

**EXHIBIT**

**1A**

**AGREEMENT**

**between**

**BROWARD COUNTY**

**and**

**CITY OF POMPANO BEACH**

**for**

**LEASE OF REAL PROPERTY FOR A PUBLIC LIBRARY FACILITY**

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### **Exhibit**

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| <b>D</b> | <b>Parking Easement Agreement</b>   |
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| <b>F</b> | <b>Criminal Background Screening Affidavit Form</b>   |

This is a Lease Agreement between Broward County ("COUNTY"), a political subdivision of the State of Florida, its successors and assigns through its Board of County Commissioners, and the City of Pompano Beach ("CITY"), a municipal corporation, organized and existing under the laws of the State of Florida, its' successors and assigns,

WHEREAS, the CITY presently owns and intends to develop as a Civic Campus those real properties within its corporate limits depicted in Exhibit "A" (hereinafter collectively the "Property");

WHEREAS, the COUNTY has budgeted and appropriated Seven Million Two Hundred Thirty-Three Thousand Two Hundred Sixty-Four Dollars (\$7,233,264.00) for construction of an approximately 25,000 to 30,000 square foot public library (gross square footage) together with one hundred thirty (130) dedicated parking spaces and the appurtenances as specified hereinafter in the City of Pompano Beach to replace the existing public library located at 1213 East Atlantic Boulevard, Pompano Beach, FL 33060; and

WHEREAS, the CITY, through the Pompano Beach Community Redevelopment Agency, a body corporate and politic created pursuant to Part III, Chapter 163, Florida Statutes, its successors and assigns (the "CRA") intends to construct and at execution of this Lease Agreement shall have constructed, a building ("Project") on the Property, the ground floor of which is hereby leased to the COUNTY for use as a public library ("Library Facility") for a fifty (50) year term, and parking for the Library Facility utilizing COUNTY funds along with, if constructed as a part of the Project, a proposed second floor Pompano Beach Cultural Center ("PBCC") to be constructed utilizing CITY funds and for CITY use in a manner at all times compatible with the Library Facility use; and

WHEREAS, the location, dimensions and area of the Library Facility, the parking for the Library Facility, as well as location of the Project on the Property and the access, signage, and the other permitted uses are to be agreed to by the Parties hereto in conjunction with the programming and design of the Project; and

WHEREAS, the COUNTY, CITY and CRA, have entered into an attendant Interlocal Agreement for programming, design, construction, operation, maintenance and funding of the Project and the parking; and

WHEREAS, COUNTY and CITY desire to enter into this Lease Agreement for the Library Facility; and

WHEREAS, COUNTY and CITY agree this Lease Agreement and the Interlocal Agreement entered into between the COUNTY, CITY and CRA sets forth their respective obligations for operation, maintenance, repair and replacement of the Library Facility, the parking area, access easements and the landscaping. All property, except for COUNTY's furnishings, fixtures, and equipment located in the Library Facility, and all permanent additions, modifications and alterations thereto shall be the property of CITY during the

term of this Lease. The artwork to be installed shall, if installed on the exterior of the Project, be retained by the CITY at the termination of the Lease.

IN CONSIDERATION of the mutual terms and conditions, promises, covenants and payments hereinafter set forth, COUNTY and CITY agree as follows.

**1. DESCRIPTION, TERM AND RENT**

1.1 CITY hereby agrees to lease to COUNTY, and the COUNTY agrees to lease from CITY, the first floor of the Library Facility and parking generally described in Exhibit "B" for One Dollar (\$1.00) per annum and other good and valuable consideration.

1.2 CITY hereby leases unto COUNTY approximately 25,000-30,000 square feet of first floor of the Project located on the Property as depicted in Exhibit "B" attached hereto and made a part hereof, with the approximate address of 100 West Atlantic Boulevard, together with 130 dedicated parking spaces, situate in the City of Pompano Beach, County of Broward, State of Florida, for the term of fifty (50) years commencing on the date provided in Paragraph 1.5 herein ("Commencement Date") and terminating on the 50<sup>th</sup> anniversary of the Commencement Date.

The Parties agree that the term of this Lease Agreement is limited to fifty years pursuant to CITY Charter. Prior to the end of the term herein, the Parties agree to negotiate in good faith for an additional term of 50 years upon the same terms and conditions.

Notwithstanding anything in this Lease Agreement to the contrary, CITY and COUNTY agree that COUNTY shall have the unilateral right to elect to terminate this Lease, at COUNTY's sole discretion, without any further obligations under this Lease Agreement providing at least ninety (90) days prior written notice to CITY.

1.3 Project Record As-Built Floor plans of the Library Facility shall be inserted in this Lease Agreement as Exhibit "B."

1.4 CITY hereby grants to COUNTY, its tenants and their respective employees, patrons, licensees, invitees, and guests, non-exclusive easements of ingress and egress upon, over, and across the real property more particularly described in the Access Agreement and Parking Easement Agreements attached as Exhibits "C" and "D" for the purposes of vehicular and pedestrian access, parking, book drop locations, signage, loading, unloading, dumpster and other service uses and, if required, easements for shared space within the Project. The Access and Parking Easement Agreements shall be substantially in the form of Exhibits "C" and "D" attached hereto.

In addition, the CITY has constructed and provided a parking lot or garage on the Property, or a portion thereof, as described or depicted in the attached Exhibit "E" and dedicated a minimum of one hundred thirty (130) parking spaces to COUNTY exclusively for uses related to the Library Facility during normal operation hours of the Library. The

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CITY shall provide easements for aerial and underground utility services and communications and rooftop satellite dish and/or antennas on, over, and across the Property as may be necessary to provide services to the Library Facility.

1.5 This Lease Agreement and rent shall not commence until COUNTY's acceptance of the Library Facility pursuant to Work Letter for Design and Construction Services, as defined in the attendant Interlocal Agreement. CITY shall provide COUNTY with written notice when all Work required pursuant to the Work Letter is complete and in compliance with all applicable laws, ordinances, orders or regulations of any federal, state, County or municipal authority unless specifically exempted therefrom, and such written certification must be acknowledged and agreed to by the COUNTY so as to establish the Commencement Date for this Lease Agreement. The Commencement Date of this Lease is \_\_\_\_\_.

## **2. DESCRIPTION OF PARKING FACILITIES**

The CITY has programmed, designed and constructed a parking area adjacent to the Library Facility for use by the Library Facility (the "Parking") pursuant to the Interlocal Agreement. CITY hereby grants COUNTY the following rights appurtenant to the lease of the Library Facility:

2.1 The right to use the Parking on an exclusive basis for Library Facility patrons, staff and service personnel, and roadways, parking areas other than the Parking, sidewalks, and promenades in common with other users of the Property; for vehicular and pedestrian access to and egress from the Library Facility and the parking areas; and the right to place signage on the Property subject to CITY approval which will not be unreasonably withheld or delayed.

2.2 The right to locate a dumpster, book drops and signs as reasonably required for the Library Facility's normal use which shall be maintained at COUNTY's sole expense and in such locations as the Parties shall mutually agree.

2.3 The CITY shall provide the Parking containing a minimum of 130 dedicated parking spaces on the Property for the patrons, staff, and service personnel of the Library Facility during normal operating hours; the farthest point of which shall not exceed 300 feet from the Library Facility. Such parking shall be located on surface lots until such time, if ever, a parking garage is constructed on the Property, which parking within the garage shall be located within 250 feet of the Library Facility, situate on the lowest floors of the garage and able to provide the COUNTY with an equivalent number of dedicated parking spaces. The Parking, whether in a parking lot or in a garage, shall be at no additional cost to the COUNTY other than the original cost allocated from the amounts paid to the CRA per the Interlocal Agreement. CITY shall designate 130 and enforce reserved parking for COUNTY's employees who work at the Library to the same extent that reserved parking is designated and enforced for CITY's officials and employees who work at the City Hall. Such designated parking shall be located as close as is practical to the Library Facility subject to applicable law and Code requirements.

2.4 The CITY will provide easements upon, over, and across the Property for the installation, maintenance, repair, and replacement of utility services to the Library Facility in such locations as the Parties shall mutually agree.

