



CITY COUNCIL AGENDA REPORT

MEETING DATE: AUGUST 7, 2012

ITEM NUMBER:

SUBJECT: FUNDING AGREEMENT BETWEEN THE COUNTY OF ORANGE AND THE CITY OF COSTA MESA FOR DONALD DUNGAN LIBRARY BEAM REPLACEMENT PROJECT

DATE: JULY 26, 2012

FROM: PUBLIC SERVICES DEPARTMENT/ENGINEERING DIVISION

PRESENTATION BY: ERNESTO MUNOZ, PUBLIC SERVICES DIRECTOR

**FOR FURTHER INFORMATION CONTACT: FARIBA FAZELI, INTERIM CITY ENGINEER
(714)754-5335**

RECOMMENDATION:

1. Approve the Funding Agreement between the County of Orange and the City of Costa Mesa for Donald Dungan Library Beam Replacement Project (Attachment 1).
2. Authorize the Mayor and the City Clerk to execute the Agreement.

BACKGROUND:

The Costa Mesa Donald Dungan Library located at 1855 Park Avenue was constructed in 1986. Although the City owns the building, the maintenance and operation of the library is the responsibility of the County of Orange (County). The County has initiated a retrofit project to replace the deteriorated exposed beams in the roof of the building.

The County requested the City to contribute a portion of the cost to perform the needed roof repairs, and the City Council authorized the contribution through the adoption of the 2012-2013 Fiscal Year Budget.

ANALYSIS:

The Donald Dungan Library features a circular floor plan and inclined roof structure that spans the library floor. The roof framing consists of radially arrayed Wood Glu-Laminated roof beams that span between a high, central steel compression ring, and low, perimeter concrete tension ring. There are a total of twelve main radial beams, six of which are partially exposed to the exterior of the building. Long term weather exposure has resulted in structural rot deterioration at the low ends of several of the exposed beams. The project will replace the deteriorated roof beams with new Wood Glu-Laminated beams. The total construction is estimated to cost \$270,000.

Due to lack of adequate funding by the County, the project has not been advertised for construction. Upon the City Council's approval of the attached funding agreement, the County will proceed with the bidding and construction phase of this project.

ALTERNATIVES CONSIDERED:

Council may elect to not approve the Agreement. However, this alternative will result in delaying the needed repairs at the Donald Dungan Library. Due to safety issues, the library may need to be closed until the County has sufficient funding to proceed with this project.

FISCAL REVIEW:

The total construction cost for the roof rehabilitation of the Donald Dungan Library is estimated at \$270,000. In FY 2012-13, the City Council allocated \$100,000 from Capital Improvement Funds towards this project. The remaining balance of \$170,000 will be entirely funded by the County.

LEGAL REVIEW:

The City Attorney has reviewed and approved the Funding Agreement as to form.

CONCLUSION:

The deteriorated exposed beams in the roof of the Donald Dungan Library are in need of replacement. The attached Funding Agreement will commit the City to contribute \$100,000 to the County towards this project. Staff recommends that the City Council authorize the Mayor and the City Clerk to execute the Funding Agreement.



ERNESTO MUNOZ
Public Services Director



FARIBA FAZELI
Interim City Engineer

ATTACHMENT: 1 – Funding Agreement

DISTRIBUTION: Chief Executive Officer
 Assistant Chief Executive Officer
 City Clerk
 City Attorney
 Staff
 File

**AGREEMENT BETWEEN
CITY OF COSTA MESA
AND
COUNTY OF ORANGE
FOR THE BEAM REPLACEMENT PROJECT
AT
COSTA MESA DONALD DUNGAN BRANCH LIBRARY**

This AGREEMENT FOR THE BEAM REPLACEMENT PROJECT AT COSTA MESA DONALD DUNGAN BRANCH LIBRARY (“**Agreement**”) is made and entered into as of the _____ day of _____, 2012, by and between the COUNTY OF ORANGE, a political subdivision of the State of California (“**COUNTY**”) and the CITY OF COSTA MESA, a California municipal corporation (“**CITY**”). COUNTY and CITY are referred to herein individually as a “**Party**” and collectively as the “**Parties.**”

RECITALS

A. COUNTY identified the need to replace major roof beams at the Costa Mesa Donald Dungan Branch Library, a COUNTY library operating out of a CITY-owned building maintained by the COUNTY, located at 1855 Park Avenue in the City of Costa Mesa, at an estimated cost of \$270,000.

B. On April 17, 2012, the Orange County Board of Supervisors approved the plans and specifications and authorized staff to advertise for bids.

C. Due to the County’s tight financial situation, the CITY has committed a \$100,000 contribution to the COUNTY for the Beam Replacement Project (“**Project**”) at Costa Mesa Donald Dungan Branch Library.

D. Upon commencement of this Agreement, COUNTY shall advertise for bids and proceed with the Project in accordance with the COUNTY’s Contract Policy Manual.

E. CITY and COUNTY desire to enter into this Agreement to set forth the obligations and responsibilities of the Parties with respect to the financing of the Project.

