

## TEMPORARY USE AGREEMENT AND LICENSE

This TEMPORARY USE AGREEMENT AND LICENSE (this “Agreement”) is made and entered into on \_\_\_\_\_, 2019 (“Effective Date”) by and between the City of Cupertino (“City”), as licensor, and the Santa Clara County Library Joint Powers Authority (“Library”), as licensee. The City and the Library are sometimes individually referred to as “Party” and collectively as “Parties.”

### RECITALS

A. City is the fee owner of that certain real property, including the Community Hall Building located thereon (“Community Hall Building”), with a street address of 10350 Torre Avenue, Cupertino, CA 95014, and more commonly known as Cupertino Civic Center. The Community Hall Building and the underlying land are referred to herein collectively as the “Property”.

B. Library has been using the Community Hall Building since its construction in 2014 for library-related programming and functions, including speaker series, story time events, and tutoring, which are well attended by the community, pursuant to one-time use permits and waivers. Library desires to continue to use the Community Hall Building for library-related programming and functions on a regular basis without the need to execute a permit and waiver in connection with each event.

C. City is willing to allow the Library to make use of that certain portion of the Property depicted and described in Exhibit A attached hereto and incorporated herein (“License Area”) on the terms and conditions set forth in this Agreement.

NOW THEREFORE, FOR AND IN CONSIDERATION of the mutual agreements by the Parties set forth herein and other good and valuable consideration, the Parties hereby agree as follows:

### AGREEMENT

1. Grant of License – City hereby grants to Library, its employees, consultants, representatives, contractors and Library program participants a non-exclusive, revocable, temporary license (“License”) to enter and use the License Area, as described in Exhibit A, for the sole purpose of conducting Library-related programming and functions (collectively, the “Permitted Activities”), which shall include, without limitation, community programming such as speaker events, story time and book reading events, and tutoring services, at such times as mutually agreed upon by the Parties in accordance with Section 3 – Scheduling, below. Library shall pay City the standard Cupertino Non-Profit fees for each use (including any applicable security staff or overtime fees but excluding a damage deposit) for use of Community Hall, as may be amended by the City from time to time. City will not charge Library for routine set up activities (including A/V set up), but the costs of extraordinary staffing needs, such as A/V recording services, shall be paid by the Library. City will invoice Library on a monthly basis for Library’s use of Community Hall.

2. As-Is – Library acknowledges that neither City nor any agent of City has

made any representation or warranty with respect to the condition of the Property or License Area, or its suitability for the Permitted Activities. Library accepts the License Area in its “AS IS” condition and City shall have no obligation to improve the License Area. Library shall not do or permit anything to be done in or about the License Area or the Property nor bring or keep anything therein which will in any way interfere with the City’s use of the Property.

3. Scheduling – Use of the License Area shall be permitted on dates and times mutually agreed to by the Parties. To facilitate scheduling of Library programs, Library staff may visit the Quinlan Center front office when City staff are present and City will provide Library with real-time access to the City’s Community Hall Building schedule. Library may request use of the License Area for Permitted Activities for at least 120 uses per year with no more than fifteen uses per month, and the City shall endeavor to accommodate the requested use if the License Area is available and there is no conflicting use already authorized by the City. Requests by the Library shall be made in writing, and City shall respond within five business days. Accordingly, Library shall be responsible for ensuring that scheduling requests are provided to City sufficiently in advance of any proposed Permitted Activities use.

City use of the License Area shall take precedence over any conflicting reserved use by the Library only if the City determines, in its sole discretion, that a Special City Council meeting, Special Planning Commission meeting, or the need to make emergency operations or repairs, requires City’s use of all or a portion of the License Area to the exclusion of the Library. In that event, City shall be allowed to use the License Area upon prompt notification to the Library, notwithstanding any prior approval of a Library scheduling request. If City revokes the Library’s reservation pursuant to this Section, City will offer an alternative community room site, if available, for the same fee.

This Agreement (and the limit on number of uses in this Section) shall apply to events co-hosted by the Library and another organization. Notwithstanding the foregoing, uses of the Community Hall by the Friends of the Library for book sale events shall not count towards the 120 uses by the Library allowed for in this Section.

The Parties designate the following individuals as representatives for the purposes of scheduling the Library’s use of the License Area under this Agreement:

For the City: City Manager or his or her designee

For the Library: Cupertino Community Librarian or designee

Either Party may change the designated person for scheduling upon written notice to the other Party.

