

**FUNDING AGREEMENT BETWEEN THE CITY OF ALISO VIEJO
AND THE COUNTY OF ORANGE
FOR THE ALISO VIEJO BRANCH LIBRARY
LANDSCAPING AND EXTERIOR LIGHTING IMPROVEMENT PROJECT**

THIS AGREEMENT made and entered into this _____ day of _____ 2018, by and between the City of Aliso Viejo, a California municipal corporation (hereinafter referred to as “CITY”) and the County of Orange, a political subdivision of the State of California, and the OC Community Resources/OC Public Libraries (“OCPL”), a County Free Public Library organized pursuant to the provisions of Education Code Sections 19100, et seq. (hereinafter referred to as “COUNTY”) without regard to number and gender. The CITY and COUNTY may be referred to herein individually as a “Party” or collectively as the “Parties.”

RECITALS

WHEREAS, COUNTY owns and OCPL operates the Aliso Viejo Branch Library, located at 1 Journey, Aliso Viejo, CA (“Library”); and

WHEREAS, CITY desires to provide funding to COUNTY in the amount of Sixty-Seven Thousand Dollars (\$67,000) for a landscaping and exterior lighting improvement project (“Project”) at the Library; and

WHEREAS, COUNTY is willing to perform the Project at the Library; and

WHEREAS, COUNTY and CITY now desire to enter into this Agreement to establish responsibilities for the Project.

NOW THEREFORE, in consideration of the foregoing premises and the mutual covenants and promises herein contained, the Parties hereto agree as follows:

1. COUNTY RESPONSIBILITIES:

1.1 Upon completion of the Project, COUNTY shall submit a written invoice to CITY which will include a complete detail of the Project’s expenditures.

1.2 COUNTY agrees, at the request of CITY, to make available to a representative of the CITY for examination of its data, financial records and related project reports maintained for the Project activities within ten (10) business days of the written request. The COUNTY shall retain such financial and Project records for at least three (3) years from the date of payment.

2. CITY RESPONSIBILITIES:

CITY shall make payment to COUNTY within forty-five (45) days of receiving a written invoice from COUNTY upon completion of the Project.

3. IT IS MUTUALLY AGREED that:

- 3.1 The obligations and participation of CITY under this Agreement shall be limited solely to the discretionary issuance of funds to COUNTY in accordance with the terms of this Agreement.
- 3.2 CITY hereby agrees to indemnify, hold harmless, and defend COUNTY, its elected and appointed officials, officers, agents, and employees, against any and all claims, loss, demands, damages, cost, expenses or liability arising out of the ownership or maintenance of the Premises, except for liability arising out of the sole negligence of COUNTY, its officers, agents, or employees, including the cost of defense of any lawsuit arising therefrom.
- 3.3 COUNTY shall be considered an independent contractor and neither COUNTY, its employees, nor anyone working under COUNTY shall be considered an agent or an employee of CITY. Neither COUNTY, its employees nor anyone working under COUNTY shall qualify for workers' compensation or other fringe benefits of any kind through CITY.
- 3.4 Any written notices pursuant to this Agreement may be provided by personal delivery or regular mail and shall be addressed as set forth below or as either party may hereafter designate by written notice and shall be deemed delivered upon personal delivery or seventy-two (72) hours after deposit in the United States Mail.

COUNTY
 OC Public Libraries
 1501 E. St. Andrew Place
 Santa Ana, CA 92705
 Attention: County Librarian

CITY
 City of Aliso Viejo
 12 Journey, Suite 100
 Aliso Viejo, CA 92656
 Attention: City Manager

4. MISCELLANEOUS PROVISIONS:

- 4.1 Non-Discrimination. In the performance of this Agreement, both Parties agree that they will comply with the requirements of Section 1735 of the California Labor Code and not engage nor permit any subcontractors to engage in discrimination in employment of persons because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex of such persons. Both Parties acknowledge that a violation of this provision shall subject the Parties to penalties pursuant to Section 1741 of the California Labor Code.
- 4.2 Governing Law and Venue. This Agreement has been negotiated and executed in the State of California and shall be governed by and construed under the laws of the State of California. In the event of any legal action to enforce or interpret this Agreement, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the Parties hereto agree to and do hereby submit to the

jurisdiction of such court, notwithstanding Code of Civil Procedure Section 394. Furthermore, the parties specifically agree to waive any and all rights to request that an action be transferred for trial to another county.

- 4.3 Entire Agreement. This Agreement, and any other documents specifically incorporated into this Agreement, shall constitute the entire agreement between COUNTY and CITY relating to this Project. As used herein, Agreement refers to and includes any documents incorporated herein by reference and any exhibits or attachments. This Agreement supersedes and merges all previous understandings, and all other agreements, written or oral, between the parties and sets forth the entire understanding of the parties regarding the subject matter thereof. The Agreement may not be modified except by a written document signed by both parties.
- 4.4 Amendments. No alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the Parties; no oral understanding or agreement not incorporated herein shall be binding on either of the Parties; and no exceptions, alternatives, substitutes or revisions are valid or binding on either Party unless authorized by either Party in writing.
- 4.5 Severability. If any term, covenant, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.
- 4.6 Attorney's Fees. In any action or proceeding to enforce or interpret any provision of this Agreement, each Party shall bear their own attorney's fees, costs and expenses.
- 4.7 Consent to Breach Not Waiver. No term or provision of this Agreement shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the Party claimed to have waived or consented. Any consent by any party to, or waiver of, a breach by the other, whether express or implied, shall not constitute consent to, waiver of, or excuse for any other different or subsequent breach
- 4.8 Authority. The Parties to this Agreement represent and warrant that this Agreement has been duly authorized and executed and constitutes the legally binding obligation of their respective organization or entity, enforceable in accordance with its terms.
- 4.9 Confidentiality. Both Parties agree to maintain the confidentiality of the other Party's related records and information pursuant to all statutory laws relating to privacy and confidentiality that currently exist or exist at any time during the term of this Agreement. All such records and information shall be considered confidential and kept confidential by both Parties' staff, agents and employees.

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IN WITNESS WHEREOF, the Parties hereto certify that they have read and understand all the terms and conditions contained herein and hereby cause this Agreement to be executed.

***City of Aliso Viejo**

By: Scott C. Smith, City Attorney (Approved as to Form) DocuSigned by: David A. Doyle
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Name: Scott C. Smith, City Attorney (Approved as to Form) Name: David A. Doyle

Title: City Attorney Best Best & Krieger LLP Title: CITY MANAGER

Dated: 6/27/2018 Dated: 6/27/2018

By: Mitzi Ortiz DocuSigned by: Mitzi Ortiz
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Name: Mitzi Ortiz

Title: city clerk

Dated: 6/27/2018

*For Contractors that are corporations, signature requirements are as follows: 1) One signature by the Chairman of the Board, the President or any Vice President; and 2) One signature by the secretary, any Assistant secretary, the Chief Financial Officer or an Assistant Treasurer.

For Contractors that are not corporations, the person who has authority to bind the Contractor to a contract, must sign on one of the lines above.

County of Orange
A Political Subdivision of the State of California

By: Dylan Wright, Director Dated: _____
OC Community Resources

APPROVED AS TO FORM
DEPUTY COUNTY COUNSEL

By: Eric Divine Dated: 6/20/2018
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Deputy County Counsel