

**FUNDING AGREEMENT FOR  
FISCAL YEAR 2021 – 2022**

***THIS FUNDING AGREEMENT***, (“Agreement”) made and entered into this 6<sup>th</sup> day of November, 2021, by and between the **CITY OF WINTER PARK, FLORIDA**, a municipal corporation organized and existing under the laws of the State of Florida, (“the City”), and **POLASEK MUSEUM AND SCULPTURE GARDEN, INC.**, a Florida not for profit corporation (“the Agency”).

**WITNESSETH THAT:**

***WHEREAS***, the Agency has applied to the City for a donation of funds in order to provide such services and programs (collectively the “Services”) as are set forth on **Exhibit "A"** attached hereto and incorporated herein by this reference; and

***WHEREAS***, the Agency is a tax-exempt entity, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, pursuant to 26 U.S.C. 501(c)(3), as further described in paragraph 5 herein; and

***WHEREAS***, the Agency maintains an independent Board of Directors; and

***WHEREAS***, these Services benefit, in whole or in part, the citizens of the City; and

***WHEREAS***, the City has determined that there is a public need for such Services and that a valid public purpose in promoting the general health, welfare and safety of the citizens of the City would be served by funding the Services; and

***WHEREAS***, in order to serve the public need and in furtherance of the public purpose, the City has appropriated funds to be granted to the Agency for providing such Services; and

***WHEREAS***, the parties mutually desire to enter into this Agreement whereby the Agency will receive and disburse the aforementioned funds of the City for the purpose of providing the Services in accordance with the terms and conditions set forth herein; and

***WHEREAS***, the Agency has available the necessary qualified and trained personnel, facilities, materials and supplies to perform the Services set forth in this Agreement; and

***WHEREAS***, the Agency agrees to report regularly to the City on its progress in providing the Services, as further described in paragraph 4 herein.

***NOW, THEREFORE***, in consideration of the promises and of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties, the parties hereby agree as follows:

**1. INCORPORATION OF PREAMBLE.** The preamble of this Agreement set forth above is true and correct and is incorporated herein by this reference as if fully set forth below.

**2. FUNDING; PERFORMANCE OF SERVICES.** The City has heretofore appropriated, for the period commencing October 1, 2020, and ending September 30, 2021, the total sum of **Twenty-Three Thousand Dollars (\$23,000.00)**.

**3.** The City's contribution shall be made to the Agency in two (2) semi-annual payments of **Eleven Thousand Five Hundred Dollars (\$11,500.00)**, unless otherwise approved and authorized in writing by the City Manager or his designees. All payments by the City shall be contingent upon: (a) receipt and approval by the City of the progress and financial reports specified in Paragraph 4 below; (b) inclusion of the audit provisions set forth in Paragraph 7 below in sub-recipient agreements; and (c) compliance by the Agency with any and all requirements, terms and conditions contained in this Agreement, including the provision of the Services by the Agency. Contingent upon all requirements having been met, payments will be disbursed on or about the 15<sup>th</sup> day of each quarter in the amounts set forth above; provided, however that to allow the City time to process this Agreement, the City shall have until the later of (i) the 15<sup>th</sup> day of the first month of the term of this Agreement or (ii) thirty (30) days following execution of the Agreement by all parties to make the first payment hereunder. Any Funds received by Agency which are not expended by Agency to provide or perform the Services set forth herein prior to December 31, 2021, shall be repaid to the City no later than December 31, 2021, unless an extension of time for such expenditure is granted by the City Manager or his designee in writing.

**4. PROGRESS AND FINANCIAL REPORTING.** The Agency agrees to submit progress and financial reports on a semi-annual basis to the City Manager or his designee in form and content acceptable to the City Manager or his designee in accordance with the schedule set forth on **Exhibit "B"** attached hereto and incorporated herein by this reference. At a minimum, subject to requests for additional information by the City Manager or his designee, such progress reports shall include an evaluation of the Services and must indicate the amount or level of Services provided to City residents. Agency will collect demographic information about its customers and will provide this data to City. Moreover, the semi-annual reports shall be consistent with the Services detailed herein and shall identify expenditures associated with or related to the Funds. Failure to comply with the requirement for submission of such reports in form and content acceptable to the City Manager or his designee shall constitute grounds for termination of this Agreement and may result in the ineligibility of the Agency to receive contributions from the City. Completion of the prior year's reporting requirements, if any, and submission of all required annual financial statements are a prerequisite to receipt of any payment under this Agreement.