4. Term – The term of this Agreement and the license granted hereunder shall commence on the Effective Date and expire one (1) year thereafter (“Initial Term”) unless this Agreement is terminated earlier in accordance with Section 5 below. Following expiration of the Initial Term, this Agreement shall continue on a month-to-month basis.

5. Termination – This Agreement may be terminated by either party at any time, for any reason, upon 30 days’ prior written notice to the other party. The City shall honor

prior reservations for dates up to six months after the notice of termination. The terms of this Agreement shall survive to apply to those prior-reserved uses occurring after the notice of termination.

6. Limitation on City Liability, Damage to Library Property – Library, as a material part of the consideration to City, hereby assumes all risk of damage to property including, but not limited to, Library’s property, and injury to or death of persons in, upon or about the License Area, the Property, or any portion thereof, arising from any cause, and Library hereby waives all claims in respect thereof against City, except to the extent such claims are caused by City’s negligence or willful misconduct. Library hereby agrees that City shall not be liable for injury to or death of any Library employee, contractor, invitee or agent, or any other person in or about the Licensed Area, the Property, or any portion thereof, whether such damage or injury is caused by fire, steam, electricity, gas, water or rain, or from the breakage, leakage or other defects of sprinklers, wires, appliances, plumbing, air conditioning or lighting fixtures, or from any other cause, whether said damage or injury results from conditions arising within or about the Community Hall Building, the Property, or any portion thereof or from other sources or places, except damage or injury caused solely by City’s negligence or willful misconduct.

7. Payment Terms – Except as otherwise provided in Section 1 above (Grant of License) and Sections 11 (Protection of Property), 13 (Indemnity) and 14 (Insurance) below, Library shall not be required to pay City any additional License fee or other compensation for use of the License Area.

8. Compliance with Laws – Library, at its expense, shall comply with any and all applicable Federal, State and municipal statutes and ordinances, and with all applicable regulations, orders and directives of appropriate governmental agencies in connection with its use the License Area and conduct of the Permitted Activities. Prior to commencement of the Permitted Activities, Library shall obtain any required permits, licenses, and governmental approvals required to conduct the Permitted Activities. The Library shall provide the City with evidence of all required Permits if so requested.

9. Waste or Nuisance –Library shall not cause or maintain any nuisances in, on, or about the License Area; or commit any waste in, on, or about the License Area.

10. No Alterations – Library shall not make any alterations, additions or improvements to the Community Hall Building or the Property or any part thereof.

11. Protection of Property – Library shall practice all due diligence to protect the Property and License Area. Library shall, at its own expense, ensure that any litter is placed in the proper garbage, recycling, or compostable bins after each use. City, at its own expense, will ensure that the License Area is free of any litter, but the City is not obligated to empty its garbage, compost, or recycle bins outside of its ordinary schedule for doing so. In the event of damage to the License Area or Property arising directly or indirectly from Library’s use or access to the License Area or performance of the Permitted Activities, whether by Library or its employees, contractors, invitees, third party program providers or other agents, the Library shall reimburse the City, within 30 days following City’s demand therefor, the cost of restoring any damage to the Community Hall Building or other improvements comprising the Property. Library’s obligations under this Section shall survive any expiration or termination

of this Agreement.

12. Cooperation – In the event City has business on the License Area, Library agrees to coordinate the Permitted Activities with City to minimize any impairment of access to the License Area and any inconvenience to or disruption of the City’s business. City agrees to coordinate its business at the Property so as to minimize any delay or disruption of the Library’s Permitted Activities.

13. Indemnity

- a. Except to the extent claims are caused by City’s negligence or willful misconduct, Library shall indemnify, protect, defend, and hold harmless City and its elected officials, officers, employees, volunteers, agents, representatives, and contractors from and against any and all claims, judgments, causes of action, damages, penalties, costs, liabilities, and expenses, including attorneys’ fees and costs incurred in the defense of any such claim or any action or proceeding brought thereon, arising at any time during or after the term as a result (directly or indirectly) of or in connection with (i) any default in the performance of any obligation on Library’s part to be performed under the terms of this Agreement; (ii) the Permitted Activities; (iii) any act, error or omission of Library or its employees, contractors, invitees, third party program providers or other agents in or about the License Area or Property or any portion thereof; or (iv) loss of, injury or damage to, or destruction of personal property or fixtures (including but not limited to furnishings and bathroom fixtures) on or about the Property (collectively, the “Indemnification”). Library shall provide the defense portion of such Indemnification by and through counsel reasonably acceptable to City. The indemnification obligations of Library set forth in this Section shall survive any expiration or termination of this Agreement.
- b. City shall indemnify, protect, defend, and hold harmless Library and its elected officials, officers, employees, volunteers, agents, representatives, and contractors from and against any and all claims, judgments, causes of action, damages, penalties, costs, liabilities, and expenses, including attorneys’ fees and costs incurred in the defense of any such claim or any action or proceeding brought thereon, arising at any time during or after the term to the extent caused (directly or indirectly) by (i) any default in the performance of any obligation on City’s part to be performed under the terms of this Agreement; (ii) any negligence or willful misconduct of City or its employees, contractors, invitees or agents in or about the License Area or Property or any portion thereof. The indemnification obligations of City set forth in this Section shall survive any expiration or termination of this Agreement.