3. USE OF PREMISES

3.1 COUNTY and CITY agree that COUNTY may use and occupy the Library Facility for any lawful purpose not inconsistent with the general operations of a public library, as part of a COUNTY public library system which shall include, but not be limited to, providing library staff, library books, library materials, library equipment, and library services and other attendant governmental uses. COUNTY covenants that it will not, without the CITY's written consent which shall not be unreasonably withheld, permit the Library Facility to be occupied by any person, firm, or corporation other than COUNTY and its employees, or subcontractors employed in operations of the Library Facility and library patrons.

CITY agrees that COUNTY may place appropriate signage, including, but not limited to monument and building façade signs, acceptable to the Parties to identify and locate the Library Facility at point of highest visibility from Atlantic Boulevard and Cypress Road.. Additionally, CITY agrees to provide additional signage acceptable to COUNTY, if needed, due to additional development on the Property during the term of this Lease Agreement .

3.2 COUNTY shall be responsible for the costs of operating and maintaining the interior of the Library Facility. In the event COUNTY uses the Library Facility for other than library purposes and uses incidental thereto, CITY shall have the right to give COUNTY written notice demanding discontinuation of the improper use. If COUNTY does not discontinue the improper use within thirty (30) days after it receives the CITY's notice, the CITY shall have the right to compel COUNTY to conform its use to library purposes pursuant to Paragraph 18 (Default) of this Lease Agreement .

3.3 COUNTY further covenants that no nuisance or hazardous trade or occupation shall be permitted or carried on, in or upon said Library Facility, no act or thing shall be permitted and nothing shall be kept in or about said Library which will increase the risk of hazard of fire, except for cleaning agents and other materials customarily used in the cleaning and maintenance of libraries, and no waste shall be permitted or committed upon or any damage done to said Library Facility, and COUNTY shall not use or occupy or permit the Library Facility to be used or occupied in any manner which will violate any laws or regulations of any governmental authority.

3.4 Use or a change in use of the PBCC located on the second floor of the Project by CITY must be in a manner which shall at all times be compatible with the Library Facility's use.

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4. QUIET ENJOYMENT

CITY shall in no way interfere with the reasonable use of the Library Facility by any person claiming under COUNTY, including without limitation, COUNTY's employees, patrons, licensees, invitees, and guests, and CITY covenants that COUNTY shall not be disturbed by any act of the CITY or any person acting on behalf of or claiming under the CITY.

5. UTILITIES AND OTHER SERVICES

The following utilities, services and expenses shall be paid and performed by the party identified by the "X":

	<u>CITY</u>	<u>COUNTY</u>
HVAC unit maintenance, repair and replacement	X	
Air conditioning filter maintenance and Replacement, routinely when needed	X	
<hr/>		
Electricity serving the Library, 1 <sup>st</sup> floor		X
<hr/>		
Electricity serving the common areas, Interior, other than the Library, 1 <sup>st</sup> floor and exterior	X	
<hr/>		
Janitorial services and supplies as to second floor and common areas	X	
<hr/>		
Janitorial services and supplies as to Library interior only		X
<hr/>		
Light bulb and lamp/light fixture replacement, Common area, second floor and Exterior, as needed	X	

	<u>CITY</u>	<u>COUNTY</u>
Light Bulbs for Library interior		X
Parking Lot Maintenance	X	
Pest control exterior	X	
Pest control – Library interior		X
Library Security (systems, alarms, etc)		X
Plumbing in common area of building and infrastructure	X	
Termite control	X	
Trash removal	X	
Water and sewer service (1 <sup>st</sup> Floor separate meter)		X
Common Area Water	X	

CITY shall not restrict the COUNTY's ability to determine the Library days and hours of service. The operating hours of the Library Facility vary and may include up to seven days per week operation.

In the event of a planned use of the PBCC, CITY shall provide notice of the upcoming event in the lobby of the Library Facility for two weeks in advance of said event, if possible. CITY agrees that it shall provide adequate parking to accommodate all patrons of both the Library Facility and the PBCC, without the use of the Library's 130 dedicated parking spaces during normal operating hours of the Library.

	<u>CITY</u>	<u>COUNTY</u>
Light Bulbs for Library interior		X
Parking Lot Maintenance	X	
Pest control exterior	X	
Pest control – Library interior		X
Library Security (systems, alarms, etc)		X
Plumbing in common area of building and infrastructure	X	
Termite control	X	
Trash removal	X	
Water and sewer service (1 <sup>st</sup> Floor separate meter)		X
Common Area Water	X	

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**6. MAINTENANCE OF LIBRARY FACILITY AND INTERIOR**

COUNTY shall maintain the interior of the Library Facility in a clean and orderly state of appearance and in good repair beginning on the Commencement Date of this Lease. CITY shall maintain the Project and the Parking area, except the interior of the Library Facility interior, in a clean and attractive state of appearance and in good repair beginning on the Commencement Date of this Lease. CITY shall routinely clean the exterior of the windows of the Project, and re-paint exterior as needed. It is specifically understood between the parties that COUNTY shall be fully responsible for performing or causing to be performed all maintenance and repairs to the interior of the Library Facility as changes to the Library program are required. In the event of damage or destruction of all or part of the Library Facility, CITY must rebuild all or that portion of the Project which is partially or totally damaged or destroyed by fire or other casualty.

**7. EXTERIOR AND COMMON AREA MAINTENANCE**

CITY covenants to keep the Project's exterior, common areas of the Project, if any and grounds in good, safe, neat and orderly condition at the CITY's expense. Exterior maintenance, includes without limitation, maintenance of the public artwork to COUNTY specifications if located on the Project's exterior; routine landscaping, including cutting, mulching, pruning and similar maintenance of all foliage; routine and non-routine maintenance of irrigation systems, parking areas, common exterior areas and swale areas within the Project and surrounding area of the Property including cleaning, painting, striping, paving, and repairs. CITY shall routinely clean the exterior of the windows on the Project and maintain and re-paint exterior as needed.

CITY agrees that required repairs to the mechanical, electrical and plumbing systems shall be commenced within 24 hours of notification or actual knowledge by CITY of the problem and completed forthwith. CITY agrees that time is of the essence to ensure the continued operation of the library. If CITY fails, within a reasonable time after request, to make such repairs or provide such maintenance then (a) CITY shall be liable for any damages to property or loss thereby sustained by COUNTY and (b) COUNTY may have such repairs made at CITY's expense and CITY shall reimburse COUNTY upon presentation of an invoice certified by COUNTY that details the repairs made and/or the expense incurred.

**8. REPAIRS**

CITY covenants to keep the Project and the Library Facility in good structural repair. CITY shall maintain and keep in good repair the roof; skylights; outside walls; foundations; sidewalks; interior walls; floors; windows; ceilings; elevators; and all sprinkler, hot water, heating, ventilating, air conditioning, plumbing, and electrical systems and appurtenances thereto. CITY shall also make any repairs necessitated by water seepage not under COUNTY'S control or other required emergency repairs. CITY shall commence repairs as soon as possible and shall forthwith notify COUNTY. CITY shall also make all repairs or changes which may be necessary to make the Library Facility and the uses herein

contemplated comply with applicable laws, ordinances, orders or regulations of any federal, state, County or municipal authority now or hereafter in effect unless specifically exempted therefrom.

If CITY fails, within a reasonable time after COUNTY's request, to make such repairs or changes, or repairs necessitated by fire or other casualty, then (a) CITY shall be liable for any damages to property or loss thereby sustained by COUNTY, (b) COUNTY shall be authorized to make said repairs and (c) CITY shall reimburse COUNTY upon presentation of an invoice certified by COUNTY that details the repairs made and/or the expense incurred.

9. ALTERATIONS AND IMPROVEMENTS

Unless otherwise prohibited by the terms of this Lease Agreement, the COUNTY may, at its own expense, make such non-structural changes, alterations, additions and improvements to the interior of the Library Facility as it may deem necessary or expedient. COUNTY may make structural alterations or additions with CITY's written consent and such consent will not be unreasonably withheld or delayed. All such non-structural alterations shall, at COUNTY's the sole option, be considered personalty and remain the COUNTY's exclusive property. COUNTY may, in its sole discretion, remove all such property from the Library Facility upon the termination of this Lease Agreement ; provided, however, that the Library Facility be restored to its original condition, permitted structural changes and alterations or additions and normal wear and tear excepted.

