

CLERK'S COPY

to Riverside County Clerk of the Board, Stop 1010

Post Office Box 1147, Riverside, Ca 92502-1147

Thank you.

MEMORANDUM OF UNDERSTANDING AND FUNDING AGREEMENT
BY AND BETWEEN THE CITY OF CALIMESA AND THE COUNTY OF RIVERSIDE FOR
THE RIVERSIDE COUNTY CALIMESA BRANCH LIBRARY FACILITY PROJECT

THIS MEMORANDUM OF UNDERSTANDING AND FUNDING AGREEMENT (hereinafter referred to as "AGREEMENT") is entered into and made effective this 8th day of November, 2022, by and between the City of Calimesa, a California municipal corporation ("CITY") and the County of Riverside, a political subdivision of the State of California ("COUNTY") to establish the cooperative funding and support for the Riverside County Calimesa Branch Library Facility Project ("PROJECT").

WHEREAS, the COUNTY is the governing board of the Riverside County Library System (RCLS), which is a public library system with 36 locations in Riverside County and services an area over 7,000 square miles;

WHEREAS, on June 23, 2015, the COUNTY and CITY entered into a Lease Agreement, which permits the COUNTY to lease the building for the RCLS Calimesa Branch Library, located at 974 Calimesa Boulevard, Calimesa, CA 92320;

WHEREAS, the CITY and COUNTY have determined the existing modular RCLS Calimesa Branch Library is undersized and inadequate at approximately 2,400 square feet and should be replaced with a new modular library of approximately 5,500 square feet;

WHEREAS, the CITY is the owner of certain real property for the proposed new location for the new 5,500 square feet Riverside County Library System Calimesa Branch Library (PROJECT), identified as Assessor Parcel Number 411-080-019 and address 964 Calimesa Boulevard, Calimesa, CA 92320;

WHEREAS, on October 18, 2021, Agenda Item Number 13, the CITY conceptually approved the partnership with the COUNTY and allocation of certain funds to the PROJECT;

WHEREAS, on March 1, 2022, Item 3.25, the Riverside County Board of Supervisors approved the PROJECT In-Principle and authorized the COUNTY to proceed with

the PROJECT and participation with the CITY; and

NOW, THEREFORE, based upon the covenants, conditions, provisions, and mutual promises contained herein, the parties agree as follows:

SECTION 1: COUNTY SHALL:

1. Administer and manage the PROJECT including the budget, schedule, and scope (development, design, bidding, construction and completion) of the new library PROJECT, through one year after the notice of completion is accepted by the Riverside County Board of Supervisors;
 - a. Riverside County Office of Economic Development administrative costs related to meetings and project management shall be born by the COUNTY without PROJECT reimbursement.
 - b. The PROJECT shall reimburse COUNTY for expenses by other Riverside County departments and outside vendors. Allowable expenses include, but are not limited to, environmental review, environmental surveys, counsel review, auditor controller review, reprographics costs, advertising costs, groundbreaking, and grand opening ceremony costs.
 - c. Any fees and expenses not specifically covered shall be resolved per Section 5: Disputes.
2. Will seek to design the PROJECT per the CITY'S Downtown Commercial Architectural Design Guidelines, contingent upon not exceeding the approved PROJECT budget; if budget becomes an issue, County and City shall jointly resolve the issue.
3. Will process and pay for all code compliance reviews and requirements through the CITY for the PROJECT;
4. Contribute a maximum of Two Million, Five Hundred Eighty-Five Thousand, Eight Hundred Fifty-Four Dollars (\$2,585,854.00) towards the PROJECT, further broken down as follows:
 - a. County Development Impact Fees Fund 30545-\$2,500,000.00

- b. Riverside County Library System Fund 21200-\$85,854.00
- 5. Accept a contribution of One Million Four Hundred Fourteen Thousand One Hundred Forty-Six Dollars (\$1,414,146.00) from the CITY, for the sole purpose of offsetting PROJECT costs;
- 6. Amend the existing Lease Agreement entered into on June 23, 2015 and Amended on June 30, 2020 (Item 3.12), to vacate the existing RCLS Calimesa Branch Library located at 974 Calimesa Blvd, Calimesa, CA 92320, and establish new services at the proposed location at 964 Calimesa Boulevard, Calimesa, CA 92320. All other terms of Lease Agreement shall remain substantially unchanged.