14. Insurance –Library shall maintain the following minimum levels of insurance coverage during the term of this Agreement. Prior to the execution of the Agreement, the Library shall provide proof of insurance required. Insurance is to be placed with either a public entity risk pooling organization acceptable to the City or with insurers authorized to conduct business in the state with a current A.M. Best’s rating of no less than A:VII, unless otherwise approved by the City in writing. Coverage shall be at least as broad as:

1. Commercial General Liability (CGL): Insurance Services Office Form CG 00 01 covering CGL on an “occurrence” basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than \$2,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 05 09 or 25 04 05 09) or the general aggregate limit shall be twice the required occurrence limit.

2. Automobile Liability: ISO Form Number CA 00 01 covering any auto (Code 1), or if Library has no owned autos, covering hired, (Code 8) and non-owned autos (Code 9), with limit no less than \$2,000,000 per accident for bodily injury and property damage.

3. Workers’ Compensation: as required by the State of California, with Statutory Limits, and Employer’s Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.

The insurance obligations under this Agreement shall be (i) the minimum coverage and limits specified above; or (ii) all the Insurance coverage and/or limits carried by or available to Library, whichever is greater. Any insurance proceeds in excess of or broader than the minimum required coverage and/or minimum required limits, which are applicable to a given loss, shall be available to City.

The insurance policies are to contain, or be endorsed to contain, the following provisions:

a. City and its elected and appointed officials, officers, agents, employees and volunteers shall be named as additional insureds on the CGL policy with respect to liability arising out of the Permitted Activities or any other work or operations performed by or on behalf of the Library. General liability coverage can be provided in the form of an endorsement to the Library’s insurance (at least as broad as ISO Form CG 20 10 11 85 or both CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 forms if later revisions used). If Sexual Abuse and Molestation Liability Coverage is provided under a separate policy rather than as an endorsement to the CGL policy, then City and its elected and appointed officials, officers, agents, employees and volunteers shall also be named as additional insureds on the Sexual Abuse and Molestation Liability policy

b. The insurer shall provide City with 30-days’ prior notice of termination or material change in coverage and ten (10) days’ prior notice of cancellation for non-payment.

c. For any claims related to this Agreement, the Library’s insurance coverage shall be primary insurance coverage with respect to the City, its elected and appointed officials, officers, agents, employees and volunteers. Any insurance or self-insurance maintained by the City, its elected or appointed officials, officers, employees, agents or volunteers shall be in excess of the Library’s insurance and shall not be contributory.

Except as to a loss covered by Section 13.b (City’s indemnity obligation) of this

Agreement, Library hereby grants to City a waiver of any right to subrogation which any insurer of the Library may acquire against City by virtue of the payment of any loss under such insurance. Library agrees to obtain any endorsement that may be necessary to implement this waiver of subrogation, but this provision applies regardless of whether or not City has received a waiver of subrogation endorsement from the insurer.

Library shall furnish City with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this Section. All certificates and endorsements are to be received and approved by the City before any use under this Agreement commences. However, failure to obtain the required documents prior to the Permitted Activities beginning shall not waive Library's obligation to provide them. City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

15. No Assignment, Subletting or Change in Use –Library may not transfer or assign its rights or obligations under this Agreement and shall not sublicense, permit or suffer any use of the License Area other than as set forth in this Agreement. Notwithstanding the foregoing, Library at its sole cost and risk may coordinate with third-party program providers, such as Friends of the Library, in conducting the Permitted Activities.

16. No Third Party Beneficiaries – This Agreement is entered into for the sole benefit of the Parties and no other person or entity is intended to be a direct or incidental beneficiary of this Agreement and no third party shall have any right in, under or to this Agreement.

17. Choice of Law– This Agreement shall be governed by and construed in accordance with the laws of the State of California.