10. HOLD OVER BY TENANT

COUNTY may hold over and remain in possession of the Library Facility after the expiration of this Lease Agreement but in no event shall it be deemed or construed to be a renewal or extension of this Lease Agreement. Any hold over by COUNTY shall only operate to create a month-to-month tenancy upon the same terms and conditions as set forth herein and which may be terminated by either Party at the end of any month upon ninety (90) days' prior written notice by certified U.S. mail to the other.

11. ASSIGNMENT OR SUBLETTING

Notwithstanding anything to the contrary, the COUNTY may assign or sublet all or portions of the Library Facility during the term of this Lease Agreement with CITY's approval, which shall not unreasonably be delayed or withheld, provided that the Library Facility continues to be used as a public library.

In the event COUNTY is assigning to a government agency as defined by state law, CITY grants its consent for such assignment without the necessity of further action although CITY may require an assignee to sign an Assignment Agreement wherein the assignee will assume the terms of this Lease Agreement.



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If CITY fails, within a reasonable time after COUNTY's request, to make such repairs or changes, or repairs necessitated by fire or other casualty, then (a) CITY shall be liable for any damages to property or loss thereby sustained by COUNTY, (b) COUNTY shall be authorized to make said repairs and (c) CITY shall reimburse COUNTY upon presentation of an invoice certified by COUNTY that details the repairs made and/or the expense incurred.

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In the event COUNTY is assigning to a government agency as defined by state law, CITY grants its consent for such assignment without the necessity of further action although CITY may require an assignee to sign an Assignment Agreement wherein the assignee will assume the terms of this Lease Agreement.

Should COUNTY assign this Lease in accordance with the requirements of this paragraph, COUNTY shall be relieved from all liability under the Lease Agreement. CITY shall have the right to terminate this Lease Agreement if a proposed private assignee or subtenant is not reasonably acceptable to CITY.

**12. CHANGE IN OWNERSHIP**

Should CITY sell any part of the Project or the Library Facility, CITY shall immediately together with the new owners notify COUNTY by certified U.S. mail of the identity of the new owner(s). Should either CITY or the new owner(s) fail to notify COUNTY, COUNTY shall be entitled to treat CITY as the Property owner until such notice is received from both CITY and new owner(s). Any sale of the Library Facility shall require the prior execution of a Subordination and Attornment Agreement running with the land in favor of the COUNTY to be recorded in the Public Records of Broward County, Florida. Additionally, prior to any sale of the Property or the Library Facility, COUNTY shall have the right to enter into an automatic new 50 year lease term with the new Owner under the same terms and conditions as contained herein.

**13. SURRENDER UPON TERMINATION**

COUNTY agrees that upon expiration of the lease term herein, or upon the termination of the Lease Agreement for any cause, upon written notification by certified U.S. mail, it will peaceably surrender and deliver the Library Facility to CITY, its agents or assigns. COUNTY further agrees that it will leave the Library Facility in good condition, subject to Paragraph 9 herein (Alterations and Improvements) and reasonable wear and tear.

**14. TAXES AND ASSESSMENTS**

CITY shall pay any and all taxes, assessments, or other charges against the Library Facility, the Project or the Property, or any combination thereof.

**15. RIGHT TO MORTGAGE AND SELL**

CITY may not encumber the Library Facility by mortgage(s) or sell any part of the Project, Library Facility, the Parking or parking areas utilized by the Library Facility without the COUNTY's prior written consent. CITY shall give the COUNTY prior written notice at least ninety (90) days before the intent to encumber or sell the Project or Library Facility. Such notice shall be given in the manner specified for notices under this Lease Agreement. Any mortgage or sale of the Library Facility shall require the prior execution of a Subordination and Attornment Agreement, in form acceptable to COUNTY, in favor of COUNTY running with the land to be recorded in the Public Records of Broward County, Florida.

16. NOTICES

Whenever either CITY or COUNTY desires to give notice to the other, such notice must be in writing sent by certified United States mail, postage prepaid, return receipt requested, or by hand delivery with a request for a written receipt of acknowledgment of delivery addressed to the party for whom it is intended at the place last specified. The place for giving notice shall remain the same as set forth herein until changed in writing in the manner provided in this Paragraph. For the present, the Parties designate the following.

FOR BROWARD COUNTY

County Administrator  
Broward County Governmental Center  
115 South Andrews Avenue, Room 409  
Fort Lauderdale, FL 33301

With additional copies to (copies shall not constitute notice):

Director of Real Property  
Broward County Governmental Center  
115 South Andrews Avenue, Room 326  
Fort Lauderdale, FL 33301

Director of Libraries Division  
Broward County Main Library – 8<sup>th</sup> Floor  
100 South Andrews Avenue  
Fort Lauderdale, Florida 33301

FOR CITY

City Manager  
City of Pompano Beach  
100 W. Pompano Beach Boulevard  
Pompano Beach, Florida 33004

With additional copies to (copies shall not constitute notice):

City Attorney  
100 W. Atlantic Boulevard  
Pompano Beach, Florida 33060

Director of Public Works  
100 W. Atlantic Boulevard  
Pompano Beach, Florida 33060

17. WARRANTIES

CITY warrants that CITY has not received any notice from any governmental authority as to violation of any law, ordinance, or regulation regarding the Property. If the Property is subject to restrictive covenants, CITY warrants that CITY has not received any notice from any person or authority as to a breach of the covenants. CITY warrants that

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FOR BROWARD COUNTY

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Broward County Governmental Center  
115 South Andrews Avenue, Room 409  
Fort Lauderdale, FL 33301

With additional copies to (copies shall not constitute notice):

Director of Real Property  
Broward County Governmental Center  
115 South Andrews Avenue, Room 326  
Fort Lauderdale, FL 33301

Director of Libraries Division  
Broward County Main Library – 8<sup>th</sup> Floor  
100 South Andrews Avenue  
Fort Lauderdale, Florida 33301

FOR CITY

City Manager  
City of Pompano Beach  
100 W. Pompano Beach Boulevard  
Pompano Beach, Florida 33004

With additional copies to (copies shall not constitute notice):

City Attorney  
100 W. Atlantic Boulevard  
Pompano Beach, Florida 33060

Director of Public Works  
100 W. Atlantic Boulevard  
Pompano Beach, Florida 33060

17. WARRANTIES

CITY warrants that CITY has not received any notice from any governmental authority as to violation of any law, ordinance, or regulation regarding the Property. If the Property is subject to restrictive covenants, CITY warrants that CITY has not received any notice from any person or authority as to a breach of the covenants. CITY warrants that

COUNTY and Library patrons shall have a continuous right of access to the Library and Property during the term of the Lease from public or private right-of-ways, and other public travelways and routes.

**18. DEFAULT**

18.1 Except as restricted or prohibited below, a Party not in default may take action to remedy a default under this Agreement after applicable cure periods and pursue any available legal and equitable remedies, including specific performance of this Agreement.

18.2 If CITY defaults under its obligations of the Lease Agreement and fails to cure such default within ninety (90) days after COUNTY's written notice or if such default is of a nature that it cannot be cured within ninety (90) days, then (a) CITY shall be liable for any damages to property or loss thereby sustained by COUNTY and (b) COUNTY may have such default corrected at CITY's expense and CITY shall reimburse COUNTY upon presentation of an invoice certified by COUNTY detailing the correction made and the expense incurred. This provision shall not deprive COUNTY of the right to recover damages for breach of this Agreement or of the right to specific performance of this Agreement.

18.3 If COUNTY defaults under its obligations of the Lease Agreement and fails to cure such default within ninety (90) days after CITY's written notice or if such default is of a nature that it cannot be cured within ninety (90) days, then (a) COUNTY shall be liable for any damages to property or loss thereby sustained by CITY and (b) CITY may have such default corrected at COUNTY's expense and COUNTY shall reimburse CITY upon presentation of an invoice certified by CITY detailing the correction made and the expense incurred. This provision shall not deprive CITY of the right to recover damages for breach of this Agreement or of the right to specific performance of this Agreement.

**19. DAMAGE TO PREMISES**

COUNTY agrees that all personal property placed in the Library Facility shall be at the risk of COUNTY. COUNTY shall give CITY, or its agent(s), prompt written notice of any accident to, or defect in, the roof, outside walls, foundations, sidewalks, interior walls, skylights, floors, windows, ceilings, sprinkler and hot water systems, elevators, heating, ventilating and air conditioning systems, plumbing and electrical wiring, utilities or other building components of the Project, and CITY agrees to remedy same with due diligence, subject to the provisions of this Lease Agreement dealing with repairs and exterior maintenance.