AGREEMENT

Based upon the foregoing Recitals, which are incorporated herein by this reference, and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, CITY and COUNTY agree as follows:

1. **TERM.**

The term of this Agreement shall commence on the date of execution by COUNTY and CITY, which date shall be inserted in the preamble to this Agreement, and shall terminate upon COUNTY’s receipt of payment from CITY as set forth in Section 2 of this Agreement, below.

2. CITY RESPONSIBILITIES.

CITY shall make payment to COUNTY within 30 days of receiving an invoice from COUNTY upon completion of the Project.

3. COUNTY RESPONSIBILITIES.

3.1 COUNTY shall submit an invoice to CITY in an amount not to exceed \$100,000 upon completion of the Project.

3.2 COUNTY shall not utilize the CITY's contribution to offset Project costs related to contingencies and/or change orders.

3.3 COUNTY agrees, at the request of CITY, to make available to a representative of the CITY for examination of its data, financial records and related project reports maintained for the Project within ten (10) business days of the written request. COUNTY shall retain such financial and project records for at least three (3) years from the date of payment.

4. IT IS MUTALLY AGREED THAT:

4.1 The obligations and participation of CITY under this Agreement shall be limited solely to the issuance of funds to COUNTY in accordance with the terms of this Agreement.

4.2 Status of County as Independent Contractor. COUNTY is, and shall at all times be deemed to be, an independent contractor. Nothing herein contained shall be construed as creating the relationship of employer and employee, or principal and agent, between CITY and COUNTY or any of COUNTY's agents or employees. COUNTY shall retain all authority for rendition of services, standards or performance, control of personnel, and other matters incident to the performance of services by COUNTY pursuant to this Agreement. COUNTY, its agents and employees shall not be considered to be CITY employees.

4.3 Insurance. Each Party agrees that the insurance held by the other, whether commercial or self-insurance, is sufficient for the purposes of this Agreement.

4.4 Indemnification. COUNTY shall defend, indemnify and save harmless CITY, its officers, agents, and employees, from and against any and all claims, demands, losses, or liabilities of any kind or nature which CITY, its officers, agents, and employees may sustain or incur or which may be imposed upon them for injury to or death of persons, or damage to property as a result of, or arising out of this Agreement.

4.5 Defaults and Remedies.

4.5.1 Default. The failure by either Party to perform any of its obligations set forth in this Agreement shall constitute a default of this Agreement. Except as required to protect against further damages, the nondefaulting Party may not institute legal proceedings against the party in default until the nondefaulting Party has provided the defaulting Party notice of the default and the cure period set forth in this Agreement has expired, or if no other specific

time period is set forth in this Agreement, the follow applicable cure period has expired: (i) the cure period for any monetary default shall be fifteen (15) days after the defaulting Party's receipt of written notice from the nondefaulting Party that such obligation was not performed; and (ii) the cure period for any other default shall be thirty (30) days after the defaulting Party's receipt of written notice from the nondefaulting Party that such obligation was not performed; provided, however if the failure cannot be corrected within such thirty (30) day period, it shall not constitute a default if the failure is correctable without material adverse effect on the nondefaulting Party, and if corrective action is instituted within fifteen (15) days of notice and diligently pursued until the failure is corrected.

4.5.2 Remedies Upon Default. Upon the occurrence of any default and after the defaulting Party has received written notice of default and the time period to cure the default has expired, the nondefaulting Party may at its option, (i) pursue damages or specific performance or any other legal and equitable remedies the injured Party may have against the defaulting Party in accordance with applicable law; and/or (ii) terminate this Agreement.

4.6 Assignment. Neither Party shall assign this Agreement or any interest in it or any money due or is to become due under it voluntarily without the non-assigning Party's prior written consent. In the event of any such purported assignment by a Party without the other Party's prior written consent, the non-assigning Party shall have the right, in addition to all other rights provided by law, to terminate this Agreement by giving written notice to the assigning Party.

4.7 Compliance with Laws. Each Party shall perform its obligations under this Agreement in conformity with all applicable laws, regulations and rules of any governmental agency having jurisdiction, and shall direct any contractors or subcontractors retained by such Party to not engage in discrimination in employment of persons because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex of such persons, or any other protected class.

4.8 Labor Code Compliance. All improvements or modifications required to be performed under this Agreement by either Party costing more than \$1,000 shall be governed by and performed in accordance with the applicable provisions of Article 2 of Chapter 1, Part 7, Division 2 of the Labor Code of the State of California (Sections 1770, et seq.).

Pursuant to the provisions of Section 1773 of the Labor Code of the State of California, the Party performing the improvements ("Performing Party") shall comply with the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in the locality applicable to this Lease for each craft, classification, or type of workman needed to execute the aforesaid improvements or modifications. The rates are available from the Director of the State Department of Industrial Relations at the following website: <http://www.dir.ca.gov/dlsr/DPreWageDetermination.htm>. The Performing Party shall post a

copy of such wage rates at the job site and shall pay the adopted prevailing wage rates. The Performing Party shall comply with the provisions of Sections 1775 and 1813 of the Labor Code.

