

**FUNDING AGREEMENT BETWEEN THE CITY OF TUSTIN
AND THE COUNTY OF ORANGE
FOR THE TUSTIN BRANCH LIBRARY
COOLING TOWER RETROFIT PROJECT**

THIS AGREEMENT made and entered into this _____ day of _____ 2018, by and between the City of Tustin, 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**”). The **CITY** and **COUNTY** may be referred to herein individually as a “**Party**” or collectively as the “**Parties**.”

RECITALS

WHEREAS, **CITY** owns and **OCPL** operates the Tustin Branch Library, located at 345 E. Main Street, Tustin, CA (“**Library**”); and

WHEREAS, **CITY** desires to provide funding to **COUNTY** in an amount not to exceed One Hundred Forty Thousand Dollars (\$140,000) for a cooling tower retrofit 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.
- 1.3 **COUNTY** shall retain as part of the **Project** records copies of all warranties provided by **COUNTY**’s contractor(s) and equipment supplier(s) in the implementation of the **Project**. In the event a need arises for work or materials potentially covered by one or

more such warranties, COUNTY shall cooperate with CITY in requesting and coordinating implementation of the work and delivery of the materials.

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. City's obligation hereunder shall not exceed One Hundred Forty Thousand Dollars (\$140,000).

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 COUNTY shall cause its contractor(s) to have and maintain liability insurance against bodily injuries and property damage in amounts determined appropriate by the County, and to have and maintain worker's compensation insurance for any injuries during the performance of the Project. All of contractor's liability insurance policies shall be endorsed to name the COUNTY and CITY as additional insureds and provide primary and non-contributory coverage. Each contractor, and each of its worker's compensation insurers, shall waive all rights of subrogation against the COUNTY and CITY. County shall also cause its contractor(s) to agree to defend and indemnify the COUNTY and CITY and their elected and appointed officials, officers, agents, and employees, against any and all claims, loss, demands, damages, cost, expenses or liability arising out of the Project, except for liability arising out of the sole negligence of the COUNTY or the CITY, or their 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, contractors, 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 Tustin
300 Centennial Way
Tustin, CA 92780
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. Except with regard to the existing Lease between the City and the COUNTY regarding the Library, this Agreement supersedes and merges all previous understandings, and all other agreements, written or oral, between the parties regarding this Project, and sets forth the entire understanding of the parties regarding the subject matter hereof. 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. This provision shall not limit the right of either party to recover the costs of a legal defense from one or more contractor(s), provided the defense is required under Section 3.2 above.

- 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.

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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.

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 Tustin

ATTEST:

By: *Elwyn A. Murray*

By: *Erica N. Yasuda*

Name: ELWYN A. MURRAY

Name: Erica N. Yasuda

Title: MAYOR

Title: City Clerk

Dated: 7-18-18

Dated: 7-18-18

County of Orange
A Political Subdivision of the State of California

By: _____
Dylan Wright, Director
OC Community Resources

Dated: _____

APPROVED AS TO FORM
DEPUTY COUNTY COUNSEL

By: _____
Deputy County Counsel

Dated: _____

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 Tustin

ATTEST:

By: _____

By: _____

Name: ELWYN MURRAY

Name: Erica Yasuda

Title: MAYOR

Title: City Clerk

Dated: _____

Dated: _____

County of Orange

A Political Subdivision of the State of California

By: _____

Dated: _____

Dylan Wright, Director
OC Community Resources

**APPROVED AS TO FORM
DEPUTY COUNTY COUNSEL**

By: Carolyn S. Frost
Deputy County Counsel

Dated: 07/16/18