

**FUNDING AGREEMENT BETWEEN
COAST COMMUNITY COLLEGE DISTRICT AND THE CITY OF COSTA MESA**

This Funding Agreement (“Agreement”) is made and entered into this 24th day of October, 2019, by and between the CITY OF COSTA MESA, a California municipal corporation (“City”) and the COAST COMMUNITY COLLEGE DISTRICT, a California Community College District (“District”). The City and the District are sometimes referred to in this Agreement individually as a “Party” and collectively as the “Parties.”

RECITALS

- A. The District owns and operates Orange Coast College (“College”), consisting of approximately 160 acres located at 2701 Fairview Road in the City of Costa Mesa, California. Pinecreek Drive terminates into the College’s parking lot located on the College’s northern boundary.
- B. On July 12, 1963, the District conveyed an Easement Deed to the City to extend Adams Avenue from Harbor Boulevard to Fairview Road, including the construction of roadways, roadway island barriers, sidewalks, underground utility mains and appurtenances, and street lights. These improvements were completed and have been in place since January 15, 1964.
- C. The City intends to construct, at the intersection of Pinecreek Drive and Adams Avenue, a vehicular lane, pedestrian walkway, pedestrian crossing, and bus stop for the purposes of improved vehicular and pedestrian safety, access, and circulation. In addition to the above-referenced improvements, the District requests the City to consider certain other improvements between Harbor Boulevard and Fairview Road, including the installation of street lighting along the south side of Adams Avenue and design of the proposed Class II bicycle pathway pursuant to the City of Costa Mesa Bicycle Master Plan. For purposes of this Agreement, the aforementioned improvements are collectively referred to herein as the “Project”.
- D. The District is willing to pay the City the amount of Two Hundred Fifty Thousand Dollars (\$250,000.00) in exchange for the City’s design, installation, construction and completion of the Project as described above.
- E. The City agrees to design, install, construct, and complete the Project subject to the District’s payment of Two Hundred Fifty Thousand Dollars (\$250,000.00) as set forth herein.

NOW, THEREFORE, for and in consideration of the above Recitals, and the mutual covenants and conditions in this Agreement, the Parties agree as follows:

1.0 RECITALS

The Recitals set forth above are incorporated into and made a part of this Agreement.

2.0 PARTY OBLIGATIONS

2.1 City Obligations

- 2.1.1 The City will be solely and exclusively responsible for the design, installation, construction, and completion of the Project. The City agrees to provide the District with

construction document progress sets of the Project at 70%, 90%, and 100% completion for review and comment. The District reserves the right to make comments, request changes, additions, and clarifications to construction document progress sets of the Project in order to meet the District's current and future needs. The District will provide review and comment to the City within seven business days of receipt of the construction document progress sets of the Project.

- 2.1.2 The City shall take all reasonable steps to approve the plan or design for construction of the Project in conformance with law.
- 2.1.3 Upon execution of a written contract for the construction of the Project ("Construction Contract"), the City will provide a copy to the District.
- 2.1.4 The City will be solely and exclusively responsible for the upkeep, maintenance, and repair of the Project, including, but not limited to the bicycle trail (once constructed), pedestrian path, lighting, roadwork, and traffic signals associated with the Project. As provided in section 2.2., the District shall be solely and exclusively responsible for the upkeep, maintenance, and repair of all landscaping associated with the Project.
- 2.1.5 As set forth in the Recitals, the City will include in the design of the Project improvements to provide a Class II Bicycle Facility along Adams Avenue between Fairview Road and Harbor Boulevard. Following completion of the design of the Project, the City intends to solicit grant funding towards the cost of s installation, construction, and completion of the Class II Bicycle Facility improvements.
- 2.1.6 The City will work with the utility providers on the extension of street lighting along the south side of Adams Avenue adjacent to the College.
- 2.1.7 The City acknowledges and agrees that (i) it will be solely and exclusively responsible to ensure that its contractor complies with all applicable provisions of Labor Code §§ 1720 *et seq.* ("Prevailing Wage Requirements") in connection with the "public works," as defined in Labor Code §1720, of the Project, and (ii) the construction contract shall require the contractor and subcontractors to pay all workers prevailing wages in compliance with the Prevailing Wage Requirements.

Separate and apart from the obligations set forth in Section 2.3.1 below, the City shall include in the construction contract a provision that the contractor and subcontractors indemnify, defend, and hold the District and its employees, agents, trustees, and volunteers (the "Indemnitees") harmless from and against all liability, loss, cost, expense (including without limitation attorneys' fees and costs of litigation), claim, demand, action, suit, judicial or administrative proceeding, penalty, deficiency, fine, order, and damage which directly or indirectly, in whole or in part, are caused by, arise in connection with, result from, relate to, or are alleged to be caused by, arise in connection with, or relate to, the payment or requirement of payment of prevailing wages (including all claims that may be made by contractors, subcontractors, or third party claimants), the failure to comply with any state or federal labor laws, regulations, or standards, including the Prevailing Wage Requirements, or any act or omission related to the payment or requirement of payment of prevailing wages in connection

with the construction of the Project. These indemnity provisions shall survive any termination of this Agreement.