**20. INSPECTION**

CITY, or its duly authorized agent, so stated by written notice to COUNTY may enter the Library Facility at reasonable times and upon reasonable notice to COUNTY to examine it; or to make needed repairs to it.

If an emergency situation arises outside of the Library Facility's normal operating hours which has the potential to cause significant damage to persons or property, CITY, its agent, janitor, watchman or authorized employee(s) shall contact COUNTY and may enter the Library Facility to address or repair same.

21. FIRE OR OTHER CASUALTY

In the event the Library Facility, Parking, its attendant parking area, garage or any part thereof is damaged by fire or other cause during the term of this Lease Agreement, the Parties shall provide immediate written notice to each other and repairs or reconstruction of the Library Facility shall diligently commence at the CITY's expense.

22. SOVEREIGN IMMUNITY AND LIABILITY

CITY is a state agency as defined by Section 768.28, Florida Statutes, and self insured. CITY agrees to be fully responsible for acts and omissions of its agents or employees to the extent permitted by law. CITY shall furnish COUNTY with written verification of liability protection in accordance with state law prior to the Commencement Date of this Agreement.

Likewise, COUNTY is a state agency as defined by Section 768.28, Florida Statutes, and self insured. COUNTY agrees to be fully responsible for acts and omissions of its agents or employees to the extent permitted by law. COUNTY shall furnish CITY with written verification of its liability protection in accordance with state law prior to the Commencement Date of this Agreement.

Nothing herein is intended to serve as a waiver of sovereign immunity by any party to which sovereign immunity may be applicable. Nothing herein shall be construed as consent by a state agency or political subdivision of the State of Florida to be sued by third parties in any matter arising out of this Lease Agreement or the attendant Interlocal Agreement.

23. INSURANCE

23.1 CITY agrees that during the term hereof it will, at its expense, keep the Project insured on an "All Risk" basis, together with extended coverage to the extent of replacement value thereof, including plate glass insurance. Notwithstanding anything herein to the contrary, CITY shall repair and replace plate glass damaged as a result of casualty covered under the CITY'S policy of fire insurance with extended coverage. Should CITY make major repairs or rebuild the Facility, and COUNTY elects to remain as a tenant, CITY shall replace said building with a structure as good as or better than the damaged or destroyed building. CITY further agrees to name Broward County Board of County Commissioners as a Certificate Holder under its liability coverage.

23.2 The parties hereto acknowledge that COUNTY is a self-insured governmental entity subject to the limitations of Section 768.28, Florida Statutes. COUNTY shall institute

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23.2 The parties hereto acknowledge that COUNTY is a self-insured governmental entity subject to the limitations of Section 768.28, Florida Statutes. COUNTY shall institute

and maintain a fiscally sound and prudent risk management program with regard to its obligations under this Lease Agreement in accordance with the provisions of Section 768.28, Florida Statutes. COUNTY is fully self-insured and self administered for General Liability coverage pursuant Section 627.7264, Florida Statutes. Nothing herein is intended to serve as a waiver of COUNTY's sovereign immunity.

**23.3 Mutual Release and Waiver of Subrogation:** Notwithstanding anything to the contrary contained in the Agreement, CITY and COUNTY hereby release each other, and each other's agents employees, officers directors, and trustees from any and all liability or responsibility for any loss or damage to property caused by fire or if such fire or other casualty have been caused by the negligence or fault of the other party or anyone for whom such party may be legally responsible; provided, however, that this release shall be applicable and in force and effect only with respect to loss or damage occurring during such time as the property insurance policies of the parties shall contain a clause or endorsement to the effect that any such release shall not adversely affect or impair or prejudice the right of the releaser to recover thereunder. CITY and COUNTY each agree that their respective policies will include such a clause or endorsement so long as the same is obtainable (cost shall not be a basis to claim non-obtainability), and, if not obtainable, shall so advise the other in writing and such notice shall release both parties from the obligation to obtain such a clause or endorsement.

**24. EXECUTION AND RE-EXECUTION OBLIGATION**

In the event either Party deems it necessary or advisable for the other to execute or re-execute any document or documents to effectuate the terms of this Lease Agreement, the Party requested to do so shall execute or re-execute such document or documents reasonably required by the other Party. If there is a cost related to the execution or re-execution required by this paragraph, the Party requesting execution or re-execution shall pay such costs.

All requests for execution or re-execution of documents and payment of costs shall be complied with within thirty (30) days of the written request. A Party's failure to comply with the obligation hereunder shall constitute a default and shall entitle the other party to the remedies described in Paragraph 18 (Default) of this Lease Agreement including, but not limited to, specific performance or execution of such document or documents on behalf of the defaulting party by a court-designated representative.

**25. CONFLICT RESOLUTION**

In recognition of the complexities involved in implementing this Lease Agreement and the Parties desire to minimize the adverse effect and cost of disputes, as to disputes between CITY and COUNTY, the Parties hereby agree that in the first instance, their respective Contract Administrators shall endeavor to resolve every dispute amicably and to also define the nature and extent of any disagreement to the extent possible.



If the Parties' Contract Administrators are unable to reach an agreement within ten (10) business days after the dispute arises, they agree to enlist the assistance of the CITY's City Manager and the COUNTY's County Administrator or their respective designee(s) to review the dispute and participate in the effort to find a resolution that will avoid the necessity of litigation with the goal of resolving the dispute within ten (10) business days thereafter.

Furthermore, before any matter is brought to litigation, the Parties agree to submit to non-binding mediation to attempt to resolve their differences in good faith with a mediator mutually agreed upon by the CITY's City Manager and the COUNTY's County Administrator or their respective designee(s). The CITY and COUNTY further agree the cost of the mediator for any such non-binding mediation shall be shared equally with each Party to bear its own attorney's fees incurred in connection with such mediation.

**26. APPLICABLE LAW AND VENUE**

This Lease Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Any controversies or legal problems arising out of this Lease Agreement and any action involving the enforcement or interpretation of any rights hereunder shall be submitted exclusively to the jurisdiction of the Seventeenth Judicial Circuit of Broward County, Florida. Venue for litigation arising out of this Lease Agreement shall be exclusively in the state courts forsaking any other jurisdiction which either Party may claim has jurisdiction.

**BY ENTERING INTO THIS AGREEMENT, CITY AND COUNTY HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO, OR ARISING OUT OF THE PROJECT OR THIS LEASE AGREEMENT.** Each Party shall bear its own attorney fees in any litigation or proceeding arising under this Agreement.

**27. THIRD PARTY RIGHTS**

Nothing in this Lease Agreement shall be construed to give any rights or benefits to anyone other than the CITY and COUNTY.

**28. COMPLIANCE WITH LAWS**

When performing its respective duties, CITY and COUNTY shall comply with all applicable federal, state, and local laws, codes, ordinances, rules, and regulations in performing their respective duties, responsibilities, and obligations pursuant to this Agreement.

**29. SURVIVAL OF OBLIGATIONS**

The obligations set forth in this Agreement shall survive the termination of the Lease and the completion of the Project and Library Facility.

If the Parties' Contract Administrators are unable to reach an agreement within ten (10) business days after the dispute arises, they agree to enlist the assistance of the CITY's City Manager and the COUNTY's County Administrator or their respective designee(s) to review the dispute and participate in the effort to find a resolution that will avoid the necessity of litigation with the goal of resolving the dispute within ten (10) business days thereafter.

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**29. SURVIVAL OF OBLIGATIONS**

The obligations set forth in this Agreement shall survive the termination of the Lease and the completion of the Project and Library Facility.

**30. MATERIALITY AND WAIVER OF BREACH**

COUNTY and CITY agree that each requirement, duty, and obligation set forth herein is substantial and important to the formation of this Agreement and therefore is a material term hereof. A Party's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or a modification of this Agreement. A waiver or breach of any provision or modification of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed a modification of the terms of this Agreement. Any party's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

**31. SEVERANCE**

In the event a portion of this Lease Agreement is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective.

**32. JOINT PREPARATION**

The parties acknowledge that they have sought and received whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein and that the preparation of this Lease Agreement has been their joint effort. The language agreed to expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the Parties as to another.

