



CEO/RFLS/OCCR-018-029  
 Costa Mesa Lions Park Library  
 1855 Park Avenue  
 Costa Mesa, CA 92627

## LEASE

THIS IS A LEASE (hereinafter referred to as “**Lease**”) made \_\_\_\_\_, 2019, (“**Effective Date**”), by and between the CITY OF COSTA MESA, a municipal corporation (hereinafter referred to as “**City**”) and the COUNTY OF ORANGE, a political subdivision of the State of California (hereinafter referred to as “**County**”) without regard to number and gender. The City and County may individually be referred to herein as a “**Party**,” or collectively as the “**Parties**.”

### 1. DEFINITIONS (1.0 SA)

“**Board of Supervisors**” means the Board of Supervisors of the County of Orange, a political subdivision of the State of California.

“**Building**” means the building commonly known as 1855 Park Ave, Costa Mesa constituting a portion of the Premises.

“**CEO/Office of Risk Management**” means the Risk Manager, County Executive Office, Risk Management, County of Orange, or designee, or upon written notice to City, such other person or entity as shall be designated by the County Executive Officer or the Board of Supervisors.

“**Chief Real Estate Officer**” means the Chief Real Estate Officer, County Executive Office, County of Orange, or upon written notice to City, such other entity as shall be designated by the County Executive Officer.

“**County Counsel**” means the County Counsel, County of Orange, or designee, or upon written notice to City, such other person or entity as shall be designated by the County Executive Officer or the Board of Supervisors.

“**County Executive Officer**” means the County Executive Officer, County Executive Office, County of Orange, or designee, or upon written notice to City, such other person or entity as shall be designated by the Board of Supervisors.

“**County Librarian**” means the County Librarian, OC Public Libraries, County of Orange, or designee, or upon written notice to City, such other person or entity as shall be designated by the County Executive Officer or the Board of Supervisors.

“**OC Public Libraries/Facilities Manager**” means the Manager, OC Public Libraries/Facilities Services, County of Orange, or designee, or upon written notice to City, such other person or entity as shall be designated by the County Librarian.

“**County Assessor Office**” means County of Orange Assessor Office.

“**City Manager**” means the City Manager of the City of Costa Mesa.

**“Risk Manager”** means the Risk Manager, County Executive Office, Risk Management, County of Orange, or designee, or such other person or entity as shall be designated by the County Officer or the Board of Supervisors.

## **2. PREMISES (1.1 SA)**

City leases to County that certain property, including the improvements thereon, described in Exhibit A and shown on Exhibit B, which exhibits are attached hereto and by reference made a part hereof, of approximately 23,600 rentable square feet (“RSF”) in the Building located at Lions Park, 1855 Park Avenue Costa Mesa, California (“Premises”), together with non-exclusive, in common use of elevators, stairways, washrooms, hallways, driveways for vehicle ingress and egress, pedestrian walkways, community room, other facilities and common areas appurtenant to the Premises. The Premises is comprised of the “Library” and the “Community Room,” both shown and defined on Exhibit B.

## **3. USE (1.2 SA)**

County shall use the Premises to provide free public library services. County shall not use the Premises or any portion thereof for any illegal or unlawful purpose and will not cause or permit a nuisance to be created or maintained therein.

City shall have the right of first refusal for use of the Community Room during non-Normal Business Hours, as defined herein.

NO ALCOHOL, TOBACCO, OR MARIJUANA PRODUCTS SHALL BE SOLD FROM OR CONSUMED WITHIN THE PREMISES. DRINKING ALCOHOLIC BEVERAGES AND SMOKING OF ANY KIND IS PROHIBITED INSIDE ANY BUILDING WITHIN THE PREMISES.

## **4. PARKING (1.3 SA)**

Throughout the Term of the Lease and including any Extension Term pursuant to Clause 7 (OPTION TO EXTEND TERM), County and library patrons shall have the nonexclusive right to parking spaces located within the parking lot and the exclusive right, without charge, to use fifteen (15) designated parking spaces for County staff within the parking lot as shown on Exhibit B. County’s use of said parking spaces shall be subject to all reasonable rules and regulations which are prescribed by City from time to time for the efficient operation of the parking areas for the Building and provided to County in writing. City shall mark the parking spaces designated for County staff.

In addition to said parking spaces, City shall also provide parking for disabled persons (“ADA Spaces”) in accordance with the Americans with Disabilities Act, Section 7102 of the California Uniform Building Code and the applicable codes and/or ordinances relating to parking for disabled persons as established by the local jurisdiction in which the Premises is located where the provisions of such local codes and/or ordinances exceed or supersede the State requirements.

## **5. TERMINATION OF PRIOR AGREEMENTS (1.4 SA)**

It is mutually agreed that this Lease shall terminate and supersede any prior agreement between the Parties hereto covering all or any portion of the Premises including that certain lease dated September 20, 1983, except for those terms relating to continuing obligations for events during the terms of that prior agreement between the Parties hereto, including but not limited to indemnification, and that all personal property and/or equipment

(e.g., fixtures, partitions, counters, shelving) attached to and/or placed upon any portion of the Premises by County pursuant to the terms of any prior agreement between the Parties hereto shall remain the personal property of County, who shall have the right and obligation to remove same.

## **6. TERM (1.5 NA)**

The Term of this Lease shall be ten (10) years (“**Term**”), commencing upon the date of City’s notice to County that the Premises is available for move-in (“**Commencement Date**”), and terminating on February 28, 2029, unless previously terminated as provided herein or as otherwise agreed to in writing by the Parties.

Parties agree that the Commencement Date of this Lease will be confirmed in writing by either Party upon demand by the other.

