



License Number
 Friends of the Library/Branch Library
 Location Name
 Premises Address

FRIENDS OF THE LIBRARY LICENSE AGREEMENT

THIS LICENSE (the “**License**”) is made and entered into on _____, 2018 (“**Effective Date**”) by and between the COUNTY OF ORANGE, a political subdivision of the State of California (“**COUNTY**”) and FRIENDS OF THE _____ BRANCH LIBRARY, a California non-profit 501(C)(3)(Corporation or Association)_____ (“**THE FRIENDS OF THE LIBRARY**” or “**LICENSEE**”) without regard to number and gender. COUNTY and THE FRIENDS OF THE LIBRARY are referred to herein individually as a “**Party**” and collectively as the “**Parties.**”

RECITALS

- A. COUNTY owns or leases property located at _____, California, which is also known as the _____ Branch Library (“**Library**”).
- B. THE FRIENDS OF THE LIBRARY operates a bookstore located in the License Area as defined in Clause 2 (LICENSE AREA), below, of this License.
- C. THE FRIENDS OF THE LIBRARY is a California non-profit (Corporation or Association) _____, which follows its objectives pursuant to THE FRIENDS OF THE LIBRARY’s current Bylaws.
- D. COUNTY now desires to grant to THE FRIENDS OF THE LIBRARY a license for use of the Library bookstore under the terms and conditions contained herein.

NOW THEREFORE, in consideration of the Recitals above, incorporated herein by reference, COUNTY and THE FRIENDS OF THE LIBRARY do hereby agree as follows:

1. DEFINITIONS (FOL-1.0 S)

The following words in this License have the significance attached to them in this clause unless otherwise apparent from context:

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

“**Chief Real Estate Officer**” means the Chief Real Estate Officer, County Executive Office, Real Estate Section, County of Orange, or upon written notice to LICENSEE, such other person 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 THE FRIENDS OF THE LIBRARY, 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 THE FRIENDS OF THE LIBRARY, such other person or entity as shall be designated by the Board of Supervisors.

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

“**OC Public Libraries**” means the County of Orange County Free Public Library organized pursuant to the provisions of Education Code Sections 19100, et seq., which is responsible for the countywide library system.

“**Orange County Public Library Foundation**” means a non-profit 501(c)(3) organization focused on enhancing our orange County public libraries.

“**Risk Manager**” means the Risk Manager, of County Executive Office, Risk Management, for the County of Orange, or upon written notice to THE FRIENDS OF THE LIBRARY, such other person or entity as shall be designated by the County Executive Officer or the Board of Supervisors.

2. LICENSE AREA (FOL-1.1 S)

COUNTY grants to THE FRIENDS OF THE LIBRARY the right to use that certain property, at no cost to THE FRIENDS OF THE LIBRARY, hereinafter referred to as “**License Area**,” described on Exhibit A and attached hereto and by reference made a part hereof, together with non-exclusive, in common use of COUNTY’s elevators, stairways, washrooms, hallways, driveways for vehicle ingress and egress, pedestrian walkways, other facilities and common areas appurtenant to COUNTY’s property adjacent to the License Area.

3. USE (FOL-1.2 S)

THE FRIENDS OF THE LIBRARY's use of the License Area shall be limited to the operation of a bookstore and storage area for the sole purpose of generating sales revenue and fundraising for the benefit of the [REDACTED] and/or the Orange County Public Library Foundation.

THE FRIENDS OF THE LIBRARY agrees not to use the License Area for any other purpose nor to engage in or permit any other activity within or from the License Area without prior written permission from the County Librarian. THE FRIENDS OF THE LIBRARY further agrees not to conduct or permit to be conducted any public or private nuisance in, on, or from the License Area, not to commit or permit to be committed waste on the License Area, and to comply with all governmental laws and regulations in connection with its use of the License Area.

NO ALCOHOL, TOBACCO, OR MARIJUANA PRODUCTS SHALL BE SOLD FROM OR CONSUMED WITHIN THE LICENSE AREA. DRINKING ALCOHOLIC BEVERAGES AND

SMOKING OF ANY KIND IS PROHIBITED INSIDE ANY BUILDING WITHIN THE LICENSE AREA.

4. PARKING (FOL-1.3 S)

All parking available to the public at the _____ Library, except for library staff designated parking spaces, shall also be available to THE FRIENDS OF THE LIBRARY's free, non-exclusive use.

5. TERMINATION OF PRIOR AGREEMENTS (FOL-1.4 S)

It is mutually agreed that this License shall terminate and supersede any prior agreement between the Parties hereto covering all or any portion of the License Area including that certain license dated _____, 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.