**33. AMENDMENTS**

No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Lease Agreement and executed for the COUNTY by the Board of County Commissioners or another person empowered to execute contracts on behalf of the COUNTY, and CITY by the City Commission.

**34. INDEPENDENT CONTRACTOR**

CITY is an independent contractor and is in no sense an agent of COUNTY with no authority whatsoever to bind COUNTY and no acts or assistance given by COUNTY shall be construed to have altered this relationship. Services provided or acquired by CITY pursuant to this Lease Agreement shall be subject to the supervision of CITY. In providing such services, neither CITY nor its agents shall act as officers, employees, or agents of COUNTY.

This Agreement shall not create nor be deemed to create a partnership or joint venture between the Parties. Likewise, COUNTY is an independent contractor and is in no

sense an agent of CITY, and COUNTY has no authority whatsoever to bind CITY, and no acts or assistance given by CITY shall be construed to have altered this relationship. Services provided or acquired by COUNTY pursuant to this Agreement shall be subject to the supervision of COUNTY. In providing such services, neither COUNTY nor its agents shall act as officers, employees, or agents of CITY.

This Lease Agreement shall not create nor be deemed to create a partnership or joint venture between the Parties.

**35. AUDIT RIGHTS AND RECORDS**

CITY shall maintain during the term of this Lease separate books of account, reports, and records customarily maintained and such records as are necessary to document its activities pursuant to this Agreement and all monies received hereunder. Such books and records shall be kept in accordance with generally accepted accounting principles. The COUNTY shall have the right to review and audit CITY's books and records for the Library Facility by giving at least thirty (30) days' prior written notice to CITY of such intent to review or audit, or both.

All records of CITY related to this Agreement shall be maintained for a period consistent with the requirements of the State of Florida's public records law, if applicable, and, at least three (3) years after the expiration of this Agreement. This provision shall survive the expiration or termination of this Agreement.

**36. TIME OF THE ESSENCE AND TIME PERIODS**

Time shall be deemed to be of the essence for this Lease Agreement with respect to all provisions in which a definite time for performance is specified; provided, however, that the foregoing shall not be deemed to deprive any Party of the benefit of any cure period set forth herein. All time periods specified in this Lease Agreement shall be deemed to be calendar days unless specifically stated otherwise; provided, however, that if the last day of any particular calendar day period is a Saturday, Sunday, or legal holiday, then the time period shall be deemed to extend to the next business day.

**37. FORCE MAJEURE**

If the performance of this Lease Agreement, or any obligation hereunder is prevented as a result of war, national or local emergency, labor troubles, acts of God, casualty, or any other cause beyond its reasonable control, the Party so affected, upon giving prompt notice to the other party, shall be excused from such performance to the extent of such prevention, provided that the party so affected shall first have taken reasonable steps to avoid and to remove such cause of non-performance and shall continue to take reasonable steps to avoid and remove such cause, and shall promptly notify the other party in writing and resume performance hereunder whenever such causes are removed.

If CITY is ultimately unable to complete the Library Facility within a reasonable time following the force majeure event, CITY shall return all monies paid by COUNTY to CITY pursuant to this Lease Agreement and the attendant Interlocal Agreement at upon request by COUNTY.

**38. CONDEMNATION**

COUNTY reserves unto itself, and CITY assigns to COUNTY, all right to compensation and damages as the COUNTY's interest appears, accruing on account of any taking or condemnation of all or any part of the Library Facility and all other COUNTY related improvements or by reason of any act of any public or quasi-public authority for which damages are payable.

CITY agrees to execute such instruments or assignments as may be required by COUNTY, to join with COUNTY in any petition for the recovery of compensation and damages, if requested by COUNTY, and to turn over to COUNTY any such compensation and damages that may be recovered in any such proceeding.

COUNTY does not reserve unto itself, and CITY does not assign unto COUNTY, any compensation or damages payable for the value of the Project/Building alone, excluding the building and the improvements to the Library Facility. COUNTY shall also retain all compensation and damages for any fixtures installed by COUNTY on the Library Facility at its cost and expense, whether or not the same are part of the realty, or for any damages for interruption to operation of the Library Facility.

**39. ENVIRONMENTAL CONTAMINATION**

Portions of the Property are the subject of two Brownfield Site Rehabilitation Agreements (BSRAs) between COUNTY and CITY. CITY, as owner, retains responsibility for compliance with the BSRA remediation and all standards contained therein. Anything further that is discovered and required to be remediated, whether unknown or discovered shall be remediated by CITY.

With the exception of the foregoing, CITY represents and warrants to COUNTY that as of the date of execution of this Lease, neither CITY, nor to the best of CITY's knowledge has any third party, used, produced, manufactured, stored, disposed of or discharged any hazardous wastes or toxic substances in, under or about the Library Facility during the time in which CITY owned the Library Facility. COUNTY covenants that it will not use, produce, manufacture, store, dispose of or discharge any hazardous wastes or toxic substances in, under or about the Library Facility (other than the normal and customary petroleum products used in the operation of motor vehicles on the Library Facility) during the term of this Lease.

**40. RADON GAS**

Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risk to persons who are exposed to it over time. Levels of radon that exceed Federal and State Guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from the Broward County Public Health Unit.

**41. TERMS**

Every term of this Lease Agreement shall be deemed and construed to be of the essence thereof, and any breach shall be deemed and construed to be material.

**42. PRIOR AGREEMENTS**

This document, together with the Interlocal Agreement and all exhibits thereto, incorporates and includes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein and the Parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Lease Agreement that are not contained in this document, or the Interlocal Agreement.

Accordingly, the Parties agree that no deviation from the terms thereof shall be predicated upon any prior representations or agreements, whether oral or written. It is further agreed that no modification, amendment or alteration in the terms or conditions contained therein shall be effective unless contained in a written document utilizing the same formalities as were used in the execution of this Lease Agreement.

In the event there is a conflict between the terms and conditions of this Lease Agreement and the Interlocal Agreement the terms and conditions of this Lease Agreement shall prevail.

**43. WHEREAS CLAUSES**

The information contained in the Whereas Clauses set forth above is true and correct, and is hereby incorporated into the body of and made a part of this Agreement.

**44. WAIVER**

Failure of either party to insist upon strict performance of any covenant or condition of this Lease, or to exercise any right or option herein contained, shall not be construed as a waiver or relinquishment for the future of any such covenant, condition or right of election; but the same shall remain in full force and effect. None of the conditions, covenants and provisions of this Lease shall be waived or modified except by the Parties hereto in writing.

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Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risk to persons who are exposed to it over time. Levels of radon that exceed Federal and State Guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from the Broward County Public Health Unit.

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**45. COPIES OF LEASE**

This Lease may be executed in multiple original copies, each copy of which, bearing original signatures, is to have the force and effect of an original document.

**46. PRIORITY OF PROVISIONS**

If there is a conflict or inconsistency between any term, statement, requirement, or provision of any exhibit attached hereto, any document or events referred to herein, or any document incorporated into this Agreement by reference and a term, statement, requirement, or provision of this Agreement, the term, statement, requirement, or provision contained in this Agreement shall prevail and be given effect.

**47. CRIMINAL BACKGROUND SCREENING**

47.1 CITY expressly understands and agrees that a duty is hereby created under this Agreement that requires CITY to provide ongoing disclosure throughout the term of this Agreement as provided for herein relative to the criminal background screening required by this Paragraph.

47.2 CITY shall perform criminal background screening as identified in Paragraph 47.3 below on its officers, employees, agents, independent contractors and volunteers who will be working under this Agreement in the COUNTY Library and in areas reasonably likely to interact with library patrons. Further, if CITY's Contractor is permitted to utilize subcontractors under this Agreement, CITY shall perform or ensure that the background screening as required in Paragraph 47.3 below is conducted on any permitted subcontractor, which term includes the subcontractor's officers, employees, agents, independent contractors and volunteers who will be working under this Lease of the Library Facility.

47.3 CITY shall not permit any person who is listed as a sexual predator or sexual offender on the Florida Department of Law Enforcement, Sexual Offenders and Predators Website or the United States Department of Justice, National Sex Offender Public Website, to provide any services for CITY on Library Facility. All persons subject to the criminal background screening under this Lease shall be rescreened annually based on the date of initial screening.

47.4 CITY shall maintain copies of the results of the criminal background screening required by this Paragraph for the term of this Lease and promptly forward copies of same to COUNTY upon its request.

