

**COST SHARING AGREEMENT BETWEEN
THE CITY OF SAN JOSE
AND
SAN JOSE STATE UNIVERSITY
FOR THE DR. MARTIN LUTHER KING, JR. LIBRARY
(2021-2022)**

THIS COST SHARING AGREEMENT ("AGREEMENT") is made and entered into as of this 21 day of October, 2021, by and between the CITY OF SAN JOSE, a municipal corporation, ("CITY") and THE TRUSTEES OF THE CALIFORNIA STATE UNIVERSITY acting in its higher education capacity as SAN JOSE STATE UNIVERSITY, ("UNIVERSITY").

RECITALS

WHEREAS, CITY, and UNIVERSITY are jointly operating the Dr. Martin Luther King, Jr. Library ("LIBRARY");

WHEREAS, CITY and UNIVERSITY operate the LIBRARY pursuant to the Agreement for Ownership and Operation of Joint Library Building and Grant of Easement (OPERATING AGREEMENT) between the parties dated December 17, 1998;

WHEREAS, as part of this effort, CITY and UNIVERSITY have incurred and will incur, expenses and costs for products and services of mutual benefit to CITY and UNIVERSITY to further the operations and systems for operation and maintenance of the LIBRARY;

WHEREAS, CITY and UNIVERSITY desire to equitably share these costs;

WHEREAS, CITY and UNIVERSITY entered into a Cost Sharing Agreement on April 14, 2003, operated throughout the Initial Term and Renewal Terms provided under that Agreement and now desire to enter into a new Cost Sharing Agreement for the current Fiscal Year.

THE PARTIES HEREBY AGREE AS FOLLOWS:

SECTION 1. TERM.

This AGREEMENT shall include expenditures for products and services from July 1, 2021 through June 30, 2022 (the "Initial Term").

SECTION 2. SHARED CONTRACTS

Representatives of CITY and UNIVERSITY shall meet periodically to discuss and identify opportunities to reduce expenses by sharing the benefits of products and services obtained by either party (CITY OR UNIVERSITY) with respect to the planned joint operation of the LIBRARY. When products or services are identified which both parties agree will be of mutual benefit and are appropriate for a SHARED CONTRACT the representatives shall complete and execute the form attached as Exhibit A, entitled SHARED CONTRACT AUTHORIZATION.

The form includes a description of the product to be obtained or service to be performed, the maximum cost to be paid for said product or service, the party (CITY or UNIVERSITY) who will be responsible to obtain the product or service, and the agreed upon allocation between the CITY and UNIVERSITY of the maximum cost of the contract.

Upon full execution of the SHARED CONTRACT AUTHORIZATION the party responsible for obtaining the services (CONTRACTING PARTY) shall forthwith contract, through their normal contracting process, with a qualified provider or consultant to secure the product or performance of the services described. The CONTRACTING PARTY shall be responsible to monitor, direct and supervise the products and/or work to be provided under the SHARED CONTRACT. The CONTRACTING PARTY shall also be responsible to enforce all provisions of the contract and make all payments required under the terms of the SHARED CONTRACT.

The CONTRACTING PARTY shall freely share with the other party all information, benefits, services, products and deliverables produced as a result of the SHARED CONTRACT.

SECTION 3. PAYMENTS.

On a bi-annual basis, on November 1 and May 1 of each fiscal year beginning July 1, each party shall submit to the other an accurate accounting of the costs of all SHARED CONTRACTS incurred by the Party, including an allocation of the costs as agreed in the SHARED CONTRACT AUTHORIZATIONS. The accounting shall include a copy of all invoices or statements of costs and proof of payment including the date of payment and contract reference.

The Parties agree that costs will be distributed according to the percentage distribution of expenses identified in **Exhibit A**, "SHARED COST PERCENTAGE DISTRIBUTION."

Each Party shall have forty-five (45) days after receipt of the accounting from the other Party to review the accounting and shall approve the accounting if it complies with the terms of this Agreement. If the accounting does not comply with the terms of this Agreement, the Reviewing Party shall so notify the Submitting Party and provide an explanation of the non-compliance.

