

**AGREEMENT FOR DEVELOPMENT AND CONSTRUCTION OF A REGIONAL
LIBRARY BRANCH IN SOUTHWEST SANTA ROSA BETWEEN THE CITY OF SANTA
ROSA AND THE SONOMA COUNTY LIBRARY**

This Agreement for the purpose of funding the Development and Construction of a Regional Library Branch in Southwest Santa Rosa (“Agreement”) is made and entered into on ____, 2024 (“Effective Date”), by and between the City of Santa Rosa, a municipal corporation ("CITY") and the Sonoma County Library, a joint powers authority (“LIBRARY”). CITY and LIBRARY are sometimes referred to individually as “Party” and collectively as “Parties.”

RECITALS

WHEREAS, the CITY and LIBRARY jointly wish to construct a new regional library branch in southwest Santa Rosa, the Parties acknowledge:

- A. CITY contracted with the County of Sonoma (County) to operate the Santa Rosa – Sonoma County Public Library from the Central Regional Library Branch and Northwest Regional Library Branch through Resolution No. 7571, dated December 15, 1964.
- B. CITY entered into a consolidation agreement with the County and City of Sebastopol, forming the CITY – County Library through Resolution No. 8960, dated May 20, 1969.
- C. County and cities of Santa Rosa, Healdsburg, Petaluma, Sonoma Sebastopol, Cotati, Rohnert Park, Windsor and Cloverdale entered into a Joint Powers Agreement dated January 27, 1975, forming the LIBRARY. The Joint Powers Agreement was subsequently replaced by the First Amended and Restated Joint Powers Agreement effective August 1, 2014.
- D. LIBRARY and CITY desire to create a library in southwest Santa Rosa to permanently house the Roseland Regional Library (the "Roseland Regional Library").
- E. On January 11, 2021, CITY approved the acquisition of the approximately six-acres property located at 976, 980 and 1004 Hearn Avenue to accommodate construction of a new Fire Station No. 8 building (the "Site").
- F. On February 15, 2022, CITY appropriated \$10,000,000 of American Rescue Plan Act (ARPA) funds to the Roseland Community Center at the Site. Anticipated funding use is \$360,023 directed to the Roseland Regional Library itself, \$4,811,430 directed to development of the Site, and the remaining \$4,828,547 directed to the Fire Station No. 8 building.
- G. On July 12, 2022, CITY appropriated \$10,000,000 of PG&E settlement funds to assist the LIBRARY in the location, leasing and/or development of a permanent Roseland Regional Library and Site development. Anticipated funding use is \$5,000,000 directed to construction of the Roseland Regional Library itself and \$5,000,000 to development of the Site.
- H. LIBRARY and CITY agree that co-locating the new permanent Roseland Regional Library with Fire Station No. 8 building and future community center on the Site would best serve the LIBRARY’s service demographic. Collectively, development on the Site of the

Roseland Regional Library, Fire Station No. 8, and a future community center is sometimes referred to in this Agreement as the "Project".

