

**AGREEMENT BETWEEN CITY OF HALF MOON BAY AND COUNTY OF  
SAN MATEO TO PROVIDE FOR AN ADVANCE OF FUNDS TO CITY BY COUNTY  
FOR CONSTRUCTION OF 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 an advance of funds to City by County to be repaid to County by City as provided herein, for construction of a new Half Moon Bay Library (“Library” or “Library Project”) to be located within the City.

**RECITALS**

**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**, the City and County are parties to a Library Joint Powers Agreement, pursuant to Government Code §6500, *et seq.*, for the purpose, among others, of jointly exercising, with the other parties to the Agreement, their authority to provide library services so that City may provide such services to City and County residents; and

**WHEREAS**, the City and County have already entered into an 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 (“Library Funding Agreement”) under which the County has agreed to contribute up to one half of the construction costs of the Library Project; and

**WHEREAS**, in order to ensure timely completion of the Library Project, County will advance and make available funds in an amount not to exceed six million dollars (\$6,000,000) to

assist the City in ensuring prompt completion of the Library Project, which funds the City shall repay to County as provided herein.

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

**1. Library Funding Agreement and San Mateo County Library Joint Powers Agreement (“JPA”) to Remain Fully Applicable.**

(a) This Agreement to provide for an advance of funds to City (“this Agreement”) is intended to stand as a supplement to, but not a replacement for or amendment of, the Library Funding Agreement, which shall remain fully applicable.

(b) The San Mateo County Library Joint Powers Agreement (“JPA” or “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 remain in full force and effect.

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

(a) County agrees to advance funds to City, on an interest free basis, except as otherwise provided herein, in an amount not to exceed six million dollars (\$6, 000,000) to be used to pay for costs associated with construction of the Library Project to include: design, environmental review, demolition of existing library, construction, and construction management for the Library Project (“Covered Construction Costs”). 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, which costs shall not be included in the Covered Construction Costs for which the advanced funds may be utilized. The Covered Construction Costs for which advanced funds may be expended shall 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. The Covered Construction Costs for which advanced funds may be expended shall not include any cost associated with operation and maintenance, repairs, furnishings, equipment or utilities for use of the Library Project once completed.

(b) The funds advanced by County pursuant to this Agreement shall constitute funds contributed by City, and such funds are subject to the requirement in paragraph 3(f) of the Library Funding Agreement that any expenditure of funds for the Library Project must be made equally from funds contributed by County and funds contributed by City. However, funds contributed by City and deposited into the Library Capital Fund established by the Library Funding Agreement as provided in that Agreement must be utilized for the Project prior to withdrawal of funds advanced by County and deposited into the escrow account pursuant to this Agreement.

(c) City acknowledges and agrees that by advancing funds for construction of the Library Project, 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 City. As owner of the Library facility, City shall be responsible for completion of all aspects of the Library Project according to all applicable legal requirements, as set forth in the Library Funding Agreement.

### **3. Construction Escrow Account.**

(a) Prior to or within a reasonable time after mutual execution of this Agreement, the parties shall establish an interest bearing construction escrow account ("Escrow Account") which provides for instructions for withdrawal by City of funds deposited by the County upon written

agreement by City and County that certain preconditions determined by the parties as set forth in this Agreement or any escrow instructions for said account have been met. Such preconditions shall include that City has provided to County documentation reasonably acceptable to County of Covered Construction Costs incurred by City which are to be paid from the Escrow Account. At County's sole option, such documentation shall 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. Upon receipt of documentation acceptable to County, and written approval by City and County for withdrawal of funds, City may withdraw from the Escrow Account sufficient funds to pay contractor for such work satisfactorily performed, less the standard retention amount.

(b) Funds in the escrow account, including interest, shall be used solely for Covered Construction Costs for the Library Project (up to six million dollars) until completion of the Library Project, or expiration of this Agreement, whichever first occurs, except that escrow fees may also be paid from the interest earned by the escrow account. City shall pay any escrow fees outstanding after application of the accrued interest.

(c) Any funds remaining in said escrow account after completion of the Library Project, temporary or permanent abandonment by City of the Library Project, or termination or expiration of this Agreement, whichever first occurs, shall promptly be released to and remain the sole property of the County, and City shall promptly execute any and all documents necessary to accomplish said release of escrow funds to County.

