

CM22-L-B.R2  
Costa Mesa/Mesa Verde Branch Library

REDLINE VERSION

## LEASE AGREEMENT

~~THIS IS A LEASE AGREEMENT,~~ hereinafter referred to as (“**Lease.**”) is made and entered into November 1, 2017 (“**Commencement 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 term “COUNTY” shall mean the Board of Supervisors of the political body that executed this agreement or its authorized representative.~~ The CITY and COUNTY may individually be referred to herein individually as a “Party” or collectively as the “Parties.”

## RECITALS

WHEREAS, CITY is the owner of the property located at 2969 Mesa Verde Drive East, Costa Mesa, California and all appurtenances thereon known as Mesa Verde Library, which property is more particularly described and depicted in Exhibit “A” and Exhibit “B,” both attached hereto and incorporated herein by this reference (the “Premises”); and

WHEREAS, COUNTY desires to lease from City the Premises; and

WHEREAS, COUNTY and CITY desire to set forth their respective obligations in connection with such lease.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions set forth herein, the Parties agree as follows:

### 1. DEFINITIONS (1.2 N)

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

“**Building**” means the building commonly known as the Mesa Verde Branch Library constituting the Premises.

“**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.

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

“**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 of the Orange County Public Library of the County of Orange, or designee, or such other person or entity as shall be designated by the County Executive Officer or the Board of Supervisors.

“**Risk Manager**” 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.

~~“Manager of Corporate Real Estate” means the Manager, Resources and Development Management Department, Internal Services, Real Estate Division, Corporate Real Estate, County of Orange, or designee or upon written notice to CITY, such other person or entity as shall be designated by the Director of Resources Development and Management Department, or designee.~~

~~“Auditor Controller” means the Auditor Controller, 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.~~

~~“Corporate Real Estate” means the Resources Development and Management Department, Internal Services, Real Estate Division, Corporate Real Estate for the County of Orange, or upon written notice to CITY, such entity as shall be designated by the Director of Resources Development and Management Department or the County Executive Officer.~~

2. PREMISES (1.3A S)LEASE

~~CITY shall leases to COUNTY- the Premises, subject to the terms and conditions set forth herein. that certain property hereinafter referred to as “Premises,” described in “Exhibit A” and shown on “Exhibit B,” which exhibits are attached hereto and by reference made a part hereof.~~

3. USE (2.1 S)

~~The Premises shall be used for the provision of free public library services. 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 shall not cause or permit a nuisance to be created or maintained therein.~~

4. RENT (3.1 S)

~~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 and shall continue to be rent-free as long as COUNTY uses the Premises to provide free public library services.~~

COUNTY agrees to pay to CITY as rent for the Premises the sum of One Thousand Seven Hundred and Fifteen Dollars (\$1,715) per month.

To obtain rent payments CITY (or CITY's designee) shall submit to Orange County Public Library, in a form acceptable to said Orange County Public Library, a written claim for said rent payments.

Payment shall be due and payable within twenty (20) days after the later of the following:

- A. The first day of the month following the month earned; or
- B. Receipt of CITY's written claim by Orange County Public Library.

Should COUNTY occupy the Premises before the first day of the lease term, CITY shall be entitled to pro rata rent for the period of occupancy and the amount of space occupied prior to the beginning of the lease term based upon the monthly installment above. Said rent shall be included in the rent claim submitted by CITY for the first full month of the lease term and shall be paid by COUNTY at the time of payment for said month.

#### 8. ~~RENT ADJUSTMENT (3.3 N)~~

The monthly rental payable by COUNTY for the Premises shall be automatically adjusted annually as follows:

| <u>Year</u>                 | <u>Monthly Rental</u> |
|-----------------------------|-----------------------|
| <del>November 1, 2007</del> | <del>\$1,715.00</del> |
| <del>November 1, 2008</del> | <del>\$1,801.00</del> |
| <del>November 1, 2009</del> | <del>\$1,891.00</del> |
| <del>November 1, 2010</del> | <del>\$1,986.00</del> |
| <del>November 1, 2011</del> | <del>\$2,085.00</del> |
| <del>November 1, 2012</del> | <del>\$2,189.00</del> |
| <del>November 1, 2013</del> | <del>\$2,299.00</del> |
| <del>November 1, 2014</del> | <del>\$2,414.00</del> |
| <del>November 1, 2015</del> | <del>\$2,535.00</del> |
| <del>November 1, 2016</del> | <del>\$2,662.00</del> |

City Manager and County Librarian may, upon mutual consent, reduce the rent payable by substituting additional library services for rent. In no event shall rent be increased except as provided above during the term of this Lease.

#### 5. TERM (2.2A S)

The term of this Lease shall be ten (10) years ("Term"), commencing November 1, 2007 2017 and terminating on October 31, 2017 2027, unless previously terminated as provided herein or as otherwise agreed to in writing by the Parties.

63. PARKING (1.4 S)

CITY, throughout the term of this Lease, shall provide thirty (30) parking spaces for COUNTY's free and exclusive use. Said parking spaces are to be located in the parking area 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.

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.

77. OPTION TO TERMINATE LEASE (2.4 N)

Unless earlier terminated pursuant to Sections 18, 23, and 24 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. Upon termination of this Lease, COUNTY shall remove all COUNTY-owned property and equipment from the Premises in a timely manner.

~~78. RENT (3.1 S)~~

~~COUNTY's use of the Premises throughout the term of this Lease shall be rent free.~~

~~COUNTY agrees to pay to CITY as rent for the Premises the sum of One Thousand Seven Hundred and Fifteen Dollars (\$1,715) per month.~~

~~To obtain rent payments CITY (or CITY's designee) shall submit to Orange County Public Library, in a form acceptable to said Orange County Public Library, a written claim for said rent payments.~~

~~Payment shall be due and payable within twenty (20) days after the later of the following:~~

~~A. The first day of the month following the month earned; or~~

~~#~~

~~B. Receipt of CITY's written claim by Orange County Public Library.~~

~~Should COUNTY occupy the Premises before the first day of the lease term, CITY shall be entitled to pro rata rent for the period of occupancy and the amount of space occupied prior to the beginning of the lease term based upon the monthly installment above. Said rent shall be included in the rent claim submitted by CITY for the first full month of the lease term and shall be paid by COUNTY at the time of payment for said month. In consideration of the free public library services provided by COUNTY, COUNTY's use of the Premises shall be rent free throughout the term of this Lease.~~

~~8. RENT ADJUSTMENT (3.3 N)~~

~~The monthly rental payable by COUNTY for the Premises shall be automatically adjusted annually as follows:~~

| <del>Year</del>             | <del>Monthly Rental</del> |
|-----------------------------|---------------------------|
| <del>November 1, 2007</del> | <del>\$1,715.00</del>     |
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| <del>November 1, 2015</del> | <del>\$2,535.00</del>     |
| <del>November 1, 2016</del> | <del>\$2,662.00</del>     |

~~City Manager and County Librarian may, upon mutual consent, reduce the rent payable by substituting additional library services for rent. In no event shall rent be increased except as provided above during the term of this Lease.~~

#### ~~89. IMPROVEMENTS PAINTING BY CITY (4.2 N)~~

~~CITY, at its sole expense, agrees to maintain all painted surfaces and all carpeted surfaces within the Premises in accordance with CITY's maintenance schedule, attached herein as Exhibit "C." If required during the term of this Lease, CITY, at its sole expense, will repaint and/or recarpet the Premises on a date agreed upon by the Parties. Within sixty (60) days after March 1, 2012<sup>231</sup>, CITY shall repaint, at CITY's sole expense, all painted surfaces within the Premises. Said painting shall be accomplished during hours other than COUNTY's normal working hours. CITY shall be responsible for the movement and subsequent replacement of all furniture, window coverings, and fixtures necessary to repaint the Premises. Said paint shall be of a kind and quality of Dunn Edwards<sup>®</sup> semi-gloss paint or acceptable equivalent approved by COUNTY.~~

~~COUNTY and CITY may, by mutual consent, elect to defer said repainting. Said deferral shall not release CITY from the obligation to repaint. Should COUNTY and CITY elect to defer said repainting, the County Librarian, or designee, at least thirty (30) days prior to the scheduled repainting date, shall notify CITY in writing of COUNTY's decision to defer said repainting. This notice shall include the date COUNTY wishes the repainting to take place.~~

~~Should CITY fail to comply with the provisions of this clause, COUNTY shall have the option to complete said repainting and deduct the cost thereof, including overhead, from any rent payable.~~

#### ~~10. CARPETING BY CITY (4.3 N)~~

~~Within sixty (60) days after March 1, 2023, CITY shall recarpet, at CITY's sole expense, all carpeted surfaces within the Premises. Said recarpeting shall be accomplished during hours other than COUNTY's normal working hours. CITY shall be responsible for the movement and subsequent replacement of all furniture and fixtures necessary to recarpet the Premises. Carpet shall be 100% continuous filament nylon (Antron III<sup>®</sup> or equivalent) with static control, yarn weight per square yard a minimum 26 ounce level loop~~

~~to minimum 35-ounce cut pile, 1/8" to 5/32" gauge, 9.5 to 10.5 stitches per inch and have .150" to .290" pile height, and solution dyed. Carpet shall be direct glue down.~~

~~COUNTY and CITY may, by mutual consent, elect to defer said recarpeting. Said deferral shall not release CITY from the obligation to recarpet. Should COUNTY and CITY elect to defer said recarpeting, the County Librarian, or designee, at least thirty (30) days prior to the scheduled recarpeting date, shall notify CITY in writing of COUNTY's decision to defer said recarpeting. This notice shall include the date COUNTY wishes the recarpeting to take place.~~

~~Should CITY fail to comply with the provisions of this clause, COUNTY shall have the option to complete said recarpeting and deduct the cost thereof including overhead, from any rent payable.~~

#### 911. ALTERATIONS (4.4 S)

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. 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, ~~who~~ which shall have the right to remove same. COUNTY agrees that the Premises shall be left in as good condition as when received, reasonable wear and tear excepted~~exempted~~.

#### 102. -ORANGE COUNTY TELECOMMUNICATIONS NETWORK (2.7 SA)

CITY agrees that COUNTY may install, at COUNTY's sole cost and expense, telecommunication devices 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~~Section 911 (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's subcontractor ~~has the right to may~~ enter the Premises and/or Building to maintain, repair or replace the COUNTY telecommunications network consistent with said contract between COUNTY and service provider. COUNTY may, in its discretion, remove any cabling, conveyance systems or cabling conduit installed by COUNTY. ~~Upon the expiration or termination of this Lease, COUNTY reserves all rights to remove, in its discretion, any such telecommunication improvements from the Premises and/or Building.~~

#### 112. 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 COUNTY, 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. 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.

~~12123.~~ REPAIR AND MAINTENANCE (5.1 A N)(5.1A N)

COUNTY shall provide, at its own cost and expense, all janitorial supplies and services to the Premises, including the supplying of rest-room expendables and replacement of light bulbs and fluorescent tubes. COUNTY shall also provide, at its own cost and expense, the cleaning and refinishing of interior surfaces and repair of all damage caused by COUNTY's patrons' use and misuse of the Premises.

LESSORCITY shall provide, at its own cost and expense, all other repair and maintenance items, including, but not limited to, maintenance of the Heating, Ventilation, Air Conditioning ["HVAC"] system. The HVAC system serving the Premises shall be capable of maintaining the Premises at 78° Dry Bulb at a maximum range of 40% to 60% ~~r~~Relative humidity during the summer when the outdoor temperature is 95° Dry Bulb, and at 68° Dry Bulb in the winter when the outside temperature is 35° Dry Bulb.

In order for the COUNTY to comply with the California Code of Regulations, Title 8, Section 5142, and as it may be subsequently amended, LESSOR-CITY shall inspect the HVAC system at least once every- month or on a schedule agreed to in writing by LESSOR-CITY and COUNTY, and provide repair and maintenance accordingly. LESSOR's-CITY's inspections and maintenance of the HVAC system shall be documented in writing. The LESSORCITY shall at a minimum maintain a record of: (a) the name of the individual(s) inspecting and/or maintaining the system, (b) the date of the inspection and/or maintenance, and (c) the specific findings and actions taken. The LESSOR-CITY shall ensure that such records are retained for at least five (5) years. CITYThe LESSOR 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. LESSOR-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 LESSOR's-CITY's failure to provide said records to COUNTY, LESSOR-CITY shall reimburse COUNTY for said fines and/or penalties within thirty (30) days upon of receipt of written notice from COUNTY of such fines and/or penalties. ~~Should LESSOR fail to reimburse COUNTY within thirty (30) days, COUNTY may deduct the amount of the fine and/or penalty from any rent payable.~~

~~If CITY fails to provide satisfactory repair and maintenance (including fire extinguishers) to the Premises, County Librarian may notify CITY in writing; and if CITY does not instigate measures to provide satisfactory service and/or to remedy the unsatisfactory conditions within a reasonable time after COUNTY has placed such notice in the mail to CITY directed to the address shown for CITY in the clause entitled (NOTICES) below, or has personally delivered such notice to CITY, COUNTY may provide the repair and maintenance necessary to remedy the unsatisfactory conditions and assure satisfactory service or have others do so, and deduct the cost thereof, including labor, materials, and overhead from any rent payable.~~

~~If CITY or his representative cannot be contacted by COUNTY for emergency repairs and/or services the same day any emergency repairs and/or services are necessary to remedy the emergency condition, or if CITY following such contact by COUNTY is unable to make the necessary repairs or provide the necessary services, COUNTY may, at its option, have the necessary repairs made and/or provide services to remedy~~

~~the emergency condition, and deduct the cost thereof, including labor, materials, and overhead from any rent payable.~~

134. UTILITIES (5.2 N)

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

145. INSURANCE (5.3 S)

14.1

~~Property/Fire Insurance:—CITY shall obtain and keep in force during the term of this Lease a program of self-insurance to cover the CITY’s liability arising from CITY’s performance of its obligations hereunder and a policy or policies of commercial property and fire insurance with extended coverage written on ISO form CP 00 10 10 12, or a substitute form providing coverage at least as broad, to cover the with all risk coverage or special form coverage, covering the loss or damage to the Premises to the full insurable value of the improvements located on the Premises (including the full value of all improvements and fixtures owned by CITY,) at least in the amount of the full replacement cost thereof, and in no event less than the total amount required by any lender holding a security interest, against all perils included within the classification of fire, extended coverage, vandalism, malicious mischief, special extended perils (“all risk” as such term is used in the insurance industry, and flood), except for earthquake coverage, and shall name the COUNTY as an additional insured.~~

~~Included in the policy or policies of property and fire insurance shall be a standard waiver of subrogation against COUNTY by the insurance company issuing said policy or policies. CITY shall provide COUNTY with evidence of compliance with these requirements.~~

~~CITY’s insurance (a) shall be in a form satisfactory to COUNTY and carried with a company (or companies) acceptable to COUNTY and licensed to do business in the state of California, (b) shall provide that such policies shall not be subject to material alteration or cancellation without at least thirty (30) days prior written notice to COUNTY, and (c) shall be primary, and any insurance carried by COUNTY shall be non-contributing. CITY’s policy or policies, or duly executed certificates for them, shall be deposited with COUNTY prior to the Commencement Date of this Lease, and prior to renewal of such policies. If CITY fails to procure and maintain the insurance required to be procured by CITY under this Lease, COUNTY may, but shall not be required to, order such insurance and deduct the cost thereof plus any COUNTY administrative charges from the rent thereafter payable.~~

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. CITY shall provide COUNTY with a Certificate of Insurance as evidence of compliance with these requirements.



~~Commercial General Liability Insurance. CITY shall obtain and keep in force during the term of this Lease a policy or policies of commercial general liability insurance covering all injuries occurring within the Building and the Premises. The policy or policies evidencing such insurance shall provide the following:~~

- ~~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, agents and employees* as an additional insured, or provide blanket coverage which will state, **AS REQUIRED BY WRITTEN AGREEMENT**;~~
- ~~2) A primary and non-contributory endorsement using ISO form CG 20 01 04 13, or a form at least as broad evidencing that the CITY's insurance is primary and any insurance or self insurance maintained by the County of Orange shall be excess and non-contributing;~~
- ~~3) LESSOR 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 Lease, upon which the County may suspend or terminate this Lease.~~
- ~~4) Shall provide a limit of One Million Dollars (\$1,000,000) per occurrence with a Two Million Dollars (\$2,000,000) aggregate; and~~
- ~~5) 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. Prior to the Commencement Date of this Lease and upon renewal of such policies, CITY shall submit to COUNTY a Certificate of Insurance and required endorsements as evidence that the foregoing policy or policies are in effect.~~

~~If CITY fails to procure and maintain the insurance required to be procured by CITY under this Lease, COUNTY may, but shall not be required to, order such insurance and deduct the cost thereof plus any COUNTY administrative charges from the rent thereafter payable.~~

14.2 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 shall be borne by the COUNTY.

Coverage shall be at least as broad as:

1. **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. If a general aggregate limit applies, either**

the general aggregate limit shall apply separately to this location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.

2. **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.
3. **Property** insurance against all risks of loss to any tenant improvements or betterments, at full replacement cost with no coinsurance penalty provision.

If the COUNTY maintains broader coverage and/or higher limits than the minimums shown above, the CITY requires and 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 CITY.

14.3 Endorsements. COUNTY's insurance policies are to contain, or be endorsed to contain, the following provisions:

(a) Additional Insured Status. The City of Costa Mesa and its elected and appointed boards, officers, officials, agents, employees, and volunteers are to be covered as additional insureds on the CGL policy 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. General liability coverage can be provided in the form of an endorsement to the County of Orange's insurance (at least as broad as ISO Form CG 20 10).

(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.

14.4 Waiver of Subrogation. COUNTY and CITY hereby waive all rights of subrogation.

14.5 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.

14.6 COUNTY shall provide to City a Certificate of Self-insurance to comply with the insurance requirements stated herein.

14.7 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.

~~**Liability Insurance:** COUNTY shall obtain and keep in force during the term of this Lease a policy or policies of commercial general liability insurance covering all injuries occurring within the building and the Premises. The policy or policies evidencing such insurance shall name CITY as an additional insured, shall provide that same may not be cancelled or amended without thirty (30) days prior written notice to CITY,~~

~~and shall provide for a combined coverage of bodily injury and property damage in the amount of not less than One Million Dollars (\$1,000,000). Such policy or policies shall be issued by an insurance company licensed to do business in the State of California and in a form acceptable to CITY. Prior to the Commencement Date of this Lease and upon renewal of such policies, COUNTY shall submit to CITY suitable evidence that the foregoing policy or policies are in effect. CITY acknowledges and agrees that COUNTY may elect to self insure to fulfill the requirements of this clause.~~

#### 15. INDEMNIFICATION (5.5 S)

~~COUNTY hereby agrees to indemnify, hold harmless, and defend CITY, its elected officials, officers, agents, and employees, from and against any and all claims, loss, demands, damages, cost, expenses or liability arising in connection with the occupancy and use of the Premises by COUNTY, out of the ownership, maintenance, or use of the Premises, except for liability arising out of the concurrent active or sole active negligence or willful misconduct of CITY, its officers, agents, or employees, 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, an apportionment of liability to pay such judgment shall be made by a court of competent jurisdiction. Neither Party shall request a jury apportionment.~~

~~CITY hereby agrees to indemnify, hold harmless, and defend COUNTY, its elected and appointed officials, officers, agents, and employees, with counsel approved by COUNTY, against any and all claims, loss, demands, damages, cost, expenses or liability arising out of the ownership or , maintenance , or use of the Premises, 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, CITY shall notify COUNTY of such fact and shall represent COUNTY, with counsel approved by COUNTY, in such legal action unless COUNTY undertakes to represent itself as co-defendant in such legal action, in which event CITY shall pay to COUNTY its litigation costs, expenses and attorney's fees. 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, an apportionment of liability to pay such judgment shall be made by a court of competent jurisdiction. Neither Party shall request a jury apportionment.~~

~~COUNTY hereby agrees to indemnify, hold harmless, and defend CITY, its officers, agents, and employees, against any and all claims, loss, demands, damages, cost, expenses or liability arising out of the ownership, maintenance, or use of the Premises, except for liability arising out of the concurrent active or sole negligence of CITY, its officers, agents, or employees, 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, an apportionment of liability to pay such judgment shall be made by a court of competent jurisdiction. Neither Party shall request a jury apportionmentCOUNTY shall defend, indemnify and save harmless CITY, its officers, agents, and employees, from and against any and all claims, demands, losses, or liabilities of any kind or nature which CITY, its officers, agents, and employees may sustain or incur or which may be imposed upon them for injury to or death of persons, or damage to property as a result of, or arising out of, the sole negligence of COUNTY, its officers, agents, employees, subtenants, invitees, or licensees, in connection with the occupancy and use of the Premises by COUNTY.~~

~~Likewise CITY shall defend, indemnify and save harmless COUNTY, its officers, agents, and employees from and against any and all claims, demands, losses, or liabilities of any kind or nature which COUNTY, its officers, agents, and employees may sustain or incur or which may be imposed upon them for injury to or death of persons, or damage to property as a result of, or arising out of, the sole negligence of CITY, its officers, agents, employees, invitees, or licensees, in connection with the ownership, maintenance, or use of the Premises.~~

~~COUNTY shall defend, indemnify and save harmless CITY, its officers, agents, and employees, from and against any and all claims, demands, losses, or liabilities of any kind or nature which CITY, its officers, agents, and employees may sustain or incur or which may be imposed upon them for injury to or death of persons, or damage to property as a result of, or arising out of, the sole negligence of COUNTY, its officers, agents, employees, subtenants, invitees, or licensees, in connection with the occupancy and use of the Premises by COUNTY.~~

~~Likewise CITY shall defend, indemnify and save harmless COUNTY, its officers, agents, and employees from and against any and all claims, demands, losses, or liabilities of any kind or nature which COUNTY, its officers, agents, and employees may sustain or incur or which may be imposed upon them for injury to or death of persons, or damage to property as a result of, or arising out of, the sole negligence of CITY, its officers, agents, employees, invitees, or licensees, in connection with the ownership, maintenance, or use of the Premises.~~

#### 16. TAX EXEMPTION (5.6A S)

It is mutually understood and agreed that ~~the rental rate set forth in~~ this Lease is made in anticipation that the Premises will be used ~~for as~~ a public library and as such will be exempt from real property taxes (but not from special assessments and special assessment district levies) as provided for in Section 202 of the Revenue and Taxation Code. It is also understood and agreed that it is CITY's responsibility to properly claim said exemption through the Orange County Assessor's Office. If CITY has properly claimed said tax exemption and the Premises fails to qualify for said tax exemption under the above-mentioned code section, the CITY agrees to pay the real property taxes prior to delinquency, and the COUNTY agrees to reimburse the CITY for the amount of any such taxes, but not for any delinquent or other penalties thereon.

Any reimbursement made under the provisions as set forth ~~hereinabove~~ will not include payment of special assessments and special assessment district levies.

#### 17. BUILDING AND SAFETY REQUIREMENTS (5.7 S)

During the ~~Term full term~~ 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 applicable 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., Division 5, Part 1, Chapter 3, beginning with Section 6400) and, as applicable, the Federal Occupational Safety and Health Act (29 U.S.C. §§ 651 et seq.), where the provisions of such Act exceed, or supersede, the California Act, as the provisions of such Act are applicable on the date of this Lease, and as they may be subsequently amended. COUNTY agrees to notify CITY of any repair or maintenance for which CITY is responsible, pursuant to Section 12 of this Lease, necessary within the Premises or Building to comply with such Acts and CITY agrees to take such steps necessary to repair or maintain the Premises or Building diligently act to repair or maintain appropriately so long as such repair or maintenance of the Premises is a CITY expense as defined in Clause 19(A) (REPAIR MAINTENANCE, AND JANITORIAL SERVICES) above. In the event that such repair or maintenance is necessary and is the result of COUNTY's negligence 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.~~

~~CITY further agrees to maintain the Premises as a "safe place of employment," as defined in the California Occupational Safety and Health Act (California Labor Code, Division 5, Part 1, Chapter 3, beginning with Section 6400) and the Federal Occupational Safety and Health Act, where the provisions of such Act exceed, or supersede, the California Act, as the provisions of such Act are applicable on the date of this Lease, and as they may be subsequently amended.~~

~~In the event CITY neglects, fails, or refuses to maintain said Premises as aforesaid set forth herein, 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, terminate this Lease with written notice to the CITY; thirty (30) days following a second written notice of such neglect, failure, or refusal, COUNTY may terminate this Lease with written notice to the CITY; or.~~

~~A. Terminate this Lease; or~~

~~B. — At COUNTY's sole option, cure any such default by performance of any act, including payment of money, and subtract the cost thereof plus reasonable administrative costs (ten percent (10%)) from the rent.~~

#### 18. TOXIC MATERIALS (5.9 S)

COUNTY hereby warrants and represents that COUNTY will comply with all applicable 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 defend, 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.

~~Likewise, 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 hydrocarbon substances and hazardous, toxic or radioactive matter, including, but not limited to, those Toxic Materials identified in Title 26 of the California Code of Regulations (collectively "Toxic Materials"). CITY shall be responsible for and shall defend, indemnify and hold COUNTY, its 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 previous, current and future storage, use and disposal of Toxic Materials on the Premises (or building if the Premises comprises only a portion of said building) by CITY. 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.~~

#### ~~19. — SUBORDINATION, ATTORNMENT AND NON-DISTURBANCE (6.4 N)~~

~~This Lease and all rights of the COUNTY hereunder are subject and subordinate to any mortgage or deed of trust which does now or may hereafter cover the Premises or any interest of CITY therein, and to any and all advances made on the security thereof, and to any and all increases, renewals, modifications, consolidations, replacements and extensions of any such mortgage or deed of trust except, insofar as COUNTY is meeting its obligations under this Lease, any foreclosure of any mortgage or deed of trust shall not result in the termination of this Lease or the displacement of COUNTY.~~

~~In the event of transfer of title of the Premises, including any proceedings brought for foreclosure or in the event of the exercise of the power of sale under any mortgage or deed of trust, or by any other transfer of title covering the Premises, COUNTY shall attorn to and recognize any subsequent title holder as the CITY under all terms, covenants and conditions of this Lease. COUNTY's possession of the Premises shall not be disturbed by the CITY, or its successors in interest, and this Lease shall remain in full force and effect. Said attornment shall be effective and self-operative immediately upon succession of the current titleholder, or its successors in interest, to the interest of CITY under this Lease.~~

~~Notwithstanding the above, CITY shall obtain and deliver to COUNTY a *Subordination, Attornment and Non-Disturbance Agreement* from CITY's Lender (consistent with the form attached hereto in Exhibit E), within thirty (30) days of the date of full execution of this Lease. The inability or failure of CITY to obtain such *Subordination, Attornment and Non-Disturbance Agreement* shall not constitute a default by CITY hereunder but shall entitle COUNTY to cancel this Lease. CITY shall require all future lenders on the Premises, upon initiation of their interest in the Premises, to enter into a *Subordination, Attornment and Non-Disturbance Agreement* with COUNTY, thereby insuring COUNTY of its leasehold interests in the~~

~~Premises. Said Subordination, Attornment and Non-Disturbance Agreement shall be in the form of COUNTY's standard form Subordination, Attornment and Non-Disturbance Agreement or in a form approved by County Librarian, City Manager, Corporate Chief Real Estate Officer, and County Counsel. Accordingly, notwithstanding anything to the contrary herein, COUNTY's obligation to enter into an agreement to subordinate its interest under this Lease to a lien or ground lease not in existence as of the date of this Lease shall be conditioned upon the holder of such lien, or a ground CITY, as applicable, confirming in writing and substantially in the form of COUNTY's standard form Subordination, Attornment and Non-Disturbance Agreement that COUNTY's leasehold interest hereunder shall not be disturbed so long as no default by COUNTY exists under this Lease.~~

~~Foreclosure shall not extinguish this Lease, and any lender or any third party purchasing the Premises at foreclosure sale shall do so subject to this Lease and shall thereafter perform all obligations and be responsible for all liabilities of the CITY under the terms of this Lease.~~

~~Upon default by CITY of any note or deed of trust, COUNTY may, at its option, make all lease payments directly to Lender, and same shall be applied to the payment of any and all delinquent or future installments due under such note or deed of trust.~~

#### ~~20. ESTOPPEL CERTIFICATE (6.5 N3.7 A)~~

~~COUNTY agrees that its the County Librarian, or designee, shall furnish from time to time upon receipt of a written request from CITY or the holder of any deed of trust or mortgage covering the Premises or any interest of CITY therein ("**CITY Representative**"), COUNTY's standard form Estoppel Certificate (consistent with the form attached hereto in Exhibit E) containing information as to the current status of the Lease. Said standard form Estoppel Certificate shall be completed by COUNTY in a timely manner, upon receipt of the CITY Representative signed COUNTY standard form Subordination, Attornment and Non-Disturbance Agreement, agreed pursuant to Clause 27 (SUBORDINATION, ATTORNMENT AND NON-DISTURBANCE). The Estoppel Certificate shall be approved by Chief Real Estate Officer and County Counsel and shall be processed and approved concurrently with the Subordination, Attornment and Non-Disturbance Agreement, by Chief Real Estate Officer and County Counsel. The Estoppel Certificate shall be approved by County Librarian, City Manager, Corporate Real Estate, County Counsel and the City Attorney.~~

#### ~~1924. 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.~~

#### ~~204. DEFAULTS AND REMEDIES (6.8 S)~~

##### **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, and COUNTY shall have ten (10) days from such notice in which to cure said breach; or (b) in the event of any non-monetary breach of this~~

Lease, within fifteen (15) days after receipt by COUNTY of written notice from CITY specifying wherein such obligation of COUNTY has not been performed, COUNTY fails to cure said breach; 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, and CITY shall have ten (10) days from such notice in which to cure said breach or (b) in the event of any non-monetary breach of this Lease, within fifteen (15) days after receipt by CITY of written notice from COUNTY specifying wherein such obligation of CITY has not been performed, CITY fails to cure said breach; 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 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 Section. Upon termination of this Lease, COUNTY shall remove all COUNTY-owned property and equipment from the Premises in a timely manner.

~~The occurrence of any of the following shall constitute an event of default:~~

- ~~• Failure to pay any installment of any monetary amount due and payable hereunder;~~
- ~~• Failure to perform any obligation, agreement or covenant under this Lease.~~

~~In the event of any non-monetary breach of this Leasean event of default by COUNTY, CITY shall notify COUNTY in writing of such breach, and COUNTY shall have fifteen (15) days in which to initiate action to cure said breach.~~



~~In the event of any non-monetary breach of this Lease an event of default by CITY, COUNTY shall notify CITY in writing of such breach and CITY shall have fifteen (15) days in which to initiate action to cure said breach.~~

~~In the event of any monetary breach of this Lease by COUNTY, CITY shall notify COUNTY in writing of such breach, and COUNTY shall have fifteen (15) days in which to cure said breach, unless specified otherwise within this Lease.~~

~~In the event of any monetary breach of this Lease by CITY, COUNTY shall notify CITY in writing of such breach, and CITY shall have fifteen (15) days in which to cure said breach, unless specified otherwise within this Lease.~~

~~In the event any such monetary breach by COUNTY in the payment of the monthly rent, pursuant to the clause entitled (RENT) herein, is not cured within said fifteen (15) day period, CITY may declare all rent payments to the end of COUNTY's current fiscal year to be due, including any delinquent rent from prior budget years. However, in no event shall CITY be entitled to a remedy of acceleration of the total rent payments due over the term of this Lease.~~

## ~~22. DEBT LIMIT (6.9 S)~~

~~CITY acknowledges and agrees that the obligation of the COUNTY to pay rent under this Lease is contingent upon the availability of COUNTY funds which are appropriated or allocated by the COUNTY's Board of Supervisors for the payment of rent hereunder. In this regard, in the event that this Lease is terminated due to an uncured default of the COUNTY hereunder, CITY may declare all rent payments to the end of COUNTY's current fiscal year to be due, including any delinquent rent from prior budget years. In no event shall CITY be entitled to a remedy of acceleration of the total rent payments due over the term of the Lease. The parties acknowledge and agree that the limitations set forth above are required by Article 16, section 18, of the California Constitution. CITY acknowledges and agrees that said Article 16, section 18, of the California Constitution supersedes any law, rule, regulation or statute, which conflicts with the provisions of this paragraph. Notwithstanding the foregoing, CITY may have other rights or civil remedies to seek relief due to the COUNTY's default under the Lease. Such rights or remedies may include a right to continue the COUNTY's right of possession under the Lease and sue for the rent as it becomes past due.~~

## 212. LABOR CODE COMPLIANCE (6.10 S)

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 Sections 1770, et seq., Article 2 of Chapter 1, Part 7, Division 2 of the California Labor Code, of the State of California (Sections 1770, et seq.) as applicable. These provisions are 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 §Section 1720.2.

Pursuant to the provisions of Section 1773 of the Labor Code of the State of California, ~~the Orange County Board of Supervisors has obtained~~ CITY shall, as applicable, 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 ~~from the Director of the State Department of Industrial Relations.~~ 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. ~~Copies of said prevailing wage rates may be obtained from the State of California, Department of Industrial Relations or County Librarian.~~

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 County Librarian 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.

~~CITY hereby agrees to pay or cause its contractors and/or subcontractors to pay said prevailing wage rates at all times for all improvements or modifications to be completed for COUNTY within the Premises, and CITY herein agrees that CITY shall post, or cause to be posted, a copy of the most current, applicable prevailing wage rates at the site where the improvements or modifications are performed.~~

~~Prior to commencement of any improvements or modifications, CITY shall provide County Librarian with the applicable 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. CITY shall provide County Librarian, bi-weekly updated, certified payroll records for all workers that include, but not be limited to, the weekly hours worked, prevailing hourly wage rates, and total wages paid.~~

~~If CITY neglects, fails, or refuses to provide said payroll records to County Librarian such occurrence shall constitute an event of default of this Lease and COUNTY may, notwithstanding any other termination provisions contained herein:~~

~~A.— Terminate this Lease; or~~

~~B.— At COUNTY's sole option, COUNTY may deduct future rent payable to CITY by COUNTY as a penalty for such non-compliance of paying prevailing wage, which rent deduction would be COUNTY's estimate, in its sole discretion, of such prevailing wage rates not paid by CITY.~~

## 224. RIGHT TO WORK AND MINIMUM WAGE LAWS (6.13-S 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, pursuant to 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, pursuant to the 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 Section 1178.5 of the~~ 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 the Clause 23 (LABOR CODE COMPLIANCE) of this Lease.~~

235. EXECUTION IN PART (N)

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

246. NOTICES (8.1 S)

~~Any~~ written notices pursuant to this Lease may be provided by personal delivery or regular mail and 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,~~ or seventy-two (72) hours after deposit in the United States Mail.

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

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

County Executive Office  
333 W. Santa Ana Blvd., 3<sup>rd</sup> Floor  
Santa Ana, CA 92701  
Attention: Scott Mayer, Chief Real Estate Officer

257. ATTACHMENTS (8.2 S)

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

- I. GENERAL CONDITIONS
- II. EXHIBITS
  - A. Description - Premises
  - B. Plot Plan – Premises
  - C. City’s Maintenance Schedule

26. ENTIRE AGREEMENT

This Agreement, and any other documents specifically incorporated into this Agreement, shall constitute the entire agreement between COUNTY and CITY relating to the use of the Premises. As used herein, Agreement refers to and includes any documents incorporated herein by reference and any exhibits or attachments. This Agreement supersedes and merges all previous understandings, and all other agreements, written or oral, between the parties and sets forth the entire understanding of the parties regarding the subject matter thereof. The Agreement may not be modified except by a written document signed by both parties.

\_\_\_\_\_ IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first written above.

CITY

CITY OF COSTA MESA

By \_\_\_\_\_  
Katrina Foley, Mayor

APPROVED AS TO FORM: \_\_\_\_\_  
County Counsel

APPROVED AS TO FORM: \_\_\_\_\_  
By \_\_\_\_\_  
~~Julie Folcik~~ Brenda Green, City Clerk

By \_\_\_\_\_  
Deputy County Counsel

By \_\_\_\_\_  
Thomas Duarte, City Attorney

~~APPROVED AS TO FORM:~~

Date: \_\_\_\_\_

By \_\_\_\_\_

~~ATTEST: \_\_\_\_\_~~ Kimberly Hall Barlow Tom

Duarte, City Attorney

By \_\_\_\_\_  
Brenda Green, City Clerk

RECOMMENDED FOR APPROVAL:  
~~Orange County~~ OC Public Librariesy

By \_\_\_\_\_  
County Librarian

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

COUNTY

COUNTY OF ORANGE

By \_\_\_\_\_ Attest:

By \_\_\_\_\_

DARLENE J. BLOOM  
ROBIN STIELER

Chairwoman, Board of Supervisors

Clerk of the Board of Supervisors  
of Orange County, California

GENERAL CONDITIONS (9.1 S – 9.18 S)

1. SIGNAGE (4.5 SA)

CITY agrees to allow COUNTY to install and maintain any sign or display upon or in front of the Premises and/or Building. Such signage shall comply with all applicable laws and zoning and site plan requirements.

2. LEASE ORGANIZATION (9.1 S)

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.

3. INSPECTION (9.2 S)

Upon reasonable verbal notice (which shall not be less than forty-eight (48) hours) to COUNTY (except in an emergency [which shall mean immediate risk of injury to person or property] in which case no notice shall be required, provided that CITY shall first call COUNTY) and in the presence of COUNTY, CITY, its agents, employees and contractors and any mortgagee of the Premises shall have the right to enter the Premises during regular business hours (a) to inspect the Premises; (b) to exhibit the Premises to prospective tenants during the last six (6) months of Term, as applicable, or any time COUNTY is in material default hereunder, or purchasers of the Premises; (c) for any purpose which CITY shall deem necessary for the operation and maintenance of the Premises; and (d) to abate any condition which constitutes a violation of any covenant or condition of this Lease.

~~LESSOR or his authorized representative shall have the right at all reasonable times and upon reasonable advance notice to COUNTY to inspect the Premises to determine, if COUNTY is complying with all the provisions of this Lease.~~

4. SUCCESSORS IN INTEREST (9.3 S)

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, of whom all shall be jointly and severally liable hereunder.

5. DESTRUCTION OF OR DAMAGE TO PREMISES (9.4 S)

“**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, LESSOR 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 LESSOR CITY, at LESSOR CITY's sole cost, within ~~One Hundred and Twenty (120)~~ sixty (60) days of the occurrence of said Partial Destruction or within an extended time frame as may be authorized, in writing, by COUNTY. The Partial Destruction of the Premises shall in no way render this Lease null and void; however, reimbursement payable by COUNTY under the Lease shall be abated in proportion to the extent COUNTY's use and occupancy of the Premises is adversely affected by said Partial Destruction, demolition, or repair work required thereby. Should LESSOR CITY fail to complete necessary repairs, for any reason, within ~~One Hundred and Twenty (120)~~ sixty (60) days, or other time frame as may be authorized by COUNTY, COUNTY may, at COUNTY's sole option, terminate the Lease, ~~or complete necessary repair work and deduct the cost thereof, including labor, materials, and overhead from any reimbursement thereafter payable.~~

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 LESSOR CITY shall immediately instigate 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. All reimbursement payable by COUNTY shall be abated until complete restoration of the Premises is accepted by COUNTY. In the event LESSOR 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 180 days of the occurrence of said destruction or within an extended time frame as may be authorized, in writing, by COUNTY, COUNTY may, at COUNTY's sole option, terminate this Lease, ~~or complete the restoration and deduct the entire cost thereof, including labor, materials, and overhead from any reimbursement payable thereafter.~~

Further, LESSOR CITY, at COUNTY's request, shall provide a suitable, COUNTY-approved temporary facility ("Facility") for COUNTY's use during the restoration period for the Premises. The Facility may be leased, at market rate, under a short term lease, for which the COUNTY will reimburse LESSOR CITY the cost thereof, on a monthly basis.

#### 6. AMENDMENT (9.5 S)

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

#### 7. PARTIAL INVALIDITY (9.6 S)

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.

#### 8. CIRCUMSTANCES WHICH EXCUSE PERFORMANCE (9.7 S)



If either party hereto shall be delayed or prevented from the performance of any act required hereunder by reason of acts of God, 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.

9. STATE AUDIT (9.8 S)

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), ~~LESSOR CITY~~ shall be subject to the examination and audit of the Auditor General of the State of California for a period of three (3) years after final payment by COUNTY to ~~LESSOR 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.

10. WAIVER OF RIGHTS (9.9 S)

The failure of ~~LESSOR 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 ~~LESSOR 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.

11. HOLDING OVER (9.10 S)

In the event COUNTY shall continue in possession of the Premises after the 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.

12. HAZARDOUS MATERIALS (9.11 S)

~~LESSOR CITY~~ warrants that, to the best of its CITY's knowledge, the Premises is free and clear of all hazardous materials or substances.

13. EARTHQUAKE SAFETY (9.12 S)

~~LESSOR CITY~~ ~~warrants~~ hereby confirms that to the best of ~~LESSOR's~~ CITY's knowledge, the Premises is in compliance with all applicable seismic safety regulations and building codes.

14. QUIET ENJOYMENT (9.13 S)

~~LESSOR 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.

15. WAIVER OF JURY TRIAL. (9.15 S)

Each party acknowledges that it is aware of and has had the advice of Counsel of its choice with respect to its rights to trial by jury, and each party to the extent permitted by applicable law, for itself and its successors and assigns, does hereby expressly and knowingly waive and release all such rights to trial by jury in any action, proceeding or counterclaim brought by any party hereto against the other (and/or against its officers, directors, employees, agents, or subsidiary or affiliated entities) on or with regard to any matters whatsoever arising out of or in any way connected with this agreement and/or any claim of injury or damage.

16. GOVERNING LAW AND VENUE. (9.16 N)

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.

17. TIME (9 S)

Time is of the essence of this Lease.

18. COOPERATION (N)

COUNTY and CITY agree to mutually cooperate and take any and all action necessary to achieve the purposes of this Lease.

19. INTEGRATION (N)

This agreement, together with any exhibit(s) attached hereto (which are incorporated by reference), fully expresses all understandings between COUNTY and CITY with respect to the subject matter herein and supersedes all prior and contemporaneous understandings or agreements regarding this subject matter.

20. INSPECTION OF PREMISES BY A CERTIFIED ACCESS SPECIALIST (N)

In accordance with California Civil Code section 1938, CITY represents that the Premises has undergone an inspection by a Certified Access Specialist (CASp) and that there have been no modifications or alterations completed or commenced between the date of inspection and the Commencement Date of this Lease which have impacted the Premises' compliance with constructed-related accessibility standards. CITY shall not be required to correct violations of construction-related accessibility standards that are noted in the CASp report, unless required to do so pursuant to applicable law.

In accordance with California Civil Code section 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 CITY 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.”

#### 21. FORCE MAJEURE (6.5 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.

#### 22. CONDEMNATION (6.6 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, except that the rent shall be reduced in proportion to the reduction in utility of the Premises caused by such Condemnation. 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.

#### 23. CONSENT OR APPROVAL (6.7 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.

24. UNENFORCEABLE PROVISIONS (6.8 SA)

If any paragraph or clause hereof shall be determined illegal, invalid or unenforceable, 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.

**EXHIBIT A**

LEASE DESCRIPTION (11.1 N)

PROJECT NO: CM22-L-B.R2

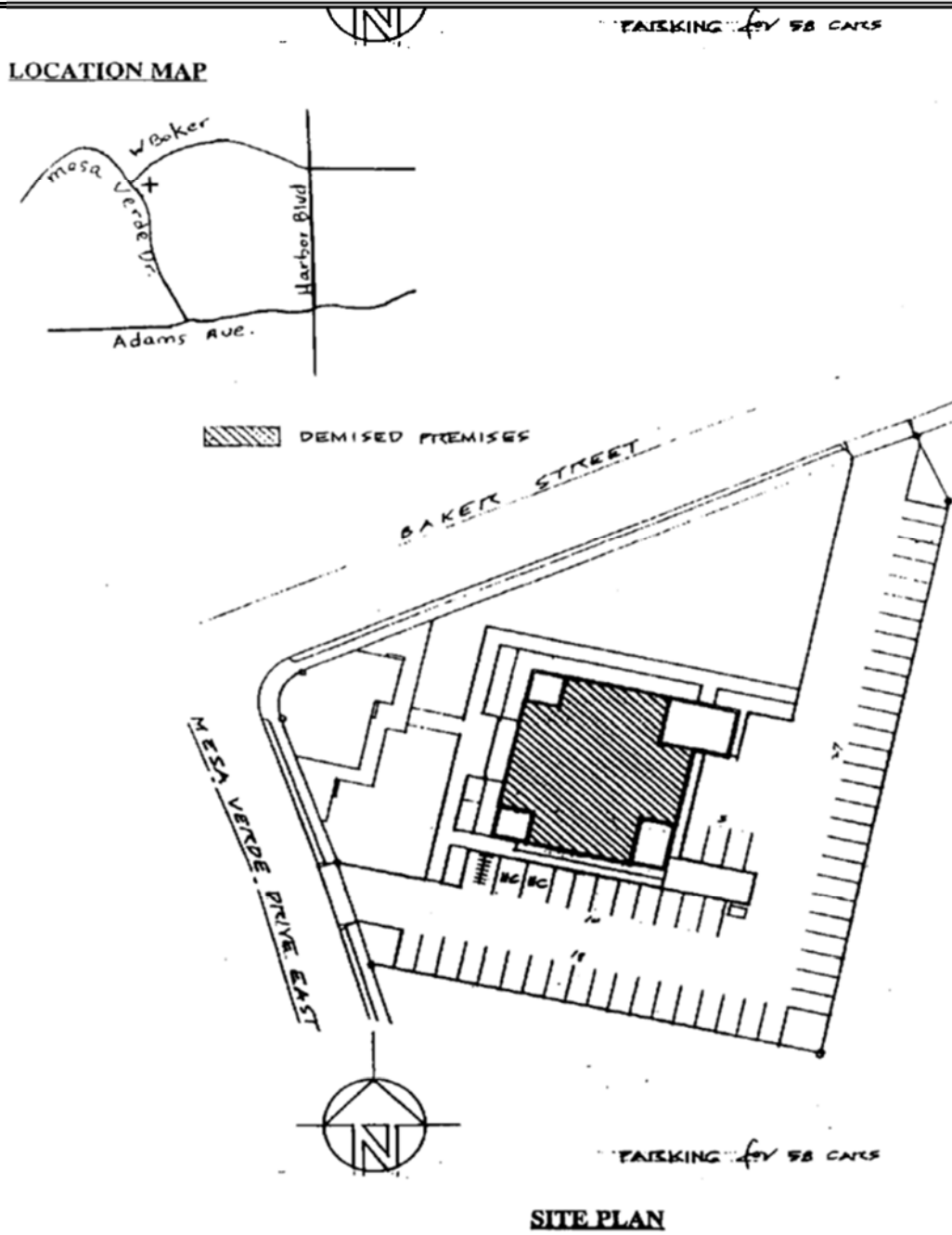
DATE: ~~November 14, 2006~~ October 4, 2017

PROJECT: Costa Mesa/Mesa Verde Library

VERIFIED BY: ~~Vince Geraghty~~ Heather Condon

All the Premises shown crosshatched on a plot plan marked Exhibit B, attached hereto and made a part hereof, being that certain one (1) story building located at 2969 Mesa Verde Drive East, in the City of Costa Mesa, County of Orange, State of California, and located on Lot 170 of Tract No. 3487 per map recorded in Book 122, pages 6 through 16, inclusive, of Miscellaneous Maps in the office of the County Recorder of the County of Orange together with exclusive use of thirty (30) parking spaces in the parking areas shown on Exhibit B.

***NOT TO BE RECORDED***



**EXHIBIT B**

|  |   |   |
|--|---|---|
| <p>CM22-L-B.R2</p> <p><u>Costa Mesa/Mesa Verde Library</u></p> <p>2969 Mesa Verde Drive East</p> <p>Costa Mesa, CA</p> | <p></p> <p></p> <p><u>Date: 10/4/2017</u></p> | <p><u>COUNTY OF ORANGE</u></p> <p><u>OC Community Resources</u></p> <p><u>OC Public Libraries</u></p> |
|--|---|---|

EXHIBIT CCITY MAINTENANCE SCHEDULEMESA VERDE 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.
- Provide oversight and documentation of Seasonal Preventative Maintenance on all HVAC systems and provide that data to the City representative at the first of every month.
- 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.
- Inspect, provide oversight and documentation that the facility is receiving required work.
- Perform monthly walkthroughs of HVAC systems for preventative maintenance work requests.

MESA VERDE 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 – two times per year
- Irrigation inspection – one time per month. Repairs made on an as needed basis.
- Trimming of seven (7) trees on an as needed basis