SECTION 2: CITY SHALL

- 1. Contribute and Transfer to the COUNTY a maximum of One Million Four Hundred Fourteen Thousand One Hundred Forty-Six Dollars (\$1,414,146.00) towards the PROJECT, further broken down as follows:
 - a. City of Calimesa Library Facilities Development Impact Fees Fund-\$1,110,000.00
 - b. City of Calimesa Library Operations Fund-\$226,285.00
 - c. City of Calimesa Donations/Deposits-\$77,861.00
- 2. Payments by CITY shall be paid to COUNTY in accordance with the following schedule:
 - a. CITY shall pay fifteen percent (15%) of the CITY'S contribution within thirty (30) days' notice of the COUNTY'S award of a Design-Build Contract.
 - b. CITY shall pay fifty percent (50%) of the CITY'S contribution within thirty (30) days' notice of the COUNTY'S acceptance and award of a Design-Build Guaranteed Maximum Price (GMP) Contract, which award authorizes the Design-Build contractor to proceed with construction.
 - c. CITY shall pay thirty percent (30%) of the CITY'S contribution within thirty (30) days' notice of the start of onsite building erection/renovation or modular set-down permit completion (traditional construction/renovation or modular).
 - d. CITY shall pay five percent (5%) of the CITY'S contribution within thirty (30)

days' notice of the COUNTY'S acceptance of the PROJECT notice of completion, as approved by the County's Board of Supervisors.

3. Amend the existing Lease Agreement entered into on June 23, 2015 and Amended on June 30, 2020 (Item 3.12), to vacate the existing RCLS Calimesa Branch Library located at 974 Calimesa Blvd, Calimesa, CA 92320, and establish new services at the proposed location at 964 Calimesa Boulevard, Calimesa, CA 92320.
4. Allow the PROJECT to be developed and located upon CITY'S real property identified as Assessor Parcel Number 411-080-019, address of 964 Calimesa Boulevard, Calimesa, CA 92320; which may include improvements as needed to facilitate the PROJECT on Assessor Parcel Number 411-080-021 and address of 974 Calimesa Boulevard, Calimesa, CA 92320;
5. Provide all PROJECT compliance per California Building Code, Electrical Code, Plumbing Code, Fire Code, and other applicable onsite and offsite compliance review as needed to complete the PROJECT.
 - a. The PROJECT will reimburse CITY for plan check and inspection services as identified in Section 2.2.5.
 - b. CITY administrative costs, not specified for reimbursement, shall be borne by the CITY without PROJECT reimbursement.
 - c. Any conflicts or disagreements on these allowable fees and expenses shall be resolved per Section 5: Disputes.

SECTION 3: TERM

This AGREEMENT shall be effective upon signature of this AGREEMENT by both parties and continues in effect until one year after the CITY has reimbursed COUNTY the total contribution to PROJECT, totaling One Million Four Hundred Fourteen Dollars One Hundred Forty-Six (\$1,414,146.00) and the Riverside County Board of Supervisors has accepted the PROJECT as complete with a PROJECT Notice of Completion.

SECTION 4: AMENDMENTS

This AGREEMENT may be modified only by a subsequent written amendment executed by both parties.

SECTION 5: DISPUTES

In the event that any dispute between the parties arises under this AGREEMENT, the parties shall first attempt to resolve such dispute at the management level. If the dispute is not resolved at this level within a mutually acceptable period of time (not to exceed sixty (60) calendar days from the date written notice of such dispute is delivered by any party), the parties shall attempt to resolve the dispute at the senior management level. If this process and the involvement of senior management does not result in resolution of the dispute within sixty (60) days from the date of referral to upper management, then the dispute shall be referred to and finally resolved through legal proceedings. The use of the foregoing procedure is a condition precedent to the commencement of any legal proceedings hereunder.

