



**DONATION AGREEMENT
FOR THE
SAN YSIDRO BRANCH LIBRARY**

This Donation Agreement (Agreement), effective upon execution by authorized representatives of both parties and approval of the City Attorney, is made and entered into by and between the City of San Diego (City), with its principal place of business located at City Administration Building, 202 C Street, San Diego, CA 92101, and the San Diego Public Library Foundation (Foundation), with offices located at 330 Park Blvd., San Diego, CA 92101 (each a “Party” and collectively, the “Parties”).

RECITALS

WHEREAS, the City has proposed building a new 15,000 square foot San Ysidro Branch Library to address the current and future needs of the rapidly growing community; and

WHEREAS, the new San Ysidro Branch Library will replace the existing 4,089 square foot library built in 1924; and

WHEREAS, in addition to much needed community meeting spaces, and on-site parking, not available at the current library site, the new library will include a computer lab, audio/visual areas, an informal reading/special feature area, and Adult/Young Adult and Children areas; and

WHEREAS, the City has acquired the land for this project; and

WHEREAS, the City requires additional funding to complete the project; and

WHEREAS, the Foundation is a nonprofit 501(c)(3) charitable organization, organized to accept, receive, hold, invest, reinvest, and administer contributions, gifts, legacies, bequests, devises, funds, benefits of trust, and property of any sort or nature, and to use, apply, or expend the income or principal thereof to support the San Diego Public Library system; and

WHEREAS, the Foundation desires to make a \$1,500,000 contribution to the City to be used for the purpose of paying for a significant portion of the San Ysidro Branch Library project; and

WHEREAS, the City desires to accept the contribution; and

WHEREAS, without this contribution, the City would be unable to move forward with the project at this time; and

WHEREAS, this contribution is made possible by the generosity of Lloyd and Caroline de Llamas;

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth herein and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties do hereby agree as follows:

Section 1. Donation

- 1.1 The Foundation agrees to pay the sum of \$1,500,000 to the City under the conditions set forth in this Agreement. The City may use the contribution only for the completion of the new San Ysidro Branch Library. The Foundation's contribution will be paid in two installments:
 - a. The Foundation shall pay an installment of \$750,000 to the City when the San Ysidro Branch Library construction project reaches the mid-point of the construction project timeline as prepared by the contractor; and
 - b. The Foundation shall pay an installment of \$750,000 when the San Ysidro Branch Library construction project is three-quarters completed according to the construction project timeline as prepared by the contractor, and at such time that books and materials will need to be purchased.
- 1.2 The Foundation shall distribute funds when the above milestones have been reached.
- 1.3 This donation is contingent on the Foundation receiving funds from Lloyd and Caroline de Llamas (de Llamas Donor Funds).
- 1.4 The Parties acknowledge that the Foundation will distribute any and all de Llamas Donor Funds under this agreement. In the event the Foundation receives no donor funds from Lloyd and Caroline de Llamas for any reason, the City will release the Foundation from its obligation of said payments as set forth herein. In the event the Foundation receives a reduced donation from Lloyd and Caroline de Llamas, the Foundation shall equally reduce its contribution to the City.

Section 2. Use of Donation

- 2.1 The City shall deposit contributions in the City's interest bearing fund, Fund 400264, PRIVATE & OTHER CONTRIB-CIP or another specific CIP fund established for the project. The Parties agree that all contributions shall be used by the City for completion of the new San Ysidro Branch Library.
- 2.2 The City shall return all contributions to the Foundation should the new San Ysidro Branch Library project not be completed for any reason.
- 2.3 The City shall return any donated funds remaining unspent after project completion.

Section 3. Recognition

- 3.1 In consideration of the contribution, and after receiving all \$1,500,000 from the Foundation, the City will name the Computer Lab in the new San Ysidro Branch Library for "Lloyd de Llamas" for the life of the Computer Lab and the Homework Center in the new San Ysidro Public Library for "Caroline de Llamas" for the life of the Homework Center. The donors, Lloyd and Caroline de Llamas, agree to allow their names and gift amount to be made public.

- 3.2 The City and the Foundation agree to acknowledge the de Llamas donation in a manner consistent with the donor recognition used at the Central Library, compatible with the architecture and design of the new San Ysidro Branch Library, and commensurate with the contribution amount. Acknowledging that recognition serves an important role in the Foundation's ongoing fundraising efforts, the City shall consult with and seek input from the Foundation on all recognition for this contribution.