6. TERM (FOL-1.5 S)

This License shall become effective upon the Effective Date. Said License shall continue in effect until terminated as provided in Clause 7 (TERMINATION) of this License or until ten (10) years from the date first written, whichever occurs first.

7. TERMINATION (FOL-1.6 S)

This License shall be revocable by either COUNTY or THE FRIENDS OF THE LIBRARY at any time; however, as a courtesy the terminating Party will attempt to give thirty (30) days written notice to the other Party prior to the termination date.

8. LICENSE FEE (FOL-1.7 S)

Based upon the benefit to COUNTY for the services provided pursuant to this License, the License Fee for this License shall be waived for THE FRIENDS OF THE LIBRARY's use of the Licensed Area.

9. FORM OF BUSINESS ORGANIZATION AND NON-PROFIT STATUS (FOL-1.8 S)

Form of Business Organization - Non-profit Status: THE FRIENDS OF THE LIBRARY shall maintain throughout the term of this License, THE FRIENDS OF THE LIBRARY's non-profit status and ensure that the organization is in compliance with the California Attorney General requirements found at <http://rct.doj.ca.gov/Verification/Web/Search.aspx?facility=Y>. Upon the request of the County Librarian, THE FRIENDS OF THE LIBRARY shall prepare and submit, within thirty (30) days thereafter, a letter of exemption from the federal Internal Revenue Service containing the form of THE FRIENDS OF THE LIBRARY's business organization (*i.e.*, proprietorship, partnership, corporation, etc.). If during the term of this License, THE FRIENDS OF THE LIBRARY fails to maintain its non-profit status, the County Librarian may terminate this License until such time THE FRIENDS OF THE LIBRARY's non-profit status is restored. Upon the request of the County Librarian, THE FRIENDS OF THE LIBRARY shall submit, within thirty (30) days thereafter, a copy of THE FRIENDS OF THE LIBRARY's articles of incorporation and by-laws.

10. SHARING OF FUNDS (FOL-1.9 S)

For the purpose of demonstrating continued public benefit to substantiate the waiver of the License Fee hereunder, all funds, gross receipts, donation and donation checks, or moneys, less applicable sales tax, less operating expenses (e.g. office and insurance expenses, etc.) and less direct payments to vendors for library-related purchases or events, (“**Funds**”) collected by THE FRIENDS OF THE LIBRARY shall be for the benefit of the [REDACTED] Branch Library or other branch libraries system as designated by THE FRIENDS OF THE LIBRARY, including the Orange County Public Library Foundation.

THE FRIENDS OF THE LIBRARY shall submit a written statement of Funds raised (“**Statement of Funds**”), upon request, to the County Librarian certifying that the Statement of Funds is accurate to the best of THE FRIENDS OF THE LIBRARY’s knowledge. Any donation checks from THE FRIENDS OF THE LIBRARY to the County shall be payable to “OC Public Libraries.” The County Librarian has the right to inspect the financial records of THE FRIENDS OF THE LIBRARY that substantiate such Statement of Funds and such records shall be provided to COUNTY’s representative upon request. THE FRIENDS OF THE LIBRARY shall maintain financial records supporting its Statement of Funds for a period of six (6) years after the event and shall make them available to COUNTY’s representatives upon demand.

11. COUNTY OBLIGATIONS – UTILITIES AND JANITORIAL (FOL-2.0 S)

COUNTY shall be responsible for all charges for the following utilities: water, gas, electricity, and sewer. COUNTY shall be responsible for all maintenance and repairs (including but not limited to: fire alarm, fire extinguisher, HVAC system, elevator maintenance, landscaping, pest control, and trash) unless such maintenance and repairs arise out of THE FRIENDS OF THE LIBRARY’s negligence or intentional acts not in accordance with the uses permitted herein, per Clause 3 (USE), above and not including normal wear and tear. THE FRIENDS OF THE LIBRARY shall be responsible for telephone service, cable service, internet service.

12. CONSTRUCTION AND/OR ALTERATION BY THE FRIENDS OF THE LIBRARY (SRLic-2.1 S)

COUNTY’s Consent. No structures, improvements, or facilities shall be constructed, erected, altered, or made within the License Area without prior written consent of COUNTY. Any conditions relating to the manner, method, design, and construction of said structures, improvements, or facilities fixed by the COUNTY as a condition to granting such consent, shall be conditions hereof as though originally stated herein.

