in up to two identical counterparts, each of which, when executed, shall be deemed an original, and all of which shall, collectively, constitute one and the same agreement.

12. **Time.** Time is of the essence in connection with this Agreement and each provision hereof.

13. **Captions; Days.** The captions contained in this Agreement are for convenience of reference only and in no way define, describe, extend or limit the scope or intent of this Agreement or the intent of any provision contained herein. Each reference to "day" or "days" herein shall mean calendar days unless otherwise stated.

14. **Construction.** All parties to this Agreement having participated fully and equally in the negotiation and preparation hereof, the fact that one of the parties to this Agreement, or its attorney, may be deemed to have drafted or structured any provision of this Agreement shall not

be considered in construing or interpreting any particular provision of this Agreement, either in favor of or against such party.

15. **Incorporation and Capitalized Terms.** The Lease is incorporated herein by reference. All capitalized terms and other terms not otherwise defined herein shall have the meanings ascribed to them in the Lease.

IN WITNESS WHEREOF, the parties have executed this Agreement or caused this Agreement to be executed and delivered by their duly authorized officers on the date(s) noted below.

[Signatures on the Following Pages]

ATTEST:

Phil Diamond, CPA, County Comptroller, as
Clerk of the Board of County Commissioners

By: *Jennifer Jan-Klimtz*
for Deputy Clerk

COUNTY:

ORANGE COUNTY, FLORIDA

By: Board of County Commissioners

By: *Jerry L. Demings*
for Jerry L. Demings
Orange County Mayor

Execution Date: *26 September, 2023*



ORANGE COUNTY LIBRARY DISTRICT:

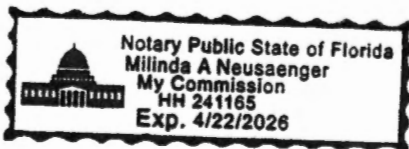
Signed, sealed, and delivered
in the presence of:

[Signature]
Name:
[Signature]
Name:

An independent special taxing district
By: [Signature]
Printed Name: Steven Powell
Title: Director / CEO
Execution Date: Aug. 18, 2023

STATE OF FLORIDA
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me, a Notary Public, by means of physical presence or online notarization this 18th day of August, 2023, by Steven Powell, as Library Director/CEO of the Orange County Library District, an independent special district, who is personally known to me or has produced (type of identification) _____ as identification.



Notary Public [Signature]
Printed Name Milinda A Neusaenger
My Commission Expires: 04-22-2026