The accounting of each Party shall be compared to determine the appropriate payment (RECONCILIATION PAYMENT) to be made to conform each Party's cost to the total costs and allocations agreed in the SHARED CONTRACT AUTHORIZATIONS.

The total of all RECONCILIATION PAYMENTS made by either Party shall not exceed \$290,000 appropriated for the cost share items.

Payments to the CITY should be mailed as follows:

City of San Jose
Library Department Administration
150 E. San Fernando Street, 4th floor
San Jose, CA 95112

Payments to the UNIVERSITY should be mailed as follows:

Administrative Officer
San Jose State University Library
One Washington Square
San Jose, CA 95192-0138

SECTION 4. GENERAL PROVISIONS.

A. Entire Agreement.

This Agreement, including any exhibits attached hereto, represents the entire understanding of the Parties as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered in this Agreement. This Agreement may only be modified by a written amendment duly executed by the Parties to this Agreement.

B. Disputes.

Disputes shall be resolved in accordance with the dispute resolution provisions in Section 4.3 of the Agreement for Ownership and Operation of Joint Library Building and Grant of Easement.

C. Governing Law.

This Agreement shall be governed, construed and enforced in accordance with the laws of the State of California.

D. Waiver.

No waiver by any party to this Agreement of any breach or violation of any term or condition of this Agreement shall be deemed to be a waiver of any other term or condition contained herein or a waiver of any subsequent breach or violation of the same or any other term or condition.

E. Notices.

All notices and other communication required or permitted under this Agreement shall be in writing and may be delivered by hand, by facsimile transmission with verification of receipt, or by United States mail, postage prepaid and return receipt requested, addressed to the respective parties as follows:

CITY:

Administrative Officer
City of San Jose Library Department
150 E. San Fernando Street, 4th Floor
San Jose, CA 95112

UNIVERSITY:

Administrative Officer
San Jose State University Library
One Washington Square
San Jose, CA 95192-0028

F. Venue.

In the event that suit shall be brought by any party to this Agreement, the parties agree that venue shall be exclusively vested in the state courts of the State of California, County of Santa Clara, or where applicable, in the United States District Court for the Northern District of California, San Jose, California.

G. Severability.

If any term, covenant, condition or provision of this Agreement is held to be illegal, invalid or unenforceable, in full or in part, then such provision shall be modified to the minimum extent necessary to make the provision legal, valid and enforceable, and the other provisions of this Agreement shall not be affected or invalidated thereby.

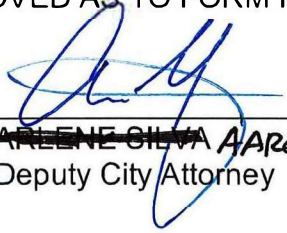
H. Counterparts.

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

WITNESS THE EXECUTION HEREOF as of the day and year first hereinabove written.

APPROVED AS TO FORM FOR
CITY:

By:


~~ARLENE SILVA~~ AARON YU
Deputy City Attorney

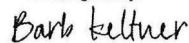
"CITY"



SARAH ZARATE
Director of API
Office of the City Manager

APPROVED BY
"UNIVERSITY"

DocuSigned by:



270D5308C1D54C4

BARB KELTNER
Contract Analyst
San Jose State University

SHARED CONTRACT AUTHORIZATION

This Shared Contract Authorization is entered into pursuant to the terms of the CITY and the UNIVERSITY'S Cost Sharing Agreement.

Full description of products and services to be obtained or performed: (attach additional information if available).

Pre-approval signatures: _____

University Co-Unit **City Co-Unit**

Rationale for split:

Maximum cost of products or services: \$_____

Party responsible for obtaining products or services: ☐ SJSU ☐ SJPL

Allocation of costs between the Parties: SJSU % _____ SJPL % _____

Does this expense support King Library and Branches?