- I. LIBRARY will receive donated funds from the Library Foundation. the Foundation's mission is to raise funds for the Library and enhance public awareness of Library facilities, programs and services to ensure equitable access thereto and the Foundation is a separate legal entity from the Library certified by the Internal Revenue Service pursuant to Internal Revenue Code section 501(c)(3) as a tax-exempt non-profit organization;
- J. LIBRARY will receive donated funds from the Library Foundation in the amount of \$3,600,000 to assist with the development and construction of the Roseland Library. Anticipated funding use is \$1,000,000 directed to the CITY for the construction of the Roseland Regional Library and the remaining \$2,600,000 will be retained by the LIBRARY to pay for the fixtures, furnishing, and equipment to be furnished by the LIBRARY.
- K. LIBRARY has received donated funds from the Federated Indians of Graton Rancheria via the Library Foundation in the amount of \$3,500,000 to assist with the construction of the Roseland Regional Library ("Foundation Funds"). This donation in its entirety is anticipated to be directed to the CITY for construction of the Roseland Regional Library
- L. LIBRARY has been awarded California State Library Targeted Grant funding to the project in the amount of \$1,000,000 for the Roseland Library. ("Library CSL Grant"). The Library CSL Grant is held by the County of Sonoma ("COUNTY"), and funds are expressly for the purpose of pre-construction. LIBRARY and COUNTY has entered into a Sub-grant Agreement Regarding Roseland Library Project, executed May 1, 2024, stipulating that COUNTY will reimburse LIBRARY for expenses incurred ("COUNTY MOU") These funds will be used to reimburse CITY for pre-construction costs already incurred by CITY.
- M. On July 11, 2023, the CITY accepted a grant award from the California State Library Targeted State Grant for \$5,000,000 for the acquisition of the Site and Project activities that benefit the construction of the new Roseland Regional Library.
- N. CITY has retained Kitchell as Project Manager, Group4 to perform the preliminary design and GHD Inc. to complete CEQA for the Project.
- O. Group4 has developed a conceptual site layout, plans and program for the Roseland Regional Library based on feedback from the LIBRARY and public.
- P. Kitchell developed a project estimate based on the conceptual work completed by Group4 showing that the total estimate cost to develop and construct the Hearn Community Hub-Phase 1 with a 20,000 square foot Roseland Regional Library and 10,000 square foot Fire Station No. 8 building and site improvements to be \$57,300,000. The remaining funding need from the LIBRARY was determined to be \$10,900,000.
- Q. LIBRARY therefore agreed to a reduced square footage of no less than 15,000 square foot Roseland Regional Library which brought the remaining funding needed from LIBRARY to \$5,454,051.

- R. On June 12, 2024, CITY issued a Request For Proposals (RFP) for the solicitation of the Design and construction by CITY of Project. The project delivery method is Design-Build utilizing a Best Value procurement method and Stipulated Sum contracting approach.
- S. LIBRARY acknowledges that the development and construction of a 15,000 square foot Roseland Regional Library is dependent on closing the \$5,454,051 estimated deficit along with allocation of all the funding received to date listed herein and provisions set forth in the RFP dated June 12, 2024.
- T. CITY and LIBRARY agree that RFP responses may reduce the \$5,454,501 figure, and that the final square footage is the primary goal, not a final dollar figure.

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

Obligations of CITY:

Project Management. CITY agrees to undertake management of the Project through completion in accordance with the plans and specifications provided by CITY and approved by LIBRARY, the milestones set forth in the Project Plan (Exhibit A), and all provisions of federal, state and local laws and regulations. The LIBRARY agrees it will respond in writing within 2 weeks of receipt of plans and specifications, or ability to approve the plans and specifications is waived by the LIBRARY. CITY's Project management responsibilities shall include, but are not limited to:

1. Preparation and issuance of RFQ/P for Design-Build services;
 - a. Advertisement and award of Project for development and construction;
 - b. Comprehensive construction management and oversight, including but not limited to:
 - i. Compliance with all CITY approved plans and specifications;
 - ii. Timely completion of the Project;
 - iii. Compliance with all Federal, State and local laws and regulations in the development and construction of the Project;
 - iv. Reviewing and administering all LIBRARY related change orders, provided that any change order that would require any change to approved plans and specifications or any work beyond the scope of the Project shall be submitted to the LIBRARY for its approval prior to execution. The LIBRARY will respond to CITY in writing within 5 days of receipt of change orders that are within the approved Project contingency, or LIBRARY waives its ability to approve the change order. Change orders that exceed the approved Project contingency may require LIBRARY Commission approval, in which case approval shall be placed on the next available Commission agenda for action. Change orders that exceed Project Contingency by an amount greater than \$150,000 will require Commission approval.
 - c. CITY will cooperate with LIBRARY in complying with the terms of the California State Library Targeted State Grant. Monthly reporting to the LIBRARY of Project status; and

