



Interoffice Memorandum

REAL ESTATE MANAGEMENT ITEM 2

DATE: August 26, 2022

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

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

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

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

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

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

District 1

PURPOSE: To provide an Escrow Agreement that governs the administration of certain funds that are to be held by Orange County, pursuant to the Horizon West Library Lease – Sportsplex Lease.

ITEMS: Escrow Agreement

APPROVALS: Real Estate Management Division
County Attorney's Office

REMARKS: The Board entered into a Lease Agreement with the Orange County Library District (Library) at its meeting on July 26, 2022 (Lease). Pursuant to Section 2.2 of the Lease, the Library is required to deposit money in the amount of \$250,000 to Orange County to be used in accordance with the terms of the Lease.

The Escrow Agreement is required by the Orange County Comptroller's office for Orange County to hold these funds.

This instrument prepared by:
Orange County, Florida
County Attorney's Office
Attn: David Berman, Esq.
P.O. Box 1393
Orlando, FL 32801-1393

Tax ID No: 59-2045143

ESCROW AGREEMENT
Horizon West Library Demolition Fund

THIS ESCROW AGREEMENT ("Escrow Agreement") is made and entered into as of the date of latest execution ("Effective Date"), by and among **Orange County Library District**, an independent special taxing district under the laws of the State of Florida ("Library"); **Orange County**, a charter county and political subdivision of the State of Florida ("County") (Library and County, together, shall be referred to herein as the "Principals"); and the **Orange County Comptroller**, in its capacity as Escrow Agent ("Escrow Agent"), with all parties' mailing addresses as noted in Section 12, 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 ("Lease") for use of a portion of the Property for the construction of a library building, parking and associated infrastructure (collectively, the "Improvements"); and

WHEREAS, pursuant to the Lease, Library agrees to provide County with funds to be held in escrow to be used to offset the cost of demolishing the Improvements at the end of the term of the Lease or as otherwise provided for in the Lease; and

WHEREAS, County has consented to accept the Escrowed Funds (as defined below) to be held by Escrow Agent in accordance with the terms and provisions of this Escrow Agreement; and

WHEREAS, Escrow Agent has agreed to serve as Escrow Agent in accordance with this Escrow Agreement; and

WHEREAS, the Principals desire that Escrow Agent shall hold and release the Escrowed Funds subject to the terms and conditions set forth in this Escrow Agreement.

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. **Establishment of Escrow Relationship; Acceptance by Escrow Agent.** The Principals hereby retain Escrow Agent, at no cost to them, to serve solely in its capacity as escrow agent with respect to the Escrowed Funds and Escrow Agent hereby accepts such retention.

3. **Escrowed Funds.** No later than ninety (90) days after the Effective Date of the Lease, Library shall deliver funds in the amount of \$250,000.00 (the "Escrowed Funds" or "Demolition Fund") to Escrow Agent to be held in an interest-bearing account and any interest earned will be to the credit of the Demolition Fund. Within five (5) business days of receipt, Escrow Agent shall place the Escrowed Funds into an escrow account (the "Escrow Account") to be held, administered, distributed, and released as provided for herein. Escrow Agent shall acknowledge receipt of the Escrowed Funds by providing notice, either in writing or by electronic mail, to each of the Principals within five (5) business days after receipt of the Escrowed Funds.

4. **County Claim(s) on Escrowed Funds.** County may use all or a portion of the Escrowed 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. At County's election, it may utilize the Escrowed Funds for such repairs and thereafter, the Library shall replenish the Escrowed Funds in accordance with the Lease. In said event, County may withdraw all or a portion, as it deems necessary, of the Escrowed Funds upon presentation to the Escrow Agent of a statement signed by the Manager of the Orange County Real Estate Management Division, or their designee, stating Library has received a notification in accordance with the Lease and has failed to cure the matter(s) contained in such notification within the prescribed period of time following receipt thereof. Any funds not used by County shall be placed back in the Escrow Account or released as provided in Section 5 hereinbelow, as applicable.

