

AGREEMENT BETWEEN THE CITY OF BRISBANE AND THE COUNTY OF SAN MATEO TO PROVIDE FOR LOAN OF FUNDS FROM COUNTY TO CITY FOR THE CONSTRUCTION OF THE BRISBANE LIBRARY PROJECT

This Agreement is made and entered in the County of San Mateo, California, by and between the City of Brisbane (“City”) and the County of San Mateo (“County,” and, together with the City, the “Parties”) for the purpose of stating the terms for a loan of funds to City by County to be repaid to County by City as provided herein, for construction of a new Brisbane Library to be located within the City.

RECITALS

WHEREAS, City owns a building and lands located at 250 Visitacion Avenue, Brisbane, California presently used for public library purposes, and City desires to build a new replacement public library (hereinafter, “Library” or the “Library Project”) at the same location; and

WHEREAS, the City and County are parties to the San Mateo County Library Joint Powers Agreement (“JPA” or “JPA Agreement”), pursuant to Government Code § 6500, *et seq.*, for the purpose, among others, of jointly exercising, with the other parties to the JPA, the Parties’ authority to provide library services so that City may provide such services to City and County residents; and

WHEREAS, in order to ensure timely completion of the Library Project, County will advance funds pursuant to this loan agreement in an amount not to exceed one-million seven-hundred thousand dollars (\$1,700,000) to assist the City in ensuring prompt completion of the Library Project, which funds the City shall repay with interest to County as provided herein.

NOW THEREFORE, in consideration of their mutual promises and obligations, the Parties hereby agree as follows:

1. San Mateo County Library Joint Powers Agreement Remains Fully Applicable.

The San Mateo County Library Joint Powers Agreement (“JPA” or “JPA Agreement”) and

associated or successor agreements between the Parties remain fully applicable. This Agreement is not intended to affect the applicability of the JPA Agreement or associated or successor agreements, which remain in full force and effect.

2. County Disbursement of Funds to City for Library Project; Use of Funds.

(a) **County Loan of Funds.** County agrees to loan funds to City in an amount not to exceed one million seven-hundred thousand dollars (\$1,700,000) (“Funds”) to be used for covered construction costs for the Library Project, as described herein.

(b) **Covered Construction Costs.** The City shall use the Funds to cover costs associated with construction of the Library Project (“Covered Construction Costs”), which may include: design, environmental review, demolition of existing library, construction, and construction management for the Library Project. Covered Construction Costs may also include the costs for remediation of hazardous materials which may be found during demolition of the existing library or construction of the Library Project, but only to the extent that such hazardous materials are integrated into and as part of the existing building to be demolished or found naturally occurring in the underlying soil. Covered Construction Costs shall not include any cost associated with operation and maintenance, repairs, furnishings, equipment or utilities for use of the Library Project once completed. The Parties agree that each party shall individually bear its own administrative costs, including but not limited to staff costs and overhead for all aspects of the Library Project, and such administrative costs shall not be included in the Covered Construction Costs.

(c) **No County Liability.** City acknowledges and agrees that notwithstanding County’s disbursement of Funds for the Library Project, County does not assume any liability for construction defects, dangerous conditions of public property, or any other responsibility or

liability associated with the construction, operation, repairs, maintenance or ownership of the Library by City. As owner of the Library facility, City shall be responsible for completion of all aspects of the Library Project, and maintenance thereof, according to all applicable legal requirements.

3. Disbursement of Funds.

County shall disburse the Funds to City within a reasonable time after submission of a written request by City which includes documentation by City reasonably acceptable to County of Covered Construction Costs incurred by City which are to be paid from the Funds. At County's sole discretion, such documentation may include the payment application by a contractor for work that constitutes Covered Construction Costs performed by said contractor on the Library Project, and reasonably satisfactory written assurance from City that all work covered by the payment application has been satisfactorily performed. City must submit said request for Funds and required documentation no later than June 30, 2019, or the obligation of County to provide Funds shall expire as of that date.

4. Terms of Repayment of Funds.

(a) **Terms of Repayment.** City shall repay to County the Funds plus interest accrued at a fixed annual rate of 1.2%, accrual to begin as of the date of disbursement of Funds to City. City may repay the Funds, in full or in part, at any time without penalty upon written notification to County. All money paid by City to County toward the satisfaction of this Agreement shall be applied first to the payment of loan interest and then to the retirement of the principal amount of the Funds.

(b) **Repayment Term.** City shall commence repayment no later than December 15 of the fiscal year in which disbursement of the Funds is first made and final payment shall be made no later than fifteen years after such disbursement of funds. (“Repayment Period”).

