

**FUNDING AGREEMENT  
BETWEEN  
THE CITY OF JACKSONVILLE  
AND  
SHAWN D. DELIFUS FOUNDATION**

This Funding Agreement (the “Agreement”) is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2023 (the “Effective Date”), by and between the **CITY OF JACKSONVILLE**, a consolidated municipal corporation and political subdivision existing under the Constitution and laws of the State of Florida, whose address is 117 West Duval Street, Jacksonville, Florida 32202 (the “City”), and **Shawn D. Delifus Foundation, Inc.**, a Florida not-for-profit corporation whose address is 5507 Ahmad Drive West, Jacksonville, Florida 32209 (the “Recipient”).

**RECITALS**

**WHEREAS**, Recipient is a non-profit organization that provides a free summer swim program to teach swimming and water safety to families in underserved communities; and

**WHEREAS**, Recipient has a waitlist of applicants for the 2023 summer swim program and is requesting donations to offset the costs for an additional 150 participants to attend the program; and

**WHEREAS**, pursuant to Ordinance 2023-\_\_\_\_-E, the City Council has authorized this donation to Recipient subject to the terms and conditions outlined herein.

**NOW, THEREFORE**, in consideration of the mutual covenants herein contained, the parties agree as follows:

1. Recitals and Exhibits. The recitals set forth above are true and correct and are incorporated into this Agreement by this reference. Any Exhibit or attachment to this Agreement that is referenced in this Agreement is, by this reference, made a part of this Agreement and incorporated herein.
2. Agreement Term. The term of this Agreement shall begin on the Effective Date and shall end on September 30, 2023.
3. Maximum Indebtedness. The City’s maximum indebtedness under this Agreement shall be a fixed monetary amount not-to-exceed **Eight Thousand One Hundred and 00/100 U.S. Dollars (\$8,100.00)** contingent upon availability of lawfully appropriated funds for this Agreement. Recipient shall expend the funds solely to cover fees to allow an additional 150 applicants currently on the waitlist for Recipient’s eight-week 2023 summer swim program (the “Program”) to participate in the Program at a cost of \$54.00 per applicant. Recipient hereby agrees that acceptance of the City funds shall be subject to and in accordance with the terms of this Agreement and the provisions of Ordinance 2023-\_\_\_\_-E.

4. Payment. The City funds are payable upon Recipient's execution of this Agreement. To receive payment, Recipient shall submit an invoice to the City in the form prescribed by the Parks, Recreation and Community Services Department.
5. Recipient agrees as follows:
  - a. To abide by Chapter 119, *Florida Statutes*, as may be amended from time to time, as said law pertains to this agreement and the City funds provided hereunder; and
  - b. To return to the City, within fifteen (15) days of demand therefore, all City funds paid to Recipient under the terms of this Agreement upon the City Council, the Council Auditors, or the Contract Administrator finding that the terms of this Agreement or the provisions of Ordinance 2023-\_\_\_\_-E have been violated by Recipient; and
  - c. To consent to:
    - i. Such audits of the financial affairs of the Recipient by the Council Auditor's Office as the Council Auditor may require.
    - ii. Producing the documents required by the Council Auditor.
    - iii. Furnishing an annual report of receipts and expenditures of City funds in such form as the Council Auditor shall prescribe. This report shall be certified as to its accuracy by the Financial Officer or Treasurer of Recipient's organization. This report shall be on a fiscal year of October 1 through September 30 and shall be due on November 15 of each year.
6. Recipient agrees to perform the requirements of this Agreement under the general coordination of the Parks, Recreation and Community Services Department. The City's Contract Administrator for the purposes of this Agreement shall be as follows:

Parks, Recreation and Community Services Department  
Attn: Director  
214 North Hogan Street, 4<sup>th</sup> Floor  
Jacksonville, Florida 32202  
Phone: (904) 255-7903

Recipient's notice information is as above-written in the preamble.
7. Recipient shall not assign any rights or duties under this Agreement to any other party without the prior written permission of the City. If the Recipient attempts to assign any rights or duties without securing prior written permission, this Agreement shall be void and the Recipient shall remit to the City all payments made pursuant to this Agreement for the entire term of the Agreement within 5 days from demand.