B. At the end of the Lease Term and upon County's written request, Library will, at its expense, demolish and remove the Library Building, and all improvements, fixtures, apparatus, and equipment which are attached to, installed on, under, or made a part of the Leased Premises 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, will be paid by the County to the Library. The Library will provide the County with an invoice for the cost of the demolition and payment will be made to the Library within thirty (30) days of receipt of the invoice.

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

5. **Term and Termination.** Unless terminated earlier as provided for in this Section, the term of this Escrow 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 is complete. This Escrow Agreement may be terminated earlier as follows:

(a) the mutual written agreement of the Principals; or

(b) Upon Escrow Agent's resignation as Escrow Agent, which Escrow Agent may do at any time upon giving written notice to Library and County of its desire to so resign; provided, however, that resignation of Escrow Agent shall take effect no earlier than thirty (30) business days after the giving of notice of resignation or ten (10) days after Library and County have provided Escrow Agent with written notice of their selection for a successor escrow agent, whichever is later. The parties shall cooperate to ensure the Escrowed Funds are conveyed to a successor escrow agent.

Notwithstanding the foregoing, if any portion of the Escrowed Funds is subject to any active or pending draw request(s), this Agreement shall not terminate until disbursement of such draw request. In the event the Escrowed Funds, or any portion thereof, are returned to Library, such funds shall be disbursed to Library within a reasonable period, but in any case no later than ninety (90) days after the last day of the Lease Term.

6. **Indemnification of Escrow Agent; Sovereign Immunity.** It is agreed that the duties of the Escrow Agent are purely ministerial in nature and shall be expressly limited to the matters herein for which Escrow Agent is expressly obligated. Library and County hereby indemnify Escrow Agent and agree to hold Escrow Agent harmless from and against any and all claims, liabilities, damages, costs, penalties, losses, actions, suits, or proceedings at law or in equity, and any other expenses, fees, or charges of any character or nature, which Escrow Agent may incur or with which Escrow Agent may be threatened directly or indirectly arising from or in any way connected with this Escrow Agreement, except in the case of gross negligence or willful misconduct of Escrow Agent. In connection therewith, the Principals indemnify Escrow Agent against any and all reasonable expenses, including reasonable attorney fees (pre-litigation, litigation, and appellate) and the cost of defending or prosecuting any action, suit, or proceeding

or resisting any claim, whether or not litigation is instituted. Nothing contained herein is intended as, nor shall constitute, a waiver by County of its sovereign immunity protections pursuant to Section 768.28, Florida Statutes.

7. **No Constructive Knowledge.** Escrow Agent shall not be deemed to have knowledge of any matter or thing unless and until Escrow Agent has actually received written notice of such matter or thing, and then shall only be required to act on that knowledge in its capacity as Escrow Agent as further described herein. Escrow Agent shall not be charged with any constructive knowledge whatsoever.

8. **Capacity of Escrow Agent.** It is expressly understood and agreed by the parties that the Escrow Agent shall not act under this Escrow Agreement in any capacity as Clerk to the Board of County Commissioners, but rather in Escrow Agent's capacity as an independent constitutional officer.

9. **No Obligation to Overdraw.** Notwithstanding any provision of this Escrow Agreement to the contrary, Escrow Agent shall not be required to make payment of an amount in excess of the balance in the Escrow Account.

10. **No Obligation to Pay Interest.** Notwithstanding any provision of this Escrow Agreement to the contrary, Escrow Agent shall not be required to make any interest payment on any balance in the Escrow Account.

11. **No Liability for Library's Obligations.** The execution of this Escrow Agreement does not relieve Library of its obligations under the Lease, or obligate County or Escrow Agent to undertake or complete any of Library's obligations, and does not imply or require that either the County or the Escrow Agent assume any liability for the Library's obligations or any other responsibility of the Library. This provision shall survive the termination of this Escrow Agreement.