47.5 CITY shall be required to furnish to COUNTY's Contract Administrator, on a monthly basis, an Affidavit, in the form attached hereto as Exhibit "F," affirming the persons listed in the Affidavit have been background screened as required in Paragraph 47.3 above and have been deemed eligible by CITY to work on Library Facility. CITY's monthly Affidavit shall update information from the previous Affidavit by reconfirming the status of



persons who have previously been deemed eligible as provided for above and updating the list, when applicable, to specifically identify new persons providing services for CITY under this Agreement who have been background screened as required in Paragraph 47.3 above and deemed eligible to work on the Library Facility. COUNTY's Contract Administrator may, in his or her discretion, permit CITY to furnish the monthly Affidavit in an electronic format.

47.6 In the event CITY obtains, or is provided, supplemental criminal background information, including police reports and arrest information, which potentially disqualifies a person previously deemed eligible by CITY to provide services under this Agreement, CITY shall take immediate action to review the matter; however, during such review time and until a determination of eligibility is made by CITY based on the requirements of this Paragraph, CITY shall immediately cease allowing the person to work on County Library Property. Additionally, CITY shall be required to inform any person background screened pursuant to this Article who is providing services under this Agreement, to notify CITY within forty-eight (48) hours of any arrest related to sexual misconduct which has occurred after the person was deemed eligible to work on County Library Property.

47.7 CITY shall, by written contract, require its permitted subcontractors to agree to the requirements and obligations of this Paragraph.

47.8 COUNTY may terminate this Agreement immediately for cause, with Notice provided to CITY for a violation related to CITY's failure to perform the required background screening on its officers, employees, agents, independent contractors and volunteers who are working under this Agreement on County Library Property. COUNTY may also terminate this Agreement immediately for cause, with Notice provided to CITY, if COUNTY determines CITY failed to ensure that its permitted subcontractors, as defined in Paragraph 47.2 above, have been background screened as required in this Paragraph prior to performing any services under this Agreement on County Library Property. CITY shall not be subject to immediate termination in the event COUNTY determines a violation of this Paragraph was outside the reasonable control of CITY and CITY has demonstrated to COUNTY compliance with the requirements of this Paragraph.

47.9 COUNTY may terminate this Agreement for cause if CITY fails to provide the monthly Affidavit to COUNTY as provided for under Paragraph 47.5 above, and CITY does not cure said breach within five (5) days of Notice provided to CITY.

#### 48. OTHER PROVISIONS

Any additional provisions entered into any the time of execution of this Lease shall require approval of the parties by initialing at the bottom of any additional page(s), which must be affixed to the Lease.

#### 49. RECORD

This Lease shall be recorded in the public records of Broward County.

persons who have previously been deemed eligible as provided for above and updating the list, when applicable, to specifically identify new persons providing services for CITY under this Agreement who have been background screened as required in Paragraph 47.3 above and deemed eligible to work on the Library Facility. COUNTY's Contract Administrator may, in his or her discretion, permit CITY to furnish the monthly Affidavit in an electronic format.

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47.9 COUNTY may terminate this Agreement for cause if CITY fails to provide the monthly Affidavit to COUNTY as provided for under Paragraph 47.5 above, and CITY does not cure said breach within five (5) days of Notice provided to CITY.

#### **48. OTHER PROVISIONS**

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#### **49. RECORDING**

This Lease shall be recorded in the public records of Broward County.



Public Works Department  
**REAL PROPERTY SECTION**

115 S. Andrews Avenue, Room 326 • Fort Lauderdale, Florida 33301 • 954-357-6815 • FAX 954-357-6292 • mhammond@broward.org

September 1, 2011

Mary L. Chambers, MMC  
City Clerk  
P.O. Drawer 1300, suite 253  
Pompano Beach, FL 33061

**RE: Library Agreement with Lease**

Dear Ms. Chambers:

I am sending you a copy of the County Commission Board Item #52 showing that both motions were approved. I have also included the executed agreement with all of its exhibits. Please note that Exhibit 2, the Lease, will not be fully executed until such time as the Library is completed and ready for occupancy. I have pulled the section of signature pages and substituted a few pages into all of the original Lease documents. This makes it easy to see which pages will be replaced when the building is ready. I am holding all of the original Lease signature pages in my file. I explained this to your attorney, Fawn Powers, and she agreed to this concept.

If you have any questions I can be reached at 954-357-6815.

Sincerely,

Marie Andrée Hammond  
Assistant Real Estate Officer

Cc: Sue Goldstein, Construction Management Division

Enclosures

*This section  
will be replaced.*

50. ENTIRE AGREEMENT

This Agreement, the attached Exhibits "A," "B," "C," "D," "E" and "F" and any addenda or amendments signed by the parties, shall constitute the entire Agreement between CITY and COUNTY, and supersedes any other written or oral agreement between them. This Agreement can only be modified in writing signed by CITY and COUNTY.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement: BROWARD COUNTY through its BOARD OF COUNTY COMMISSIONERS, signing by and through its Mayor or Vice-Mayor, authorized to execute same by Board action on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, and CITY, signing by and through its Mayor, duly authorized to execute same.

COUNTY

ATTEST:

BROWARD COUNTY, by and through  
It's Board of County Commissioners

\_\_\_\_\_  
Broward County Administrator, as  
Ex-officio Clerk of the Broward County  
Board of County Commissioners

By \_\_\_\_\_  
Mayor

Insurance requirements  
approved by Broward County  
Risk Management Division

Approved as to form by  
Office of the County Attorney  
for Broward County, Florida  
JONI ARMSTRONG COFFEY, County  
Attorney  
Governmental Center, Suite 423  
115 South Andrews Avenue  
Fort Lauderdale, Florida 33301  
Telephone: (954) 357-7600  
Telecopier: (954) 357-7641

By \_\_\_\_\_  
Risk Manager

By \_\_\_\_\_  
Nancy Rubin  
Assistant County Attorney

**"CITY":**

**Witnesses:**

**CITY OF POMPANO BEACH**

Chester W. Boka

By: Lamar Fisher

LAMAR FISHER, MAYOR

Shelly R. Bartholomew

By: Dennis W. Beach

DENNIS W. BEACH, CITY MANAGER

**Attest:**

Mary L. Chambers

MARY L. CHAMBERS, CITY CLERK

(SEAL)

**Approved by:**

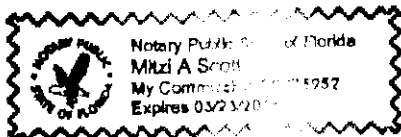
Gordon B. Linn

GORDON B. LINN, CITY ATTORNEY

STATE OF FLORIDA  
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this 22nd day of July, 2011, by LAMAR FISHER as Mayor, DENNIS W. BEACH as City Manager, and MARY L. CHAMBERS as City Clerk of the City of Pompano Beach, Florida, a municipal corporation, on behalf of the municipal corporation, who is personally known to me.

**NOTARY'S SEAL:**



Mitzi A. Scott

NOTARY PUBLIC, STATE OF FLORIDA

Mitzi A. Scott

(Name of Acknowledger Typed, Printed or Stamped)

Commission Number

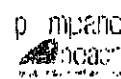
L:\todo\fp\library\lease agreement

# EXHIBIT A



**END**  
CIVIC CAMPUS

CITY OF POMPAÑO BEACH  
COMMUNITY REDEVELOPMENT AGENCY



**NEW PUBLIC L**  
CIVIC CAMP

## **EXHIBIT B**

**As-Built Floor Plan of Project to include Library Facility  
and possibly Pompano Beach Cultural Center**

**TO BE INSERTED AT EXECUTION OF LEASE AGREEMENT**

**THIS INSTRUMENT PREPARED BY  
AND SHOULD BE RETURNED TO:**

**EXHIBIT**

C

Nancy Rubin, Esq.  
**Broward County Attorney's Office**  
115 South Andrews Avenue, Suite 423  
Fort Lauderdale, FL 33301  
954-357-7600

**ACCESS AGREEMENT**

THIS ACCESS AGREEMENT is made this \_\_\_\_ day of \_\_\_\_\_, 2011, between the City of Pompano Beach, a Florida municipal corporation, its successors and assigns, hereinafter referred to as "CITY" having its principal place of business at 100 West Atlantic Boulevard, Pompano Beach, FL 33060, and Broward County, a political subdivision of the State of Florida, its successors and assigns (the "COUNTY") with its principal address at 115 South Andrews Ave., Fort Lauderdale, FL 33301.