Rationale # _____ SJPL only: _____
See table below Charge Number

	Descriptions of Rationale (See Primary Categories for King Library)	King Library		KL & Branches Central System wide	
		SJSU	SJPL	SJSU	SJPL
1	Allocation of library square footage at King Library	64.51%	35.49%		
2	Economic investment to original construction	59.00%	41.00%		
3	Support to library services	50.00%	50.00%	1/3	2/3
4	Telephone: service desk & other merged location	50.00%	50.00%		
4 (a-d)	Telephone: staff, capital, branches & maintenance	# of lines	# of lines		
5a	Tenants	each pays for own	each pays for own		
5b	Special Collections shared areas	75.00%	25.00%		
6	Employee distribution	# of employee	# of employees		
7	Use by patron type				
8	Furnishings a. <u>staff area</u> b. <u>public area</u> b. <u>shared area</u>	each pays for own	each pays for own		
		59.00 %	41.00 %		
		50.00%	50.00%		
9	Microfilm equipment	40.00%	60.00%		
10	Security	50%	50%		
11	Public Art	50%	50%		
12	Meeting Suites/Classrooms	59%	41%		

APPROVALS:

UNIVERSITY:

CITY:

_____ Dean	_____ Date	_____ City Librarian	_____ Date
_____ Administrative Officer	_____ Date	_____ Administrative Officer	_____ Date
_____ Purchasing	_____ Date	_____ Purchasing	_____ Date

Certificate Of Completion

Envelope Id: A45FFF48EA5B49648914F70B44240498

Subject: Please DocuSign: Cost Share SJSU and SJPL 21-22.pdf

Source Envelope:

Document Pages: 7

Signatures: 1

Certificate Pages: 4

Initials: 0

AutoNav: Enabled

EnvelopeId Stamping: Enabled

Time Zone: (UTC-08:00) Pacific Time (US & Canada)

Status: Completed

Envelope Originator:

Barb Keltner

One Washington Square

CL500

San Jose, CA 95116

barbara.keltner@sjsu.edu

IP Address: 130.65.254.5

Record Tracking

Status: Original

9/10/2021 2:37:36 PM

Holder: Barb Keltner

barbara.keltner@sjsu.edu

Location: DocuSign

Signer Events

Barb Keltner

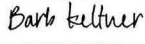
barbara.keltner@sjsu.edu

Contract Administration Specialist Lead

San Jose State University

Security Level: Email, Account Authentication
(None)**Signature**

DocuSigned by:



270D5308C1D54C4...

Signature Adoption: Pre-selected Style

Using IP Address: 130.65.254.5

Timestamp

Sent: 9/10/2021 2:39:43 PM

Viewed: 9/10/2021 2:39:49 PM

Signed: 9/10/2021 2:39:56 PM

Electronic Record and Signature Disclosure:

Accepted: 1/24/2018 1:51:04 PM

ID: 1c7b4a04-21b2-4820-aa29-8b6404fd69d8

In Person Signer Events**Signature****Timestamp****Editor Delivery Events****Status****Timestamp****Agent Delivery Events****Status****Timestamp****Intermediary Delivery Events****Status****Timestamp****Certified Delivery Events****Status****Timestamp****Carbon Copy Events****Status****Timestamp****Witness Events****Signature****Timestamp****Notary Events****Signature****Timestamp****Envelope Summary Events****Status****Timestamps**

Envelope Sent

Hashed/Encrypted

9/10/2021 2:39:43 PM

Certified Delivered

Security Checked

9/10/2021 2:39:49 PM

Signing Complete

Security Checked

9/10/2021 2:39:56 PM

Completed

Security Checked

9/10/2021 2:39:56 PM

Payment Events**Status****Timestamps****Electronic Record and Signature Disclosure**

ELECTRONIC RECORD AND SIGNATURE DISCLOSURE

From time to time, San Jose State University - NA2 (we, us or Company) may be required by law to provide to you certain written notices or disclosures. Described below are the terms and conditions for providing to you such notices and disclosures electronically through your DocuSign, Inc. (DocuSign) Express user account. Please read the information below carefully and thoroughly, and if you can access this information electronically to your satisfaction and agree to these terms and conditions, please confirm your agreement by clicking the 'I agree' button at the bottom of this document.