SECTION 6: MUTUAL INDEMNIFICATION

CITY and COUNTY each hereby agree to indemnify, defend, save, and hold harmless the other and their respective Supervisors or Councilmembers/Mayor, officers, agents, and employees, of and from any liabilities, claims, demands, suits, actions and causes of action arising out of or in any manner connected with any act or omission of such indemnifying party performed in connection with this AGREEMENT.

SECTION 7: AUDITS/INSPECTION OF RECORDS

COUNTY and CITY shall make available, upon written request by the other or any duly authorized federal or state agency, a copy of this AGREEMENT and such books, documents, and records as are necessary to certify the nature and extent of the costs related to the PROJECT and the payments or the basis for the payments made by CITY to COUNTY as described herein. All such books, documents, and records shall be maintained for at least five (5) years following termination of this AGREEMENT.

SECTION 8: PUBLIC WORKS CONTRACT PROVISIONS – INSURANCE

COUNTY shall cause COUNTY’S contractor to maintain in force, until completion and acceptance of the construction contract for the PROJECT, the following insurance requirements. COUNTY shall submit to the CITY a Certificate of Insurance, signed by an authorized representative of COUNTY’S contractor’s insurance provider or agency, which certifies to the CITY that insurance coverage is provided in accordance with the requirements of this section.

Certificate holder information is as follows:

City of Calimesa

Attn: Darlene Gerdes, Deputy City Manager/City Clerk

908 Park Avenue

Calimesa, CA 92320

AND

County of Riverside

4080 Lemon St,

Riverside, CA 92501

COUNTY’S contractor shall not commence work under the construction contract until he has obtained the insurance required hereunder and satisfactory proof of said insurance has been submitted to and accepted by CITY.

A. Worker’s Compensation: COUNTY’S contractor shall maintain statutory Workers’ Compensation Insurance (Part 1) as prescribed by the laws of the State of California. Policy shall include Employers’ Liability (Part 2) including Occupational Disease with limits not less than \$2,000,000 per person per accident. The policy shall be endorsed to waive subrogation in favor of the COUNTY and CITY.

B. Commercial General Liability: Commercial General Liability insurance coverage, including but not limited to:

- i. Premises, operations, and mobile equipment liability
- ii. Products and complete operations liability

- iii. Broad form property damage (including completed operations)
- iv. Explosions, collapse, and underground hazards
- v. Personal and advertising injury
- vi. Unmodified contractual liability
- vii. Cross liability coverage
- viii. Covering claims which may arise from or out of COUNTY'S contractor's performance of its obligations Commercial General Liability insurance coverage amounts are not to be less than the following:

- a. \$2,000,000 each occurrence
- b. \$4,000,000 general aggregate
- c. \$2,000,000 products-complete operations aggregate

Whether excess liability insurance is used in connection with primary liability insurance, the combination of such coverage sum must allow total limits of liability to be in the amounts not less than the specified amounts.

This policy shall name the CITY and COUNTY, its agencies, special districts, and departments, their respective director, officers, Board of Supervisors, elected and appointed officials, employees, agents, and representatives as Additional Insureds.

C. Automobile Liability: COUNTY'S contractor shall maintain liability insurance for any auto, all owned, non-owned, and hired vehicles so used in an amount not less than \$1,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this AGREEMENT or be no less than two (2) times the occurrence limit. Policy shall name the CITY and COUNTY, its agencies, special districts, and departments, their respective director, officers, Board of Supervisors, elected and appointed officials, employees, agents, and representatives as Additional Insureds.