## **7. OPTION TO EXTEND TERM (1.6 SA)**

Provided there is no current County Default under this Lease (as further defined in Clause 29 DEFAULTS AND REMEDIES), either at the time of the exercise of the Option or upon commencement of the Extension Term, County shall have the option to extend the term (the “**Option(s)**”) of this Lease for two (2) five (5) year periods (each an “**Extension Term**”) approved by the Chief Real Estate Officer and memorialized in an amendment. County shall give City written notice of its intent to exercise its Option(s) to extend the Term no sooner than twelve (12) months and no later than nine (9) months prior to the Lease termination date. Time is of the essence in the exercise of the Option(s). The Option(s) shall be personal to County and shall not be exercised by any assignee or sublessee of County. “Term” as used in this Lease shall mean the initial Term and the Extension Term(s) if the Option(s) are duly exercised. If the County exercises the Options(s) to extend, during each of the Extension Term(s) County shall continue to have the option to terminate the Lease pursuant to Clause 8 (OPTION TO TERMINATE).

## **8. OPTION TO TERMINATE LEASE (1.7 NA)**

Unless earlier terminated as set forth herein, this Lease may be terminated at any time by either Party by giving written notice to the other Party at least one hundred and eighty (180) days prior to said termination date.

## **9. RENT (1.8 NA)**

In exchange for the valuable consideration of providing free public library services, County’s use of the Premises shall be rent-free throughout the Term of this Lease or any Extension Term(s) and shall continue to be rent-free as long as County uses the Premises to provide free public library services.

## **10. RENT ADJUSTMENT (1.9 SA) - *intentionally omitted***

## **11. ADJUSTMENT FOR COST OF CITY SERVICES (2.0 SA) - *intentionally omitted***

## **12. RIGHT OF FIRST OFFER (2.1 SA) - *intentionally omitted***

## **13. CONSTRUCTION (2.2 SA) - *intentionally omitted***

## **14. PAINTING BY CITY (2.3 SA) - *intentionally omitted***

## **15. CARPETING BY CITY (2.4 SA) - *intentionally omitted***

## 16. ALTERATIONS (2.5 SA)

County may make improvements and changes in the Premises, including, but not limited to, the installation of fixtures, partitions, counters, shelving, and equipment as deemed necessary or appropriate by the County in its discretion. It is agreed that any such fixtures, partitions, counters, shelving, or equipment attached to or placed upon the Premises by County shall be considered as personal property of County, as defined below in Clause 34 (COUNTY PROPERTY), which shall have the right and the obligation, to remove same. County agrees that the Premises shall be left in as good condition as when received, reasonable wear and tear exempted.

## 17. IMPROVEMENTS BY CITY (2.6 NA) – *intentionally omitted*

## 18. ORANGE COUNTY TELECOMMUNICATIONS NETWORK (2.7 NA)

City agrees that County may install, at County's sole cost and expense, telecommunication devices and a security card access system in, on, or around the Premises and Building in accordance with the relevant and applicable County telecommunications network plans and specifications, provided that the provisions of Clause 16 (ALTERATIONS), shall be applicable to such work. It shall be County's responsibility to obtain all governmental permits and/or approvals required for such installation; however, City shall reasonably cooperate with County as necessary or appropriate, to obtain said permits and/or approvals. Additionally, County or County subcontractors have the right to enter the Premises and/or Building to maintain, repair or replace the County telecommunications network consistent with said contract between County and its service provider. County may, in its discretion, remove any cabling, conveyance systems or cabling conduit installed by County. When the Lease is terminated, County reserves all rights to remove, at its discretion, any such telecommunication improvements from the Premises and/or Building.

## 19. REPAIR, MAINTENANCE, AND JANITORIAL SERVICES (2.8 NA)

- A. **County Services.** County shall provide, at its own cost and expense, except as otherwise provided in this Lease or as otherwise directed by City: (1) all janitorial supplies and services to the Premises, including the supplying of restroom expendables and replacement of light bulbs and Light Emitting Diode (LED) lamps; (2) any and all necessary repair, maintenance and replacement of all equipment and personal property within the Premises; and (3) the cleaning and refinishing of interior surfaces and repair of all damage caused by County's patrons' use and/or misuse of the Premises.
- B. **City Services.** City shall provide, at its sole cost and expense (except as otherwise provided in this Lease) any and all necessary repair, maintenance and replacement for the Premises, Building (and systems therein), and parking lot in good order, condition and repair and in compliance with all applicable laws, including, but not limited to, the replacement, repair and maintenance of the structural portions of the Building, the roof of the Building, the parking facilities and all Building systems including the Heating, Ventilation, Air Conditioning ("HVAC") system, the plumbing, electrical and mechanical systems, fire/life safety system, elevators, roof, paving, fire extinguishers, pest control, and whether capital or non-capital (the "Services"), consistent with Exhibit C, which is attached hereto and by reference made a part hereof. City, at its sole expense, agrees to maintain all painted and carpeted surfaces within the Building; all landscaping immediately surrounding the Premises; and the parking lot in accordance with City's maintenance schedule, attached herein as Exhibit C.
- C. **Warranties.** In order for the County to comply with the California Code of Regulations, Title 8,

Section 5142 (“**Regulation 5142**”), and as it may be subsequently amended, City shall regularly inspect and maintain the HVAC system as required by Regulation 5142 and provide repair and maintenance accordingly. Inspections and maintenance of the HVAC system shall be documented in writing and City shall retain such records for at least five (5) years. City shall make all HVAC records required by this section available to County for examination and copying, within forty-eight (48) hours of a written request. City acknowledges that County may be subject to fines and/or penalties for failure to provide said records to regulatory agencies within the given timeframes. Should County incur fines and/or penalties as a direct result of City’s failure to provide said records to County in a timely manner and as set forth herein, City shall reimburse County for said fines and/or penalties within thirty (30) days upon written notice.