12. **Notices.** All notices, consents, approvals, waivers, and elections which any party shall be required or shall desire to make or give under this Escrow 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, FL 32801

With a copy to

GrayRobinson, P.A.
Attn: Heather Ramos
301 East Pine Street, Suite 1400
Orlando, FL 32801

Orange County Library District
Attn: Chief Financial Officer
101 East Central Blvd.
Orlando, FL 32801

As to County:

Orange County, Florida
Attn: Manager, Real Estate Management Division
400 East South Street, 5th Floor
Orlando, FL 32801

With a copy to:

Orange County, Florida
Attn: Manager, Parks and Recreation Division
4801 West Colonial Drive
Orlando, FL 32808

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

As to Escrow Agent:

Orange County Comptroller
Attn: Director of Finance and Accounting
201 South Rosalind Avenue
P.O. Box 38
Orlando, FL 32802-0038
Tel.: (407) 836-5715
Fac.: (407) 836-5753
Email: paul.wunderlich@occompt.com

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.

13. **Governing Law and Venue.** This Escrow 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 Escrow Agreement shall lie in the Circuit Court of the Ninth Judicial Circuit in and for Orange County, Florida.

14. **Entire Agreement, Modification.** This Escrow 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 Escrow Agreement. Neither Escrow Agent nor the Principals shall be bound by any modification, cancellation, or rescission of this Escrow Agreement unless in writing and signed by Escrow Agent and Principals. Notwithstanding anything contained herein to the contrary, in the event the terms or conditions of this Escrow Agreement conflict with, disagree with, or add to any term(s) or condition(s) of the Lease, the Lease shall be deemed controlling and shall supersede any contradictory provision(s).

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

16. **Binding Agreement.** This Escrow Agreement shall be binding upon Principals and Escrow Agent and their respective successors and assigns.

17. **Intentionally Omitted.**

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

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

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

21. **Construction.** All parties to this Escrow Agreement having participated fully and equally in the negotiation and preparation hereof, the fact that one of the parties to this Escrow Agreement, or its attorney, may be deemed to have drafted or structured any provision of this Escrow Agreement shall not be considered in construing or interpreting any particular provision of this Escrow Agreement, either in favor of or against such party.

22. **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.

23. **Settlement of Dispute.** In the event Escrow Agent is joined as a party to a lawsuit by virtue of the fact that it is holding the Escrowed Funds, Escrow Agent shall, at its option, either: (a) tender the Escrowed Funds into the registry of the appropriate court; or (b) disburse the Escrowed Funds in accordance with the court's ultimate disposition of the case. In the event Escrow Agent tenders the Escrowed Funds into the registry of the appropriate court and files an action of interpleader naming Principals and any affected third parties of whom Escrow Agent has

received actual notice, Escrow Agent shall be released and relieved from any and all further obligation and liability hereunder or in connection herewith. The Principals agree that Escrow Agent shall not be liable to any party or person whomsoever for the misdelivery to Library and County or otherwise of any monies except where such misdelivery shall be due to willful misconduct, gross negligence, or breach of trust by Escrow Agent.

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

ATTEST:

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

By: _____
Deputy Clerk

COUNTY:

ORANGE COUNTY, FLORIDA

By: Board of County Commissioners

By: _____
Jerry L. Demings
Orange County Mayor

Execution Date: _____, 20__

ORANGE COUNTY LIBRARY DISTRICT:

an independent special taxing district under the laws of the State of Florida,

Signed, sealed, and delivered
in the presence of:

[Signature]
Name:

[Signature]
Name:

By: [Signature]

Printed Name: Steve Powell

Title: Interim Director

Execution Date: Aug. 23, 2022

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 23rd day of 08, 2022, by Steven Powell, as Interim Library Director/coo of orange County Library District, a independent special taxing on behalf of said district, who ☒ is personally known to me or ☐ has produced (type of identification) _____ as identification.



Rachel M. Boevers
NOTARY PUBLIC
STATE OF FLORIDA
Comm# GG255208
Expires 9/4/2022

Rachel M. Boevers

Notary Public

Printed Name Rachel M. Boevers

My Commission Expires: 09/04/2022

Signed, sealed, and delivered
in the presence of:

ESCROW AGENT:

ORANGE COUNTY COMPTROLLER

Attest: _____
Print Name: _____
Title: _____

By: _____
Phil Diamond, CPA
County Comptroller

Attest: _____
Print Name: _____
Title: _____

Execution Date: _____, 20__