D. General Insurance Provisions – All lines:

- i. Any insurance carrier providing insurance coverage hereunder shall be admitted to the State of California and have an A M BEST rating of not less than A: VIII (A:8)

unless such requirements are waived, in writing, by the COUNTY Risk Manager. If the COUNTY'S Risk Manager waives a requirement for a particular insurer such waiver is only valid for that specific insurer and only for one policy term.

ii. COUNTY'S contractor must declare its insurance self-insured retention for each coverage required herein. If any such self-insured retention exceeds \$500,000 per occurrence each such retention shall have the prior written consent of the COUNTY Risk Manager before the commencement of operations under this AGREEMENT. Upon notification of self-insured retention unacceptable to the COUNTY, and at the election of the COUNTY'S Risk Manager, COUNTY'S contractor's carriers shall either: (1) reduce or eliminate such self-insured retention as respects this AGREEMENT with the COUNTY, or (2) procure a bond which guarantees payment of losses and related investigations, claims administration, and defense costs and expenses.

iii. COUNTY'S contractor shall cause COUNTY'S contractor's insurance carrier(s) to furnish the COUNTY and CITY with either (1) a properly executed original Certificate(s) of Insurance and certified original copies of Endorsements effecting coverage as required herein, and (2) if requested to do so orally or in writing by the COUNTY Risk Manager, provide original Certified copies of policies including all Endorsements and all attachments thereto, showing such insurance is in full force and effect. Further, said Certificate(s) and policies of insurance shall contain the covenant of the insurance carrier(s) that thirty (30) days written notice shall be given to the COUNTY prior to any material modification, cancellation, expiration or reduction in coverage of such insurance. In the event of a material modification, cancellation, expiration, or reduction in coverage, this AGREEMENT shall terminate forthwith, unless the COUNTY receives, prior to such effective date, another properly executed original Certificate of Insurance and original copies of endorsements or certified original policies, including all endorsements and attachments thereto evidencing coverage's set forth herein and the insurance required herein is in full force and effect. COUNTY'S contractor shall not commence operations until the COUNTY has been furnished original Certificate(s) of Insurance and certified original

copies of endorsements and if requested, certified original policies of insurance including all endorsements and any and all other attachments as required in this Section. An individual authorized by the insurance carrier shall sign the original endorsements for each policy and the Certificate of Insurance.

iv. It is understood and agreed to by the parties hereto that the COUNTY'S contractor's insurance shall be construed as primary insurance, and the COUNTY'S and CITY'S insurance and/or deductibles and/or self-insured retentions or self-insured programs shall not be construed as contributory.

v. COUNTY'S contractor shall pass down the insurance obligations contained herein to all tiers of subcontractors working under this AGREEMENT.

vi. The insurance requirements contained in this AGREEMENT may be met with a program(s) of self-insurance acceptable to the COUNTY.

vii. COUNTY'S contractor agrees to notify COUNTY of any claim by a third party or any incident or event that may give rise to a claim arising from the performance of this AGREEMENT. The specified insurance limits required in this AGREEMENT shall in no way limit or circumscribe COUNTY'S obligations to indemnify and hold harmless the Indemnitees herein from third party claims.

SECTION 9: AVAILABILITY OF FUNDS

The obligation(s) of funding is limited by and contingent upon the availability of funds for both the COUNTY'S and CITY's financial contribution towards PROJECT as set forth herein. In the event that such funds are not forthcoming for any reason, COUNTY or CITY shall immediately notify the other party in writing.

SECTION 10: PUBLIC WORKS CONTRACT PROVISIONS – INDEMNIFICATION

COUNTY shall cause COUNTY'S contractor to indemnify and hold harmless the COUNTY and CITY, its Agencies, Districts, Special Districts and Departments, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents and representatives (individually and collectively referred to as Indemnitees) from any liability