18. Entire Agreement – This Agreement (including all Exhibits hereto) contains all the agreements of the Parties regarding the Permitted Activities and supersedes any prior license or negotiations. There have been no representations by either of the Parties regarding the license to conduct the Permitted Activities other than those set forth in this Agreement. This Agreement may not be modified except by a written instrument duly executed by the Parties hereto.

19. Counterparts – This Agreement may be executed in one or more counterparts, each of which shall be deemed as original, but all of which together shall constitute one and the same instrument.

*[SIGNATURES ON FOLLOWING PAGE]*

IN WITNESS WHEREOF, the Parties duly authorized representatives have executed this Agreement on the date first above written.

**CITY OF CUPERTINO**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Name:  
Title: City Attorney

**SANTA CLARA COUNTY LIBRARY  
JOINT POWERS AUTHORITY**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**APPROVED AS TO FORM:**

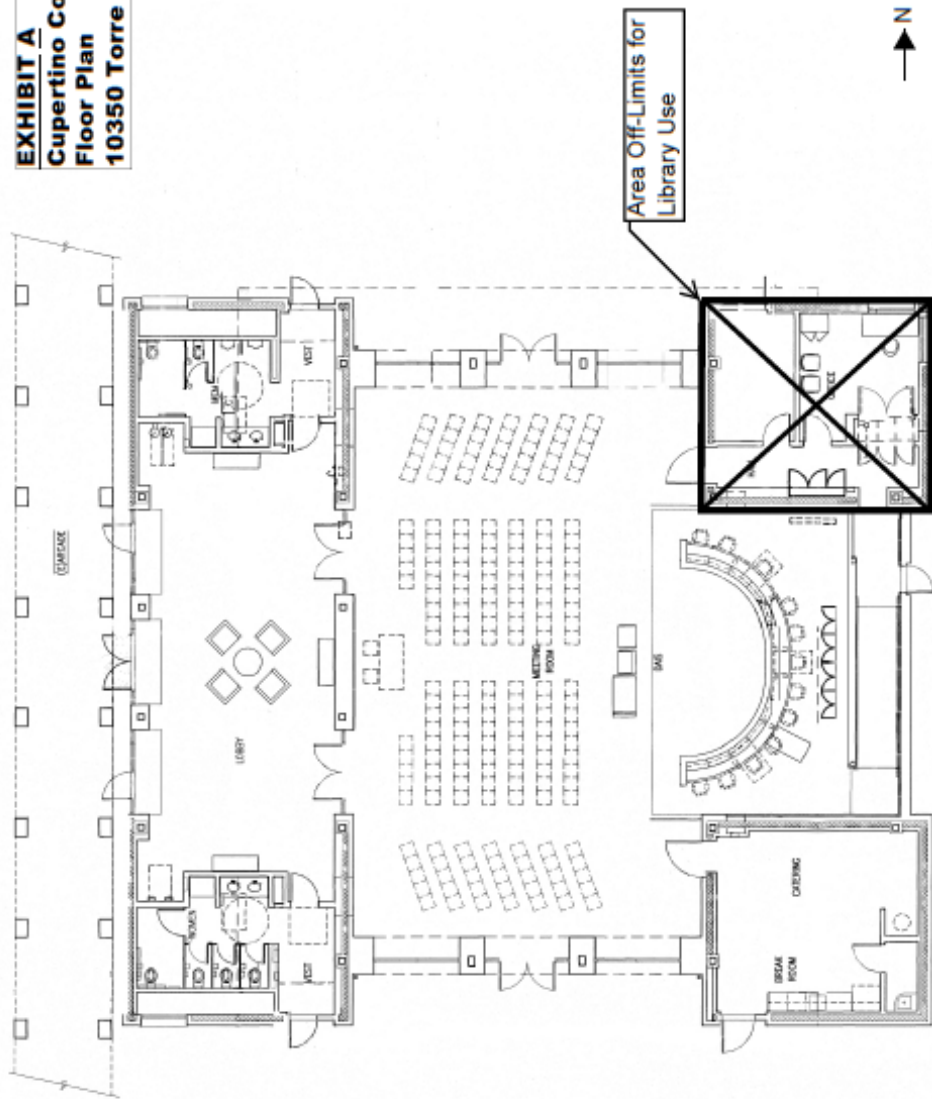
\_\_\_\_\_  
Name:  
Title: County Counsel

**Exhibit A – LICENSE AREA**

Exhibit A



**EXHIBIT A**  
**Cupertino Community Hall**  
**Floor Plan**  
**10350 Torre Avenue**



1120333.8

Exhibit A

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