**5. 501(c)3 STATUS.** Agency represents and warrants to City that it has applied for and received tax exempt status from the United States Internal Revenue Service ("IRS") as a 501(c)3 organization as evidenced by a determination letter from the IRS. A copy of the IRS letter approving Agency's tax exempt status shall be provided to the City prior to the distribution of any Funds to Agency. The Agency will maintain its tax exempt status with the IRS and its status as an active entity in good standing with the State of Florida throughout the term of this Agreement. If the Agency should, during the term of this Agreement, lose its IRS tax exempt status or its active or non-profit status with the State of Florida, it will immediately notify the City, and the City reserves the right to terminate this Agreement immediately and discontinue payments to the Agency.

**6. NONDISCRIMINATION.** The Agency agrees that it shall not unlawfully discriminate in the provision of Services. Agency shall provide Services without regard to race, color, creed, sex, sexual orientation, age, national origin, disability or marital status and in compliance with Title VII of the Civil Rights Act of 1964 as amended, and any and all other applicable federal, state or local laws,

rules or regulations, whether presently existing or hereafter promulgated. Agency shall not use any portion of the Funds for religious instruction, worship, proselytizing, or any other unauthorized purpose.

**7. ACCOUNTING AND AUDIT.** If the Agency's total annual budget is equal to, or exceeds, \$250,000 the Agency will submit copies of its audited annual financial statements to the City. If the Agency's total annual budget is less than \$250,000 the Agency will submit copies of its last two years' tax returns. Copies of the audit or tax returns will be submitted: (1) upon execution of this Agreement (or as soon thereafter as such statements are prepared) for the Agency's immediately preceding fiscal year and (2) thereafter for each fiscal year of Agency during which it receives or expends any Funds from the City under this Agreement such statements shall be submitted upon completion by the Agency which submission date shall not exceed one hundred eighty (180) days following the end of the Agency's fiscal year. For all financial statements and records related to the Funds, the Agency will utilize those accounting practices and procedures and maintain those records regarding receipts and disbursements of the Funds as are in accordance with Generally Accepted Accounting Principles (GAAP). All such records shall be open to inspection and audit by the Assistant to Director or by the Assistant to Director's designee during normal business hours during the term of this Agreement. Additionally, the Agency will maintain its books and records related to the Services provided utilizing the Funds, and the City will be entitled to audit such books and records, for a period of five (5) years from the date of the last payment under this Agreement. Any cost incurred by the Agency as a result of an audit shall be the sole responsibility of, and shall be borne by, the Agency. In addition, should the Agency provide any or all of the Funds to sub-recipients, then, and in that event, the Agency shall include in its written agreements with such sub-recipients a requirement that records of the sub-recipient be open to inspection and audit by the City or the City's designee to the same extent as those of the Agency.

**8. MONITORING.** The Agency will permit the City and the City's designees to monitor the Services to ensure compliance with the terms of this Agreement. The Agency shall, to assist in the monitoring of its Services, provide the City and the City's designees with access to all client records and such other information as the City may deem necessary within a reasonable time upon written request of the City. In the event of breach of this Agreement by Agency, the City reserves the right to pursue all legal and equitable remedies available to it including, but not limited to, the right to suspend or terminate payments under this Agreement and the right to restitution with respect to any Funds utilized by the Agency in a manner which is not in conformance with the terms of this Agreement. Agency shall make restitution to the City of any Funds not used in conformance with the terms of this Agreement within fifteen (15) days of demand by the City.

