

**AGREEMENT BETWEEN CITY OF HALF MOON BAY AND COUNTY OF
SAN MATEO FOR THE USE OF, AND CONTRIBUTION OF COSTS FOR,
HALF MOON BAY LIBRARY PROJECT**

This Agreement is made and entered in the County of San Mateo, California, by and between the City of Half Moon Bay ("City") and the County of San Mateo ("County," and, together with the City, the "Parties") for the purpose of stating the terms for the contribution by County of certain funds for construction, and use by County residents, of a new Half Moon Bay Library ("Library" or "Library Project") to be located within the City.

WHEREAS, City owns a building and lands located within the jurisdictional boundaries of the City presently used for public library purposes (620 Correas Street, Half Moon Bay, California), and City desires to build a new replacement public library (hereinafter, "Library" or the "Library Project") at the same location; and

WHEREAS, approximately one half of the population served by the existing Half Moon Bay Library lives in unincorporated areas of the County; and

WHEREAS, County has agreed to contribute one half of the costs associated with the Library Project under certain terms and conditions as set forth herein including, but not limited to, that the design and construction budget for such Library Project must be mutually agreed to by the County Board of Supervisors and the City Council prior to the County making said contribution.

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

1. Construction of Library Project

As owner of the Library facility, the City shall be responsible for completion of all aspects of the Library Project including, but not limited to, any necessary bidding and award of design, construction management and construction contracts, inspections and environmental review. City shall comply with all applicable laws pertaining to public contract bidding and award, prevailing wages, worker's compensation, the California Environmental Quality Act, Americans with Disabilities Act, and all other applicable local, state and federal laws, rules and regulations pertaining to design and construction of the Library Project. City shall enter into construction contracts and do such other work necessary to undertake the construction and completion of the Library Project in a timely manner and in compliance with the approved plans and specifications and applicable law. City acknowledges and agrees that by making its contribution toward the Covered Construction Costs for the Library, County does not assume any liability for construction defects, dangerous conditions of public property, or any other liability associated with the construction, operation, repairs, maintenance or ownership of the Library by the City.

2. Participation By County On Executive Oversight Work Group And Technical Advisory Work Group For Library Project

The City has established an Executive Oversight Work Group to make policy level decisions regarding the scope and direction of the Library Project and a Technical Advisory Work Group to implement these policy decisions such as by selecting and hiring contractors and consultants and managing the funds for the Library Project. The County shall participate on both of these work groups through representative members from the County Manager's Office, as selected by the County.

3. County Contribution and Approval of Budget

(a) In recognition that approximately half of the population served by the Half Moon Bay Library is from the unincorporated County area, County agrees to contribute fifty percent (50%) of the costs associated with the Library Project, to include: design, environmental review, demolition of existing library (except as otherwise provided herein), construction and construction management, improvements to the existing parking lots used by library patrons and construction, improvements to, or expansions of parking lots and/or parking facilities which may be required in conjunction with the Library Project development, and the community survey related to the Library Project ("Covered Construction Costs"). In the event that the City identifies other costs associated with the Library Project that City believes should be included in the Covered Construction Costs, City and County shall meet and confer in good faith, and County shall exercise reasonable discretion and not unreasonably withhold agreement, regarding whether or not these additional costs should be so included. If both parties agree, such additional costs shall be included in the Covered Construction Costs. However, the parties agree that each party shall individually bear its own administrative costs including staff costs and overhead for all aspects of the Library Project, which costs shall not be included in the Covered Construction Costs.

(b) The Covered Construction Costs shall 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 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.

(c) The 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.

(d) City shall prepare the final budget for the Library Project, which shall consist of the Covered Construction Costs and a reasonable contingency amount and must be approved by both the City Council and the County Board of Supervisors ("Approved Budget") prior to a construction contract being awarded for the Library Project. County shall not be responsible for any costs that exceed the Approved Budget without prior approval of the Board of Supervisors. In the event that the Covered Construction Costs for the Library Project exceed the Approved Budget, the City shall provide to County documentation acceptable to County regarding the amount of and explanation for Covered Construction Costs which exceed the Approved Budget. After receipt by County of this documentation, the County shall promptly seek consideration by the Board of Supervisors as to whether or not the County will contribute any portion of such excess costs up to 50% of such excess costs. If so approved by the Board of Supervisors and City Council, such excess costs shall become part of the Approved Budget.