- D. **HVAC System.** City will ensure that air conditioning is supplied to cause the temperature in the Premises and Building to be at a temperature consistent with other office buildings in Orange County, California, which are typically not less than 70° F nor greater than 75° F, during all Normal Business Hours as defined below in Clause 19(E).
- E. **Normal Business Hours.** The “**Allocation Formula**” determines the days and hours of operations for libraries based on weighing factors which include, but are not limited to, population, taxes and circulation of library materials. Pursuant to and consistent with the Allocation Formula, the County agrees, to keep the Premises and Building open the minimum hours determined. (“**Normal Business Hours**”). County agrees that it will confer and consult with City at least ninety (90) days prior to any alteration of Normal Business Hours by County.

Notwithstanding the utilities provided during Normal Business Hours, City shall provide HVAC services prior to the beginning of Normal Business Hours in order for the temperature parameters required by this Lease, above, to be met and maintained at the beginning and throughout Normal Business Hours.

- F. **Emergency Services.** If County requires same day emergency repairs and/or services (“**Emergency Services**”), County shall first contact the City. If the City cannot be reached following reasonable efforts by the County and/or is not available for such Emergency Services, and the Emergency Services are necessary to remedy the emergency condition or to prevent imminent danger to persons or property, or if following such contact by County the City is unable or refuses to provide the necessary Emergency Services, County may have the necessary repairs made and/or provide Emergency Services to remedy the emergency condition and seek reimbursement from the City for said Emergency Services. County shall document all efforts made to contact the City for any such Emergency Services and shall provide such documentation to City upon request. Any inability or refusal by City to provide Emergency Services shall be confirmed in writing by City.

## 20. UTILITIES (2.9 N)

County shall be responsible for and pay, prior to the delinquency date, all charges for utilities supplied to the Premises.

## **21. BUILDING AND SAFETY REQUIREMENTS (3.0 SA)**

During the Term and Extension Term(s) of this Lease, City, at City's sole cost, agrees to maintain the Premises in compliance with all applicable laws, rules, regulations, building codes, statutes, and orders as they are applicable on the date of this Lease, and as they may be subsequently amended, including but not limited to the California Building Code, Title 24, Seismic Code, Fire and Life Safety requirements and, if applicable, California Green Building Standard Code.

Included in this provision is compliance with the Americans with Disabilities Act ("ADA") and all other federal, state, and local codes, statutes, and orders relating to disabled access as they are applicable on the dates of this Lease, and as they may be subsequently amended and all regulations issued by the U. S. Attorney General or other agencies under the authorization of the ADA. However, City shall not be responsible for any ADA violations resulting from alterations made by County or the placement of County's furniture, fixtures or equipment by County.

City and County shall use commercially reasonable efforts to repair and maintain the Premises as a "safe place of employment," as defined in the California Occupational Safety and Health Act (California Labor Code §§ 6300 *et seq.*) and the Federal Occupational Safety and Health Act (29 U.S.C. §§ 651 *et seq.*). County agrees to notify City of any repair or maintenance necessary within the Premises or Building to comply with such Acts for which City is responsible and City agrees to take such steps necessary to repair or maintain the Premises or Building. In the event that such repair or maintenance is necessary and is the result of County's acts or omissions, provided that County approves a work order with associated expense estimate, City agrees to perform such repair or maintenance and County agrees to reimburse City within thirty (30) days.

In the event City neglects, fails, or refuses to maintain said Premises as aforesaid, following thirty (30) days after written notice from County to City providing notice of such neglect or failure or refusal, County may, notwithstanding any other termination provisions contained herein: thirty (30) days following a second written notice of such neglect or failure or refusal, County may terminate this Lease with written notice to the City.

## **22. ASSIGNMENT AND SUBLETTING (3.1 SA)**

County shall not assign this Lease or sublet the Premises or any part thereof without the prior written consent of City. However, both Parties agree that the County has the right to enter into a license agreement with the Friends of the Library, without the prior written consent of the City. This Lease serves as notice to the City of said license agreement between the County and Friends of the Library.

## **23. INSURANCE (3.2 N)**

City shall obtain and keep in force during the term of this Lease a program of self-insurance to cover City's liability arising from City's performance of its obligations hereunder with limits no less than two million dollars (\$2,000,000.00) and a policy or policies of commercial property insurance written on ISO form CP 00 10 10 12, or a substitute form providing coverage at least as broad, to cover the loss or damage to the Premises to the full insurable value of all improvements and fixtures owned by City, at least in the amount of the full replacement cost thereof.

City agrees to and shall include in the policy or policies of commercial property insurance a standard waiver of right of subrogation against the County of Orange, its elected and appointed officials, officers, agents and employees by the insurance company issuing said policy or policies. City further agrees to include in the

policies required hereunder an Additional Insured endorsement naming the County of Orange, its elected and appointed officials, officers, agents and employees as an additional insured.

County shall obtain, maintain, and keep in full force and effect during the life of this Lease insurance or a program of self-insurance against claims for injuries to persons or damages to property which may arise from or in connection with the County's operation and use of the Premises. The cost of such insurance or a program of self-insurance shall be borne by the County. County shall designate the City as an Indemnified Party under its program of self-insurance.

Coverage shall be at least as broad as:

- a. **Commercial General Liability (CGL):** Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than **Two Million Dollars (\$2,000,000.00)** per occurrence.
- b. **Workers' Compensation** insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limits of no less than **One Million Dollars (\$1,000,000.00)** per accident for bodily injury or disease.
- c. **Property** insurance against all risks of loss to any tenant improvements or betterments, at full replacement cost with no coinsurance penalty provision.

If City or County maintains broader coverage and/or higher limits than the minimums shown above, the other Party shall be entitled to the broader coverage and/or higher limits maintained. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the other Party.

Endorsements. County's program of self-insurance shall contain the following provisions:

- a. Indemnified Party Status. The City of Costa Mesa and its elected and appointed boards, officers, officials, agents, employees, and volunteers are to be covered as an Indemnified Party on the County's program of self-insurance with respect to liability arising out of work or operations performed by or on behalf of the County of Orange including materials, parts, or equipment furnished in connection with such work or operations.
- b. Notice of Cancellation. Each insurance policy required above shall provide that coverage shall not be canceled, suspended, voided, nor the coverage or limited reduced, except with thirty (30) days written notice to the City.