As required by applicable law, the Performing Party shall maintain certified payroll records for all workers that will be assigned to the improvements or modifications. Said payroll records shall contain, but not be limited to, the complete name, address, telephone number, social security number, job classification, and prevailing wage rate for each worker.

4.9 Governing Law and Venue. This Agreement has been negotiated and executed in the State of California and shall be governed by and construed under the laws of the State of California. In the event of any legal action to enforce or interpret this Agreement, the sole and exclusive venue shall be a court of competent jurisdiction, located in Orange County, California, and the Parties hereto agree to and hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure Section 394. Furthermore, the Parties specifically agree to waive any and all rights to request that an action be transferred for trial to another county.

4.10 Entire Agreement. This Agreement comprises the entire agreement between CITY and COUNTY related to the subject matter addressed herein. All previous proposals, offers, discussions, preliminary understandings, and other communications relative to this Agreement, oral or written, are hereby superseded, except to the extent that they have been incorporated into this contract.

4.11 Amendments. No alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the Parties; no oral understanding or agreement not incorporated herein shall be binding on either of the Parties; and no exceptions, alternatives, substitutes or revisions are valid or binding on a Party unless authorized by the Party in writing.

4.12 Severability. If any term, covenant, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby to the extent such remaining provisions are not rendered impractical to perform taking into consideration the purposes of this Agreement.

4.13 Attorney's Fees. In any action or proceeding to enforce or interpret any provision of this Agreement, or where any provision hereof is validly asserted as a defense, each Party shall bear its own attorney's fees, costs and expenses.

4.14 Interpretation. This Agreement has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with in this Agreement. In addition, each Party has been represented by experienced and knowledgeable independent legal counsel of its own choosing or has knowingly declined to seek such counsel despite being encouraged and given the opportunity to do so. Each Party further acknowledges that it has not been influenced to any extent whatsoever in executing this Agreement by the other Party hereto or by any person representing the other Party, or both. Accordingly, any rule or law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Agreement against the Party that has drafted it is not applicable and is

waived. The provisions of this Agreement shall be interpreted in a reasonable manner to affect the purpose of the Parties and this Agreement.

4.15 Consent to Breach Not Waiver. No term or provision of this Agreement shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the Party claimed to have waived or consented. Any consent by any Party to, or waiver of, a breach by the other, whether express or implied, shall not constitute consent to, waiver of, or excuse for any other different or subsequent breach.

4.16 Authority. The Parties to this Agreement represent and warrant that this Agreement has been duly authorized and executed and constitutes the legally binding obligation of their respective organization or entity, enforceable in accordance with its terms.

4.17 Confidentiality. To the extent permitted by applicable law, including but not limited to the California Public Records Act, CITY agrees to maintain the confidentiality of all COUNTY and COUNTY-related records and information pursuant to all statutory laws relating to privacy and confidentiality that currently exist or exist at any time during the term of this Agreement. All such records and information shall be considered confidential and kept confidential by CITY and CITY staff, agents and employees. To the extent permitted by applicable law, including but not limited to the California Public Records Act, COUNTY agrees to maintain the confidentiality of all CITY and CITY-related records and information pursuant to all statutory laws relating to privacy and confidentiality that currently exist or exist at any time during the term of this Agreement. All such records and information shall be considered confidential and kept confidential by COUNTY and COUNTY staff, agents and employees.

4.18 Termination. The termination of this Agreement for any reason shall not release any party in default.

4.19 Execution in Part. This Agreement may be executed in counterparts, each of which, when both the Parties hereto have signed this Agreement, shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.

4.20. Notices. All notices authorized or required by this Agreement shall be effective when sent via electronic mail or written and deposited in the United States Mail, first-class postage paid, and addressed as follows:

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CITY: City Chief Executive Officer (or other designated person)
City of Costa Mesa
77 Fair Drive
Costa Mesa, CA 92626
FAX Number: (714) 754-5330

COUNTY: County Librarian (or other designated person)
County of Orange/ OC Community Resources
OC Public Libraries
1501 E. St. Andrew Place
Santa Ana, CA 92705
FAX Number: (714) 566-3073

[signatures on next page]

IN WITNESS WHEREOF, the Parties have executed this Agreement the day and year first above written.

APPROVED AS TO FORM:

CITY

OFFICE OF COUNTY COUNSEL
ORANGE COUNTY, CALIFORNIA

CITY OF COSTA MESA

By: Thomas A. Wla

By: _____

Deputy

Title: _____

Date: 7/17/12

By: _____

RECOMMENDED FOR APPROVAL:

OC PUBLIC LIBRARIES

Title: _____

By: [Signature]

APPROVED AS TO FORM:

COUNTY LIBRARIAN

By: _____

CITY ATTORNEY

Signed and certified that a copy of this document has been delivered to the Chair of the Board per G.C. Sec. 25103, Resolution 79-1535

Attest:

COUNTY

COUNTY OF ORANGE

Susan Novak
Clerk of the Board of Supervisors
Orange County, California

Chair, Board of Supervisors