- 2.1.8 The City and District will cooperate to implement the Project without the need to relocate the monument sign at the southwest corner of Adams Avenue/Pinecreek Drive Intersection. If the sign requires relocation, the City will incorporate it as part of the Project. If the total Project cost as a result of this relocation exceeds the available budget of \$970,336, the District will provide funding for the costs in excess of \$970,336.
- 2.1.9 The City will identify in the construction bid documents the College's event schedule and requirement for access on specific dates and/or timeframes to the College's property on Adams Avenue. The City and its project contractor are to coordinate construction activities to minimize impacts to College events.
- 2.1.10 The City shall defend, indemnify, and hold free and harmless the District, its elected officials, officers, agents and employees, from and against all claims, damages, losses, and expenses, of every kind, nature and description (including, but not limited to, attorney's fees, expert fees, and costs of suit), to the extent arising from the City's or the City's agents' negligence, wrongful performance of services, or acts or omissions relating to the design, construction, installation, repair, maintenance, and/or upkeep of all or any portion of the Project except claims relating to maintenance of the landscaping which is the District's sole and exclusive responsibility.
- 2.1.8 The City shall require the contractor awarded the Construction Contract for the Project to provide a Payment Bond and a Performance Bond in a sum equal to the contract price for the Project as set forth in the Construction Contract. If the Performance Bond provides for a one-year warranty, a separate Maintenance Bond is not necessary. Otherwise, the Construction Contract shall require the contractor to provide a Maintenance Bond for no less than one year in an amount equal to 10% of the contract price. Bonds shall be duly executed by a responsible corporate surety, authorized to issue such bonds in the State of California and secured through an authorized agent with an office in California.

2.2 District Obligations

- 2.2.1 Upon full execution of this Agreement, the District shall pay to the City the sum of Fifty Thousand Dollars (\$50,000). Upon District's receipt of the executed Construction Contract between the City and the contractor for the Project, the District shall pay to City the sum of One Hundred Thousand Dollars (\$150,000). Upon acceptance of the Project by the City as complete, the District shall pay to City the sum of One Hundred Thousand Dollars (\$50,000). These payments shall represent the full extent of the District's financial commitment, contribution, and obligation for the design, installation, construction, and completion of the Project.
- 2.2.2 Upon completion of the Project, the District shall be solely and exclusively responsible for maintaining all landscaping associated with the Project.

- 2.2.3 The District shall defend, indemnify, hold free and harmless the City, its elected officials, officers, agents and employees, at District's sole expense, from and against any and all claims, actions, suits or other legal proceedings (including, but not limited to, attorney's fees, expert fees, and costs of suit), brought against the City, its elected officials, officers, agents and employees to the extent arising from District's or the District's agents' negligence, wrongful performance of services, or acts or omissions relating solely to the maintenance and/or upkeep of the landscaping associated with the Project.

2.3 City and District Obligations

- 2.3.1 The City and the District, their respective consultants, contractors, subcontractors, or agents shall purchase and maintain during the term of this agreement, with insurance companies duly licensed by the State of California with a rating by Best's Insurance Rating Service of not less than AVII, policies of insurance which will protect the City and District from claims which may arise out of their respective conduct, or the conduct of anyone for whose acts any of them may be liable. The City and the District may self-insure for all or a portion of such coverage as it relates to their own officers and employees. All consultants, contractors, subcontractors, or agents other than the officers and employee of either City or District shall provide insurance coverage as provided herein:
- a. Commercial bodily injury and property damage liability insurance in the combined single limit of not less than \$1,000,000.00 for each occurrence for personal injury or death and \$250,000.00 as to property damage including, but not limited to, personal injury liability, broad form property damage liability, blanket contractual liability and products liability, covering the activities of the City and District under this agreement, and shall provide the City and District with a Certificate of Insurance and Additional Insured Endorsement evidencing such policies. The insurance policies shall contain covenants by the issuing company that the policies shall not be cancelled without 30 days' prior written notice to the City and District. The City, its officers, agents, and employees and the District and the District's Board of Trustees, shall be named as additional insureds under such policy of insurance to be maintained pursuant to this section, and such policy shall contain a cross-liability endorsement.
 - b. Workers' Compensation and Employers' Liability Insurance in the amounts required by law covering all personnel employed on the premises during the term of this agreement, regardless of by whom they are employed. The City's and District's respective consultants, contractors, subcontractors, or agents shall maintain during the term of this agreement, Workers' Compensation insurance with an insurance company duly licensed and admitted by the State of California with a rating by Best's Insurance Rating Services of not less than AVII.
 - c. Comprehensive General and Auto Liability Insurance with an insurance company duly licensed and admitted by the State of California with a rating by Best's Insurance Rating Service of not less than AVII. Said insurance shall have limits of not less than \$1,000,000.00 combined single limit, bodily injury and property damage liability per occurrence with no annual aggregate limits, including:

1. Owned, Non-owned, and Hired Vehicles
2. Blanket Contractual
3. Broad Form Property Damage
4. Products/Completed Operations
5. Personal Injury

d. Each policy of insurance required in a., b., or c. (with the exception of Workers' Compensation) shall name District and its trustees, agents, and employees and the City, its officers, agents, and employees as additional insureds; shall state that, with respect to the operations of the City and District hereunder, such policy is primary and any insurance carried by the City or District is excess and non-contributing with such primary insurance, shall state that not less than thirty days' written notice shall be given to the City and District prior to cancellation, and shall waive all rights of subrogation against the City and District and its trustees, agents, and employees.