8. Assignment. Recipient shall not assign any rights or duties under this Agreement to any other party without the prior written permission of the City. If Recipient attempts to assign any rights or duties without securing prior written permission from the City, this Agreement shall be null and void and Recipient shall remit to the City all City funds paid to Recipient at the time of the assignment or that were spent by Recipient or Recipient's assignee after the unauthorized assignment. All City funds shall be returned to City within fifteen (15) days of demand thereof.
9. Breach of Agreement/Termination. In case of a breach of this Agreement, other than one that endangers the life or health of a person or will otherwise create imminent harm, in the opinion of the City, Recipient will have thirty (30) days after notice from the City to cure the default. If the default is not timely cured, the City shall have all of its remedies at law and in equity to enforce this Agreement or collect its damages arising from the breach by Recipient of this Agreement.
10. Applicable Laws; Public Records. In its performance of this Agreement, Recipient must comply with any and all applicable federal, state, and local laws, rules, regulations, and ordinances (hereinafter collectively referred to as the "Laws"), as such Laws exist and may be amended from time to time. Such Laws shall include, but are not limited to, Chapter 119, *Florida Statutes*, (Florida Public Records Law), and Section 286.011, *Florida Statutes*, (Florida Open Meetings Law). Such laws, rules, regulations, and ordinances also include, but are not limited to, the applicable requirements for licenses, permits and certifications necessary for operation of the summer swim program. If any of the obligations of this Agreement are to be performed by a subcontractor or subrecipient, the provisions of this Section shall be incorporated into and become a part of the subcontract.
11. Non-Discrimination. Recipient represents that it has adopted and will maintain a policy of nondiscrimination against employees or applicants for employment on account of race, religion, sex, color, national origin, age, or handicap, in all areas of employment relations, for the performance of services provided during the term of this Agreement. Recipient agrees that, on written request, it will permit reasonable access to its records of employment, employment advertisement, application forms and other pertinent data and records, by the Executive Director of the Jacksonville Human Rights Commission, or successor agency or commission, for the purpose of investigation to ascertain compliance with the nondiscrimination provisions of this Agreement; *provided however*, that Recipient shall not be required to produce, for inspection, records covering periods of time more than one (1) year prior to the Effective Date first above written. Recipient agrees that if any of the services to be provided pursuant to this Agreement for the summer swim program are to be performed by a subcontractor, the provisions of this Section shall be incorporated into and become a part of the subcontract, if any. Additionally, Recipient represents that it has adopted and will maintain a policy governing the misconduct of Recipient, its employees, board members, agents and representatives relating to any individuals receiving services from Recipient under this Agreement.

12. Accounts. Pursuant to the provisions of Section 118.201(e)(1), *Ordinance Code*, Recipient shall maintain a separate bank account for the advance disbursement made hereunder in which to deposit the City funds and from which to make disbursements for the summer swim program or, with the approval of the Council Auditor, to maintain a separate budgetary accounting system accurately and adequately reflecting the receipt and disbursement of the advance payment. Evidence of the existence of the separate bank account shall be submitted to the City's Contract Administrator, prior to disbursement of the advance funds. This requirement is only necessary if Recipient receives an advance disbursement upon the Effective Date. It is not required for payments made in reimbursement of expenditures previously made by Recipient.
13. Reporting. Recipient agrees to provide the City's Contract Administrator with documentation confirming the City funds were expended in accordance with this Agreement and the Ordinance appropriating the City funds. The report shall be submitted to the City's Contract Administrator within thirty (30) days after the completion of the 2023 summer swim program and be certified as to its accuracy by Recipient's financial officer or treasurer. Additionally, any reports of any kind required under this Agreement must be prepared and submitted on forms approved by the City.
14. Residual Funds. Recipient agrees that any City funds remaining unspent or unencumbered by any existing (not contingent) legal obligation at the end of the term of this Agreement shall be returned to the City in the form of a negotiable instrument not later than sixty (60) days after the termination or expiration of this Agreement.
15. Indemnification. Recipient, including its employees, agents, consultants, contractors, subcontractors and subconsultants, holds harmless, indemnifies, and will defend the City, its directors, officers, employees, representatives, and agents against any claim, action, loss, damage, injury, liability, cost, and expense of whatsoever kind or nature; including, but not by way of limitation, attorney fees and court costs, arising out of injury (whether mental or corporeal) to persons, including death or damage to property, arising out of or incidental to Recipient's, its employees', agents', or subconsultants' use of funds from this Agreement or work performed pursuant to this Agreement. Recipient, including its employees, agents, consultants, subcontractors and subconsultants, agrees to the Indemnification provisions attached hereto as **Exhibit A**
16. Custodian of Records. In accordance with Section 119.0701, *Florida Statutes*, Recipient shall:
  - i. Keep and maintain public records required by the City for the summer swim program; and
  - ii. Upon request from the City's custodian of public records, provide the City with a copy of the requested records or allow records to be inspected or copied within a reasonable time at a cost that does not exceed the cost