Upon approval by City, the required endorsements set forth herein may be satisfied by County's Certificate of Self-insurance.

Waiver of Subrogation. County and City hereby waive all rights of subrogation.

Acceptability of Insurers. Insurance is to be placed with insurers authorized to conduct business in the State of California with a current A.M. Best's rating of no less than A: VII, unless otherwise acceptable to the City.

County and City shall provide Certificates of Insurance or a Certificate of Self-insurance to comply with the insurance requirements stated herein.

Special Risks or Circumstances. City reserves the right to modify these requirements at any time, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances; however said modifications must be mutually agreed upon by both Parties.

#### **24. INDEMNIFICATION (3.3 N)**

County hereby agrees to indemnify, hold harmless, and defend City, its elected and appointed officials, officers, agents, employees, and volunteers from and against any and all claims, losses, demands, damages, costs, including reasonable attorneys' fees, expenses or liability arising in connection with the occupancy and use of the Premises by County, except for liability arising out of the sole negligence or willful misconduct of City, its elected and appointed officials, officers, agents, employees, or volunteers, including the cost of defense of any lawsuit arising therefrom.

City hereby agrees to indemnify, hold harmless, and defend County, its elected and appointed officials, officers, agents, employees, and volunteers against any and all claims, losses, demands, damages, costs, including reasonable attorneys' fees, expenses or liability arising out of the ownership or maintenance of the Premises, except for liability arising out of the sole negligence or willful misconduct of County, its elected and appointed officials, officers, agents, employees, or volunteers, including the cost of defense of any lawsuit arising therefrom.

In the event judgment is entered against County and City because of the concurrent active negligence of County and City, their officers, agents, or employees, the Parties agree that an apportionment of liability to pay such judgment shall be made by a court of competent jurisdiction. Neither Party shall request a jury apportionment.

#### **25. TAX EXEMPTION (3.4 SA) – *intentionally omitted***

#### **26. TOXIC MATERIALS (3.5 SA)**

County hereby warrants and represents that County will comply with all laws and regulations relating to the storage, use and disposal of hydrocarbon substances and hazardous, toxic or radioactive matter, including, but not limited to, those materials identified in Title 26 of the California Code of Regulations (collectively "**Toxic Materials**"). County shall be responsible for and shall indemnify and hold City, its elected officials, officers, directors, employees, agents, and representatives, harmless from and against all claims, costs and liabilities, including attorneys' fees and costs arising out of or in connection with the storage, use, and disposal of Toxic Materials on the Premises by County. If the storage, use, and disposal of Toxic Materials on the Premises by County results in contamination or deterioration of water or soil resulting in a level of contamination greater than maximum allowable levels established by any governmental agency having jurisdiction over such contamination, County shall promptly take any and all action necessary to clean up such contamination.

City hereby warrants and represents that City has in the past and will hereafter comply with all applicable laws and regulations relating to the storage, use and disposal of Toxic Materials. If the previous, current and future storage, use, and disposal of Toxic Materials on the Premises by City results in contamination or deterioration of water or soil resulting in a level of contamination greater than maximum allowable levels established by any governmental agency having jurisdiction over such contamination (and such violation does not arise out



of any acts or omissions of County, its agents, employees or contractors), City shall promptly take any and all action necessary to clean up such contamination.

**27. SUBORDINATION, ATTORNMENT AND NON-DISTURBANCE (3.6 SA) - *intentionally omitted***

**28. ESTOPPEL CERTIFICATE (3.7 SA) - *intentionally omitted***

**29. DEFAULTS AND REMEDIES (3.8 N)**

**County Default:**

County shall be deemed in default of this Lease if: a) in the event of any monetary breach of this Lease by County, City shall notify County in writing of such breach, County shall have ten (10) days from such notice in which to cure said breach, and County fails to cure said breach, or b) in the event of any non-monetary breach of this Lease, County fails within fifteen (15) days after receipt by County of written notice specifying wherein such obligation of County has not been performed; provided however, that if the nature of County's obligation is such that more than fifteen (15) days after such notice are reasonably required for its performance, then County shall not be in breach of this Lease if performance is commenced as soon as reasonably possible within such fifteen (15) day period and thereafter diligently pursued to completion (each, a "County Default").

**City Default:**

City shall be deemed in breach of this Lease if: a) in the event of any monetary breach of this Lease by City, County shall notify City in writing of such breach, City shall have ten (10) days from such notice in which to cure said breach, and City fails to cure said breach, or b) in the event of any non-monetary breach of this Lease, City fails within fifteen (15) days after receipt by City of written notice specifying wherein such obligation of City has not been performed; provided however, that if the nature of City's obligation is such that more than fifteen (15) days after such notice are reasonably required for its performance, then City shall not be in breach of this Lease if performance is commenced as soon as reasonably possible within such fifteen (15) day period and thereafter diligently pursued to completion (each, a "City Default").

**County Remedies:**

County's remedies as the result of City Default shall be the right to damages, injunctive relief, and/or any other rights at law or in equity.

**City Remedies:**

City's remedies as the result of County Default for monetary or non-monetary breach shall be the right to damages, injunctive relief, and/or any other rights at law or in equity.

In addition to the remedies set forth herein, in the event of a City Default or a County Default, the non-defaulting Party may immediately terminate this Lease. Such termination shall be deemed effective thirty (30) days after the non-defaulting party provides written notice to the defaulting party that it is terminating this Lease pursuant to this Clause 29. Upon termination of this Lease, County shall remove all County-owned property and equipment from the Premises in a timely manner.

