

**AGREEMENT BETWEEN THE CITY OF COSTA MESA AND
FRIENDS OF THE COSTA MESA LIBRARIES FOR LOCATION
OF TEMPORARY BUILDING AT MESA VERDE LIBRARY**

THIS AGREEMENT is made and entered into this _____ day of _____, 2006 (“Effective Date”), by and between the CITY OF COSTA MESA, a municipal corporation (“City”), and FRIENDS OF THE COSTA MESA LIBRARIES, a public nonprofit corporation (“Friends”).

WHEREAS, the Newport-Mesa Unified School District is the owner of a temporary building (the “Building”) presently located at the Ensign Intermediate School; and

WHEREAS, the Newport-Mesa Unified School no longer has need for the Building and is leasing it to the Friends; and

WHEREAS, City is the owner of that certain real property located in the City of Costa Mesa, County of Orange, State of California commonly known and described as 2969 Mesa Verde Drive East and more particularly described as Lot 170 of Tract No. 3487, M.M. / Book 122, pages 6 – 16 (the “Premises”); and

WHEREAS, the Friends desire to relocate the Building to the Premises for its use thereby at the Mesa Verde Library; and

WHEREAS, City is willing to accommodate the relocation of the Building onto the Premises in accordance with this Agreement, Minor Conditional Use Permit ZA05025, City Council action of July 5, 2005 and August 2, 2005 respecting relocation and placement of the Building.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions contained herein, the parties hereby agree as follows:

1. Entire Agreement; Modifications in Writing: This Agreement constitutes the entire understanding and agreement of the parties with respect to the subject matter set forth herein and supersedes any and all previous negotiations, discussions and agreements between the parties with respect to the subject matter hereof. Each party to this Agreement acknowledges that no party, or anyone acting on behalf of any party, orally or otherwise, has made any representations, inducements, promises or agreements that are not embodied herein. This Agreement may be terminated or modified only by a written agreement executed by the parties hereto, or by their respective successors in interest.

2. Delegation and Assignment. The duties set forth herein shall not be delegated or

assigned to any person or entity without the prior written consent of City. Friends may engage a subcontractor(s) as permitted by law and may employ other personnel to perform the relocation and other services contemplated by this Agreement at Friends' sole cost and expense.

3. Term. This Agreement shall commence on the Effective Date and continue until June 23, 2010, upon expiration of the minor conditional use permit issued to Friends, unless previously terminated as provided herein or as otherwise agreed to in writing by the parties.

4. Relocation. The Friends will be fully and completely responsible for relocating the temporary building from its current location at Ensign Intermediate School to the space it will occupy on the Premises at Mesa Verde Library, including hiring personnel to perform such relocation and obtaining any required permits. All work shall be done in a neat and workmanlike manner.

5. Removal. At the end of the five-year period of occupation, the Building will be removed. The Friends will be responsible for relocating or disposing of the Building at its sole cost and expense.

6. Maintenance: The Friends agree to maintain the interior and exterior of the Building and any appurtenances thereto in a condition acceptable to the City, and to repair any defects or deficiencies as they occur. Any condition that may present a safety hazard to the public shall be repaired immediately upon awareness of the deficiency or within three (3) working days from notification by the City.

7. Return to Original Condition. In the event City exercises its option to have the Building removed from the Premises, it shall be Friends' responsibility to return the Premises to its original condition, including removal of any foundations, utility hook ups and any appurtenances thereto, to City's satisfaction.

8. Notice of Termination. The City reserves and has the right and privilege of canceling, suspending or abandoning the execution of all or any part of this Agreement, with reasonable cause, at any time, by providing written notice to Friends. The termination of this Agreement shall be deemed effective upon receipt of the notice of termination. In the event of such termination, Friends shall remove the Building from the Premises within sixty (60) days of receipt of notification.

9. Indemnity: The Friends hereby agrees to defend, indemnify and hold harmless the City and its elected and appointed boards, officers, agents and employees from and against any and all claims, suits or liabilities and losses of any nature whatsoever including but not limited to reasonable attorney fees and costs, for damage to the Premises and the improvements thereon or to persons, including death, which arise out of or are related to the relocation, connection, use, operation, repair, replacement, maintenance or disposal of the Building.

10. Non-limiting: Nothing in this Section shall be construed as limiting in any way, the indemnification provision contained in this Agreement, or the extent to which Friends may be held responsible for payments of damages to persons or property.

11. Waiver: Friends hereby waives any claim against the City for any damages to the Building or its contents regardless of cause, excepting only those damages caused by the sole negligence of City.