Strict Compliance with Plans and Specifications. All improvements constructed by THE FRIENDS OF THE LIBRARY within the License Area shall be constructed in strict compliance with detailed plans and specifications approved by COUNTY and to the extent applicable, in compliance with the requirements of California Public Contract Code Section 22000 *et seq.*, which requires those improvements to be constructed as if such improvements had been constructed under the direction and supervision, or under the authority, of COUNTY.

13. OWNERSHIP OF IMPROVEMENTS (SRLic-2.2 S)

All improvements, exclusive of trade fixtures, constructed or placed within the License Area by THE FRIENDS OF THE LIBRARY (“**LICENSEE Improvements**”) must, upon completion, be free and clear all

liens, claims, or liability for labor or material and at COUNTY's option shall be the property of COUNTY's at the termination of this License. COUNTY retains the right to require THE FRIENDS OF THE LIBRARY, at LICENSEE's cost, to remove all of LICENSEE's Improvements located on the License Area at the expiration or termination hereof. In the event that LICENSEE fails to remove said LICENSEE Improvements within fifteen (15) days following receipt of written notice from COUNTY to do so, such LICENSEE Improvements will be deemed abandoned and LICENSEE shall lose all right, title and interest in and thereto, and COUNTY may elect (i) at LICENSEE's cost, to remove, demolish, or otherwise dispose of some or all of such items or (ii) sell or make use of any or all such items.

14. MECHANICS LIENS OR STOP-NOTICES (SRLic-2.3 S)

LICENSEE shall at all times indemnify, defend with counsel approved in writing by COUNTY and save COUNTY harmless from all claims, losses, demands, damages, cost, expenses, or liability costs for labor or materials in connection with construction, repair, alteration, or installation of structures, improvements, equipment, or facilities within the License Area, and from the cost of defending against such claims, including attorneys' fees and costs.

In the event a lien or stop-notice is imposed upon the License Area as a result of such construction, repair, alteration, or installation, LICENSEE shall either:

- A. Record a valid Release of Lien, or
- B. Procure and record a bond in accordance with Section 3143 of the Civil Code, which frees the License Area from the claim of the lien or stop-notice and from any action brought to foreclose the lien.

Should LICENSEE fail to accomplish either of the two optional actions above within fifteen (15) days after the filing of such a lien or stop-notice, the License shall be in default and shall be subject to immediate termination.

15. OPERATIONAL REQUIREMENTS OF LICENSEE (FOL-2.4 S)

THE FRIENDS OF THE LIBRARY shall, to the satisfaction of COUNTY, keep and maintain the License Area and all improvements of any kind in good condition and in substantial repair, normal wear and tear excepted. It shall be THE FRIENDS OF THE LIBRARY's responsibility to take all necessary and appropriate steps to maintain such standard of condition and repair.

THE FRIENDS OF THE LIBRARY expressly agrees to maintain the License Area in a safe, clean, wholesome, and sanitary condition, to the complete satisfaction of COUNTY and in compliance with all applicable laws. COUNTY shall provide containers for trash and garbage to THE FRIENDS OF THE LIBRARY to keep the License Area free and clear of rubbish and litter. COUNTY shall have the right to enter upon and inspect the License Area at any time to verify conformity with any terms and conditions of this License including cleanliness and safety.

THE FRIENDS OF THE LIBRARY shall designate in writing to COUNTY an on-site representative who shall be responsible for the day-to-day operation and level of maintenance, cleanliness, and general order. Additionally, the on-site representative shall ensure that THE FRIENDS OF THE LIBRARY follow and abide by the OC Public Libraries' policies and procedures, as they relate to the operations of THE

FRIENDS OF THE LIBRARY. If THE FRIENDS OF THE LIBRARY fails to maintain or make repairs or replacements or abide by policies as required herein, COUNTY may notify THE FRIENDS OF THE LIBRARY in writing of said failure. Should THE FRIENDS OF THE LIBRARY fail to correct the situation within three (3) business days thereafter, COUNTY may make or cause to be made the necessary correction, and the cost thereof, including, but not limited to, the cost of labor, materials, and equipment and administration, shall be paid by THE FRIENDS OF THE LIBRARY within ten (10) days of receipt of a statement of said cost from COUNTY. COUNTY may, at COUNTY's option, choose other remedies available herein, or by law.

16. INSURANCE (FOL-2.5 S)

THE FRIENDS OF THE LIBRARY agrees to purchase all required insurance at THE FRIENDS OF THE LIBRARY's expense and to deposit with the COUNTY certificates of insurance, including all endorsements required herein, necessary to satisfy the COUNTY that the insurance provisions of this License have been complied with and to keep such insurance coverage and the certificates and endorsements therefore on deposit with the COUNTY during the entire term of this License.