**9. TERMINATION.** This Agreement may be terminated by either party at any time, with or without cause, upon written notice to the other party. Said notice shall be delivered in the manner set forth in Paragraph 21 below. The termination of this Agreement shall not relieve the Agency from any obligations under this Agreement with respect to funds paid to the Agency prior to termination.

**10. INDEMNIFICATION.** The Agency agrees to indemnify, defend and save harmless the City from and against any and all liability, claims, demands, damages, expenses, fees, fines, penalties, suits, proceedings, actions and cost of actions, including attorneys' fees for trial and on appeal, of any kind and nature arising or growing out of or in any way connected with any or all of the following: (1) the acts or omissions of the Agency, its employees, officers, Directors, sub-recipients or agents related to this Agreement, (2) the provision of any Services by the Agency, its sub-recipients or agents, or (3) the mere existence of this Agreement itself.

11. **NO WAIVER.** Continued performance by either party after a default or violation of any of the terms, covenants or conditions herein shall not be deemed a waiver of any right to terminate this Agreement or elect any other remedy or action, nor shall it be construed or act as a waiver for any subsequent default.

12. **CONSTRUCTION; SEVERABILITY.** This Agreement shall be construed in accordance with the laws of the State of Florida. It is agreed to by the parties that if any covenant, condition or provision contained in this Agreement is held to be invalid by any court of competent jurisdiction, such invalidity shall not affect the validity of any other covenants, conditions or provisions contained herein.

13. **NONASSIGNABILITY.** The Agency may not assign its rights or obligations under this Agreement without the prior written consent of the City Manager or his designee, which assignment may be agreed to, denied, or conditioned in part or in whole as the City Manager or his designee deems appropriate in his or her sole discretion. A successor agency does not automatically have any rights to the Funds disbursed under this Agreement by its position as a successor. A successor agency must receive prior approval from the City Manager or his designee before it can receive Funds. Failure to comply with this section may result in immediate termination of this Agreement.

14. **THIRD PARTY BENEFICIARY.** This Agreement is solely for the benefit of the parties signing hereto and no right, nor any cause of action shall accrue to or for the benefit of any third party.

15. **NO JOINT VENTURE.** It is mutually understood and agreed that nothing contained in this Agreement is intended to or shall be construed as creating, or shall in any way create or establish a relationship as partners or joint ventures between the parties hereto or constitute the Agency as the agent or representative of the City for any purpose or in any manner whatsoever.

16. **VENUE.** Exclusive venue in any action to construe or enforce the provisions of this Agreement shall be in the Circuit Court of and for Orange County, Florida and shall be governed by the laws of the State of Florida. The Agency agrees to notify the City in writing within ten (10) business days of the occurrence of any incident or action such as, but not limited to, lawsuits, injuries, or allegations of abuse or neglect filed against the Agency, related to the Services provided under this Agreement.

17. **CORPORATE TABLE/TICKETS.** In the event the Agency holds a fundraising event, the Agency agrees to give the City, upon its request, up to the number of tickets available to a top level event sponsor at no cost in consideration of the contribution provided to the Agency under this Agreement. This provision may be waived by the City Manager or his designee.

18. **CREDITS.** The Agency will give written credit to the City as a sponsor/financial supporter in all acknowledgements, brochures, catalogues, invitations, press releases, printed materials, and all other marketing, promotions and advertising related to the Services. The form and manner of such written credit shall be mutually agreed to by the parties. This provision may be waived by the City Manager or his designee.

19. **INSURANCE.** The Agency will have in force during the term of this Agreement the insurance coverages listed below. Current and valid certificates of insurance for said insurance coverages will be provided to the City Manager or his designee upon execution of this Agreement by the Agency.