Getting paper copies

At any time, you may request from us a paper copy of any record provided or made available electronically to you by us. For such copies, as long as you are an authorized user of the DocuSign system you will have the ability to download and print any documents we send to you through your DocuSign user account for a limited period of time (usually 30 days) after such documents are first sent to you. After such time, if you wish for us to send you paper copies of any such documents from our office to you, you will be charged a \$0.00 per-page fee. You may request delivery of such paper copies from us by following the procedure described below.

Withdrawing your consent

If you decide to receive notices and disclosures from us electronically, you may at any time change your mind and tell us that thereafter you want to receive required notices and disclosures only in paper format. How you must inform us of your decision to receive future notices and disclosure in paper format and withdraw your consent to receive notices and disclosures electronically is described below.

Consequences of changing your mind

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. To indicate to us that you are changing your mind, you must withdraw your consent using the DocuSign 'Withdraw Consent' form on the signing page of your DocuSign account. This will indicate to us that you have withdrawn your consent to receive required notices and disclosures electronically from us and you will no longer be able to use your DocuSign Express user account to receive required notices and consents electronically from us or to sign electronically documents from us.

All notices and disclosures will be sent to you electronically

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through your DocuSign user account all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

How to contact San Jose State University - NA2:

You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows:

To contact us by email send messages to: leon.nguyen@sjsu.edu

To advise San Jose State University - NA2 of your new e-mail address

To let us know of a change in your e-mail address where we should send notices and disclosures electronically to you, you must send an email message to us at leon.nguyen@sjsu.edu and in the body of such request you must state: your previous e-mail address, your new e-mail address. We do not require any other information from you to change your email address..

In addition, you must notify DocuSign, Inc to arrange for your new email address to be reflected in your DocuSign account by following the process for changing e-mail in DocuSign.

To request paper copies from San Jose State University - NA2

To request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an e-mail to leon.nguyen@sjsu.edu and in the body of such request you must state your e-mail address, full name, US Postal address, and telephone number. We will bill you for any fees at that time, if any.

To withdraw your consent with San Jose State University - NA2

To inform us that you no longer want to receive future notices and disclosures in electronic format you may:

- i. decline to sign a document from within your DocuSign account, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may;
- ii. send us an e-mail to leon.nguyen@sjsu.edu and in the body of such request you must state your e-mail, full name, US Postal Address, telephone number, and account number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

Required hardware and software

Operating Systems:	Windows2000? or WindowsXP?
Browsers (for SENDERS):	Internet Explorer 6.0? or above
Browsers (for SIGNERS):	Internet Explorer 6.0?, Mozilla FireFox 1.0, NetScape 7.2 (or above)
Email:	Access to a valid email account
Screen Resolution:	800 x 600 minimum
Enabled Security Settings:	<ul style="list-style-type: none">•Allow per session cookies•Users accessing the internet behind a Proxy Server must enable HTTP 1.1 settings via proxy connection

** These minimum requirements are subject to change. If these requirements change, we will provide you with an email message at the email address we have on file for you at that time providing you with the revised hardware and software requirements, at which time you will have the right to withdraw your consent.

Acknowledging your access and consent to receive materials electronically

To confirm to us that you can access this information electronically, which will be similar to other electronic notices and disclosures that we will provide to you, please verify that you were able to read this electronic disclosure and that you also were able to print on paper or electronically save this page for your future reference and access or that you were able to e-mail this disclosure and consent to an address where you will be able to print on paper or save it for your future reference and access. Further, if you consent to receiving notices and disclosures exclusively in electronic format on the terms and conditions described above, please let us know by clicking the 'I agree' button below.

By checking the 'I Agree' box, I confirm that:

- I can access and read this Electronic CONSENT TO ELECTRONIC RECEIPT OF ELECTRONIC RECORD AND SIGNATURE DISCLOSURES document; and
- I can print on paper the disclosure or save or send the disclosure to a place where I can print it, for future reference and access; and
- Until or unless I notify San Jose State University - NA2 as described above, I consent to receive from exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to me by San Jose State University - NA2 during the course of my relationship with you.