Section 4. Miscellaneous

- 4.1 Integration. The Agreement and the exhibits and references incorporated into the Agreement fully express all understandings of the Parties concerning the matters covered in the Agreement. No change, alteration, or modification of the terms or conditions of the Agreement, and no verbal understanding of the Parties, their officers, agents, or employees shall be valid unless made in the form of a written change agreed to in writing by both Parties and an amendment to the Agreement agreed to by both Parties. All prior negotiations and agreements concerning the subject matter hereof are merged into the Agreement. In resolving conflicts between the Parties, if any, this Agreement shall take precedence.
- 4.2 No Waiver. No failure of either the City or Foundation to insist upon the strict performance by the other of any covenant, term or condition of the Agreement, nor any failure to exercise any right or remedy upon a breach of any covenant, term, or condition of the Agreement, shall constitute a waiver of any such breach or of such covenant, term or condition. No waiver of any breach shall affect or alter the Agreement, and each and every covenant, condition, and term hereof shall continue in full force and effect to any existing or subsequent breach.
- 4.3 Severability. The unenforceability, invalidity, or illegality of any provision of the Agreement shall not render any other provision of the Agreement unenforceable, invalid, or illegal.
- 4.4 Successors in Interest. The Agreement and all rights and obligations created by the Agreement shall be in force and effect whether or not any Parties to the Agreement have been succeeded by another entity, and all rights and obligations created by the Agreement shall be vested and binding on any Party's successor in interest.
- 4.5 Compliance with Controlling Law. Both Parties shall comply with all laws, ordinances, regulations, and policies of the federal, state, and local governments applicable to the Agreement. The laws of the State of California shall govern and control the terms and conditions of the Agreement.
- 4.6 Jurisdiction, Venue, and Attorneys' Fees. The venue for any suit or proceeding concerning the Agreement, the interpretation or application of any of its terms, or any related disputes shall be in the County of San Diego, State of California.
- 4.7 Municipal Powers. Nothing contained in the Agreement shall be construed as a limitation upon the powers of the City as a chartered City of the State of California.

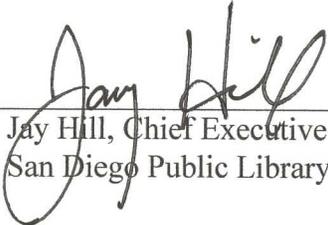
- 4.8 Drafting Ambiguities. The Parties agree that they are aware that they have the right to be advised by counsel with respect to the negotiations, terms and conditions of the Agreement, and the decision of whether or not to seek advice of counsel with respect to the Agreement is a decision which is the sole responsibility of each Party. The Agreement shall not be construed in favor of or against either Party by reason of the extent to which each Party participated in the drafting of the Agreement.
- 4.9 Signing Authority. The representative for each Party signing on behalf of a nonprofit organization, corporation, partnership, joint venture or governmental entity hereby declares that authority has been obtained to sign on behalf of the nonprofit organization, corporation, partnership, joint venture, or entity and agrees to hold the other Party or Parties hereto harmless if it is later determined that such authority does not exist.

[Signatures on following page.]

IN WITNESS WHEREOF, the Agreement is executed by the City of San Diego and by the San Diego Public Library Foundation.

I hereby certify that I can legally bind the San Diego Public Library Foundation and that I have read and understand all of this Agreement.

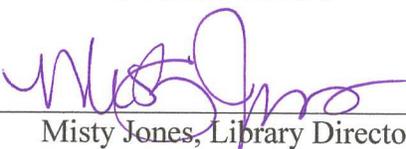
SAN DIEGO PUBLIC LIBRARY FOUNDATION

By: 
Jay Hill, Chief Executive Officer
San Diego Public Library Foundation

Date: 11/25/15

I have read and understand all of this Agreement, and I acknowledge that the foregoing terms and conditions for the donation of \$1,500,000 from the San Diego Public Library Foundation for the completion of the new San Ysidro Branch Library are acceptable.

THE CITY OF SAN DIEGO

By: 
Misty Jones, Library Director
San Diego Public Library

Date: 11/25/15

Approved as to form this _____ day of _____, 2015.

JAN I. GOLDSMITH, City Attorney

By: _____
Marco A. Verdugo
Deputy City Attorney