(c) **Minimum Payments.** Minimum payments (“payments”) shall be due twice per year on December 15th and April 15th of each fiscal year (or the following business day if those days fall on weekends or holidays), pursuant to a payment schedule approved by the County Manager.

(d) **Recurring Payment from Tax Revenues.** During the Repayment Period and until all monies owed to County pursuant to this Agreement are paid, City authorizes the County Controller (“Controller”) to, and the Controller shall, pay to County each payment on the City’s behalf using the City’s secured property tax revenues that would otherwise be payable by the Controller to City on December 15th and April 15th of each fiscal year (or the following business day if those days fall on weekends or holidays), pursuant to a schedule approved by the County Manager. The Controller shall make such payments to County prior to making any other payments to City or any other person or entity, but after adjustments for any duly authorized property tax refund. In the event that there are insufficient property tax revenues due to City on any given payment due date, the City authorizes and the Controller shall take from any other available tax apportionments otherwise due to City to fulfill the balance of the payment. In the event property and other tax proceeds are insufficient to pay the full amounts due to County under any payment, City shall remain responsible for payment of, and shall promptly pay to County, such payments due to County.

5. Contingencies.

(a) **Changes in Use and Delays in Library Project.** Except as provided by mutual written agreement, in the event the Library building is sold, or the Library building is used for any purpose other than as a public library, all Funds disbursed by County shall be immediately due and payable in full and, in this event, City shall also pay to County the accrued loan interest on the full amount of the Funds principal at 1.2% annually. In the event that the City postpones or does not complete construction of the Library Project, County shall have the option to require that City immediately repay to County all Funds disbursed to City pursuant to this Agreement including interest accrued at 1.2% annually. For purposes of this section, City shall be deemed to have postponed or not completed construction of the Library Project if there is no material construction activity for any period of twelve consecutive months after execution of this Agreement by the parties, unless otherwise agreed in writing by the County Board of Supervisors. County agrees that if the delay is due to circumstances beyond the control of City, County will meet and confer with City in good faith to consider whether or not to extend this twelve month period. Any such extension must be approved by the County Board of Supervisors.

(b) **Repayment Required.** In any event, any amount remaining due and payable by City to County under this Agreement upon expiration or termination of this Agreement shall be promptly paid to County by City, unless otherwise agreed in writing by the County Board of Supervisors.

6. Hours and Use of Library.

(a) **Library Uses.** The Library building and its associated facilities and grounds shall be used for library and associated administrative uses, including library related events.

(b) **Hours.** City shall ensure that the hours the Library is open to the public, including all residents of the County, will be equal to or greater than the minimum service levels specified in the JPA Agreement.

(c) **Withdrawal from JPA.** City agrees that in the event that City withdraws from the JPA, and establishes a City library, all County residents will still have access, for as long as there remain Funds to be repaid to County or the Library is in operation, to all library programs and services at the City Library.

7. Hold Harmless, Indemnification and Defense of Claims

City shall hold harmless, indemnify and defend the County, its officers, employees and agents from and against any and all claims, suits or actions of every kind which arise out of the performance or nonperformance of the City's covenants, responsibilities and obligations under this Agreement and which result from the negligent or wrongful acts of the City or its officers, employees, or agents.

County shall hold harmless, indemnify and defend the City, its officers, employees and agents from and against any and all claims, suits or actions of any kind which arise out of the performance or non-performance of the County's covenants, responsibilities and obligations under this Agreement and which result from the negligent or wrongful acts of the County or its officers, employees or agents.

In the event of concurrent negligence of the County, its officer or employees, and the City, its officers and employees, the liability for any and all claims for injuries or damages to persons and/or property or any other loss or costs which arise out of the terms, conditions, covenants or responsibilities of this agreement shall be apportioned according to the California theory of comparative negligence.

8. Insurance.

(a) **Property Insurance.** City shall, at its own cost and expense, keep and maintain insurance sufficient to protect all portions of the Library Project against fire, lightning, extended coverage, vandalism and malicious mischief in an amount not less than one hundred percent (100%) of the replacement cost thereof.

(b) **Liability Insurance.** City shall, at its sole cost and expense, maintain a minimum of two million dollars (\$2,000,000) in comprehensive general liability insurance.

(c) **Contractors and Subcontractors.** City shall require all contractors and subcontractors on all City contracts associated with construction of the Library Project to name County as an additional insured, and to agree in such contracts to hold harmless and indemnify County to the same extent that they hold harmless and indemnify City.

(d) **Workers' Compensation.** City shall, at its sole cost and expense, comply with all provisions of law applicable to City projects with respect to obtaining and maintaining Workers' Compensation insurance for its employees. City shall also require any of its contractors and subcontractors performing work for the Library Project to carry all legally mandated workers' compensation insurance.