THE FRIENDS OF THE LIBRARY agrees that THE FRIENDS OF THE LIBRARY shall not operate on the License Area at any time the required insurance is not in full force and effect as evidenced by a certificate of insurance and necessary endorsements or, in the interim, an official binder being in the possession of the County Librarian. In no cases shall assurances by THE FRIENDS OF THE LIBRARY, its employees, agents, including any insurance agent, be construed as adequate evidence of insurance. The County Librarian will only accept valid certificates of insurance and endorsements, or in the interim, an insurance binder as adequate evidence of insurance. THE FRIENDS OF THE LIBRARY also agrees that upon cancellation, termination, or expiration of THE FRIENDS OF THE LIBRARY's insurance, COUNTY may take whatever steps are necessary to interrupt any operation from or on the License Area until such time as the County Librarian reinstates the License.

If THE FRIENDS OF THE LIBRARY fails to provide the County Librarian with a valid certificate of insurance and endorsements, or binder at any time during the term of the License, COUNTY and THE FRIENDS OF THE LIBRARY agree that this shall constitute a material breach of the License. Whether or not a notice of default has or has not been sent to THE FRIENDS OF THE LIBRARY, said material breach shall permit COUNTY to take whatever steps necessary to interrupt any operation from or on the License Area, and to prevent any persons, including, but not limited to, members of the general public, and THE FRIENDS OF THE LIBRARY's employees and agents, from entering the License Area until such time as the County Librarian is provided with adequate evidence of insurance required herein. THE FRIENDS OF THE LIBRARY further agrees to hold COUNTY harmless for any damages resulting from such interruption of business and possession, including, but not limited to, damages resulting from any loss of income or business resulting from the COUNTY's action.

THE FRIENDS OF THE LIBRARY may occupy the License Area only upon providing to COUNTY the required insurance stated herein and maintain such insurance for the entire term of this License. COUNTY reserves the right to terminate this License at any time THE FRIENDS OF THE LIBRARY's insurance is canceled or terminated and not reinstated within ten (10) days of said cancellation or termination.

All contractors performing work on behalf of THE FRIENDS OF THE LIBRARY pursuant to this License shall obtain insurance subject to the same terms and conditions as set forth herein for THE FRIENDS OF

THE LIBRARY and insurance as described in the contractor’s insurance requirements. THE FRIENDS OF THE LIBRARY shall not allow contractors or subcontractors to work if contractors have less than the level of coverage required by COUNTY from THE FRIENDS OF THE LIBRARY under this License. It is the obligation of THE FRIENDS OF THE LIBRARY to provide written notice of the insurance requirements to every contractor and to receive proof of insurance prior to allowing any contractor to begin work within the License Area. Such proof of insurance must be maintained by THE FRIENDS OF THE LIBRARY through the entirety of this License and be available for inspection by a COUNTY representative at any reasonable time.

All self-insured retentions (SIRs) and deductibles shall be clearly stated on the Certificate of Insurance. Any self-insured retention (SIR) in an amount in excess of Fifty Thousand Dollars (\$50,000) shall specifically be approved by COUNTY’s Risk Manager, or designee, upon review of THE FRIENDS OF THE LIBRARY’s current audited financial report. If THE FRIENDS OF THE LIBRARY’s SIR is approved, THE FRIENDS OF THE LIBRARY, in addition to, and without limitation of, any other indemnity provision(s) in this License, agrees to all of the following:

- 1) In addition to the duty to indemnify and hold the County harmless against any and all liability, claim, demand or suit resulting from THE FRIENDS OF THE LIBRARY’s, its agents, employee’s or subcontractor’s performance of this License, THE FRIENDS OF THE LIBRARY shall defend the County at its sole cost and expense with counsel approved by Board of Supervisors against same; and
- 2) THE FRIENDS OF THE LIBRARY’s duty to defend, as stated above, shall be absolute and irrespective of any duty to indemnify or hold harmless; and
- 3) The provisions of California Civil Code Section 2860 shall apply to any and all actions to which the duty to defend stated above applies, and the LICENSEE’s SIR provision shall be interpreted as though THE FRIENDS OF THE LIBRARY was an insurer and the County was the insured.

If THE FRIENDS OF THE LIBRARY fails to maintain insurance acceptable to COUNTY for the full term of this License, COUNTY may terminate this License.

Qualified Insurer

The policy or policies of insurance must be issued by an insurer with a minimum rating of A- (Secure A.M. Best’s Rating) and VIII (Financial Size Category) as determined by the most current edition of the **Best’s key Rating Guide/Property-Casualty/United States or ambest.com**. It is preferred, but not mandatory, that the insurer be licensed to do business in the state of California (California Admitted Carrier).

