

## Attachment B



Lease #  
Laguna Beach Library  
363 Glenneyre St.  
Laguna Beach, CA 92651



### LEASE

THIS IS A LEASE (hereinafter referred to as “**Lease**”) made \_\_\_\_\_, 2022, (“**Effective Date**”), by and between the CITY OF LAGUNA BEACH, 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**”). The City and County may individually be referred to herein as a “**Party**,” or collectively as the “**Parties**.”

### RECITALS

1. The City is the owner of the real property located at 363 Glenneyre Street, Laguna Beach (Assessor’s Parcel No. 644-014-01, also sometimes identified as 280 Park), which has been operated as a County Library for more than fifty (50) years at that location.
2. The City is willing to lease to County, and County is willing to lease from City, the Premises, as defined below, for the continued operation of the library, as more fully set forth herein.

### AGREEMENT

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL PROMISES, COVENANTS, AND CONDITIONS IN THIS LEASE, THE PARTIES AGREE AS FOLLOWS:

#### 1. DEFINITIONS (1.0 SA)

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

“**Building**” means the building commonly known as 363 Glenneyre St., Laguna Beach constituting a portion of the Premises.

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

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

“**City Council**” means the City Council of the City of Laguna Beach, California.

“**City Manager**” means the City Manager of the City of Laguna Beach, California.

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

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

“**Friends of the Library**” means that 501(c)(3) non-profit corporation whose purpose is to provide fundraising support for the Orange County library system.

“**Library Purchase Price Principal**” means the \$4,290,000 paid by City to County to purchase the Premises and Building pursuant to that certain Purchase and Sale Agreement entered into between City and County on or about \_\_\_\_\_, 2022. The Parties agree that the Library Purchase Price Principal shall only be used for County Library System purposes within the City, including tenant improvements, FF&E, and mutually agreed upon costs related to Clause 10.

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

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

### 2. PREMISES (1.1 SA)

City leases to County that certain property, including the improvements thereon, described in Exhibit A and shown on Exhibit B, which exhibits are attached hereto and by reference made a part hereof, of approximately 9,840 rentable square feet (“**RSF**”) in the Building located at 363 Glenneyre Street, Laguna Beach, California (“**Premises**”), together with non-exclusive, in common use of elevators, stairways, washrooms, hallways, driveways for vehicle ingress and egress, pedestrian walkways, community room, other facilities and common areas appurtenant to the Premises.

### 3. USE (1.2 SA)

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

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

### 4. PARKING (1.3 SA)

Throughout the Term of the Lease, County and library patrons shall have the exclusive right, without further charge, to parking spaces located within the parking lot shown on Exhibit B during Normal Business Hours (as defined below in Clause 13(D)) including the exclusive right, without charge, to the use of ten (10) of such

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parking spaces for County staff use (excluding any spaces City may designate for use by the Friends of the Library or the Chamber of Commerce). County's use of said parking spaces shall be subject to all reasonable rules and regulations which are prescribed by City from time to time for the efficient operation of the parking areas for the Building and provided to County in writing. City shall mark the parking spaces designated for County staff. The City shall be responsible for ensuring that the parking lot complies with applicable local, state and federal laws.

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

It is mutually agreed that this Lease shall terminate and supersede any prior agreement between the Parties hereto covering all or any portion of the Premises including that certain Lease between the Parties dated January 2, 2020, as amended on December 18, 2020, except for those terms relating to continuing obligations for events during the terms of that prior agreement between the Parties hereto, including but not limited to indemnification, and that all personal property and/or equipment (*e.g.*, fixtures, partitions, counters, shelving) attached to and/or placed upon any portion of the Premises by County pursuant to the terms of any prior agreement between the Parties hereto shall remain the personal property of County.

### 6. TERM (1.5 NA)

The Term of this Lease shall commence on the day after the sale of the Premises from County to City, evidenced by the recording of a Grant Deed from the County to the City ("**Commencement Date**"), and shall terminate twenty-five (25) years later ("**Term**"), unless terminated earlier as otherwise agreed to in writing by the Parties.

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

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

Upon mutual consent, provided there is no current County Default under this Lease (as further defined in Clause 20 DEFAULTS AND REMEDIES), either at the time of the exercise of the Option or upon commencement of the Extension Term, County shall have the option to extend the term (the "**Option**") of this Lease for twenty-five (25) years ("**Extension Term**") approved by the Chief Real Estate Officer and memorialized in an amendment. County shall give City written notice of its intent to exercise its Option to extend the Term no sooner than twelve (12) months and no later than nine (9) months prior to the Lease Term's termination date. Time is of the essence in the exercise of the Option. The Option shall be personal to County and shall not be exercised by any assignee or sublessee of County. "Term" as used in this Lease shall mean collectively the initial Term and the Extension Term if the Option is duly exercised. If the County exercises the Options to extend, during the Extension Term, the Parties shall continue to have the option to terminate the Lease pursuant to Clause 8 (OPTION TO TERMINATE).

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

This Lease may be terminated effective at any time by either Party by giving written notice to the non-terminating Party at least eighteen (18) months prior to said termination date. In the event that a majority of the Library Purchase Price Principal has been expended on a Capital Improvement Plan (as defined below), termination shall not occur within fifteen (15) years of finalization of the work as provided by in Clause 10 (or such other lesser time frame as agreed to by the Parties in the event that a majority of the Library Purchase

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Price Principal has *not* been expended), unless the Parties agree to a reimbursement of such costs based on an agreed upon depreciation of the capital improvements funded.

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

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

### **10. COUNTY WORK AND CAPITAL IMPROVEMENT PLAN (2.2 N)**

The County and the City shall meet and confer and develop a capital improvement plan for the Premises to be funded from the Library Purchase Price Principal ("**Capital Improvement Plan**") within a time period mutually agreeable to both Parties, but in no event later than twenty-four (24) months of the Effective Date. The Capital Improvement Plan, as approved by the Parties, shall detail the type of improvements as well as the Party who will complete the work. Work performed by the County or City, under an agreed upon Capital Improvement Plan, shall be funded through the Library Purchase Price Principal, as available. Any costs in excess of the Library Purchase Price Principal shall be the sole cost of the City unless mutually agreed otherwise by the Parties.

### **11. COUNTY ALTERATIONS (2.5 SA)**

County may make necessary critical safety and maintenance improvements and changes within the Premises ("**County Alterations**") during the term of this Lease with such improvements being paid out of the Library Purchase Price Principal. It is agreed that any such County Alterations attached to or placed upon the Premises by County shall be considered as personal property of County, as defined below in Clause 25 (COUNTY PROPERTY), which shall have the right and the obligation, to remove same. County shall notify the City of any and all planned County Alterations, which require permitting by the City, if any. City shall not unreasonably withhold, condition or delay permit approval of said County Alteration.

### **12. ORANGE COUNTY TELECOMMUNICATIONS NETWORK (2.7 NA)**

City agrees that County may install telecommunication devices and a security card access system in, on, or around the Premises and Building in accordance with the relevant and applicable County telecommunications network plans and specifications, provided that the provisions of Clause 11 (COUNTY ALTERATIONS), shall be applicable to such work. To the extent that the installation or reinstallation of such system is necessitated by the improvements to be completed under the Capital Improvement Plan, such work will be initially funded out of the Library Purchase Price Principal; however any work completed prior to or subsequent to the completion of the Capital Improvement Plan shall be at County's sole cost and expense. It shall be County's responsibility to obtain all governmental permits and/or approvals required for such installation; however, City shall reasonably cooperate with County as necessary or appropriate, to obtain said permits and/or approvals. Additionally, County or County subcontractors have the right to enter the Premises and/or Building to maintain, repair or replace the County telecommunications network consistent with said contract between County and its service provider. County may, in its discretion, remove any cabling, conveyance systems or cabling conduit installed by County which if completed outside of the Capital Improvement Plan will be at County's cost and expense. When the Lease is terminated, County reserves all rights to remove, at its discretion, any such telecommunication improvements from the Premises and/or Building.

**13. REPAIR, MAINTENANCE, AND JANITORIAL SERVICES (2.8 N)**

- A. **County Services.** County shall provide library services in the Premises, at its own cost and expense, except as otherwise provided in this Lease or as otherwise directed by City, as well as: (1) all janitorial supplies and services to the interior Premises, including the supplying of restroom expendables and replacement of light bulbs and Light Emitting Diode lamps; (2) any and all necessary repair, maintenance and replacement of all library equipment and personal property within the Premises; (3) pest control (except for tenting for termite fumigation); (4) interior fire extinguishers, and; (5) the cleaning and refinishing of interior surfaces and repair of wear and tear damage caused by County's patrons' use and/or misuse of the Premises. The County Services in the preceding sentence shall be funded from County funding other than the Library Purchase Price Principal. County may also provide for: (i) the repainting of interior surfaces (as needed in County's discretion); and, (ii) the re-carpeting (as needed in County's discretion) of all carpeted surfaces within the Premises. The County Services in the preceding sentence shall be funded from the Library Purchase Price Principal, if available.
- B. **City Services.** City shall provide, at its sole cost and expense (except as otherwise provided in this Lease), any and all necessary repair, maintenance and replacement for the Premises, Building (and systems therein), and parking lot in good order, condition and repair and in compliance with all applicable laws, including, but not limited to, the replacement, repair and maintenance of the structural portions of the Building, the roof of the Building, the parking facilities and all Building systems, including the Heating, Ventilation, Air Conditioning ("HVAC") system, the plumbing, electrical and mechanical systems, fire/life safety system, roof, paving, tenting for termite fumigation, and whether capital or non-capital consistent with Exhibit C, which is attached hereto and by reference made a part hereof (the "**City Services**"). In addition, City agrees to maintain all landscaping immediately surrounding the Premises; the dumpster area, and the parking lot in accordance with City's maintenance schedule, attached herein as Exhibit C.

In the event of any ambiguity or confusion about whether certain services are County Services or City Services, for avoidance of doubt, the guiding principle of the Parties with the respect to the distinction in service, if not clearly set forth above, is that the County is generally responsible for the interior space within the Premises, and the City is generally responsible for the Building and exterior space.

- C. **Normal Business Hours.** The "**Allocation Formula**," as defined below, determines the days and hours of operations for libraries based on weighing factors which include, but are not limited to, population, taxes and circulation of library materials. Pursuant to and consistent with the Allocation Formula, the County agrees, to keep the Premises and Building open the minimum hours determined, which shall be Monday through Thursday 10:00 AM – 7:00 PM; Friday and Saturday 9:00 AM – 5:00 PM. ("**Normal Business Hours**"). County agrees that it will notify the City as soon as possible of any alteration of Normal Business Hours by County.

The current Allocation Formula is used each year to calculate a factor from three elements: percent of total property tax (weighted 40%), percent of total "robust circulation" (weighted 30%), and percent of total population (also weighted 30%). The factor determines the number of days per week that a library is open, and that in turn drives the branch costs of staffing and related services and supplies.

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- D. **Emergency Services.** If County requires same day emergency repairs and/or services (“**Emergency Services**”), County shall first contact the City. If the City cannot be reached following reasonable efforts by the County and/or is not available for such Emergency Services, and the Emergency Services are necessary to remedy the emergency condition or to prevent imminent danger to persons or property, or if following such contact by County the City is unable or refuses to provide the necessary Emergency Services, County may have the necessary repairs made and/or provide Emergency Services to remedy the emergency condition and seek reimbursement from the City for said Emergency Services. County shall document all efforts made to contact the City for any such Emergency Services and shall provide such documentation to City upon request. Any inability or refusal by City to provide Emergency Services shall be confirmed in writing by City, but receipt of written refusal shall not be required prior to County arranging for and completing necessary repairs.
- E. **Coordination of Efforts.** City and County shall coordinate efforts related to repair, maintenance, and alterations to facilitate minimal disruption to service hours, patron accessibility, and workplace settings to the best and most reasonable basis.

### **14. UTILITIES (2.9 N)**

County shall be responsible for and pay, prior to the delinquency date, all charges for utilities supplied to the Premises. As part of the Capital Improvement Plan to be developed by the Parties, the Parties agree to assess the viability of separately metering the utilities for the Chamber of Commerce space within the Building, with such utilities to be paid by the City or Chamber of Commerce as appropriate and agreed to by the Parties.

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

During the Term and Extension 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 federal, state, and local codes, statutes, and orders relating to disabled access as they are applicable on the dates of this Lease, and as they may be subsequently amended and all regulations issued by the U. S. Attorney General or other agencies under the authorization of the ADA. However, City shall not be responsible for any ADA violations resulting from alterations made by County or the placement of County’s furniture, fixtures or equipment by County.

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

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

### 16. ASSIGNMENT AND SUBLETTING (3.1 SA)

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

### 17. INSURANCE (3.2 N)

#### A. City Insurance.

**Commercial Property Insurance:** City shall obtain and keep in force during the term of this Lease a policy or policies of commercial property insurance written on an “All Risks” or “Special Form” basis, 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.

City agrees to and shall include in the policy or policies of commercial property insurance a standard waiver of the 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 shall provide the County of Orange with a Certificate of Insurance as evidence of compliance with these requirements. City shall deposit the Certificate of Insurance with CEO Real Estate, consistent with the Notice clause, through electronic correspondence on or before the Effective Date of this Lease and annually throughout the Term, as necessary to: insurance.ceore@ocgov.com

**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 bodily injury, and property damage 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. City shall provide thirty (30) days prior written notice to County of any policy cancellation or non-renewal and ten (10) days prior written notice where cancellation is due to the non-payment of premium and provide a copy of the cancellation notice to County. Failure to provide written notice of

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cancellation or non-renewal may constitute a material breach of the Lease, upon which the County may suspend or terminate this Lease.

4. The policy(ies) shall be written on an occurrence basis and shall provide a limit of not less than One Million Dollars (\$1,000,000) per occurrence with a Two Million Dollars (\$2,000,000) aggregate and shall include broad form contractual liability coverage.
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**). Insurers shall be licensed to do business in the state of California or approved by the National Surplus Lines Association to do business in California.

If the insurance carrier does not have an A.M. Best Rating of A-/VIII, or if the insurance carrier does not have an A.M. Best Rating of A-/VIII, or not licensed by the State or approved by the National Surplus Lines Association, 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.

### **B. County Insurance**

County shall maintain a program of self-insurance at its own expense for its liability exposures including commercial general liability with minimum limits of \$1,000,000 per occurrence and a \$2,000,000 aggregate, auto liability with a combined single limit of not less than \$1,000,000 per accident, Workers Compensation with statutory limit and Employers' Liability with a limit \$1,000,000 per accident or disease. Evidence of County's self-insurance shall be provided upon request, with City named as an Indemnified Party on the County's program of self-insurance.

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

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

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



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and appointed officials, officers, agents, employees, or volunteers, including the cost of defense of any lawsuit arising therefrom.

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

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

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

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

### **20. DEFAULTS AND REMEDIES (3.8 N)**

#### **A. County Default:**

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

#### **B. City Default:**

City shall be deemed in breach of this Lease if: a) in the event of any monetary breach of this Lease by City, County shall notify City in writing of such breach, City shall have ten (10) days from such notice in which to cure said breach, and City fails to cure said breach, or b) in the event of any non-monetary breach of this Lease, City fails within fifteen (15) days after receipt by City of written notice specifying wherein such obligation of City has not been performed; provided however, that if the nature of City’s obligation is such that more than

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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**”).

### **C. 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.

### **D. City Remedies:**

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

In addition to the remedies set forth herein, in the event of a City Default or a County Default, the non-defaulting Party may immediately terminate this Lease. Such termination shall be deemed effective thirty (30) days after the non-defaulting party provides written notice to the defaulting party that it is terminating this Lease pursuant to this Clause 20. Upon termination of this Lease, County shall remove all County-owned property and equipment from the Premises in a timely manner.

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

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

Pursuant to the provisions of Section 1773 of the Labor Code of the State of California, City shall comply with the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in the locality applicable to this Lease for each craft, classification, or type of workman needed to execute the aforesaid improvements or modifications. The rates are available at the following website: <http://www.dir.ca.gov/dlsr/DPreWageDetermination.htm> from the Director of the State Department of Industrial Relations. As required by applicable law, City shall post a copy of such wage rates at the job site and shall pay the adopted prevailing wage rates at all times for all improvements or modifications to be completed for County within the Premises. As applicable, City shall comply with the provisions of Sections 1775 and 1813 of the Labor Code.

As required by applicable law, City shall maintain payroll records for all workers that will be assigned to the improvements or modifications. Said payroll records shall contain, but not be limited to, the complete name, address, telephone number, social security number, job classification, and prevailing wage rate for each worker. Upon request City shall provide the OC Public Libraries/Facilities Manager updated, certified payroll records for all workers that shall include, but not be limited to, the weekly hours worked, prevailing hourly wage rates, and total wages paid.

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

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

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

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

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

Notwithstanding the minimum wage requirements provided for in this clause, City, where applicable, shall comply with the prevailing wage and related requirements, as provided for in Clause 22 (LABOR CODE COMPLIANCE) of this Lease.

**23. 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 for library use by, at the direction of or with the consent (express or implied) of the City, its employees, agents, licensees or invitees, shall be at the sole risk of the County, and City shall not be liable for any loss of or damage to said property resulting from any cause whatsoever unless such loss or damage is the result of City's negligence or willful misconduct and not otherwise waived pursuant to Clause 24 (CITY'S RIGHT OF ENTRY AND ACCESS TO THE PREMISES) below. City hereby waives any and all lien rights, whether statutory or common law or established pursuant to this Lease, that City may have as "landlord" with respect to any and all goods, wares, equipment, fixtures, furniture, improvements and other personal property of County presently or which may hereafter be situated within the Premises.

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

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

**25. SIGNAGE (4.5 SA)**

County shall not erect, install or maintain any sign or display upon or in front of the Premises and/or Building without prior written approval from City except for any existing signage related to the operation of the public library onsite. However, County may hang up to two banners and/or flags at each entrance to the Library for special events without prior City approval. Such banners and flags shall be removed promptly after the

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conclusion of such special events. All signage shall comply with all applicable laws and zoning and site plan requirements.

### **26. SECURITY SERVICES (4.6 SA)**

County may provide security services within the Premises. City may provide security services for the exterior of the Premises. City shall wire the Building alarm system notifications so that City's Police and Fire Departments, as well as the County, are notified when the Building alarm system activated.

### **27. AUTHORITY (4.7 SA)**

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

### **28. LEASE ORGANIZATION (4.8 SA)**

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

### **29. SUCCESSORS IN INTEREST (4.9 SA)**

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

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

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

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

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

In the event of Total Destruction of the Premises or the Premises being legally declared unsafe or unfit for occupancy, this Lease shall in no way be rendered null and void and City shall immediately initiate action to rebuild or make repairs, as necessary, to restore the Premises (including replacement of all tenant

## **Attachment B**

improvements) to the condition which existed immediately prior to the destruction. County shall reimburse City for costs to repair the Premises for damage or destruction caused by County or County's employees, agents or invitees. In the event City refuses to diligently pursue or is unable to restore the Premises to a condition suitable for being occupied (including replacement of all tenant improvements) within one hundred and eighty (180) days of the occurrence of said destruction or within an extended time frame as may be mutually agreed, County may, at County's sole option, terminate this Lease.

### **31. AMENDMENT (5.1 SA)**

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

### **32. PARTIAL INVALIDITY (5.2 SA)**

If any term, covenant, condition, or provision of this Lease is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby.

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

If either Party hereto shall be delayed or prevented from the performance of any act required hereunder by reason of Force Majeure as defined below in Clause 42 (FORCE MAJEURE), performance of such act shall be excused for the period of the delay; and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay. Financial inability shall not be considered a circumstance excusing performance under this Lease.

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

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

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

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

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

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

### **37. QUIET ENJOYMENT (5.8 SA)**

## **Attachment B**

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.

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

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

### **39. GOVERNING LAW AND VENUE (6.0 SA)**

This agreement has been negotiated and executed in the State of California and shall be governed by and construed under the laws of the State of California. In the event of any legal action to enforce or interpret this agreement, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the Parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure section 394.

### **40. ATTORNEYS' FEES (6.1 SA)**

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

### **41. TIME (6.2 SA)**

Time is of the essence of this Lease.

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

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

Pursuant to California Civil Code section 1938, City hereby represents that the Premises has not undergone an inspection by a certified access specialist and no representations are made with respect to compliance with accessibility standards.

### **43. FORCE MAJEURE (6.4 SA)**

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

## **Attachment B**

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.

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

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

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

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

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

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

### **47. NOTICES (6.8 SA)**

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

To: City

To: County

**Attachment B**

City of Laguna Beach  
505 Forest Avenue  
Laguna Beach, CA 92651  
Attention: City Manager

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

With a copy to:

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

In regards to insurance, City shall ensure that any and all insurance related mail includes the Lease number and project name and City shall mail all insurance certificates and insurance related correspondence to: insurance.ceore@ocgov.com.

**48. ATTACHMENTS (6.9 SA)**

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

**I. EXHIBITS**

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

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**Attachment B**

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

**CITY**

City of Laguna Beach, a municipal corporation

By \_\_\_\_\_  
Shohreh Dupuis, City Manager

APPROVED AS TO FORM:

By \_\_\_\_\_  
Phillip D. Kohn, City Attorney  
Rutan & Tucker, LLP

ATTEST:

By \_\_\_\_\_  
Ann Marie McKay, City Clerk

APPROVED AS TO FORM:

OFFICE OF COUNTY COUNSEL  
ORANGE COUNTY, CALIFORNIA

By Michael A. Haubert \_\_\_\_\_  
Deputy

Digitally signed by Michael A. Haubert  
DN: cn=Michael A. Haubert, o=County of  
Orange, ou=County Counsel,  
email=michael.haubert@coco.ocgov.com,  
c=US  
Date: 2022.06.14 16:57:52 -07'00'

**COUNTY**

COUNTY OF ORANGE

By: \_\_\_\_\_  
Thomas A. Miller Chief Real Estate Officer  
Orange County, California per Minute Order  
Dated July 19, 2022

**Attachment B**

**EXHIBIT A**

**LEASE DESCRIPTION (10.1 S)**

PROJECT NO: CEO/RFLS/OCCR-018-029  
PROJECT: Laguna Beach Library

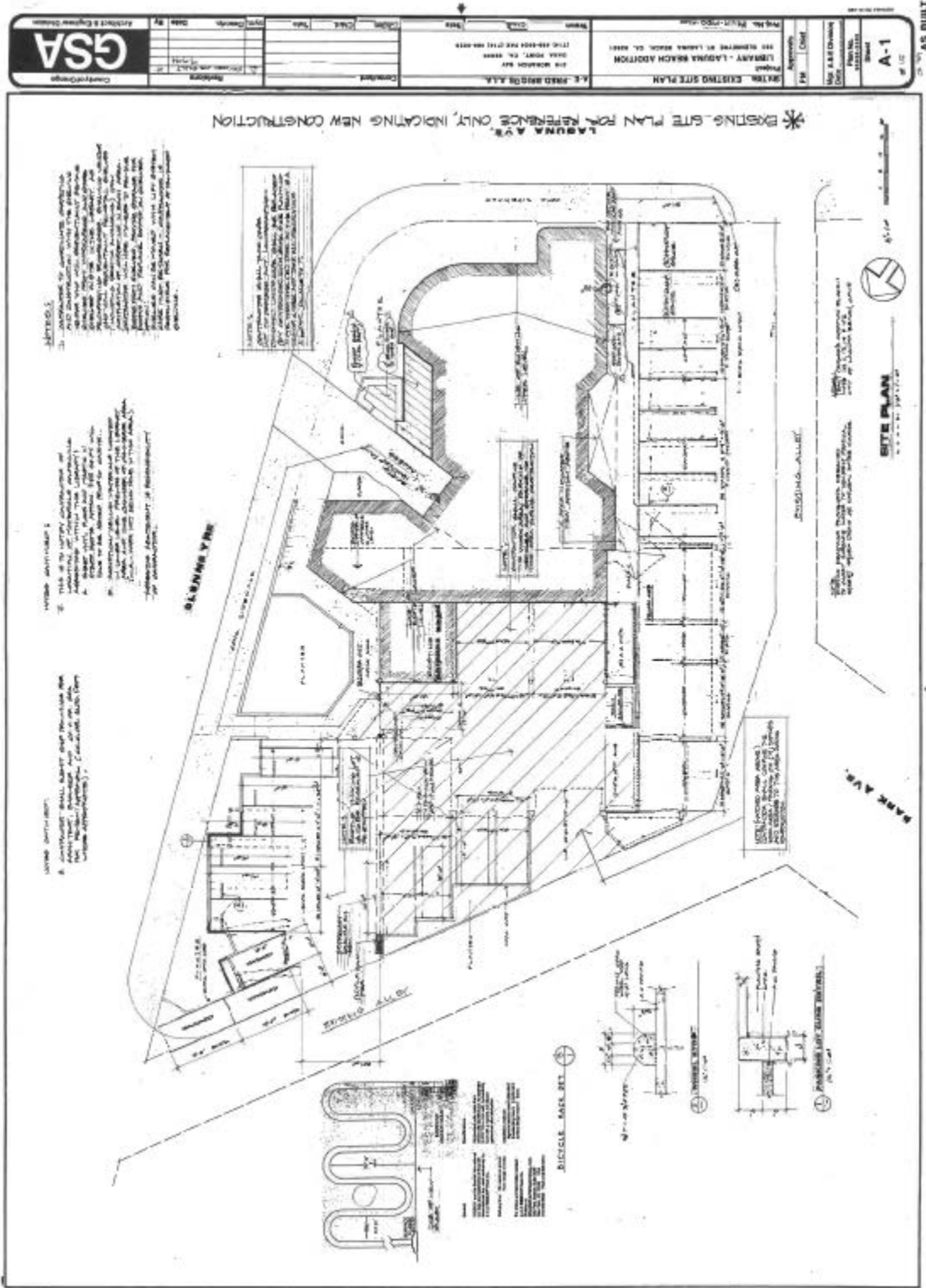
DATE: 7/17/2018  
VERIFIED BY:  
Malcolm Henry

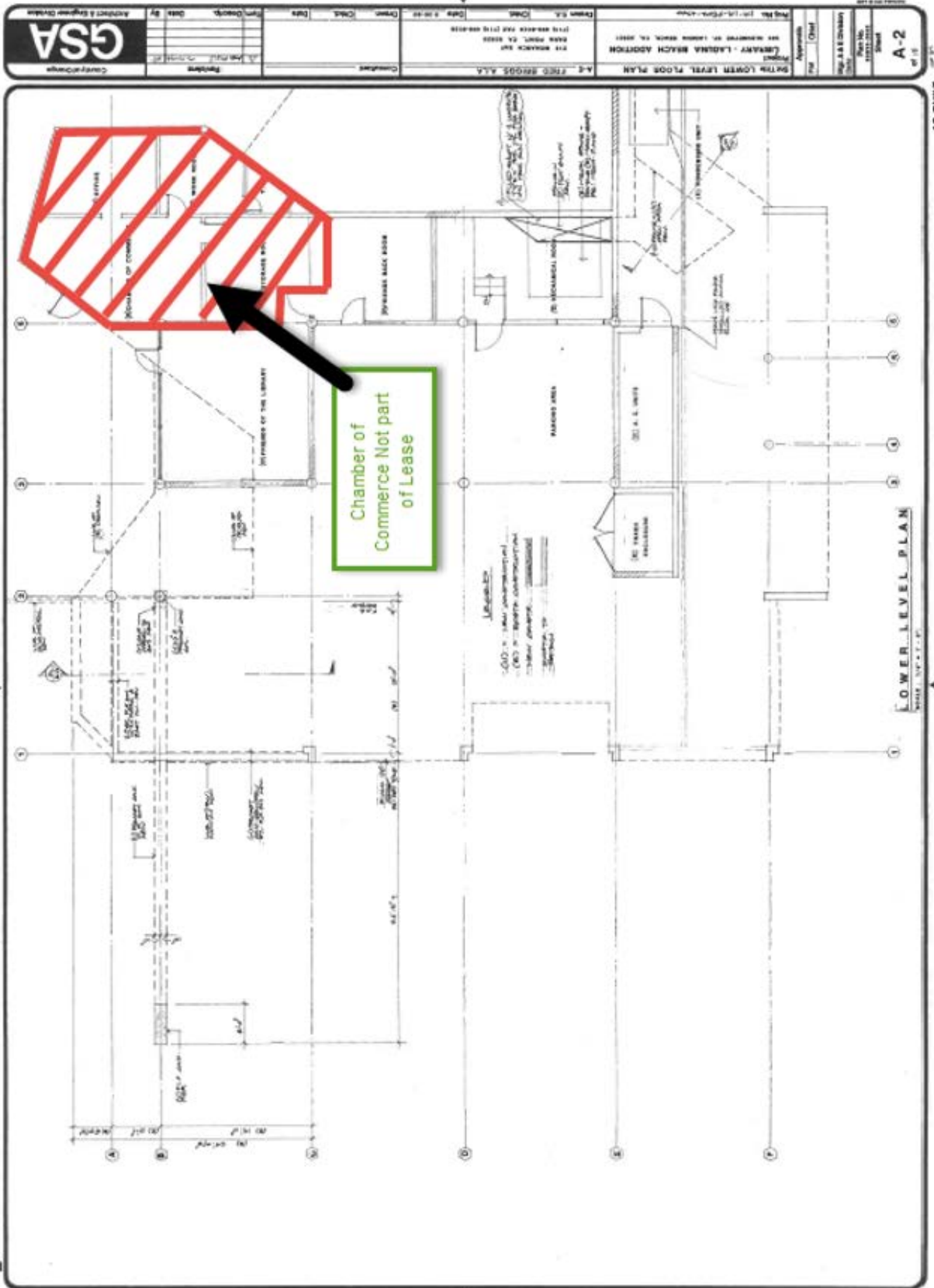
All the Premises shown on plot plan marked Exhibit B, attached hereto and made a part hereof, located at 363 Glenneyre St. Laguna Beach, CA 92651, County of Orange, State of California, comprising approximately 9,840 square feet, together with exclusive use by County staff of ten (10) parking spaces in the parking shown on Exhibit B during Normal Business Hours (excluding any spaces that the City may designate for use by the Friends of the Library or the Chamber of Commerce).

**NOT TO BE RECORDED**

EXHIBIT B

DEPICTION OF PREMISES





AS BUILT

## **Attachment B**

### **EXHIBIT C**

#### **CITY MAINTENANCE SCHEDULE**

##### **LAGUNA BEACH LIBRARY MAINTENANCE BY CITY CONTRACTOR**

City shall provide, at its sole cost and expense (except as otherwise provided in this Lease) any and all:

- Necessary repair, maintenance and replacement for the Premises, Building (and systems therein), and parking lot so as to maintain in good order, condition and repair in compliance with all applicable laws, including, but not limited to, the replacement, repair and maintenance of the structural portions of the Building, the roof of the Building, the parking facilities and all Building systems. Notwithstanding anything to the contrary in this Lease, the replacement of building systems or structures, if necessary, may be funded from Library Purchase Price Principal through inclusion in the agreed upon Capital Improvement Plan.
- Replacement of HVAC system, water heaters, or other major equipment beyond serviceable life if necessary and as agreed to by the Parties. Notwithstanding anything to the contrary in this Lease, the foregoing replacement of building systems, if necessary, may be funded from Library Purchase Price Principal through inclusion in the agreed upon Capital Improvement Plan.
- Maintain Dumpster Area and provide Library with a call number to report misuse and abuse of dumpster area. Provide same day clean-up of distressed area for illegal dumping and overflow of receptacles.
- Respond to indoor temperature complaints regarding HVAC system, provide inspection, expeditious correction and preventative maintenance work requests. Maintain record of complaints and corrections.
- Inspect all HVAC systems at least twice a year, with seasonal start-up and run inspections performed and documented, and inspect all moving parts or components, investigate noises; belts; bearings; drives; and fans, and lubricate and adjust as recommended per manufacturers' specifications.

##### **LAGUNA BEACH LIBRARY LANDSCAPE MAINTENANCE BY CITY CONTRACTOR**

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