9. Term of Agreement and Provisions for Enforcement

(a) **Effective Term.** This Agreement shall become effective on execution by the parties and shall remain in effect for (i) fifteen years from disbursement of Funds to City by County, or (ii) expiration of this Agreement pursuant to section 3 of this Agreement, or (iii) such earlier date that all moneys owed pursuant to this Agreement are repaid to County, or (iii) until any temporary or permanent abandonment of the Library Project by the City as defined in Section 5, whichever first occurs; provided, however, that this Agreement shall remain effective

for the purpose of enforcing any and all obligations of City under this Agreement including, but not limited to, the City obligations for use of the Library and for repayment of funds to County as set forth in this Agreement, and for the purpose of enforcing the hold harmless and indemnification provisions of this Agreement. At County's sole option, for purposes of this subparagraph (a), City may be deemed to have abandoned the Library Project if there is no material construction activity for any period of twelve consecutive months at any point after execution of this Agreement by the parties. County agrees that if the Library Project is delayed due to circumstances beyond City's control, it will meet and confer with City in good faith to consider whether or not this twelve month time period will be extended. Any such determination to extend the time period must be approved by the San Mateo County Board of Supervisors.

(b) Interest. In the event all amounts disbursed, along with accrued loan interest, are not repaid within fifteen years of the disbursement of Funds by County to City, any such amounts that remain outstanding shall accrue interest from and after the expiration of the term at the rate specified by law for prejudgment interest.

(c) Remedies Not Limited by This Agreement. Nothing set forth in this section shall preclude any remedies available to County at law or equity to compel payment of any amounts still due and owing at the end of the term of this agreement.

10. Interpretation of Agreement

The Parties acknowledge that they have each been represented by independent counsel, or had the opportunity to be represented by independent counsel, in entering into this Agreement. Each of the Parties affirms to the other that it has been consulted and discussed the provisions of this Agreement with its counsel and fully understands the legal effect of each provision. The

Parties have had the opportunity to equally participate in the drafting and negotiation of this Agreement. For all purposes, this Agreement shall be deemed to have been drafted jointly by each of the Parties, and shall not be construed against any Party due to authorship; the provision of Civil Code section 1654 expressly shall not apply to interpretation of this Agreement.

11. General Provisions

(a) **Waiver.** The waiver by City or County of any term, covenant or condition herein contained shall not be deemed to a waiver of such term, covenant or condition or any subsequent breach of the same or any other term, covenant or condition herein contained.

(b) **Successors and Assigns.** The covenants and conditions herein contained, subject to the provisions as to assignment, apply and bind the heirs, successors, executors, administrators and assigns of the parties hereto.

(c) **Amendment of Agreement.** No provision of this Agreement may be amended except by an agreement in writing signed by both parties to this agreement. This Agreement and any Amendment shall not be effective or binding on either party until fully executed by both parties.

(d) **Accounting.** The City shall maintain an accounting of all Funds advanced to it pursuant to this Agreement and shall provide any documentation and records to the County Manager, or designee, upon request.

(e) **Choice of Law.** This Agreement is subject to the laws and jurisdiction of the State of California and any action related to the Agreement shall be brought in the California Superior Court for the County of San Mateo. In the event that any court action should be brought in conjunction with this Agreement, it shall be subject to interpretation under the laws of the State of California.

(f) **Independent Entities.** This Agreement is by and between two independent entities and is not intended to and shall not be construed to create the relationship of agent, servant, employee, partnership, joint venture, joint employer, or association.

(g) **Authority to Execute Agreement.** The Parties each warrant that they have the authority to execute this Agreement and that all actions have occurred, and all necessary approvals or consents have been obtained to allow each party to enter into this Agreement.

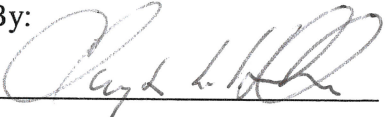
(h) **Notices.** All notices provided for herein shall be in writing and shall be delivered to the appropriate parties as provided below:

For CITY: **City Manager**
50 Park Place
Brisbane, CA 94005

For COUNTY: **County Manager**
400 County Center, 1st Floor
Redwood City, CA 94063

IN WITNESS WHEREOF, CITY and COUNTY have signed this Agreement on the dates set forth below.

CITY OF BRISBANE

Executed By: _____
Signature: 
Printed Name: CLAYTON HOLSTINE
Title: CITY MANAGER
Date: 03-19-2018

COUNTY OF SAN MATEO

Executed By: _____
Signature: _____
Printed Name: _____
Title: _____
Date: _____