#### **4. Terms of Repayment of the Advance of Funds.**

(a) City shall repay to County the full amount of all funds advanced pursuant to this Agreement directly from its property tax apportionments in two installments per fiscal year for a ten year period (the “Repayment Period”) beginning no later than fiscal year 2019-2020, as set forth below. City shall commence repayment no later than December 15, 2019, and final payment shall be made no later than April 15, 2029. During the Repayment Period, the County Controller shall pay, and City does specifically authorize the Controller to pay, the amounts owed by City to County from City secured property tax revenues that would otherwise be payable by the County Controller to City, on December 15th and April 15th of each fiscal year. County Controller shall make such payment(s) to County prior to making any other payments to City or any other person or entity, until the City has fully repaid all funds advanced, including any interest or penalties as set forth herein.

(b) The amount of each installment described in Section 4(a) of this Agreement shall be 1/20<sup>th</sup> of the total amount of funds advanced to City by County, for a total payment to County of 1/10<sup>th</sup> of the total amount of funds advanced to City by County per full fiscal year for the ten-year Repayment Period, as provided in subparagraph (a) above. In the event that there are insufficient property tax revenues due to City on any given installment date, the County Controller shall take from any other available tax apportionments otherwise due to City any amounts owed by City to County and pay County from such other available tax apportionments otherwise due to City. City hereby specifically authorizes the Controller to pay County from such other available tax apportionments otherwise due the City, as set forth in this Section 4(b). City acknowledges that in the event tax proceeds are insufficient to pay the full amounts due to County under any installment, City shall remain responsible for payment of, and shall promptly

pay to County, such installment amounts due to County. Further, 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.

(c) Except as set forth in section 5 (a) below or otherwise 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 advanced by County shall be immediately due and payable in full, and in this event, City shall also pay to County interest on the full amount advanced at the average rate that would have been earned by such funds had they been invested in the County's pool for investment of excess County funds. Further, 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 County funds advanced to and expended by City from the escrow account established pursuant to this Agreement and pay to County interest on the full amount advanced at the average rate that would have been earned by such funds had they been invested from the time of deposit of the funds in the escrow account in the County's pool for investment of excess County funds, said interest to be calculated by County subject to audit by City. For purposes of this subparagraph (c), 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.

## **5. Hours and Use of Library.**

(a) The Library building shall be used for library and associated administrative uses, including library related events, as well as other events approved in writing by the City Manager and the County Manager (or their respective designees) provided that such uses shall be in accordance with reasonable and customary conditions imposed by the City (e.g., insurance requirements) and shall not interfere with the required library hours and service levels set forth in this Agreement and in other agreements binding the parties. Residents of unincorporated County shall be permitted to use all facilities and services associated with the Library to the same extent and in the same manner as City residents. Further, the County shall be permitted to use the Library building to the same extent as City uses the building for incidental or permitted non-Library purposes, as set forth herein.

(b) City shall ensure that the hours the Library is open to the public will be equal to or greater than the minimum service levels specified in the Library Joint Powers Agreement.

(c) City agrees that in the event that City withdraws from the San Mateo County Library JPA, and establishes a City library, all County residents will have access, for as long as the Library is in operation and at the same level as City residents, to all library programs and services at the City Library.

## **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 two (2) million dollars 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.

**8. Term of Agreement and Provisions for Enforcement**

(a) This Agreement shall become effective on execution by the parties and shall remain in effect (i) until April 15, 2029 (or such earlier date that all funds advanced by the County to the City pursuant to this Agreement are repaid), or (ii) until any temporary or permanent abandonment of the Library Project by the City, 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) In the event all amounts advanced, along with accrued interest if applicable pursuant to Section 4(b) of this Agreement, are not repaid by September 15, 2029 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) 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.

## **9. 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.

## **10. 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 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.

**(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.

**(g) 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  
501 Main Street  
Half Moon Bay, CA 94019**

**For COUNTY:**

**County Manager  
400 County Center, 1<sup>st</sup> 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: \_\_\_\_\_

Executed By:

\_\_\_\_\_

**COUNTY OF SAN MATEO**

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

Executed By:

\_\_\_\_\_