WHEREAS, CITY is the owner of land in Pompano Beach, Broward County, Florida, more particularly described in Exhibit "A" of this Agreement (the "Property"); and

WHEREAS, COUNTY entered into an agreement with CITY and the Pompano Beach Community Redevelopment Agency ("CRA") to utilize COUNTY funds and construct a building to be owned by CITY on a portion of the Property, the ground floor of which shall be leased to COUNTY for use as a public library together with 130 dedicated parking spaces and certain appurtenances (collectively the "Library Facility") pursuant to a fifty (50) year lease; and

WHEREAS, the Library Facility, including the parking, has been constructed, thereby reaching completion of the library project ("Project Completion"); and

WHEREAS, CITY wishes to grant COUNTY a perpetual easement for ingress and egress up, over, and across the Property for the purposes of providing access from the public roads to parking areas for the Library Facility,

NOW, THEREFORE, in consideration of the mutual agreements herein and for other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the CITY and COUNTY hereby agree as follows.



1. Access

CITY hereby grants to COUNTY and any successors in title to the Library FACILITY, its tenants and their respective employees, patrons, licensees, invitees, and guests, a perpetual, non-exclusive easement of ingress and egress upon, over, and across the Property for the Library Facility, for the purposes of access, parking, loading and unloading, book-drops, signage, dumpster uses, which area is legally described on the attached Exhibit "B" of this Access Agreement. Access to the Property for the purposes of ingress and egress to the Library Facility will be provided from East Atlantic Boulevard, South Cypress Road, and Southwest 2<sup>nd</sup> Street, via the interior roads of the City Hall Civic Campus.

2. Additional Provisions

2.1 The Library Facility is to be used for library purposes and the COUNTY has agreed to operate it as part of the COUNTY's public library system. In the event the COUNTY abandons the Library Facility, or uses it for uses not consistent with a public library, CITY may, at CITY's sole option, give notice to the COUNTY, demanding the Library Facility be used for library purposes only. If COUNTY fails to discontinue the improper use and continue operation of a public library, the CITY may, at its sole option, terminate this easement.

2.2 NOTICES. Whenever either Party desires to give notice to the other, such notice must be in writing, sent by certified United States mail, postage prepaid, return receipt requested, or by hand delivery with a request for a written receipt of acknowledgment of delivery, addressed to the Party for whom it is intended at the place last specified. The place for giving notice shall remain the same as set forth herein until changed in writing in the manner provided in this section. For the present, the Parties designate the following:

FOR BROWARD COUNTY:

Broward County  
Director of Libraries Division  
100 South Andrews Avenue  
Fort Lauderdale, Florida 33301

Broward County  
Director of Real Property  
115 South Andrews Avenue, Room 326  
Fort Lauderdale, Florida 33301

FOR CITY:

Dennis W. Beach, City Manager  
100 West Atlantic Boulevard  
Pompano Beach, Florida 33060

- 2.3 The easement granted by this instrument to COUNTY is for the benefit of and appurtenant to the Library Facility, and shall run with the land and bind the COUNTY and the CITY, and the successors and assigns in title of either of them as owner of such property.
- 2.4 Rights under this instrument shall not be assignable, except to a successor in title.
- 2.5 COUNTY and CITY are agencies or political subdivisions as defined in Section 768.28, Florida Statutes, and each agrees to be fully responsible for acts and omissions of its agents or employees to the extent permitted by law. Nothing herein is intended to serve as a waiver of sovereign immunity by any party to which sovereign immunity may be applicable. Nothing herein shall be construed as consent by a state agency or political subdivision of the State of Florida to be sued by third parties in any matter arising out of this Access Agreement or any other contract.
- 2.6 No modification, amendment or alteration of the terms or conditions contained herein shall be effective unless contained in a written document executed by the Parties, with the same formality and of equal dignity of this Instrument.
- 2.7 Failure of either Party to insist upon strict performance of any covenant or condition of this Access Agreement, or to exercise any right herein contained, shall not be construed as a waiver or relinquishment for the future of any such covenant, condition or right; but the same shall remain in full force and effect. None of the conditions, covenants or provisions of this Access Agreement shall be waived or modified except by the Parties hereto in writing.
- 2.8 Neither COUNTY nor CITY intends to directly or substantially benefit a third party by this Access Agreement. Therefore, the Parties agree that there are no third party beneficiaries to this Access Agreement and that no third party shall be entitled to assert a claim against either of them based upon this Access Agreement. The Parties expressly acknowledge that it is not their intent to create any

rights or obligations in any third person or entity under this Access Agreement.

- 2.9 The Parties hereto shall not discriminate against any employee or participant in the performance of the duties, responsibilities and obligations under this Access Agreement because of race, age, religion color, gender, national origin, marital status, disability or sexual orientation.

**REMAINDER OF PAGE BLANK  
SIGNATURES ON FOLLOWING PAGES**

**COUNTY**

"CITY":

Witnesses:

[Signature]  
[Signature]

CITY OF POMPANO BEACH

By:

[Signature]  
LAMAR FISHER, MAYOR

By:

[Signature]  
DENNIS W. BEACH, CITY MANAGER

Attest:

[Signature]  
MARY L. CHAMBERS  
CITY CLERK

(SEAL)

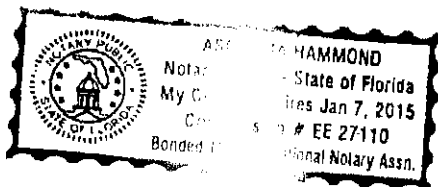
Approved As To Form:

[Signature]  
GORDON B. LINN, CITY ATTORNEY

STATE OF FLORIDA  
COUNTY OF BROWARD

The foregoing instruments were acknowledged before me this 26th day of July, 2011 by **LAMAR FISHER** as Mayor, **DENNIS W. BEACH** as City Manager, and **MARY L. CHAMBERS** as City Clerk of the City of Pompano Beach, Florida, a municipal corporation, on behalf of the municipal corporation, who are personally known to me.

NOTARY'S SEAL:



[Signature]  
NOTARY PUBLIC, STATE OF FLORIDA

Asceleta Hammond

(Name of Acknowledger Typed, Printed or Stamped)

Commission Number

Mah  
H:Pompano Library Access Agreement

**EXHIBIT**

D

**THIS INSTRUMENT PREPARED BY  
AND SHOULD BE RETURNED TO:**

Nancy Rubin, Esq.  
**Broward County Attorney's Office**  
115 South Andrews Avenue, Suite 423  
Fort Lauderdale, FL 33301  
(954) 357-7600

**PARKING EASEMENT AGREEMENT**

THIS **PARKING EASEMENT AGREEMENT** (this "Parking Agreement") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2011, by and between BROWARD COUNTY, a political subdivision of the State of Florida, its successors and assigns, through its Board of County Commissioners, having an address at Broward County Governmental Center, 115 South Andrews Avenue, Fort Lauderdale, Florida 33301 (hereinafter "COUNTY"), and the CITY OF POMPANO BEACH, a Florida municipal corporation, its successors and assigns, having an address at 10001 Atlantic Boulevard, Pompano Beach, Florida 330604300 N.W. 36 Street, Lauderdale Lakes, Florida 33319 (hereinafter "CITY").

**RECITALS**

1. COUNTY owns fee simple title to certain real property located in Broward County, Florida more particularly described in Exhibit "A" attached hereto and made a part hereof (the "Property").
2. COUNTY has received and pursuant to an agreement with CITY and the Pompano Beach Community Redevelopment Agency ("CRA"), COUNTY has agreed to allow the CITY and CRA to program, design and construct a building on a portion of the Property, the floor of which shall be leased for a 50 year term to COUNTY for use as a public library together with 130 dedicated parking spaces and certain appurtenances (collectively the "Library Facility").
3. As part of the design and construction of the Library Facility, CITY shall install, maintain, and repair a minimum of 130 dedicated parking spaces not to be located within 300 feet from the Library Facility until such time, if ever, a parking garage is constructed on the Property which shall be located within 250 feet of the Library Facility. CITY shall provide an equivalent number of dedicated parking spaces, and be located on the lowest possible floor(s) of the parking garage (the "Parking") along

with related improvements, including, but not limited to, driveways, landscaping, lighting, and sidewalks (collectively the "Appurtenances").