whatsoever, based or asserted upon any services of COUNTY'S contractor, its officers, employees, subcontractors, agents or representatives arising out of or in any way relating to the construction contract for the PROJECT, including but not limited to property damage, bodily injury, or death or any other element of any kind or nature whatsoever arising from the performance of COUNTY'S contractor, its officers, employees, subcontractors, agents or representatives from the construction contract for the PROJECT. COUNTY'S contractor shall defend, at its sole expense, all costs and fees including, but not limited to attorney fees, cost of investigation, defense and settlements or awards, the Indemnitees in any claim or action based upon such alleged acts or omissions. With respect to any action or claim subject to indemnification herein by COUNTY'S contractor, COUNTY'S contractor shall, at their sole cost, have the right to use counsel of their own choice and shall have the right to adjust, settle, or compromise any such action or claim without the prior consent of COUNTY; provided, however, that any such adjustment, settlement or compromise in no manner whatsoever limits or circumscribes COUNTY'S contractor indemnification to Indemnitees as set forth herein. COUNTY'S contractor's obligation hereunder shall be satisfied when COUNTY'S contractor has provided to COUNTY the form of dismissal relieving COUNTY from any liability for the action or claim involved. The specific insurance limits required above shall in no way limit or circumscribe COUNTY'S contractor's obligations to indemnify and hold harmless the Indemnitees herein from third party claims. In the event there is conflict between this clause and California Civil Code § 2782, this clause shall be interpreted to comply with Civil Code 2782. Such interpretation shall not relieve COUNTY'S contractor from indemnifying the Indemnitees to the fullest extent allowed by law.

SECTION 11: GOVERNING LAW AND JURISDICTION

The parties agree that in the exercise of this AGREEMENT, the parties shall comply with all applicable federal, state, county, and local laws and regulations. The existence, validity, construction, operation, and effect of this AGREEMENT and all of its terms and provisions shall be determined in accordance with the laws of the State of California. Any action at law or in equity

brought by any party hereto for the purpose of enforcing a right or rights provided for in this AGREEMENT shall be tried in a court of competent jurisdiction in the County of Riverside, State of California, and the parties hereby waive all provisions of law providing for a change of venue in such proceedings to any other county.

SECTION 12: TERMINATION

Time is of the essence in executing the work contemplated under this AGREEMENT. At any time during the term of this AGREEMENT, COUNTY or CITY may terminate this AGREEMENT for cause, including but not limited to COUNTY'S failure to execute the work in a timely manner, upon providing thirty (30) days written notice stating the extent and effective date of termination.

SECTION 13: ASSIGNMENT

Neither COUNTY nor CITY shall assign this AGREEMENT without the written consent of the other party.

SECTION 14: NO THIRD-PARTY BENEFICIARIES

This AGREEMENT is made and entered into for the sole protection and benefit of the parties hereto. No other person or entity shall have any right of action based upon the provisions of this AGREEMENT.

SECTION 15: AUTHORITY TO EXECUTE

The individuals executing this AGREEMENT each represent and warrant that they have the legal power, right, and actual authority to bind their respective parties to the terms and conditions of this AGREEMENT.

SECTION 16: AMBIGUITY

This AGREEMENT is the result of negotiations between the parties hereto and the advice and assistance of their respective counsel. The fact that this AGREEMENT was prepared as a matter of convenience by COUNTY shall have no importance or significance. Any uncertainty or ambiguity in this AGREEMENT shall not be construed against the party that prepared it in its final form.

SECTION 17: COUNTERPARTS

This AGREEMENT may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute but one and the same instrument. It shall not be necessary that any single counterpart hereof be executed by all parties hereto so long as at least one counterpart is executed by each party.

SECTION 18: RELATIONSHIP OF THE PARTIES

Nothing contained in this AGREEMENT shall be deemed or construed by the parties or by any third person to create the relationship of principal and agent, or partnership or joint venture, or any association between the COUNTY and CITY, and none of the provisions contained in this AGREEMENT or any act of the parties shall be deemed to create any relationship other than as specified herein, nor shall this AGREEMENT be construed, as expressly provided herein, to authorize any party to act as the agent for the other.

SECTION 19: WAIVER

Any waiver by COUNTY or CITY of any breach by the other party of any provision of this AGREEMENT shall not be construed to be a waiver of any subsequent or other breach of the same or any other provision hereof. Failure on the part of COUNTY or CITY to require from the other party exact, full and complete compliance with any of the provisions of this AGREEMENT shall not be construed as in any manner changing the terms hereof or stopping COUNTY or CITY from enforcing this AGREEMENT.