- d. Project close out, including full final accounting.
2. Use of LIBRARY Funds. CITY will use funds provided by LIBRARY only for the purposes as set out in this Agreement and not for any other purpose whatsoever without obtaining LIBRARY's prior written approval.
3. Compliance with Laws. With regard to administering and completing the Project, CITY shall, and shall at all times comply with all applicable laws of the United States, the State of California, and the County, and with all applicable regulations promulgated by federal, state, regional, or local administrative and regulatory agencies, now in force and as they may be enacted, issued, or amended during the term of this Agreement, including but not limited to all environmental review and analysis required under the California Environmental Quality Act and compliance with all applicable prevailing wage requirements under the California Labor Code.
4. Records. CITY shall maintain adequate documentation to substantiate all expenditures related to the Project. CITY shall provide all documentation to the LIBRARY to fulfill the conditions of the Targeted State Grants and at all times allow LIBRARY to audit all expenditures relating to the Project, whether those expenditures are funded through this Agreement or through Federal or State grants or otherwise. For the duration of the Project, and for five (5) years following completion of the Project, or earlier discharge of the Agreement, CITY shall promptly make available to LIBRARY, upon LIBRARY's request, all records relating to expenditures relating to the Project, including but not limited to expenses incurred in performance of this Agreement.
5. Periodic Reports. CITY will include LIBRARY in all Project construction meetings and will provide LIBRARY with monthly Project progress reports. Project progress reports shall include a statement of construction progress, a listing of all requested change orders, identification of any unanticipated site conditions, identification of any experienced or anticipated Project delays, and a cost accounting to date.
6. Close-Out. Upon completion of the Project, CITY shall submit all receipts to LIBRARY for final review, if requested. All unused Sonoma County Library Foundation donated funds shall promptly be returned to LIBRARY.

Obligation of LIBRARY:

LIBRARY agrees to provide the CITY the following amounts for actual, documented expenses and costs incurred by LIBRARY in completing the Project:

1. Transfer and Appropriation of Funds.
 - a. Upon receipt of documentation from CITY showing at least ONE MILLION DOLLARS (\$1,000,000) in CITY expenditures for Project preconstruction costs, LIBRARY will, pursuant to the terms of the COUNTY MOU, request reimbursement from Library CSL Grant funds totaling ONE MILLION DOLLARS (\$1,000,000). CITY understands and agrees that reimbursement is subject to all terms and conditions of the Library CSL Grant and the COUNTY MOU.
 - b. Based upon the funding plan in Exhibit B, LIBRARY agrees to transfer to CITY Foundation Funds totaling FOUR MILLION, FIVE HUNDRED THOUSAND DOLLARS (\$4,500,000) to assist with development and construction of the Project. CITY shall account for these funds such that the funds shall be used solely for the purpose of completing the Roseland Library.

- c. Based upon the funding plan in Exhibit B, LIBRARY agrees to transfer FIVE MILLION FOUR HUNDRED FIFTY-FOUR THOUSAND DOLLARS (\$5,454,000) to CITY to assist with development and construction of the Roseland Library. In the event LIBRARY is unable to secure the entire amount, CITY agrees to negotiate with the LIBRARY on a mutually acceptable amount of square footage based on the funding available to LIBRARY according to provisions set forth in the RFP dated June 12, 2024. Any change in LIBRARY's contribution under this subsection will be memorialized in an amendment to this Agreement.
 - d. This Agreement does not obligate LIBRARY to provide additional funding to cover any cost overruns or funding shortfalls. The parties may agree in a written amendment to this Agreement to provide additional funding. At key milestone points during the Project, LIBRARY and the CITY will meet to reassess scope and budget. Parties agree that scope may need to be adjusted to meet available budget and anticipated costs.
2. Notice of Audit. LIBRARY shall provide timely notice to CITY if an audit is to be conducted.

Obligations of both Parties:

A. Term of Agreement:

This Agreement begins on the Effective Date and expires on December 31, 2029, unless extended or otherwise terminated by mutual written agreement of the Parties. Upon termination, LIBRARY Funds that have not been expended or irrevocably committed to the Project shall be promptly returned to LIBRARY.

B. Termination:

This agreement may only be terminated for cause, defined as a material breach by either party which has not been cured within 90 days of delivery by either party of a notice describing the material breach. Upon a notice of termination, the parties agree to meet to determine which funds have been already committed to be spent and which funds can be returned to LIBRARY. Construction claims and change orders resulting from termination would be shared between the LIBRARY and CITY in proportion to the parties share of the Project budget. Upon termination, LIBRARY Funds that have not been expended shall be promptly returned to LIBRARY.

C. Modifications:

No modification of this Agreement shall be effective unless and until such modification is evidenced by a written document signed by the Parties.