provided for in Chapter 119, *Florida Statutes*, or as otherwise provided by law; and

- iii. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term and following completion of this Agreement if Recipient does not transfer the records to the City; and
- iv. Upon completion of this Agreement, transfer to the City at no cost all public records in possession of Recipient or keep and maintain public records required by the City for the program. If Recipient transfers all public records to the City upon completion of this Agreement, Recipient shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Recipient keeps and maintains public records upon completion of this Agreement, Recipient shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City upon request from the City's custodian of public records in a format that is compatible with the City's information technology systems.

The above requirements apply to a Recipient as a "Contractor" defined in Section, 119.0701, *Florida Statutes*.

**IF RECIPIENT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, *FLORIDA STATUTES*, TO ITS DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CITY'S CUSTODIAN OF PUBLIC RECORDS AT (904) 255-7674; [PRRGOVQA@COJ.NET](mailto:PRRGOVQA@COJ.NET); CITY OF JACKSONVILLE, PUBLIC RECORDS REQUEST, 214 N. HOGAN STREET, SUITE 1180, JACKSONVILLE, FLORIDA 32202.**

17. Employment Eligibility. In accordance with Section 448.095, *Florida Statutes*, Recipient confirms that it does not currently, and will not in the future, employ, contract with or subcontract with unauthorized aliens and Recipient, including any of its subcontractors, has registered accordingly with E-Verify platform.
18. Governing Law; Venue. This Agreement and the rights and obligations of the parties hereunder shall be governed by the laws of the State of Florida. Venue for the purposes of any action arising from or related to this Agreement shall lie exclusively in the state and federal courts located in Jacksonville, Duval County, Florida.
19. Waiver. The failure or delay by either party in asserting any of its rights or remedies as to any default hereunder shall not constitute a waiver of such default, or any other default, or of related rights or remedies. If any provision of this Agreement is

determined to be invalid, and the invalid provision is not a material part of this Agreement, in the opinion of the City, the invalidity of the provision shall not impair the operation of or have any other effect on the remaining provisions of this Agreement.

20. Binding Effect. This Agreement shall be binding upon and inure to the benefit of each party, its successors and assigns.
21. Assignment. This Agreement may not be assigned by either party without the prior written consent of the other party. Any purported assignment in violation of this Section is void. Written consent of an assignment, if given, shall not in any manner relieve the assignor from liability for the performance of this Agreement by its assignee.
22. Severability. In the event any part or parts of this Agreement is/are held to be invalid or unenforceable, the remainder of this Agreement shall remain in full force and effect as if the invalid or unenforceable provision had never been part of the Agreement.
23. No Third-Party Beneficiaries. Nothing in this Agreement, express or implied, is intended to confer upon any other person any rights or remedies of any nature whatsoever under or by reason of this Agreement, except as otherwise expressly provided herein.
24. Authority. Recipient represents and warrants to the City that Recipient has full right and authority to execute and perform its obligations under this Agreement, and Recipient and the person(s) signing this Agreement on Recipient's behalf represent and warrant to the City that such person(s) are duly authorized to execute this Agreement on Recipient's behalf without further consent or approval by anyone. Recipient shall deliver to the City promptly upon request all documents reasonably requested by the City to evidence such authority.
25. Entire Agreement; Counterparts. This Agreement represents the entire agreement between the parties with respect to its subject matter. No statement, understanding, writing, course of action, or course of conduct by the parties or their authorized representatives is binding unless contained in this Agreement. This Agreement may be amended only by written amendment signed by the authorized representatives of the parties. This Agreement may be signed in counterparts and by electronic signature, the counterparts and signatures of which, when taken together, shall constitute but one agreement.