**30. DEBT LIMIT (3.9 SA) - *intentionally omitted***

### **31. LABOR CODE COMPLIANCE (4.0 SA)**

City acknowledges and agrees that all improvements or modifications required to be performed as a condition precedent to the Commencement Date of the Term of this Lease or any such future improvements or modifications performed by City at the request of County shall be governed by, and performed in accordance with, the provisions of Article 2 of Chapter 1, Part 7, Division 2 of the Labor Code of the State of California (Sections 1770, et seq.), as applicable. These provisions may be applicable to improvements or modifications costing more than \$1,000, unless an exception applies, including but not limited to the exception to the definition of public works under § 1720.2.

Pursuant to the provisions of Section 1773 of the Labor Code of the State of California, City 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 at the following website: <http://www.dir.ca.gov/dlsr/DPreWageDetermination.htm> from the Director of the State Department of Industrial Relations. As required by applicable law, City shall post a copy of such wage rates at the job site and shall pay the adopted prevailing wage rates at all times for all improvements or modifications to be completed for County within the Premises. As applicable, City shall comply with the provisions of Sections 1775 and 1813 of the Labor Code.

As required by applicable law, City shall maintain 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. Upon request City shall provide the OC Public Libraries/Facilities Manager updated, certified payroll records for all workers that shall include, but not be limited to, the weekly hours worked, prevailing hourly wage rates, and total wages paid.

Except as expressly set forth in this Lease, nothing herein is intended to grant authority for City to perform improvements or modifications on space currently leased by County or for which County has entered into a lease or lease amendment.

### **32. RIGHT TO WORK AND MINIMUM WAGE LAWS (4.1 SA)**

In accordance with the United States Immigration Reform and Control Act of 1986, City shall require its employees that directly or indirectly service the Premises or the terms and conditions of this Lease, in any manner whatsoever, to verify their identity and eligibility for employment in the United States. City shall also require and verify that its contractors or any other persons servicing the Premises or terms and conditions of this Lease, in any manner whatsoever, verify the identity of their employees and their eligibility for employment in the United States.

Pursuant to the United States of America Fair Labor Standard Act of 1938, as amended, and State of California Labor Code, Section 1178.5, City shall pay no less than the greater of the Federal or California Minimum Wage to all its employees that directly or indirectly service the Premises, in any manner whatsoever. City shall require and verify that all its contractors or other persons servicing the Premises on behalf of the City also pay their employees no less than the greater of the Federal or California Minimum Wage.

City shall comply and verify that its contractors comply with all other Federal and State of California laws for minimum wage, overtime pay, record keeping, and child labor standards pursuant to the servicing of the Premises or terms and conditions of this Lease.

Notwithstanding the minimum wage requirements provided for in this clause, City, where applicable, shall comply with the prevailing wage and related requirements, as provided for in Clause 31 (LABOR CODE COMPLIANCE) of this Lease.

**33. COMMISSION (4.2 SA) - intentionally omitted**

**34. COUNTY PROPERTY (4.3 SA)**

All trade fixtures, merchandise, inventory, telecommunications equipment, supplemental air conditioning equipment and all personal property placed in or about the Premises by, at the direction of or with the consent (express or implied) of the City, its employees, agents, licensees or invitees, shall be at the sole risk of the County, and City shall not be liable for any loss of or damage to said property resulting from any cause whatsoever unless such loss or damage is the result of City's negligence or willful misconduct and not otherwise waived pursuant to Clause 35 (CITY'S RIGHT OF ENTRY) below. City hereby waives any and all lien rights, whether statutory or common law or established pursuant to this Lease, that City may have as "landlord" with respect to any and all goods, wares, equipment, fixtures, furniture, improvements and other personal property of County presently or which may hereafter be situated within the Premises.

**35. CITY'S RIGHT OF ENTRY AND ACCESS TO THE PREMISES (4.4 N)**

City shall have the right to enter the Premises at any time, with or without notice to County. City and County shall each have full access to the entire Premises, with the exception of each Party's server room. Access to each Party's server room shall be limited to that Party and its officers, agents, employees, and volunteers, unless such Party permits access to the other Party.

**36. SIGNAGE (4.5 SA)**

County shall not erect, install or maintain any sign or display upon or in front of the Premises and/or Building without prior written approval from City. However, County may hang up to two banners and/or flags at each entrance to the Library for special events without prior City approval. Such banners and flags shall be removed promptly after the conclusion of such special events. All signage shall comply with all applicable laws and zoning and site plan requirements.

**37. SECURITY SERVICES (4.6 SA)**

County may provide security services within the Premises. City may provide security services for the exterior of the Premises.

City shall wire the Building alarm system notifications so that City's Police and Fire Departments are notified when the Building alarm system activated.

**38. AUTHORITY (4.7 SA)**

The persons executing the Lease below on behalf of County or City warrant that they have the power and authority to bind County or City to this Lease.

**39. LEASE ORGANIZATION (4.8 SA)**

The various headings in this Lease, the numbers thereof, and the organization of the Lease into separate sections and paragraphs are for purposes of convenience only and shall not be considered otherwise.

**40. SUCCESSORS IN INTEREST (4.9 SA)**

Unless otherwise provided in this Lease, the terms, covenants, and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators, and assigns of all the Parties hereto, all of whom shall be jointly and severally liable hereunder.

**41. DESTRUCTION OF OR DAMAGE TO PREMISES (5.0 NA)**

“**Partial Destruction**” of the Premises shall mean damage or destruction to the Premises, for which the repair cost is less than 25 percent (25%) of the then replacement cost of the Premises (including tenant improvements), excluding the value of the land.

“**Total Destruction**” of the Premises shall mean damage or destruction to the Premises, for which the repair cost is 25 percent (25%) or more of the then replacement cost of the Premises (including tenant improvements), excluding the value of the land.

In the event of a Partial Destruction of the Premises, City shall immediately pursue completion of all repairs necessary to restore the Premises to the condition which existed immediately prior to said Partial Destruction. Said restoration work (including any demolition required) shall be completed by City, at City’s sole cost, within sixty (60) days of the occurrence of said Partial Destruction or within an extended time frame as may be mutually agreed. County shall reimburse City for costs to repair the Premises for damage or destruction caused by County or County’s employees, agents or invitees. The Partial Destruction of the Premises shall in no way render this Lease null and void. Should City fail to complete necessary repairs, for any reason, within sixty (60) days, or other time frame as may be mutually agreed, County may, at County’s sole option, terminate the Lease.