D. Indemnity/Liability:

1. LIBRARY shall, to the fullest extent permitted by law, indemnify, protect, defend and hold harmless CITY, and its employees, officials and agents (“Indemnified Parties”) from all claims, demands, costs or liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, interest, defense costs, and expert witness fees), that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of LIBRARY, its officers, employees, volunteers or agents, in said performance of services

under this Agreement, excepting only liability arising from the sole negligence, active negligence or intentional misconduct of CITY. If there is a possible obligation to indemnify, LIBRARY's duty to defend exists regardless of whether it is ultimately determined that there is no obligation to indemnify.

2. CITY shall, to the fullest extent permitted by law, indemnify, protect, defend and hold harmless LIBRARY, and its employees, officials and agents ("Indemnified Parties") from all claims, demands, costs or liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, interest, defense costs, and expert witness fees), that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of CITY, its officers, employees, volunteers or agents, in said performance of services under this Agreement, excepting only liability arising from the sole negligence, active negligence or intentional misconduct of LIBRARY. If there is a possible obligation to indemnify, CITY's duty to defend exists regardless of whether it is ultimately determined that there is no obligation to indemnify.

E. Insurance:

CITY shall ensure that all consultants and contractors performing work on the Project obtain, keep in force and maintain insurance for builders risk, general liability, workers' compensation and business automobile liability, and professional liability (as appropriate) adequate to cover their potential liabilities hereunder. CITY agrees that insurance provided by contractors will name LIBRARY as an additional insured on the builders risk, general liability, and business automobile liability policies, which shall provide that insurance maintained by LIBRARY shall be in excess of the contractor's insurance and shall not contribute with it. If compliance with this additional insured requirement incurs an additional cost LIBRARY agrees to pay this cost or waive this additional insured requirement.

F. Notice:

Except as otherwise specifically provided in this Agreement, any notice, submittal or communication required or permitted to be served on a party hereto, may be served by personal delivery to the person or the office of the person identified below. Service may also be made by mail, by placing first-class postage affixed thereto, and addressed as indicated below, and depositing said envelope in the United States mail to:

CITY:
Transportation & Public Works
Department
69 Stony Point Road
Santa Rosa, California 95404

LIBRARY:
Sonoma County Library
6135 State Farm Drive
Rohnert Park, CA 94928

G. Compliance with Laws:

LIBRARY and CITY shall carry out their responsibilities pursuant to this Agreement in accordance with all applicable Federal, State and Local laws and all policies, procedures, regulations and requirements as the federal government, State, and CITY from time to time prescribe.

H. Counterparts and Electronic Signatures:

This Agreement and future documents relating thereto may be executed in two or more counterparts, each of which will be deemed an original and all of which together constitute one Agreement. Counterparts and/or signatures delivered by facsimile, pdf or City-approved electronic means have the same force and effect as the use of a manual signature. Both CITY and LIBRARY wish to permit this Agreement and future documents relating thereto to be electronically signed in accordance with applicable federal and California law. Either party to this Agreement may revoke its permission to use electronic signatures at any time for future documents by providing notice pursuant to the Agreement. The Parties agree that electronic signatures, by their respective signatories are intended to authenticate such signatures and to give rise to a valid, enforceable, and fully effective Agreement. The CITY reserves the right to reject any signature that cannot be positively verified by the CITY as an authentic electronic signature.

I. Additional Acts and Documents:

Each party agrees to do all such things and take all such actions, and to make, execute and deliver such other documents and instruments, as shall be reasonably requested to carry out the provisions, intent and purpose of the Agreement.

J. Integration:

This Agreement represents the entire agreement of the parties with respect to the subject matter hereof. No representations, warranties, inducements or oral agreements have been made by any of the parties except as expressly set forth herein, or in other contemporaneous written agreements.

K. Independent Agency.

LIBRARY and CITY render their obligations under this Agreement as independent agencies. None of the agents or employees of either Party shall be agents or employees of the other.

L. Standard of Performance.

Both Parties shall perform all services to be performed under this Agreement in the manner and according to the professional standards currently expected of a competent and experienced public agency. Both parties shall assign only competent personnel to perform services under this Agreement. In the event that either party, at any time, desires the removal of any person assigned by the other party to perform services under this Agreement, the parties shall meet and confer to explore options for alternative performance of those services.

M. Assignment.

The Agreement may not be assigned, transferred, hypothecated, or pledged by any party without the express written consent of the other party.