If the insurance carrier does not have an A.M. Best rating of A-/VIII, the CEO /Office of Risk management retains the right to approve or reject a carrier after a review of the company’s performance and financial ratings.

The policy or policies of insurance maintained by THE FRIENDS OF THE LIBRARY shall provide the minimum limits and coverage as set forth below:

Coverages

Minimum Limits

<u>Coverages</u>	<u>Minimum Limits</u>
Commercial General Liability	\$1,000,000 per occurrence \$2,000,000 aggregate

The policy or policies of insurance maintained by Contractors hired by THE FRIENDS OF THE LIBRARY shall provide the minimum limits and coverage as set forth below:

Commercial General Liability	\$1,000,000 per occurrence \$2,000,000 aggregate
Automobile Liability including coverage for owned, non-owned and hire vehicles	\$1,000,000 limit per occurrence
Workers' Compensation	Statutory
Employers' Liability	\$1,000,000 per occurrence

Required Coverage Forms

The Commercial General Liability coverage shall be written on Insurance Services Office (ISO) form CG 00 01, or a substitute form providing liability coverage at least as broad.

The Business Auto Liability coverage shall be written on ISO form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form providing liability coverage as broad. (Applicable to contractors only)

Required Endorsements

The Commercial General Liability policy shall contain the following endorsements, which shall accompany the Certificate of insurance:

- 1) An Additional Insured endorsement using ISO form CG 20 26 04 13 or a form at least as broad naming the **County of Orange, its elected and appointed officials, officers, employees, agents, building owner (City of [redacted])** as Additional Insureds. Blanket coverage may also be provided which will state – **As Required By Written Agreement**.
- 2) A primary non-contributing endorsement using ISO form CG 20 01 04 13, or a form at least as broad, evidencing that THE FRIENDS OF THE LIBRARY's insurance is primary and any insurance or self-insurance maintained by the County of Orange and the City of _____ shall be excess and non-contributing.

All insurance policies required by this License shall waive all rights of subrogation against the County of Orange, its elected and appointed officials, officers, agents and employees and the City of _____ when

acting within the scope of their appointment or employment.

The Workers' Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against the County of Orange, its elected and appointed officials, officers, agents and employees and the City of [REDACTED]. Blanket coverage may also be provided which will state – *As Required by Written Agreement*. (Applicable to contractors only)

THE FRIENDS OF THE LIBRARY shall notify COUNTY in writing within thirty (30) days of any policy cancellation and ten (10) days for non-payment of premium and provide a copy of the cancellation notice to COUNTY. Failure to provide written notice of cancellation may constitute a material breach of the License, upon which COUNTY may suspend or terminate this License.

The Commercial General Liability policy shall contain a severability of interests clause, also known as a “separation of insureds” clause (standard in the ISO CG 001 policy).

Insurance certificates should be forwarded to the COUNTY address provided in the Clause 43 (NOTICES) below or to an address provided by the County Librarian. THE FRIENDS OF THE LIBRARY has ten (10) business days to provide adequate evidence of insurance or this License may be cancelled.

COUNTY expressly retains the right to require THE FRIENDS OF THE LIBRARY to increase or decrease insurance of any of the above insurance types throughout the term of this License. Any increase or decrease in insurance will be as deemed by County of Orange Risk Manager as appropriate to adequately protect COUNTY.

COUNTY shall notify THE FRIENDS OF THE LIBRARY in writing of changes in the insurance requirements. If THE FRIENDS OF THE LIBRARY does not deposit copies of acceptable certificates of insurance and endorsements with COUNTY incorporating such changes within thirty (30) days of receipt of such notice, this License may be in breach without further notice to THE FRIENDS OF THE LIBRARY, and COUNTY shall be entitled to all legal remedies.

The procuring of such required policy or policies of insurance shall not be construed to limit THE FRIENDS OF THE LIBRARY's liability hereunder nor to fulfill the indemnification provisions and requirements of this License, nor in any way to reduce the policy coverage and limits available from the insurer.

17. INDEMNIFICATION (FOL-2.6 S)

THE FRIENDS OF THE LIBRARY hereby waives all claims and recourse against COUNTY including the right of contribution for loss or damage of persons or property arising from, growing out of, or in any way connected with or related to this License except claims arising from the concurrent active or sole negligence of COUNTY, its officers, agents, and employees. THE FRIENDS OF THE LIBRARY hereby agrees to indemnify, hold harmless, and defend COUNTY, its officers, agents, and employees, with counsel approved in writing by COUNTY, against any and all claims, loss, demands, damages, cost, expenses, or liability costs arising out of the operation, use, or maintenance of the property described herein, and/or THE FRIENDS OF THE LIBRARY's exercise of the rights under this License, except for liability arising out of the concurrent active or sole negligence of COUNTY, its officers, agents, or employees, including the cost of defense of any lawsuit arising therefrom.