Memorandum

TO: Sarah Zarate
DIRECTOR
City Manager's Office

FROM: Jill Bourne
CITY LIBRARIAN

**SUBJECT: APPROVAL OF RETROACTIVE
AGREEMENT**

DATE: September 7, 2021

Approved

Sarah Zarate

Date

10/21/21

**SUBJECT: APPROVAL OF RETROACTIVITY IN THE 21-22 COST SHARE
AGREEMENT WITH SAN JOSE STATE UNIVERSITY**

In June 2013, the City Auditor released an audit report entitled "Consulting Agreements: Better Enforcement of Procurement Rules, Monitoring, and Transparency is Needed." (City Audit Report No. 13-06.) Recommendation No. 4 (Audit Report pages 16-17) involves limiting retroactive agreements to situations where contract execution is in process. The audit report states that when a City employee informally authorizes work before execution of the agreement, the employee commits City funds not within his/her authority to commit.

The Library Department (SJPL) is seeking authorization for the retroactive provision to pay for services in the following agreement.

The justification for the requests detailed below that are to include a retroactivity provision is that the agreement:

Its execution was already in process when the services started.

- ☐ The services responded to an *immediate* threat to public health, safety, or property.
- ☐ The manner of compensation doesn't involve a commitment of City funds.
- ☐ The consultant/contractor provided a letter stating that the City isn't obligated to pay for any services it provided if the contract/amendment isn't executed.
- ☒ Starting services protected or advanced the following significant City interest:

The City and San Jose State University entered into an Agreement for Ownership and Operation of joint Library Building and Grant of Easement (Operating Agreement), which included

September 7, 2021

Subject: Retroactive Memo – 21-22 Cost Share Agreement with SJSU

Page 2

direction for the City and University to incur expenses and costs for products and services of mutual benefit through a separate Cost Sharing Agreement entered into in August 23, 2012. The renewal of the agreement will allow for continuity of operations in an efficient and fiscally prudent manner benefitting both entities.

SJPL understand that retroactive agreements are to be avoided and request an exception be made and the agreement detailed in this memorandum be allowed to proceed with retroactive clauses. SJPL acknowledges the process was out of City contract compliance and will monitor future agreements to prevent this oversight in the future.



JILL BOURNE
City Librarian

For questions, please contact Andrea Maestre, Administrative Officer at (408) 808-2192.

City of San José Contract/Agreement Transmittal Form

Route Order

Attached / Completed

Electronically Signed

TO: ☒ City Attorney
☒ City Manager
☒ City Clerk **OR** Return to
Dept. (circle one)

☐ Insurance Certificates / Waivers ☒ Electronically Signed: Yes
☐ Business Tax Certificate ☐ Audit Trail Attached (if applicable)
☐ Contacted Clerk re: Form 700 ☐ Scanned Signature Authorization
☐ Supplemental Memorandums (if applicable): Select One

Type of Document: New Contract

Type of Contract: Other

REQUIRED INFORMATION FOR ALL CONTRACTS:

Existing GILES # 667216-000

Contractor: San Jose State University

Address: 1 Washington Square, San Jose CA 95192

Phone: (408)924-1000

Email: wendy.dunn@sjsu.edu

Contract Description: Cost sharing expenses between SJSU and the Library for operation and maintenance of the Martin Luther King Jr. Joint Library

Term Start Date: July 1, 2021 Term End Date: June 30, 2022 Extension: No

Method of Procurement: Select one ☒ RFB, RFP or RFQ No.: _____ Date Conducted: _____

Agenda Date (if applicable): _____

Agenda Item No.: _____

Resolution No.: _____

Ordinance No.: _____

Original Contract Amount: \$290,000.00

Amount of Increase/Decrease: _____

Option #: ____ of ____ Option Amount: _____

Updated Contract Amount: _____

Fund/Appropriation: 001/0721

Form 700 Required: No

Revenue Agreement: No

Business Tax Certificate No.: CA State Agency

Expiration Date: _____

Department: Library (72) ☒

Department Contact Name/Phone: Luz Mejia/808-2197

Notes:

Department Director Signature: Andrea G. Maestre

Date

Office of the City Manager Signature: _____

Date