12. Friends' Insurance:

12.1. Minimum Scope and Limits of Insurance. Friends shall obtain and maintain during the life of this Agreement all of the following insurance coverages:

- (a) Comprehensive general liability, including premises-operations, products/completed operations, broad form property damage, blanket contractual liability, independent contractors, personal injury with a policy limit of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence and aggregate.
- (b) Automobile liability for owned vehicles, hired, and non-owned vehicles, with a policy limit of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence and aggregate.
- (c) Workers' compensation insurance as required by the State of California.
- (d) All risk insurance policies for the full replacement value of the: [i] Premises and [ii] Friends' property in and all other contents of the Premises (collectively "Friends' Property"). The City shall maintain the all risk insurance policy with respect to the Premises and the Friends shall maintain the all risk policy with respect to the Friends' Property. Each policy shall be without deduction for depreciation and standard fire insurance and extended coverage including vandalism and malicious mischief.

12.2. Endorsements. The comprehensive general liability insurance policy shall contain or be endorsed to contain the following provisions:

- (a) Additional insureds: "The City of Costa Mesa and its elected and appointed boards, officers, agents, and employees are additional insureds with respect to this subject project and contract with City."
- (b) Notice: "Said policy shall not terminate, nor shall it be cancelled, nor the coverage reduced, until thirty (30) days after written notice is given to City."
- (c) Other insurance: "Any other insurance maintained by the City of Costa Mesa shall be excess and not contributing with the insurance provided by this policy."

12.3. Certificates of Insurance: Friends shall provide to City certificates of insurance showing the insurance coverages and required endorsements described above, in a form and content approved by City, prior to performing any services under this Agreement.

13. Contractor's Insurance. Any contractor or subcontractor who is engaged in the relocation, construction, prosecution, completion or repair of the Building or Premises pursuant to this Agreement shall obtain and maintain during the life of this Agreement all of the above insurance requirements except for 12.1(e).

14. Notices: Any notices, documents, correspondence or other communications concerning this Agreement or the work hereunder may be provided by personal delivery, facsimile or mail and shall be addressed as set forth below. Such communication shall be deemed served or delivered: a) at the time of delivery if such communication is sent by personal delivery; b) at the time of transmission if such communication is sent by facsimile; and c) 48 hours after deposit in the U.S. Mail as reflected by the official U.S. postmark if such communication is sent through regular United States mail.

IF TO FRIENDS:

Friends of the Costa Mesa Library
2969 Mesa Verde Drive East
Costa Mesa, CA 92626
Tel: 714-438-0517

Attn: Mary Ellen Goddard

IF TO CITY:

City of Costa Mesa
77 Fair Drive
Costa Mesa, CA 92626
Tel: 714-754-5667
Fax: 714-754-5330

Attn: Ann Shultz

15. Attorneys' Fees: In the event that litigation is brought by any party in connection with this Agreement, the prevailing party shall be entitled to recover from the opposing party all costs and expenses, including reasonable attorneys' fees, incurred by the prevailing party in the exercise of any of its rights or remedies hereunder or the enforcement of any of the terms, conditions, or provisions hereof.

16. Governing Law: This Agreement shall be governed by and construed under the laws of the State of California without giving effect to that body of laws pertaining to conflict of laws. In the event of any legal action to enforce or interpret this Agreement, the parties hereto agree that the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California.

17. Prevailing Wage: Friends and any contractor, subcontractor or any other person or entity involved with the relocation of the temporary building shall comply in all respects with Title 40 U.S.C. Section 276a, also known as "The Davis-Bacon Act," where Federal government funds are involved, and Friends shall also comply in all respects with California Labor Code, Sections 1770 et seq., including the keeping of all records required by the provisions of Labor Code Section 1776.

Any contractor hired by Friends, who is engaged in the relocation, construction, prosecution, completion or repair of the Building, shall furnish each week to City a statement with respect to the wages of each of its employees during the preceding weekly payroll period.

18. Severability: If any provision of this Agreement is determined by a court of competent jurisdiction to be unenforceable in any circumstance, such determination shall not affect the validity or enforceability of the remaining terms and provisions hereof or of the offending provision in any other circumstance. Notwithstanding the foregoing, if the value of this Agreement, based upon the substantial benefit of the bargain for any party is materially impaired, which determination as made by the presiding court or arbitrator of competent jurisdiction shall be binding, then both parties agree to substitute such provision(s) through good faith negotiations.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by and through their respective authorized officers, as of the date first above written.

CITY OF COSTA MESA,
A municipal corporation

City Manager

Date: _____

FRIENDS OF THE COSTA MESA LIBRARIES

Signature

Date: _____

Name

President
Friends of the Costa Mesa Libraries