In the event COUNTY is named as co-defendant, THE FRIENDS OF THE LIBRARY shall notify COUNTY of such fact and shall represent COUNTY in such legal action, with counsel approved by COUNTY, unless COUNTY undertakes to represent itself as co-defendant in such legal action, in which event THE FRIENDS OF THE LIBRARY shall pay to COUNTY its litigation costs, expenses, and attorneys' fees. In the event judgment is entered against COUNTY and THE FRIENDS OF THE LIBRARY because of the concurrent active negligence of COUNTY and THE FRIENDS OF THE LIBRARY, their officers, agents, or employees, an apportionment of liability to pay such judgment shall be made by a court of competent jurisdiction. Neither Party shall request a jury apportionment.

18. LIMITATION OF THE LICENSE (FOL-2.7 S)

This License and the rights and privileges granted THE FRIENDS OF THE LIBRARY in and to the License Area are subject to all covenants, conditions, restrictions, and exceptions of record or apparent from a physical inspection of the License Area. Nothing contained in this License or in any document related hereto shall be construed to imply the conveyance to THE FRIENDS OF THE LIBRARY of rights in the License Area which exceed those owned by COUNTY.

19. UNLAWFUL USE (FOL-2.8 S)

THE FRIENDS OF THE LIBRARY agrees no improvements shall be erected, placed upon, operated, nor maintained on the License Area, nor any business conducted or carried on therein or therefrom, in violation of the terms of this License, or of any regulation, order of law, statute, bylaw, or ordinance of a governmental agency having jurisdiction.

20. RESERVATIONS TO COUNTY (FOL-2.9 S)

The License Area is accepted as is and where is by LICENSEE subject to any and all existing easements, encumbrances and physical characteristics. LICENSEE acknowledges that except as specifically herein provided, neither COUNTY nor any of its employees, agents, or representatives has made any representations, warranties or agreements to or with LICENSEE on behalf of COUNTY as to any matters concerning the License Area, access to the License Area, the present use thereof, or the suitability of LICENSEE's intended use of the License Area. Without limiting COUNTY's rights with respect to the License Area, COUNTY reserves the right to install, lay, construct, maintain, repair, and operate such sanitary sewers, drains, storm water sewers, pipelines, manholes, and connections; water, oil, and gas pipelines; telephone and telegraph power lines; and the appliances and appurtenances necessary or convenient in connection therewith, in, over, upon, through, across, under, and along the License Area or any part thereof, and to enter the License Area for any and all such purposes. COUNTY also reserves the right to grant franchises, easements, rights of way, and permits in, over, upon, through, across, under, and along any and all portions of the License Area. No right reserved by COUNTY in this clause shall be so exercised as to interfere unreasonably with LICENSEE's use hereunder.

COUNTY agrees that rights granted to their parties by reason of this Clause 20 shall contain provisions that the surface of the land shall be restored as nearly as practicable to its original condition upon the completion of any construction. COUNTY further agrees that should the exercise of these rights temporarily interfere with the use of any or all of the License Area by LICENSEE, any License Fee shall be reduced in proportion to the interference with LICENSEE's use of the License Area.

21. NO ASSIGNMENT, SUBAGREEMENTS (FOL-3.0 S)

The License granted hereby is personal to THE FRIENDS OF THE LIBRARY and any assignment of said license by THE FRIENDS OF THE LIBRARY, voluntarily or by operation of law, shall automatically terminate the License granted hereby. Sublicenses or subleases are not authorized under this License and any attempt by LICENSEE to create any such sublicense or sublease shall be null and void and shall automatically terminate the License.

22. TAXES AND ASSESSMENTS (FOL-3.1 S)

Although not anticipated, should this License create a possessory interest which is subject to the payment of taxes levied on such interest, it is understood and agreed that all taxes and assessments (including but not limited to said possessory interest tax) which become due and payable in connection with this License or upon fixtures, equipment, or other property used in connection with this License, shall be the full responsibility of THE FRIENDS OF THE LIBRARY, and THE FRIENDS OF THE LIBRARY shall cause said taxes and assessments to be paid promptly.

23. LABOR CODE COMPLIANCE (FOL-3.2 S)

LICENSEE 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 License or any such future improvements or modifications performed by LICENSEE 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, LICENSEE 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 License 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. LICENSEE 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 License Area. LICENSEE shall comply with the provisions of Sections 1775 and 1813 of the Labor Code.