In the event of Total Destruction of the Premises or the Premises being legally declared unsafe or unfit for occupancy, this Lease shall in no way be rendered null and void and City shall immediately initiate action to rebuild or make repairs, as necessary, to restore the Premises (including replacement of all tenant improvements) to the condition which existed immediately prior to the destruction. County shall reimburse City for costs to repair the Premises for damage or destruction caused by County or County’s employees, agents or invitees. In the event City refuses to diligently pursue or is unable to restore the Premises to a condition suitable for being occupied (including replacement of all tenant improvements) within one hundred and eighty (180) days of the occurrence of said destruction or within an extended time frame as may be mutually agreed, County may, at County’s sole option, terminate this Lease.

**42. AMENDMENT (5.1 SA)**

This Lease sets forth the entire agreement between City and County and any modification must be in the form of a written amendment.

**43. PARTIAL INVALIDITY (5.2 SA)**

If any term, covenant, condition, or provision of this Lease 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.

#### **44. CIRCUMSTANCES WHICH EXCUSE PERFORMANCE (5.3 SA)**

If either Party hereto shall be delayed or prevented from the performance of any act required hereunder by reason of Force Majeure as defined below in Clause 55 (FORCE MAJEURE), performance of such act shall be excused for the period of the delay; and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay. Financial inability shall not be considered a circumstance excusing performance under this Lease.

#### **45. STATE AUDIT (5.4 SA)**

Pursuant to and in accordance with Section 8546.7 of the California Government Code, in the event that this Lease involves expenditures and/or potential expenditures of State funds aggregating in excess of ten thousand dollars (\$10,000), City shall be subject to the examination and audit of the Auditor General of the State of California for a period of three years after final payment by County to City under this Lease. The examination and audit shall be confined to those matters connected with the performance of the contract, including, but not limited to, the costs of administering the contract.

#### **46. WAIVER OF RIGHTS (5.5 SA)**

The failure of City or County to insist upon strict performance of any of the terms, conditions, and covenants in this Lease shall not be deemed a waiver of any right or remedy that City or County may have, and shall not be deemed a waiver of any right or remedy for a subsequent breach or default of the terms, conditions, and covenants herein contained.

#### **47. HOLDING OVER (5.6 SA)**

In the event County shall continue in possession of the Premises after the Term or any Extension Term of this Lease, such possession shall not be considered a renewal of this Lease but a tenancy from month to month and shall be governed by the conditions and covenants contained in this Lease.

#### **48. EARTHQUAKE SAFETY (5.7 SA)**

City hereby confirms that to the best of City's knowledge, the Premises was in compliance with all applicable seismic safety regulations and building codes at the time of construction.

**49. QUIET ENJOYMENT (5.8 SA)**

City agrees that, subject to the terms, covenants and conditions of this Lease, County may, upon observing and complying with all terms, covenants and conditions of this Lease, peaceably and quietly occupy the Premises.

**50. ADMINISTRATIVE COSTS (5.9 SA) - *intentionally omitted*****51. GOVERNING LAW AND VENUE (6.0 SA)**

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 do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure section 394.

**52. ATTORNEYS' FEES (6.1 SA)**

In the event of a dispute between City and County concerning claims arising out of this Lease, or in any action or proceeding brought to enforce or interpret any provision of this Lease or where any provision hereof is validly asserted as a defense, each Party shall bear its own attorneys' fees and costs.

**53. TIME (6.2 SA)**

Time is of the essence of this Lease.

**54. INSPECTION OF PREMISES BY A CERTIFIED ACCESS SPECIALIST (6.3 SA)**

In accordance with California Civil Code 1938(e), "A Certified Access Specialist (CAsp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CAsp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CAsp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The Parties shall mutually agree on the arrangements for the time and manner of the CAsp inspection, the payment of the fee for the CAsp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises."

Pursuant to California Civil Code section 1938, City hereby represents that the Premises has not undergone an inspection by a certified access specialist and no representations are made with respect to compliance with accessibility standards. However, if it is determined that a violation of handicapped access laws (including the Americans with Disabilities Act) existed at the Premises as of the Commencement Date, City shall correct such non-compliance at City's cost.

**55. FORCE MAJEURE (6.4 SA)**

For purposes of this Lease, the term "**Force Majeure**" means any of the following events which are beyond the control of either Party: act of God, unavailability of equipment or materials (but only if such equipment and materials were ordered in a timely fashion), enemy or terrorist act, act of war, riot or civil commotion, strike, lockout or other labor disturbance, fire, earthquake, explosion, governmental delays (including

nonstandard delays in issuance of any permit or other necessary governmental approval or the scheduling of any inspections or tests), nonstandard delays by third party utility providers, or any other matter of any kind or character beyond the reasonable control of the Party delayed or failing to perform under this Lease despite such Party's best efforts to fulfill the obligation. "**Best Efforts**" includes anticipating any potential force majeure event and addressing the effects of any such event (a) as it is occurring and (b) after it has occurred, to prevent or minimize any resulting delay to the greatest extent possible. Force Majeure shall not include inability to obtain financing or other lack of funds. City and County shall be excused for the period of any delay in the performance of any obligation hereunder when such delay is occasioned by causes beyond its control.