Upon the expiration or modification of such certificates of insurance, the Agency shall provide continuing proof of insurance to the City Manager or his designee for the coverages listed below. The insurance coverages shall contain a provision that forbids any cancellation, changes or material alterations in the coverages without providing thirty (30) days written notice to the City (except for cancellation of a policy for non-payment which may provide for a minimum of ten (10) days notice to the City).

a. Commercial General Liability -- The Agency will provide and maintain a commercial general liability policy with limits of not less than \$1,000,000 per occurrence and in the aggregate, for bodily injury and property damage.

b. Automobile Liability -- The Agency will provide coverage for all owned and hired vehicles with limits of not less than \$500,000 per occurrence, combined single limits for bodily injury and property damage.

c. Workers' Compensation -- The Agency will provide full and complete Workers' Compensation coverage as required by Florida state law, as well as Employer's Liability coverage of not less than \$100,000.

d. Employee's Honesty Insurance (Fidelity Insurance) -- The Agency will provide coverage of not less than \$10,000 per occurrence.

20. **ENTIRE AGREEMENT.** This Agreement, including any Exhibits hereto, contains all the terms and conditions agreed to by the parties. No other agreement, oral or written, regarding the subject matter of this Agreement shall be deemed to exist or to bind either party hereto.

21. **NOTICE.** Any and all notices to be delivered hereunder shall be in writing and shall be deemed to be delivered:

- (i) when hand delivered to the person hereinafter designated,
- (ii) on the date of deposit in the United States Mail, return receipt requested, or
- (iii) on the date such notice is given into the possession of a national delivery company, including but not limited to Federal Express, for delivery requiring signature acceptance,

addressed to a party at the address set forth below, or at such other address as the applicable party shall have specified, from time to time, by written notice to the other party delivered in accordance herewith. The City Manager or his designee shall have full authority to send all notices related to this Agreement on behalf of the City. The parties' addresses are as follows:

City:	<b>City of Winter Park</b>
	Attention: Peter Moore
	Office of Management & Budget
	401 South Park Avenue
	Winter Park, Florida 32789

Copy to: **Fishback Dominick**  
City Attorney – Winter Park  
1947 Lee Road  
Winter Park, FL 32789

Agency: **Polasek Museum**  
Attention: Debbie Komanski  
Executive Director  
Address: 633 Osceola Ave.  
Winter Park, FL 32789

***IN WITNESS WHEREOF***, the parties hereto have executed these presents and have set their hands and seals the day and year first above written.

**CITY OF WINTER PARK, FLORIDA**

BY: *Randy Knight*  
City Manager Randy Knight

**POLASEK MUSEUM & SCULPTURE  
GARDENS, INC., a Florida Not-For-Profit  
Corporation**

BY: *Debbie Komanski*

Print Name: Debbie Komanski

Title: CEO? Executive Director

## **EXHIBIT "A"**

Funding will be utilized to pay annual City of Winter Park utility costs which average \$23,000 annually.



## EXHIBIT "B"

### SEMI-ANNUAL REPORT SCHEDULE FOR FISCAL YEAR 2021 - 2022

Semi-annual progress and financial reports for the reporting periods indicated are due to the City Manager or his designee on the due date specified.

Progress reports should include:

*Mid-Year:*

1. Revenues received and spending to date by category
2. Review of projects/program progress and meeting benchmarks
3. Copies of up-to-date Board minutes
4. Updates to Board membership
5. Presentation to City Commission of activities and progress to-date (if requested)

*Year-End:*

1. Final Report on revenue and spending, program/project activities, benchmarks and successes
2. Presentation to City Commission (if requested)
3. Updated application for next fiscal year
4. Site visit (if requested)

Reporting Period Due Dates:

Mid-Year (Oct. 1 to Mar. 31) - April 30, 2022

Year-End (Apr. 1 to Sept. 30) - Oct. 31, 2022

Reports may be sent by regular mail, e-mail or fax to:

City of Winter Park  
ATTN: Peter Moore, Office of Management & Budget  
401 South Park Avenue  
Winter Park, FL 32789  
E-MAIL: [pmoore@cityofwinterpark.org](mailto:pmoore@cityofwinterpark.org)  
FAX: (407) 599-3448

Agency acknowledges and understands that the semi-annual reports required by this Agreement are a material provision of the Agreement and that the failure of Agency to submit a semi-annual report when due shall constitute grounds by the City, in its discretion and in addition to any other right or remedy available to the City, to refuse to make any additional disbursements of Funds to the Agency until such report is filed in form and content acceptable to the City.