SECTION 20: SEVERABILITY

If any provision in this AGREEMENT is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

SECTION 21: ENTIRE AGREEMENT

This AGREEMENT is intended by the parties as a complete and exclusive statement of the terms of their agreement with regard to participation and funding of the PROJECT and supersedes all prior agreements, written or oral, as to this subject matter.

SECTION 22: NOTICES

Any notice required by this AGREEMENT to be given or delivered to any party shall be deemed to have been received when personally delivered or mailed in the United States mail addressed as follows:

CITY

City of Calimesa
Attn: Darlene Gerdes, Deputy City Manager/City Clerk
908 Park Avenue
Calimesa, CA 92320

AND

COUNTY

Riverside County Office of Economic Development
Attn: Erik Sydow, Principal Development Specialist
3403 10th Street, Suite 400
Riverside, CA 92501

SECTION 23: ELECTRONIC SIGNATURES

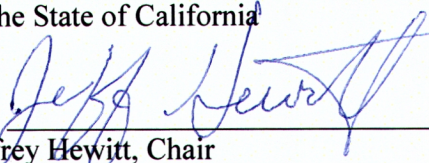
Each party to this AGREEMENT agrees to the use of electronic signatures, such as digital signatures that meet the requirements of the California Uniform Electronic Transactions Act (“CUETA”) Cal. Civ. Code §§ 1633.1 to 1633.17), for executing this AGREEMENT. The parties further agree that the electronic signatures of the parties included in this AGREEMENT are intended to authenticate this writing and to have the same force and effect as manual signatures. Electronic signature means an electronic sound, symbol, or process attached to or logically associated with an electronic record and executed or adopted by a person with the intent to sign the electronic record pursuant to the CUETA as amended from time to time. The CUETA authorizes use of an electronic signature for transactions and contracts among parties in California, including a government agency. Digital signature means an electronic identifier, created by computer, intended by the party using it to have the same force and effect as the use of a manual signature, and shall be reasonably relied upon by the parties. For purposes of this section, a digital signature is a type of "electronic signature" as defined in subdivision (i) of Section 1633.2 of the Civil Code.

(Remainder of Page Intentionally Left Blank; Signature Page Follows)

IN WITNESS WHEREOF, the parties hereto have caused this AGREEMENT to be executed as of the day and year first written above.

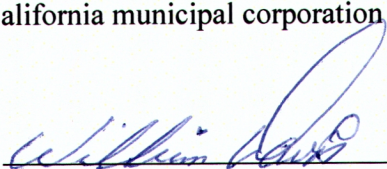
“COUNTY”

COUNTY OF RIVERSIDE
A political subdivision
of the State of California

By: 
Jeffrey Hewitt, Chair
Board of Supervisors

“CITY”:

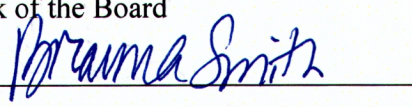
CITY OF CALIMESA
A California municipal corporation

By: 
William Davis, Mayor
Calimesa City Council

ATTEST:

KECIA R. HARPER

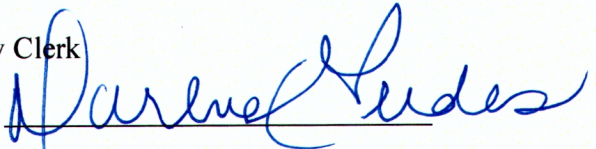
Clerk of the Board

By: 
Deputy

ATTEST:

DARLENE GERDES


City Clerk

By: 
City Clerk

(SEAL)

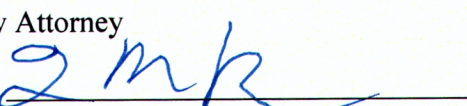
APPROVED AS TO FORM:

County Counsel

By: 
Kristine Bell-Valdez
Deputy County Counsel

APPROVED AS TO FORM:

City Attorney

By: 
Quinn Barrow
City Attorney