**[Remainder of page intentionally left blank. Signature page follows.]**

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

**SHAWN D. DELIFUS FOUNDATION, INC.**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**ATTEST:**

**CITY OF JACKSONVILLE**, a consolidated political subdivision and municipal corporation existing under the laws of the State of Florida

By: \_\_\_\_\_  
James R. McCain, Jr.  
Corporation Secretary

By: \_\_\_\_\_  
Lenny Curry, Mayor

Encumbrance and funding information for internal City use:

**Amount                      \$8,100.00**

In accordance with Section 24.103(e), of the Ordinance Code of the City of Jacksonville, I do hereby certify that there is an unexpended, unencumbered and unimpounded balance in the appropriation sufficient to cover the foregoing Agreement; provided however, this certification is not nor shall it be interpreted as an encumbrance of funding under this Agreement. Actual encumbrance[s] shall be made by subsequent purchase order[s] as specified in said Agreement.

\_\_\_\_\_  
Director of Finance  
City Contract # \_\_\_\_\_  
Purchase Order # \_\_\_\_\_

**FORM APPROVED:**

By: \_\_\_\_\_  
Office of General Counsel

## Exhibit A Indemnification

Recipient, including its employees, agents, consultants, contractors, subcontractors and subconsultants (collectively, the “Indemnifying Parties”) shall hold harmless, indemnify, and defend the City and its members, officers, officials, employees and agents (collectively, the “Indemnified Parties”) from and against, without limitation, any and all claims, suits, actions, losses, damages, injuries, liabilities, fines, penalties, costs and expenses of whatsoever kind or nature, which may be incurred by, charged to or recovered from any of the foregoing Indemnified Parties for:

1. **General Tort Liability.** For any negligent act, error or omission, recklessness, or intentionally wrongful conduct on the part of the Indemnifying Parties that causes injury (whether mental or corporeal) to persons (including death) or damage to property, whether arising out of or incidental to the Indemnifying Parties’ performance of the Agreement, operations, services, or work performed hereunder; and

2. **Environmental Liability.** To the extent this Agreement contemplates environmental exposures, arising from or in connection with any environmental, health and safety liabilities, claims, citations, clean-up, or damages, whether arising out of or relating to the operation or other activities performed in connection with the Agreement; and

3. **Intellectual Property Liability.** To the extent this Agreement contemplates intellectual property exposures, arising directly or indirectly out of any allegation that the Project, any product generated by the Project, or any part of the services as contemplated in this Agreement, constitutes an infringement of any copyright, patent, trade secret or any other intellectual property right. If in any suit or proceeding, the Project, or any product generated by the Project, is held to constitute an infringement and its use is permanently enjoined, the Indemnifying Parties shall, immediately, make every reasonable effort to secure within sixty (60) days, for the Indemnified Parties a license, authorizing the continued use of the disputed part of the service or product. If the Indemnifying Parties fail to secure such a license for the Indemnified Parties, then the Indemnifying Parties shall replace the disputed service or product with a non-infringing service or product or modify such service or product in a way satisfactory to the Indemnified Parties, so that the service or product is non-infringing.

If an Indemnified Party exercises its rights under this Agreement, the Indemnified Party will: (1) provide reasonable notice to the Indemnifying Parties of the applicable claim or liability, and (2) allow Indemnifying Parties, at their own expense, to participate in the litigation of such claim or liability to protect their interests. **The scope and terms of the indemnity obligations herein described are separate and apart from and shall not be limited by any insurance provided pursuant to the Agreement or otherwise. Such terms of indemnity shall survive the expiration or termination of the Agreement.**

In the event that any portion of the scope or terms of this indemnity is in derogation of Section 725.06 or 725.08, *Florida Statutes*, all other terms of this indemnity shall remain in full force and effect. Further, any term which offends Section 725.06 or 725.08, *Florida Statutes*, will be modified to comply with said statutes.