#### **56. CONDEMNATION (6.5 SA)**

If the Premises or any portion thereof are taken under the power of eminent domain or sold under the threat of the exercise of said power (collectively, "**Condemnation**"), this Lease shall terminate as to the part taken as of the date the condemning authority takes title or possession, whichever first occurs. If all or a material portion of the rentable area of the Premises are taken by Condemnation, County may, at County's option, to be exercised in writing within ten (10) days after City shall have given County written notice of such taking (or in the absence of such notice, within ten (10) days after the condemning authority shall have taken possession) terminate this Lease as of the date the condemning authority takes such possession. City shall also have the right to terminate this Lease if there is a taking by Condemnation of any portion of the Building or property which would have a material adverse effect on City's ability to profitably operate the remainder of the Building. If neither Party terminates this Lease in accordance with the foregoing, this Lease shall remain in full force and effect as to the portion of the Premises remaining. Condemnation awards and/or payments shall be the property of City, whether such award shall be made as compensation for diminution in value of the leasehold, the value of the part taken or for severance damages. County hereby waives any and all rights it might otherwise have pursuant to Section 1265.130 of the California Code of Civil Procedure, or any similar or successor Laws.

#### **57. CONSENT OR APPROVAL (6.6 SA)**

Unless expressly stated otherwise, where the consent or approval of a Party is required, such consent or approval will not be unreasonably withheld, conditioned or delayed.

#### **58. UNENFORCEABLE PROVISIONS (6.7 SA)**

If any paragraph or clause hereof shall be determined illegal, invalid or unenforceable by a court of competent jurisdiction, it is the express intention of the Parties hereto that the remainder of the Lease shall not be affected thereby, and it is also the express intentions of the Parties hereto that in lieu of each paragraph or clause of this Lease which may be determined to be illegal, invalid or unenforceable, there may be added as a part of this Lease a paragraph or clause as similar in terms to such illegal or invalid or unenforceable paragraph or clause as may be possible and may be legal, valid and enforceable.

**59. NOTICES (6.8 SA)**

All written notices pursuant to this Lease shall be addressed as set forth below or as either Party may hereafter designate by written notice and shall be deemed received upon personal delivery, delivery by facsimile machine, electronic mail, or seventy-two (72) hours after deposit in the United States Mail.

To: City  
City of Costa Mesa  
77 Fair Drive  
Costa Mesa, CA 92628  
Attention: City Manager

To: County  
Orange County Public Library  
1501 E. St. Andrew Place  
Santa Ana, CA 92705  
Attention: County Librarian

With a copy to:

County Executive Office  
333 W. Santa Ana Boulevard, 3rd Floor  
Santa Ana, CA 92701  
Attention: Thomas A Miller, Chief Real Estate Officer

**60. ATTACHMENTS (6.9 SA)**

This Lease includes the following, which are attached hereto and made a part hereof:

**I. EXHIBITS**

- Exhibit A - Description of Premises
- Exhibit B - Depiction of Premises
- Exhibit C - City Maintenance Schedule



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

APPROVED AS TO FORM:

OFFICE OF COUNTY COUNSEL  
ORANGE COUNTY, CALIFORNIA

By [Signature]  
Deputy

Date: 1-30-19

RECOMMENDED FOR APPROVAL

OC Public Libraries

By [Signature]  
County Librarian

COUNTY EXECUTIVE OFFICE

By [Signature]  
Administrative Manager  
Real Estate Services

SIGNED AND CERTIFIED THAT A  
COPY OF THIS DOCUMENT HAS BEEN  
DELIVERED TO THE CHAIRMAN OF  
THE BOARD OF SUPERVISORS  
PER GC § 25103, RESO. 79-1535

BY: \_\_\_\_\_  
ROBIN STIELER  
Clerk of the Board of Supervisors  
of Orange County, California

CITY

City of Costa Mesa, a municipal corporation

By [Signature]  
Tamara Letourneau, Acting City Manager

APPROVED AS TO FORM:

By [Signature]  
Kimberly Hall Barlow, City Attorney

ATTEST:

By [Signature] 1/23/19  
Brenda Green, City Clerk



COUNTY

COUNTY OF ORANGE

BY: \_\_\_\_\_  
Chairman of the Board of Supervisors  
Orange County, California