N. Successors.

This Agreement shall be binding upon the successor(s), assignee(s) or transferee(s) of the CITY or LIBRARY as the case may be. This provision shall not be construed as an authorization to assign, transfer, hypothecate or pledge this Agreement other than as provided above.

O. Interpretation.

The Parties acknowledge that this Agreement has been negotiated by both Parties and their legal counsel and agree that this Agreement shall be interpreted as if drafted by both Parties.

P. Severability.

Should any part of this Agreement be determined to be unenforceable, invalid, or beyond the authority of either party to enter into or carry out, such determination shall not affect the validity of the remainder of this Agreement which shall continue in full force and effect; provided that, the remainder of this Agreement can, absent the excised portion, be reasonably interpreted to give effect to the intentions of the parties.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Effective Date.

CITY OF SANTA ROSA
a Municipal Corporation

SONOMA COUNTY LIBRARY DISTRICT
a joint powers authority

By: _____

By: _____

Print Name: _____

Print Name: _____

Title: _____

Title: _____

APPROVED AS TO FORM:

APPROVED AS TO FORM:

Office of the City Attorney

General Counsel

Exhibit A – Project Plan
Exhibit B – Financing Plan

Exhibit A

Project Plan

The following describes the Plan for Development and Construction of the Hearn Community Hub Project, consisting of the future Fire Station 8, Roseland Library and 6 acres of site development.

The CITY retained the following consultants to provide planning, development, and construction for the Project.

- i. RossDrulisCusenbery
- ii. Kitchell
- iii. Group 4
- iv. GHD

Project Plan consists of:

- i. Project Planning
 - Community Outreach events
 - Site investigations
 - Conceptual design development (Criteria Documents)
 - Integrated Design Workshops
 - Conceptual estimates
 - Environmental assessments – Noise Analysis, Plant studies
 - Stakeholder budget coordination
 - Constructability reviews
 - Develop all applicable CEQA documentation
- ii. Procurement
 - Developed and Issued procurement documents – Request for Qualifications (RFQ) and Request for Proposals (RFP)
 - Retained demolition & abatement contractor and removed existing structures on site.
 - Selection Committee evaluation of Proposals
 - Prepare and process staff reports
 - Support City Council meeting and award of Design-Build Contract
- iii. Design
 - Owner, Architect, Contractor (OAC) and Stakeholder Design-Coordination meetings
 - Constructability Review
- iv. Permit
 - Support DBEs with permitting process
 - Acquire all applicable Agency approvals and environmental permits
 - Acquire all applicable permits necessary for Design and Construction of the Project
- v. Construction
 - Construction management, Inspection coordination & construction oversight.
 - Weekly Owner, Architect, Contractor (OAC) meetings/Construction-Coordination meetings.
- vi. Closeout & Turnover
 - Commissioning, Closeout documentation, Certificate of occupancy, and Building turnover.

Exhibit B

Financing Plan

LIBRARY funds shall be disbursed as provided by Section 1 of the "Library Obligations" portion of this Agreement. In addition, funds disbursed pursuant to Sections 1.b., 1.c., and 1.d. of the "Library Obligations" portion of this Agreement shall be disbursed as follows, subject to the other requirements of this Agreement: All funds shall be transferred via electronic fund transfer, check or other mutually agreed upon method.

1. Forty Percent (40%) of the total amount of the funds described in Sections 1.b., 1.c., and 1.d. of the "Library Obligations" portion of this Agreement to be transferred to CITY upon full execution of a design-build contract with the awarded Design-Build Entity.
2. Thirty Percent (30%) of the total amount of the funds described in Sections 1.b., 1.c., and 1.d. of the "Library Obligations" portion of this Agreement to be transferred to CITY upon issuance of the Notice to Proceed with construction of the Roseland Library.
3. Ten Percent (10%) of the total amount of the funds described in sections 1.b., 1.c., and 1.d. of the "Library Obligations" portions of this Agreement to be transferred to CITY upon execution of the Lease Agreement.
4. Twenty Percent (20%) of the total amount of the funds described in Sections 1.b., 1.c., and 1.d. of the "Library Obligations" portion of this Agreement to be transferred to CITY upon issuance by CITY of a Temporary Certificate of Occupancy for the Library's portion of the Project and compliance with item 3 above.