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

If LICENSEE neglects, fails, or refuses to provide said payroll records to the COUNTY, upon request, such occurrence shall constitute an event of default of this License and COUNTY may, notwithstanding any other termination provisions contained herein terminate this License upon written notice to LICENSEE.

24. RIGHT TO WORK AND MINIMUM WAGE LAWS (FOL-3.3 S)

If applicable and in accordance with the United States Immigration Reform and Control Act of 1986, THE FRIENDS OF THE LIBRARY shall require its employees that directly or indirectly service the License Area or terms and conditions of this License, in any manner whatsoever, to verify their identity and eligibility for employment in the United States. THE FRIENDS OF THE LIBRARY shall also require and verify that its contractors or any other persons servicing the License Area or terms and conditions of this License, 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, THE FRIENDS OF THE LIBRARY shall pay no less than the greater of the Federal or California Minimum Wage to all its employees that directly or indirectly service the License Area, in any manner whatsoever. THE FRIENDS OF THE LIBRARY shall require and verify that all its contractors or other persons servicing the License Area on behalf of THE FRIENDS OF THE LIBRARY also pay their employees no less than the greater of the Federal or California Minimum Wage.

THE FRIENDS OF THE LIBRARY 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 License Area or terms and conditions of this License.

25. SIGNS (FOL-3.4 S)

THE FRIENDS OF THE LIBRARY agrees not to construct, maintain, or allow any hardscape/permanent signs upon License Area except as approved by County Librarian. Unapproved signs, banners, flags, etc., may be removed.

26. LICENSE ORGANIZATION (FOL-3.5 S)

The various headings and numbers herein, the grouping of provisions of this License into separate clauses and paragraphs, and the organization hereof, are for the purpose of convenience only and shall not be considered otherwise.

27. AMENDMENTS (FOL-3.6 S)

This License is the sole and only agreement between the Parties regarding the subject matter hereof; other agreements, either oral or written, are void. Any changes to this License shall be in writing and shall be properly executed by both Parties.

28. PARTIAL INVALIDITY (FOL-3.7 S)

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

29. WAIVER OF RIGHTS (FOL-3.8 S)

The failure of COUNTY to insist upon strict performance of any of the terms, covenants, or conditions of

this License shall not be deemed a waiver of any right or remedy that COUNTY may have, and shall not be deemed a waiver of the right to require strict performance of all the terms, covenants, and conditions of the License thereafter, nor a waiver of any remedy for the subsequent breach or default of any term, covenant, or condition of the License. Any waiver, in order to be effective, must be signed by the party whose right or remedy is being waived.

30. GOVERNING LAW AND VENUE (FOL-3.9 S)

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.

31. ATTORNEYS' FEES (FOL-4.0 S)

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

32. TIME OF ESSENCE (FOL-4.1 S)

Time is of the essence of this License Agreement. Failure to comply with any time requirements of this License shall constitute a material breach of this License.

33. INSPECTION (FOL-4.2 S)

COUNTY or its authorized representative shall have the right at all reasonable times to inspect the operation to determine if the provisions of this License are being complied with.

34. INSPECTION OF PREMISES BY A CERTIFIED ACCESS SPECIALIST (FOL-4.3 S)

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 1938, COUNTY 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. If it is determined during this tenancy that a violation of handicapped access laws (including the Americans with Disabilities Act) exists at the Premises, COUNTY shall correct such non-compliance at COUNTY's cost.

35. PERMITS AND LICENSES (FOL-4.4 S)

THE FRIENDS OF THE LIBRARY shall be required to obtain any and all permits and/or licenses which may be required in connection with the operation and use of the License Area as set out herein. No permit, approval, or consent given hereunder by COUNTY, in its governmental capacity, shall affect or limit THE FRIENDS OF THE LIBRARY's obligations hereunder, nor shall any approvals or consents given by COUNTY, as a party to this License Agreement, be deemed approval as to compliance or conformance with applicable governmental codes, laws, rules, or regulations.

36. PAYMENT CARD COMPLIANCE (FOL-4.5 S)

Should THE FRIENDS OF THE LIBRARY conduct credit/debit card transactions in conjunction with their business with the COUNTY, on behalf of the COUNTY, or as part of the business that they conduct, THE FRIENDS OF THE LIBRARY covenants and warrants that it is currently Payment Card Industry Data Security Standard (“PCI DSS”) and Payment Application Data Security Standards (“PA DSS”) compliant and will remain compliant during the entire duration of this License. THE FRIENDS OF THE LIBRARY agrees to immediately notify COUNTY in the event THE FRIENDS OF THE LIBRARY should ever become non-compliant, and will take all necessary steps to return to compliance and shall be compliant within ten (10) days of the commencement of any such interruption.

Upon demand by COUNTY, THE FRIENDS OF THE LIBRARY shall provide to COUNTY written certification of THE FRIENDS OF THE LIBRARY’s PCI DSS and/or PA DSS compliance.

37. CONDITION OF LICENSE AREA UPON TERMINATION (FOL-4.6 S)

Except as otherwise agreed to herein, upon termination of this License, THE FRIENDS OF THE LIBRARY shall redeliver possession of said License Area to COUNTY in substantially the same condition that existed immediately prior to THE FRIENDS OF THE LIBRARY's entry thereon, reasonable wear and tear, flood, earthquakes, war, and any act of war excepted.

38. DISPOSITION OF ABANDONED PERSONAL PROPERTY (FOL-4.7 S)

If THE FRIENDS OF THE LIBRARY abandons the License Area or is dispossessed thereof by process of law or otherwise, title to any personal property belonging to THE FRIENDS OF THE LIBRARY and left on the License Area ten (10) days after such event shall be deemed, at COUNTY's option, to have been transferred to COUNTY. COUNTY shall have the right to remove and to dispose of such property without liability therefor to THE FRIENDS OF THE LIBRARY or to any person claiming under THE FRIENDS OF THE LIBRARY, and shall have no need to account therefor.

39. PUBLIC RECORDS (FOL-4.8 S)

Any and all written information submitted to and/or obtained by COUNTY from LICENSEE or any other person or entity having to do with or related to this License and/or the License Area, either pursuant to this License or otherwise, at the option of COUNTY, may be treated as a public record open to inspection by the public pursuant to the California Records Act (Government Code Section 6250, et seq.) as now in force or hereafter amended, or any Act in substitution thereof, or otherwise made available to the public and LICENSEE hereby waives, for itself, its agents, employees, sublicensees, and any person claiming by,

through or under LICENSEE, any right or claim that any such information is not a public record or that the same is a trade secret or confidential information and hereby agrees to indemnify and hold COUNTY harmless from any and all claims, demands, liabilities, and/or obligations arising out of or resulting from a claim by LICENSEE or any third party that such information is a trade secret, or confidential, or not subject to inspection by the public, including without limitation reasonable attorneys' fees and costs.

40. RELATIONSHIP OF PARTIES (FOL-4.9 S)

The relationship of the Parties hereto is that of LICENSOR and LICENSEE, and it is expressly understood and agreed that COUNTY does not in any way or for any purpose become a partner of or a joint venture with LICENSEE in the conduct of LICENSEE's business or otherwise, and the provisions of this License and the agreements relating to rent payable hereunder are included solely for the purpose of providing a method by which rental payments are to be measured and ascertained.

41. EXECUTION IN PART (FOL-5.0 S)

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

42. HOLDING OVER (FOL-5.1 S)

In the event THE FRIENDS OF THE LIBRARY shall continue in possession of the Premises after the term of this License, such possession shall not be considered a renewal of this License but a tenancy from month to month and shall be governed by the conditions and covenants contained in this License.

43. NOTICES (FOL-5.2 S)

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

TO: COUNTY
County of Orange
OC Public Libraries
1501 E. St. Andrew Place
Santa Ana, CA 92705
Attn: County Librarian

TO: THE FRIENDS OF THE LIBRARY

44. ATTACHMENT TO LICENSE (FOL-5.3 S)

This License includes the following, which are attached hereto and made a part hereof: Exhibit A – Description of the License Area
//

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

APPROVED AS TO FORM:
OFFICE OF COUNTY COUNSEL
ORANGE COUNTY, CALIFORNIA

THE FRIENDS OF THE LIBRARY

By 
Jeffrey Stock, Deputy County Counsel

By _____

Date: 9-4-18

Title _____

By _____

RECOMMENDED FOR APPROVAL:

OC PUBLIC LIBRARIES

Title _____

By 
Helen Fried, County Librarian

SIGNED AND CERTIFIED THAT A COPY
OF THIS DOCUMENT HAS BEEN
DELIVERED TO THE CHAIR OF THE
BOARD PER G.C. SEC. 25103,
RESOLUTION 79-1535

ATTEST:

COUNTY

Robin Stieler
Clerk of the Board of Supervisors
of Orange County, California

Chair, Board of Supervisors
County of Orange

EXHIBIT A

DESCRIPTION OF THE LICENSE AREA