(e) Prior to or within a reasonable time after mutual execution of this Agreement, City shall establish a dedicated fund for maintenance and accounting of all City and County funds contributed for the Library Project (the "Library Capital Fund"). City shall periodically provide to County documentation that reasonably establishes all funds it has set aside for the Library Project, including, but not limited to, documentation of the City's allocation of funding for the Library Project and account statements for the Library Capital Fund. Within thirty (30) days of receipt by County of such documentation satisfactory to the County, County shall remit payment

to City in an amount equal to the funds already set aside by City in the Library Capital Fund; provided, however, that in no case shall the County be required to remit funding in an amount greater than the total funds set aside by City or fifty percent 50% of the Approved Budget, whichever is less. If, upon approval of the Approved Budget, County has paid more than its fifty percent (50%) share, any excess funds shall be returned to County within thirty (30) days.

(f) All City and County funds for the Library Project shall be maintained in the Library Capital Fund until used for the Library Project, and said funds shall be used only for the Library Project. Any expenditure of funds for the Library Project from the Library Capital Fund shall be made equally from funds contributed by County and funds contributed by City.

(g) Throughout the term of this Agreement, City may request that the County deposit additional funds in the Library Capital Fund by submitting reasonably acceptable documentation of additional funding contributed by the City to the Library Capital Fund. County shall, within thirty (30) days of receiving such documentation, remit payment to City in an amount equal to the additional City funding, provided, however, that in no case shall the County be required to remit total funding equal to more than 50% of the Approved Budget.

(h) Upon at least sixty (60) days written notice from County, City shall provide to County documentation showing the current balance of funds available in the Library Capital Fund for the Library Project, separately identifying remaining City contributions and County contributions. Said documentation shall include a breakdown of payments to contractors and vendors or any other expenditures made from the Library Capital Fund during the preceding quarter. If requested by County, City shall promptly provide to County itemized copies of invoices, lien releases or any

other documentation reasonably determined by County to be useful to account for all expenditures related to the Library Project.

(i) In the event that construction of the Library Project is not completed within the term of this Agreement, City shall promptly return to County any and all unexpended County contributions to the Library Project.

4. Use of Library

(a) Residents of the unincorporated County shall be permitted to use all Library facilities and services associated with the Library to the same extent and in the same manner as City residents.

(b) The Library shall be primarily used for library and associated administrative uses, but may also be used for public uses such as public meetings or community events. The County shall be permitted to use the Library building and facilities for non- Library public uses such as public meetings or community events to the same extent that the City uses the Library building and facilities for non-Library public uses such as public meetings or community events. In the event of such use by the County for non-Library public uses, County shall provide proof of insurance to cover such use by County, to the same extent and in the same amount as required by City of other non-City users of similar City facilities. Such required insurance may be satisfied by the County's self- insured retention.

(c) In the event the Library is no longer primarily used as a Library with incidental uses as set forth in subparagraph (b), above, or in the event the Library is sold, City shall reimburse County for all County funds paid to City for completion of the Library Project, adjusted in an amount equivalent to the annual percentage change in the Consumer Price Index-West (SF-Oak-

SJ, CA)(1982-84=100 bi-monthly) or its successor, published by the U.S. Bureau of Labor Statistics or its successor.

5. JPA Agreement Remains Fully Applicable.

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

6. 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.

7. 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 \$2 million 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 they hold harmless and indemnify the 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 workers' compensation insurance.

8. Term of Agreement

This Agreement shall become effective on execution by the parties and shall terminate upon completion of the Library Project or on June 30, 2019, whichever first occurs, unless earlier mutually terminated in writing by the Parties. However, paragraphs 3(i), 4, 5, and 6 of this Agreement shall survive its termination.

9. Satisfaction of Obligations

The parties acknowledge that execution and performance of this Agreement satisfies all obligations of the County under section VI.F. of the JPA 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 to Agreements. No provision of this Agreement may be amended or added to except by an agreement in writing signed by the parties hereto to their respective successors in interest. This Agreement shall not be effective or binding on any party until fully executed by both parties hereto.

(d) Choice of Law. This Agreement is subject to the laws and jurisdiction of the State of California. 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.

(e) 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.

(f) 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.

12. Notice.

All notices provided for herein shall be in writing and shall be delivered to the appropriate parties as provided below:

For CITY:
City Manager
501 Main Street
Half Moon Bay, CA 94019

For COUNTY:

COUNTY MANAGER'S OFFICE
400 County Center, 1st Floor
Redwood City, CA 94063

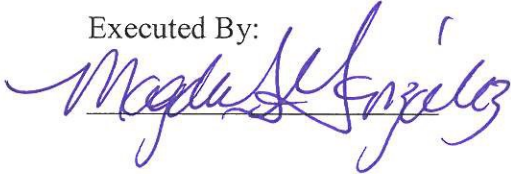
IN WITNESS WHEREOF, CITY and COUNTY have signed this Agreement on the dates
set forth below.

CITY OF HALF MOON BAY

Date:

Nov. 17, 2015

Executed By:



COUNTY OF SAN MATEO

Date: _____

Executed By:
