



CM22-L-BR2
Costa Mesa/Mesa Verde Library

LEASE AGREEMENT

THIS LEASE AGREEMENT (“**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 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 (1.0 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 the Mesa Verde Branch Library constituting a portion of 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.

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

5 “**Risk Manager**” means the Risk Manager, County Executive Office, Risk Management, County of Orange,
7 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.

9 2. LEASE

11 CITY shall lease to COUNTY the Premises, subject to the terms and conditions set forth herein.

13 3. USE (2.1 S)

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

19 4. RENT (3.1 S)

21 In exchange for the valuable consideration of providing free public library services, COUNTY’s use of the
23 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.

25 5. TERM (2.2A S)

27 The term of this Lease shall be ten (10) years (“**Term**”), commencing November 1, 2017 and terminating on October
29 31, 2027, unless previously terminated as provided herein or as otherwise agreed to in writing by the Parties.

31 6. PARKING (1.4 S)

33 CITY, throughout the term of this Lease, shall provide thirty (30) parking spaces for COUNTY’s free and
35 exclusive use. Said parking spaces are to be located in the parking area shown on Exhibit “B.” COUNTY’s
37 use of said parking spaces shall be subject to all reasonable rules and regulations which are prescribed by CITY
in writing.

39 In addition to said parking spaces, CITY shall also provide parking for disabled persons in accordance with
41 the Americans with Disabilities Act, Section 7102 of the California Uniform Building Code and the applicable
43 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
45 the State requirements.

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1 7. OPTION TO TERMINATE LEASE (2.4 N)

3 Unless earlier terminated as set forth herein, this Lease may be terminated at any time by either Party by giving
5 written notice to the other Party at least one hundred and eighty (180) days prior to said termination date. Upon
7 termination of this Lease, COUNTY shall remove all COUNTY-owned property and equipment from the
9 Premises in a timely manner.

11 8. IMPROVEMENTS BY CITY (4.2 N)

13 CITY, at its sole expense, agrees to maintain all painted surfaces and all carpeted surfaces within the Premises
15 in accordance with CITY's maintenance schedule, attached herein as Exhibit "C." If required during the term
17 of this Lease, CITY, at its sole expense, will repaint and/or recarpet the Premises on a date agreed upon by the
19 Parties.

21 9. ALTERATIONS

23 COUNTY may make improvements and changes in the Premises, including but not limited to the installation
25 of fixtures, partitions, counters, shelving, and equipment as deemed necessary or appropriate. It is agreed that
27 any such fixtures, partitions, counters, shelving, or equipment attached to or placed upon the Premises by
29 COUNTY shall be considered as personal property of COUNTY, which shall have the right to remove same.
31 COUNTY agrees that the Premises shall be left in as good condition as when received, reasonable wear and
33 tear excepted.

35 10. ORANGE COUNTY TELECOMMUNICATIONS NETWORK (2.7 SA)

37 CITY agrees that COUNTY may install, at COUNTY's sole cost and expense, telecommunication devices in,
39 on, or around the Premises and Building in accordance with the relevant and applicable COUNTY
41 telecommunications network plans and specifications, provided that the provisions of Section 9
43 (ALTERATIONS), shall be applicable to such work. It shall be COUNTY's responsibility to obtain all
45 governmental permits and/or approvals required for such installation; however, CITY shall reasonably
47 cooperate with COUNTY as necessary or appropriate, to obtain said permits and/or approvals. Additionally,
49 COUNTY or COUNTY's subcontractor 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.

11. 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.

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12. REPAIR AND MAINTENANCE (5.1 A N)

COUNTY shall provide, at its own cost and expense, all janitorial supplies and services to the Premises, including the supplying of restroom 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.

CITY 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% 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, CITY shall inspect the HVAC system at least once every month or on a schedule agreed to in writing by CITY and COUNTY, and provide repair and maintenance accordingly. CITY’s inspections and maintenance of the HVAC system shall be documented in writing. CITY 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. CITY shall ensure that such records are retained for at least five (5) years. CITY shall make all HVAC records required by this section available to COUNTY for examination and copying, within forty-eight (48) hours of a written request. CITY acknowledges that COUNTY may be subject to fines and/or penalties for failure to provide said records to regulatory agencies within the given timeframes. Should COUNTY incur fines and/or penalties as a direct result of CITY’s failure to provide said records to COUNTY, CITY shall reimburse COUNTY for said fines and/or penalties within thirty (30) days of receipt of written notice from COUNTY of such fines and/or penalties.

13. UTILITIES (5.2 N)

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

14. INSURANCE (5.3 S)

14.1 CITY shall obtain and keep in force during the term of this Lease a program of self-insurance to cover CITY’s liability arising from CITY’s performance of its obligations hereunder and a policy or policies of commercial property insurance written on ISO form CP 00 10 10 12, or a substitute form providing coverage at least as broad, to cover the loss or damage to the Premises to the full insurable value of all improvements and fixtures owned by CITY, at least in the amount of the full replacement cost thereof.

CITY agrees to and shall include in the policy or policies of commercial property insurance a standard waiver of right of subrogation against the County of Orange, its elected and appointed officials, officers, agents and employees by the insurance company issuing said policy or policies. CITY further agrees to include in the policies required hereunder an Additional Insured endorsement naming the County of Orange, its elected and appointed officials, officers, agents and employees as an additional insured. CITY shall provide COUNTY with a Certificate of Insurance as evidence of compliance with these requirements.

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3 14.2 COUNTY shall obtain, maintain, and keep in full force and effect during the life of this Lease
5 insurance or a program of self-insurance against claims for injuries to persons or damages to property which
7 may arise from or in connection with the COUNTY's operation and use of the Premises. The cost of such
9 insurance or a program of self-insurance shall be borne by the COUNTY.

7 Coverage shall be at least as broad as:

- 9 1. **Commercial General Liability (CGL):** Insurance Services Office Form CG 00 01 covering
11 CGL on an "occurrence" basis, including products and completed operations, property damage,
13 bodily injury and personal & advertising injury with limits no less than **Two Million Dollars**
15 **(\$2,000,000.00)** per occurrence. If a general aggregate limit applies, either the general
17 aggregate limit shall apply separately to this location (ISO CG 25 03 or 25 04) or the general
19 aggregate limit shall be twice the required occurrence limit.
- 17 2. **Workers' Compensation** insurance as required by the State of California, with Statutory
19 Limits, and Employer's Liability Insurance with limits of no less than **One Million Dollars**
21 **(\$1,000,000.00)** per accident for bodily injury or disease.
- 21 3. **Property** insurance against all risks of loss to any tenant improvements or betterments, at full
23 replacement cost with no coinsurance penalty provision.

23 If the COUNTY maintains broader coverage and/or higher limits than the minimums shown above, the
25 CITY requires and shall be entitled to the broader coverage and/or higher limits maintained. Any available
27 insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to
29 the CITY.

29 14.3 Endorsements. COUNTY's insurance policies are to contain, or be endorsed to contain,
31 the following provisions:

31 (a) Additional Insured Status. The City of Costa Mesa and its elected and appointed
33 boards, officers, officials, agents, employees, and volunteers are to be covered as additional insureds on the
35 CGL policy with respect to liability arising out of work or operations performed by or on behalf of the County
37 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).

39 (b) Notice of Cancellation. Each insurance policy required above shall provide that
41 coverage shall not be canceled, suspended, voided, nor the coverage or limited reduced, except with thirty (30)
43 days written notice to the City.

43 14.4 Waiver of Subrogation. COUNTY and CITY hereby waive all rights of subrogation.

45 14.5 Acceptability of Insurers. Insurance is to be placed with insurers authorized to conduct
47 business in the State of California with a current A.M. Best's rating of no less than A: VII, unless otherwise
49 acceptable to the City.

1 14.6 COUNTY shall provide to City a Certificate of Self-insurance to comply with the insurance
3 requirements stated herein.

5 14.7 Special Risks or Circumstances. CITY reserves the right to modify these requirements at
7 any time, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special
9 circumstances.

11 15. INDEMNIFICATION (5.5 S)

13 COUNTY hereby agrees to indemnify, hold harmless, and defend CITY, its elected officials, officers, agents,
15 and employees, from and against any and all claims, loss, demands, damages, cost, expenses or liability arising
17 in connection with the occupancy and use of the Premises by COUNTY, except for liability arising out of the
19 sole negligence or willful misconduct of CITY, its officers, agents, or employees, including the cost of defense
21 of any lawsuit arising therefrom.

23 CITY hereby agrees to indemnify, hold harmless, and defend COUNTY, its elected and appointed officials,
25 officers, agents, and employees, against any and all claims, loss, demands, damages, cost, expenses or liability
27 arising out of the ownership or maintenance of the Premises, except for liability arising out of the sole
29 negligence of COUNTY, its officers, agents, or employees, including the cost of defense of any lawsuit arising
31 therefrom.

33 16. TAX EXEMPTION (5.6A S)

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

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

37 17. BUILDING AND SAFETY REQUIREMENTS (5.7 S)

39 During the Term of this Lease, CITY, at CITY's sole cost, agrees to maintain the Premises in compliance with
41 all applicable laws, rules, regulations, building codes, statutes, and orders, including but not limited to the
43 California Building Code, Title 24, Seismic Code, fire and life safety requirements and, if applicable,
45 California Green Building Standard Code, the Americans with Disabilities Act ("ADA") and all other
47 applicable federal, state, and local codes, statutes, and orders relating to disabled access. However, CITY shall
49 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

1 §§ 6300 *et seq.*) and, as applicable, the Federal Occupational Safety and Health Act (29 U.S.C. §§ 651 *et seq.*).
3 COUNTY agrees to notify CITY of any repair or maintenance for which CITY is responsible, pursuant to
5 Section 12 of this Lease, necessary within the Premises or Building to comply with such Acts and CITY agrees
7 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.

9 In the event CITY neglects, fails, or refuses to maintain said Premises as set forth herein, following thirty (30)
11 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
13 written notice to the CITY thirty (30) days following a second written notice of such neglect, failure, or refusal.

15 18. TOXIC MATERIALS (5.9 S)

17 COUNTY hereby warrants and represents that COUNTY will comply with all applicable laws and regulations
19 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
21 (collectively "**Toxic Materials**"). COUNTY shall be responsible for and shall ~~defend~~, indemnify and hold
23 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
25 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
27 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.

29 CITY hereby warrants and represents that CITY has in the past and will hereafter comply with all applicable
31 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
33 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
35 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.

37 19. ASSIGNMENT AND SUBLETTING (3.1 SA)

39 COUNTY shall not assign this Lease or sublet the Premises or any part thereof without the prior written
consent of CITY.

41 20. DEFAULTS AND REMEDIES (6.8 S)

43 **20.1 COUNTY Default:**

45 COUNTY shall be deemed in default of this Lease if: (a) in the event of any monetary breach of this Lease by
47 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,
49 within fifteen (15) days after receipt by COUNTY of written notice from CITY specifying wherein such

1 obligation of COUNTY has not been performed, COUNTY fails to cure said breach; provided however, that
3 if the nature of COUNTY's obligation is such that more than fifteen (15) days after such notice are reasonably
5 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").

7 **20.2 CITY Default:**

9 CITY shall be deemed in breach of this Lease if: (a) in the event of any monetary breach of this Lease by
11 CITY, COUNTY shall notify CITY in writing of such breach, and CITY shall have ten (10) days from such
13 notice in which to cure said breach or (b) in the event of any non-monetary breach of this Lease, within fifteen
15 (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").

17 **20.3 COUNTY Remedies:**

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

23 **20.4 CITY Remedies:**

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

29 In addition to the remedies set forth herein, in the event of a CITY Default or a COUNTY Default, the non-
31 defaulting Party may immediately terminate this Lease. Such termination shall be deemed effective thirty (30)
33 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.

35 21. LABOR CODE COMPLIANCE (6.10 S)

37 CITY acknowledges and agrees that all improvements or modifications required to be performed as a condition
39 precedent to the Commencement Date of the term of this Lease or any such future improvements or
41 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.*, of the California Labor Code, as applicable. These
43 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 Section 1720.2.

45 Pursuant to the provisions of Section 1773 of the Labor Code of the State of California, CITY shall, as
47 applicable, comply with the general prevailing rate of per diem wages and the general prevailing rate for
workman needed to execute the aforesaid improvements or modifications. The rates are available at the
49 following website: <http://www.dir.ca.gov/dlsr/DPreWageDetermination.htm> from the Director of the State

1 Department of Industrial Relations. As required by applicable law, CITY shall post a copy of such wage rates
3 at the job site and shall pay the adopted prevailing wage rates at all times for all improvements or modifications
5 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.

7 As required by applicable law, CITY shall maintain payroll records for all workers that will be assigned to the
9 improvements or modifications. Said payroll records shall contain, but not be limited to, the complete name,
11 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.

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

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

19 In accordance with the United States Immigration Reform and Control Act of 1986, CITY shall require its
21 employees that directly or indirectly service the Premises, pursuant to the terms and conditions of this Lease,
23 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
25 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.

27 Pursuant to the United States of America Fair Labor Standard Act of 1938, as amended, and Section 1178.5
29 of the California Labor Code, 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
31 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.

33 CITY shall comply and verify that its contractors comply with all other Federal and State of California laws
35 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.

37 23. EXECUTION IN PART (N)

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

43 24. NOTICES (8.1 S)

45 Any written notices pursuant to this Lease may be provided by personal delivery or regular mail and shall be
47 addressed as set forth below or as either party may hereafter designate by written notice and shall be deemed
delivered upon personal delivery or seventy-two (72) hours after deposit in the United States Mail.

49 COUNTY CITY
Orange County Public Library City of Costa Mesa

1 1501 E. St. Andrew Place
3 Santa Ana, CA 92705
Attention: County Librarian

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

5 County Executive Office
7 333 W. Santa Ana Blvd., 3rd Floor
9 Santa Ana, CA 92701
Attention: Scott Mayer, Chief Real Estate Officer

11 25. ATTACHMENTS (8.2 S)

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

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

25 26. ENTIRE AGREEMENT

27 This Agreement, and any other documents specifically incorporated into this Agreement, shall constitute the
29 entire agreement between COUNTY and CITY relating to the use of the Premises. As used herein, Agreement
31 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.

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

3 APPROVED AS TO FORM:

CITY OF COSTA MESA

5 OFFICE OF COUNTY COUNSEL
7 ORANGE COUNTY, CALIFORNIA

By _____
Katrina Foley, Mayor

9 By _____
11 Deputy

13 Date _____

APPROVED AS TO FORM:

15 By _____
Thomas Duarte, City Attorney

17 RECOMMENDED FOR APPROVAL:

19 OC Public Libraries

ATTEST:

21 By _____
23 Helen Fried, County Librarian

By _____
Brenda Green, City Clerk

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

COUNTY

39 Attest:

COUNTY OF ORANGE

41
43 _____
45 ROBIN STIELER
Clerk of the Board of Supervisors
of Orange County, California

Chairwoman of the Board of Supervisors
Orange County, California

1 GENERAL CONDITIONS (9.1 S – 9.18 S)

3 1. SIGNAGE (4.5 SA)

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

9 2. LEASE ORGANIZATION (9.1 S)

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

15 3. INSPECTION (9.2 S)

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

35 4. SUCCESSORS IN INTEREST (9.3 S)

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

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

45 “**Partial Destruction**” of the Premises shall mean damage or destruction to the Premises, for which the repair
47 cost is less than 25 percent (25%) of the then replacement cost of the Premises (including tenant
49 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 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 CITY fail to complete necessary repairs, for

1 any reason, within sixty (60) days, or other time frame as may be authorized by COUNTY, COUNTY may, at
3 COUNTY's sole option, terminate the Lease.

5 In the event of Total Destruction of the Premises or the Premises being legally declared unsafe or unfit for
7 occupancy, this Lease shall in no way be rendered null and void and CITY shall immediately instigate action
9 to rebuild or make repairs, as necessary, to restore the Premises (including replacement of all tenant
11 improvements) to the condition which existed immediately prior to the destruction. All reimbursement payable
13 by COUNTY shall be abated until complete restoration of the Premises is accepted by COUNTY. In the event
15 CITY refuses to diligently pursue or is unable to restore the Premises to a condition suitable for being occupied
17 (including replacement of all tenant improvements) within 180 days of the occurrence of said destruction or
19 within an extended time frame as may be authorized, in writing, by COUNTY, COUNTY may, at COUNTY's
sole option, terminate this Lease.

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

19 6. AMENDMENT (9.5 S)

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

25 7. PARTIAL INVALIDITY (9.6 S)

27 If any term, covenant, condition, or provision of this Lease is held by a court of competent jurisdiction to be
29 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.

31 8. CIRCUMSTANCES WHICH EXCUSE PERFORMANCE (9.7 S)

33 If either party hereto shall be delayed or prevented from the performance of any act required hereunder by
35 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.

37 9. STATE AUDIT (9.8 S)

39 Pursuant to and in accordance with Section 8546.7 of the California Government Code, in the event that this
41 Lease involves expenditures and/or potential expenditures of State funds aggregating in excess of Ten
43 Thousand Dollars (\$10,000), CITY shall be subject to the examination and audit of the Auditor General of the
45 State of California for a period of three (3) 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.

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1 10. WAIVER OF RIGHTS (9.9 S)

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

11 11. HOLDING OVER (9.10 S)

13 In the event COUNTY shall continue in possession of the Premises after the term of this Lease, such possession
15 shall not be considered a renewal of this Lease but a tenancy from month to month and shall be governed by
17 the conditions and covenants contained in this Lease.

19 12. HAZARDOUS MATERIALS (9.11 S)

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

25 13. EARTHQUAKE SAFETY (9.12 S)

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

31 14. QUIET ENJOYMENT (9.13 S)

33 CITY agrees that, subject to the terms, covenants and conditions of this Lease, COUNTY may, upon observing
35 and complying with all terms, covenants and conditions of this Lease, peaceably and quietly occupy the
37 Premises.

39 15. WAIVER OF JURY TRIAL. (9.15 S)

41 Each party acknowledges that it is aware of and has had the advice of Counsel of its choice with respect to its
43 rights to trial by jury, and each party to the extent permitted by applicable law, for itself and its successors and
45 assigns, does hereby expressly and knowingly waive and release all such rights to trial by jury in any action,
47 proceeding or counterclaim brought by any party hereto against the other (and/or against its officers, directors,
49 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.

1 17. TIME (9 S)

3 Time is of the essence of this Lease.

5 18. COOPERATION (N)

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

11 19. INTEGRATION (N)

13 This agreement, together with any exhibit(s) attached hereto (which are incorporated by reference), fully
15 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.

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

19 In accordance with California Civil Code section 1938, CITY represents that the Premises has undergone an
21 inspection by a Certified Access Specialist (CASp) and that there have been no modifications or alterations
23 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.

25 In accordance with California Civil Code section 1938(e), "A Certified Access Specialist (CASp) can inspect
27 the subject premises and determine whether the subject premises comply with all of the applicable
29 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
31 tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of
33 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."

35 21. FORCE MAJEURE (6.5 SA)

37 For purposes of this Lease, the term "**Force Majeure**" means any of the following events which are beyond
39 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,
41 strike, lockout or other labor disturbance, fire, earthquake, explosion, governmental delays (including
43 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
45 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,
47 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
49 any delay in the performance of any obligation hereunder when such delay is occasioned by causes beyond its

1 control.

3 22. CONDEMNATION (6.6 SA)

5 If the Premises or any portion thereof are taken under the power of eminent domain or sold under the threat of
7 the exercise of said power (collectively, “**Condemnation**”), this Lease shall terminate as to the part taken as
9 of the date the condemning authority takes title or possession, whichever first occurs. If all or a material
11 portion of the rentable area of the Premises are taken by Condemnation, COUNTY may, at COUNTY’s option,
13 to be exercised in writing within ten (10) days after CITY shall have given COUNTY written notice of such
15 taking (or in the absence of such notice, within ten (10) days after the condemning authority shall have taken
17 possession) terminate this Lease as of the date the condemning authority takes such possession. CITY shall
19 also have the right to terminate this Lease if there is a taking by Condemnation of any portion of the Building
21 or property which would have a material adverse effect on CITY’s ability to profitably operate the remainder
23 of the Building. If neither Party terminates this Lease in accordance with the foregoing, this Lease shall remain
25 in full force and effect as to the portion of the Premises remaining, except that the rent shall be reduced in
27 proportion to the reduction in utility of the Premises caused by such Condemnation. Condemnation awards
29 and/or payments shall be the property of CITY, whether such award shall be made as compensation for
31 diminution in value of the leasehold, the value of the part taken or for severance damages. COUNTY hereby
33 waives any and all rights it might otherwise have pursuant to Section 1265.130 of the California Code of Civil
35 Procedure, or any similar or successor Laws.

23 23. CONSENT OR APPROVAL (6.7 SA)

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

27 24. UNENFORCEABLE PROVISIONS (6.8 SA)

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

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1 **EXHIBIT A**

3 **LEASE DESCRIPTION (10.1 S)**

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7 PROJECT NO: CM22-L-B.R2

DATE: October 4, 2017

9 PROJECT: Costa Mesa/Mesa Verde Branch Library

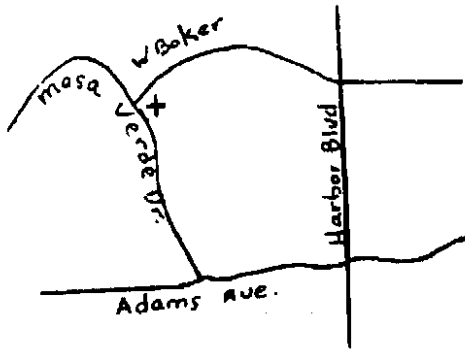
VERIFIED BY: Heather Condon

11 All the Premises shown crosshatched on a plot plan marked Exhibit B, attached hereto and made a part hereof,
13 being that certain one (1) story building located at 2969 Mesa Verde Drive East, in the City of Costa Mesa,
15 County of Orange, State of California, and located on Lot 170 of Tract No. 3487 per map recorded in Book
17 122, pages 6 through 16, inclusive, of Miscellaneous Maps in the office of the County Recorder of the County
19 of Orange together with exclusive use of thirty (30) parking spaces in the parking areas shown on Exhibit B.

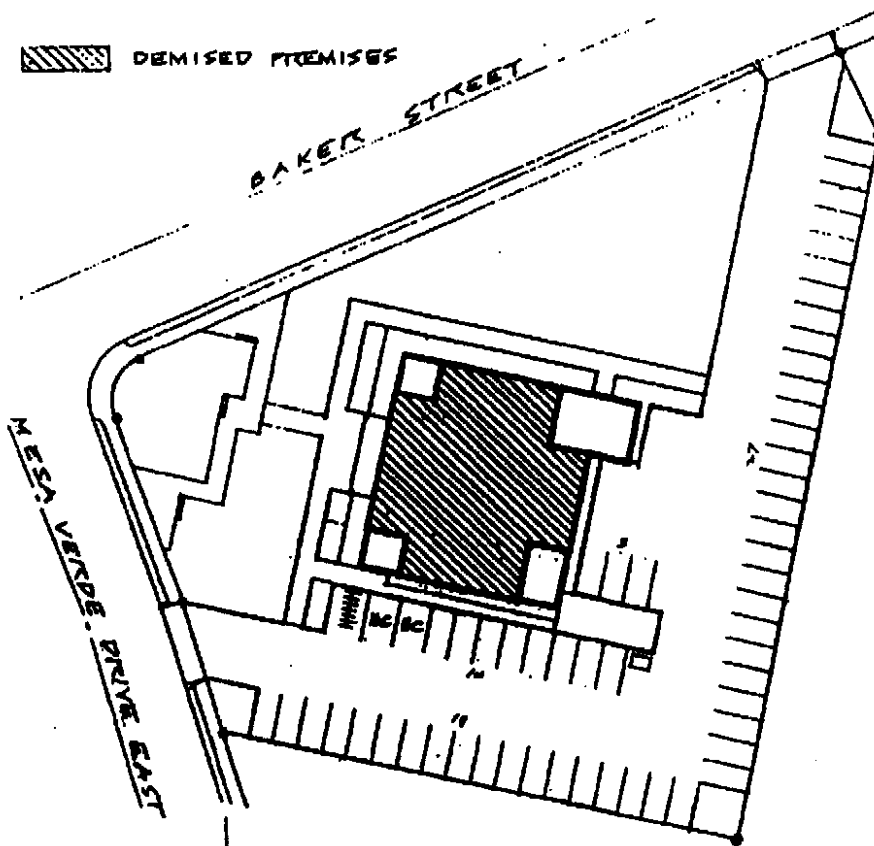
21 **NOT TO BE RECORDED**

EXHIBIT B

LOCATION MAP



 DEMISED PREMISES



PARKING for 50 CARS

SITE PLAN

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

CITY MAINTENANCE SCHEDULE

MESA 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