**EXHIBIT A**

**LEASE DESCRIPTION (10.1 S)**

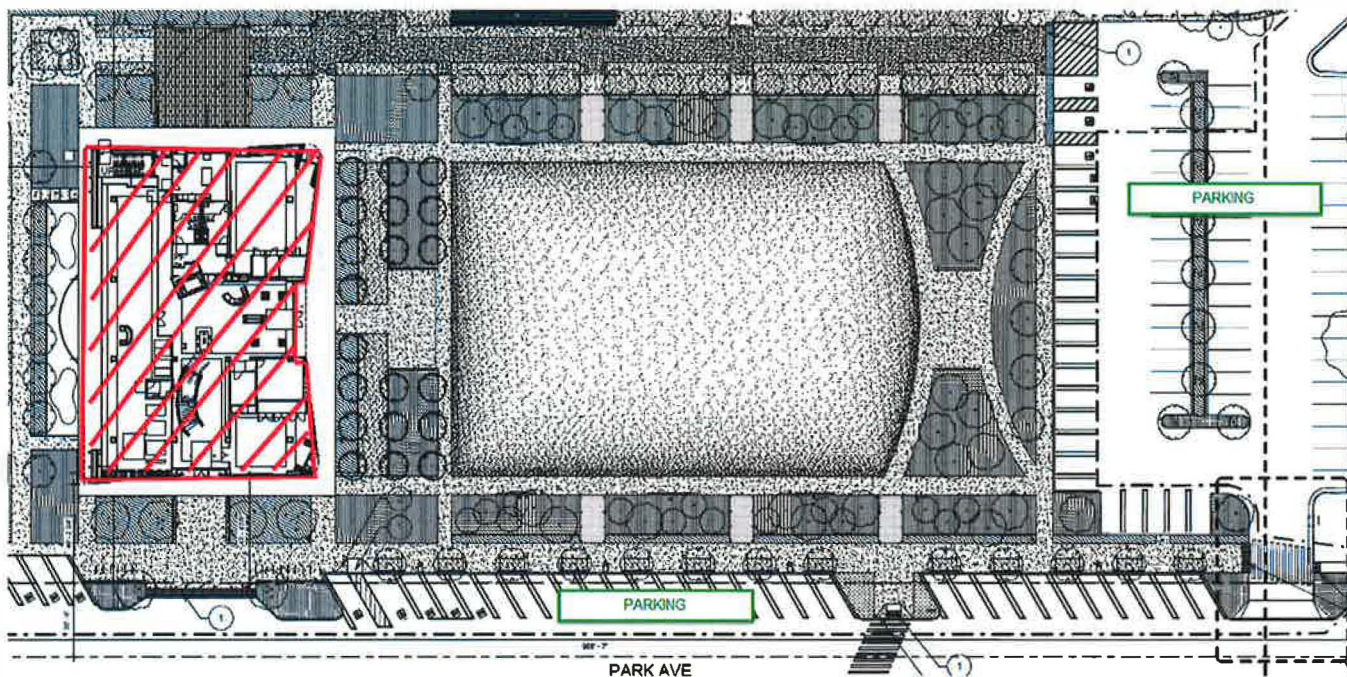
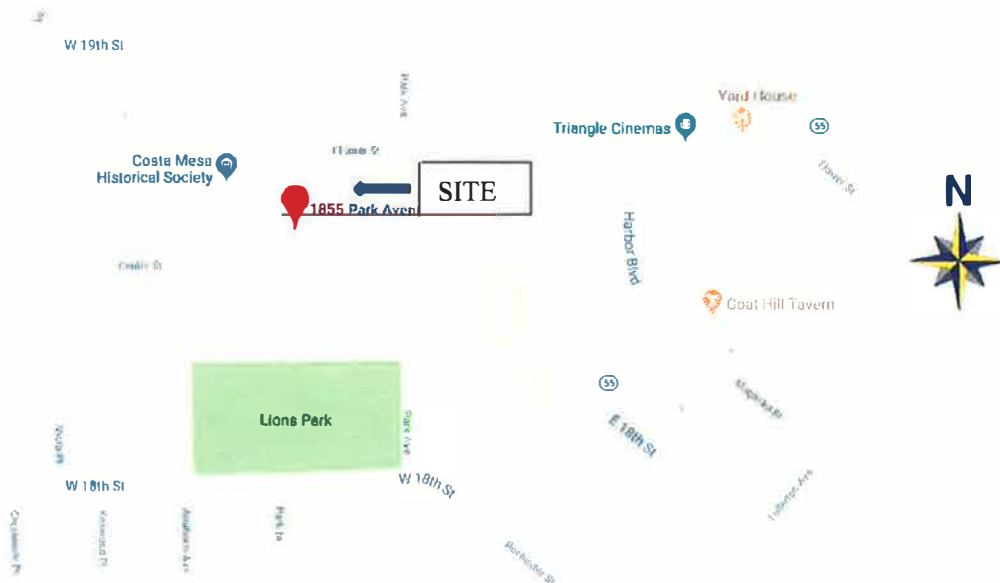
PROJECT NO: CEO/RFLS/OCCR-018-029  
PROJECT: Costa Mesa-Lions Park Library


DATE: 7/17/2018  
VERIFIED BY:  
Malcolm Henry

All the Premises shown (hatched) on plot plan Marked Exhibit B. Attached hereto and made a part hereof, located at 1855 Park Avenue in the City of Costa Mesa, County of Orange, State of California, comprising approximately 23,600 square feet, together with free use of fifteen (15) parking spaces in the parking shown on Exhibit B.

**NOT TO BE RECORDED**

**EXHIBIT B**  
**DEPICTION OF PREMISES**



<p align="center"><b>CEO/RFLS/OCCR-018-029</b> <b>Costa Mesa-Lions Park Library</b></p> <p align="center">1855 Park Avenue</p> <p align="center">Costa Mesa, CA 92627</p>	<p>Prepared By: Malcolm Henry</p>	<p align="center"><b>County OF ORANGE</b></p>  <p align="center"><b>OC PUBLIC LIBRARIES</b></p>
	<p>Checked By: Julie Oakley</p>	
	<p>Date: 7-17-2018</p>	

**EXHIBIT C****CITY MAINTENANCE SCHEDULE****LIONS PARK LIBRARY HEATING-VENTILATION-AIR CONDITIONING (HVAC) MAINTENANCE BY CITY CONTRACTOR**

- Respond to indoor temperature complaints and provide expeditious correction and record complaints and corrections.
- Inspect all HVAC systems at least twice a year, with seasonal start-up and run inspections performed and documented.
- Inspect all support structures, and provide documentation of maintenance and repairs to the City Representative.
- Inspect all moving parts or components, investigate noises; belts; bearings; drives; and fans, and lubricate and adjust as recommended per manufacturers' specifications.
- Perform air-handling unit maintenance which includes but is not limited to; all services recommended by manufacturer; replacing air filters at least quarterly.
- Perform monthly walkthroughs of HVAC systems for preventative maintenance work requests.

**LIONS PARK LIBRARY LANDSCAPE MAINTENANCE BY CITY CONTRACTOR**

- Mowing – weekly
- Planter weeding – minimum one time per month or more often as needed
- Shrub trimming – minimum one time per month or more often as needed
- Turf Fertilization – two times per year
- Planter Fertilization – two times per year
- Planter Pre-emergent or alternate method, as needed
- Irrigation inspection – one time per month. Repairs made on an as needed basis.
- Trimming of trees on an as needed basis

**LIONS PARK LIBRARY MAINTENANCE BY CITY/CITY CONTRACTOR**

- Clean inside and outside of all windows – minimum two (2) times a year
- Inspect paint condition on the inside of the Library at year five (5) of the Lease Term and repaint if City deems appropriate. If not repainted at year (5) of the Lease Term, repaint at year ten (10) of the Lease Term
- Inspect Library carpet condition at year ten (10) of the Lease Term and replace if City deems appropriate. If not replaced at year ten (10) of the Lease Term, recarpet the Library at the conclusion of the first Extension Term.