4. CITY has agreed to grant to COUNTY a non-exclusive, perpetual easement for use of the Parking and Appurtenances.

NOW, THEREFORE, for and in consideration of the premises and the sum of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, COUNTY and CITY do hereby agree as follows:

**1. Recitals** The Parties acknowledge that the foregoing recitals are true and correct and hereby incorporate this Parking Agreement as if fully set forth herein.

**2. Intent** CITY and COUNTY are entering into this Parking Agreement in conjunction with a certain Interlocal Agreement dated \_\_\_\_\_, 2011 (the "Agreement") which allows the CITY and CRA to program, design and construct the Library Facility with attendant parking and appurtenances on the Property, including the proposed construction of a second floor onto the Library Facility to be utilized as the Pompano Beach Cultural Center for cultural or educational purposes in a manner at all times compatible with the Library. It is the intent of the Parties that the Parking and Appurtenances installed, constructed, operated, maintained, repaired and replaced hereunder are intended in conjunction with, and provide the required parking for, the Library Facility.

**3. Grant of Easement** Subject to the terms and conditions of this Parking Agreement, CITY does hereby grant and convey to COUNTY and its licensees, agents, independent contractors, successors and assigns, a non-exclusive, perpetual easement in, over, upon, across and through the Property for the purpose of vehicular and pedestrian ingress and egress and the foregoing easement rights are in addition to the parking rights granted by that certain Lease between the Parties of even date herewith.

With respect to the remainder of the parking spaces in the surface parking lot or garage ("CITY's Parking Spaces"), CITY's easement hereunder shall be exclusive in nature. Without limiting the foregoing, CITY may restrict access to CITY's Parking Spaces, charge and collect fees for which fees shall be the sole property of the CITY, and otherwise promulgate and enforce rules and regulations for the use and operation of the surface parking lot or garage; provided, however, that at least one hundred thirty (130) spaces maintained for COUNTY's use shall remain available and unrestricted at all times.

**4. Covenants** This Parking Agreement and the rights and interests created herein, shall be binding upon and inuring to the benefit of the Parties hereto and their respective successors and assigns.

**5. Indemnification.**

5.1. In addition to the provisions and monetary limitations of Section 768.28, Florida Statutes, as amended or superseded, CITY does hereby indemnify and hold harmless COUNTY and all liabilities, damages, claims, costs or expenses whatsoever, including reasonable attorneys' fees and costs at both the trial and appellate levels (collectively the "Claims") arising from CITY's and its licensees, agents, independent contractors exercise of their rights under this Parking Agreement, except to the extent any Claims due to the acts or omissions of COUNTY and its licensees, agents and independent contractors.

5.2. In addition to the provisions and monetary limitations of Section 768.28, Florida Statutes, as amended or superseded, COUNTY does hereby indemnify and hold harmless CITY and all liabilities, damages, claims, costs or expenses whatsoever, including reasonable attorneys' fees and costs at both the trial and appellate levels (collectively the "Claims") arising from COUNTY's and its licensees, agents, independent contractors exercise of their rights under this Parking Agreement, except to the extent any Claims are due to the acts or omissions of CITY and its licensees, agents and independent contractors.

**6. Miscellaneous.**

6.1. In the event it becomes necessary to enforce through litigation, any term or condition of this Parking Agreement, the prevailing party shall be entitled to recover from the losing party all of its costs and reasonable attorneys' fees at all trial and appellate levels.

6.2. This Parking Agreement shall be construed under the laws of the State of Florida. COUNTY shall, at COUNTY's cost and expense, record this Parking Agreement and all amendments hereto in the Public Records of Broward County, Florida. This Agreement may only be modified, supplemented or revised in writing. Any modification, supplement or revision shall be effective only when recorded in the Public Records of Broward County, Florida.

6.3. Notices required, permitted or desired to be given hereunder shall be in writing and shall be deemed delivered when on any business day delivery is made, by hand, by overnight courier service, or by U.S. mail certified, return receipt requested, and addressed to the following addresses.

6.4. Notices to:

Broward County Governmental Center  
100 North Andrews Avenue, Room 409  
Ft. Lauderdale, Florida 33301



With copies to:

Real Property Section  
Broward County Governmental Center, Room 326  
2500 South Andrews Avenue  
Fort Lauderdale, Florida 33301

Records Division  
Director of Libraries Division  
2500 South Andrews Avenue  
Fort Lauderdale, Florida 33301

For delivery to:

Deerfield Beach, City Manager  
West Atlantic Boulevard  
Deerfield Beach, Florida 33060

With copy to:

John B. Linn, City Attorney  
West Atlantic Boulevard  
Deerfield Beach, Florida 33060

6.4. This Parking Agreement is not intended nor shall it be construed to create any third party beneficiary rights as to any person who is not a party hereto unless expressly otherwise provided. No third party shall be entitled to assert a claim against either the COUNTY, or both, based upon this Parking Agreement

6.5. If any clause, sentence or other portion of this Parking Agreement shall become illegal, void or unenforceable for any reason, or shall be held by any court of competent jurisdiction to be so, the remaining portions thereof shall remain in full force and effect.

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SIGNATURES ON FOLLOWING PAGES

IN WITNESS WHEREOF, the parties hereto by their authorized representatives have executed this \_\_\_\_\_ as of the date set forth hereinabove.

WITNESSES:

COUNTY:

ATTEST:

BROWARD COUNTY, by and  
through its Board of County  
Commissioners

Broward County Administrator, as  
Ex-officio Clerk of Broward County  
Board of County Commissioners, Broward County, Florida By \_\_\_\_\_  
Mayor  
\_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_

Insurance received  
Broward County  
Division is approved by  
Management

Approved as to form by  
Joni Armstrong Coffey, County Attorney  
for Broward County, Florida  
Governmental Center, Suite 423  
115 South Andrews Avenue  
Fort Lauderdale, Florida 33301  
Telephone: (954) 357-7600  
Telecopier: (954) 357-7641

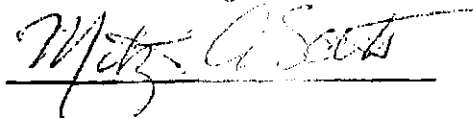
By \_\_\_\_\_ By \_\_\_\_\_  
Nancy Rubin  
Assistant County Attorney  
\_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_

**"CITY":**

**CITY OF POMPANO BEACH**

**Witnesses:**





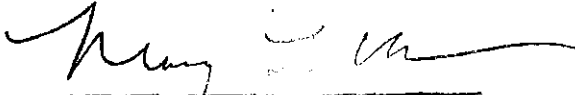
**By:**

  
**LAMAR FISHER, MAYOR**

**By:**

  
**DENNIS W. BEACH, CITY MANAGER**

**Attest:**



**MARY L. CHAMBERS  
CITY CLERK**

(SEAL)

**Approved As To Form:**



**GORDON B. LINDER  
CITY ATTORNEY**

**STATE OF FLORIDA  
COUNTY OF BROWARD**

The foregoing instruments were acknowledged before me this 26th day of July, 2011 by **LAMAR FISHER** as Mayor, **DENNIS W. BEACH** as City Manager, **MARY L. CHAMBERS** as City Clerk of the City of Pompano Beach, Florida, a municipal corporation, on behalf of the municipal corporation, who are personally known to me.

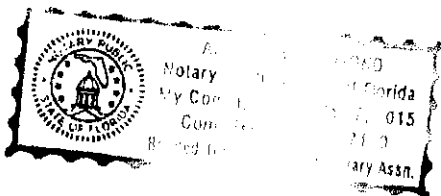
**NOTARY'S SIGNATURE**

  
**NOTARY PUBLIC, STATE OF FLORIDA**

**Asceletha Hammond**

(Name of Acknowledger Typed, Printed or Stamped)

Commission Number



[L:/todo/fp/libra...](http://todo/fp/libra...) - easement

## **EXHIBIT E**

Legal Description or Depiction of Dedicated Parking  
for the Library Facility

TO BE INSERTED AT EFFECTIVE DATE OF LEASE AGREEMENT

## **EXHIBIT F**

Criminal Background Screening Affidavit Form

TO BE INSERTED AT EFFECTIVE DATE OF LEASE AGREEMENT