2.3.2 The City and the District shall notify one another in the event of material change in, or failure to renew, each policy. Prior to commencing work, the City and District shall deliver, or cause to be delivered to each of them certificates of insurance and additional insured endorsements as evidence of compliance with the requirements herein, which are to be attached hereto as an integral part of the agreement. In the event any of the City's or District's consultants, contractors, subcontractors, or agents fails to secure or maintain any policy of insurance required, the City or District, as the case may be, may, at its sole discretion, secure such policy of insurance in the name of and for the account of the City or District and in such event the City or District shall reimburse the other Party upon demand for the cost thereof.

2.3.3 Neither the City's or the District's exercise of any of their respective rights or remedies prescribed in this agreement shall relieve the other Party from responsibility for damages or other losses incurred or to be incurred by the either Party as a result of the other Party's breach of its obligations under this agreement.

3.0 GENERAL PROVISIONS

3.1 No Partnership or Joint Venture. Nothing contained in this Agreement shall be construed to create a partnership or agency relationship between or joint venture by the Parties. No Party shall hold itself out contrary to the terms of this provision, and no Party shall become liable by any representation, act, or omission of the other Party contrary to the provisions hereof.

3.2 No Third Party Beneficiaries. The rights and obligations in this Agreement are intended exclusively for the benefit of the Parties and shall not be construed to convey any rights or remedies to any third party.

3.3 Assignment. No Party may assign any of its interests or obligations under this Agreement to any other person, entity, or governmental agency, without the prior written authorization of the other Party.

- 3.4 Governing Law and Venue. This Agreement 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 Parties agree that the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California.
- 3.5 Construction. The Parties have participated jointly in the negotiation and drafting of this Agreement. In the event of an ambiguity or question of intent or interpretation arises with respect to this Agreement, this Agreement shall be construed as if drafted jointly by both Parties and in accordance with its fair meaning. There shall be no presumption or burden of proof favoring or disfavoring either Party by virtue of authorship of any of the provisions of this Agreement.
- 3.6 Headings. Paragraphs and subparagraph headings contained in the Agreement are included solely for convenience and are not intended to modify, explain, or to be a full or accurate description of the content thereof and shall not in any way affect the meaning or interpretation of the Agreement.
- 3.7 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 of this Agreement 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.
- 3.8 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original. All counterparts shall be construed together and shall constitute one agreement.
- 3.9 Waiver. The delay or failure of either Party at any time to require performance or compliance by the other of any of its obligations or agreements shall in no way be deemed a waiver of those rights to require such performance or compliance. No waiver of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the Party against whom enforcement of a waiver is sought. The waiver of any right or remedy in respect to any occurrence or event shall not be deemed a waiver or any right or remedy in respect to any other occurrence or event, nor shall any waiver constitute a continuing waiver.
- 3.10 Notices. Any notices, documents, correspondence, or other communications concerning this Agreement may be provided by personal delivery, electronic mail 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 electronic mail; 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.

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IF TO DISTRICT

Coast Community College District
1370 Adams Avenue
Costa Mesa, CA 92626
Tel: (714) 438-4732
E-mail: johnw@ccd.edu
Attn: Chancellor

IF TO CITY

City of Costa Mesa
77 Fair Drive
Costa Mesa, CA 92626
Tel: (714) 754-5343
E-mail: loriann.farrellharrison@costamesaca.gov
Attn: City Manager

- 3.11 **Authority.** The persons executing this Agreement represent and warrant that they are duly authorized to execute this Agreement on behalf of the Parties they represent and that all necessary approvals and authorities have been obtained, subject to the approval of the District's Board of Trustees.
- 3.12 **Entire Agreement.** This Agreement constitutes the entire agreement and understanding between the Parties with respect to the matters in this Agreement and supersedes any and all other prior writings and oral negotiations. This Agreement may be modified only in writing and signed by the Parties.

IN WITNESS WHEREOF, the Parties have caused the Agreement to be executed by and through their respective authorized representatives, effective as of the last signature date set forth below.

CITY OF COSTA MESA

Signature _____ Date: _____

Lori Ann Farrell Harrison
City Manager

COAST COMMUNITY COLLEGE DISTRICT

Signature  Date: 10/24/19

Lorraine Prinsky, Ph.D.
President, Board of Trustees

ATTEST:

 Date: 6/9/20

John Weispfenning, Ph.D.
Chancellor
Coast Community College District