



CITY OF CUPERTINO

AGENDA

CITY COUNCIL

10300 Torre Avenue and 10350 Torre Avenue
Monday, July 8, 2019
5:30 PM

Special Meeting Non-Televised Closed Session (5:30) and Televised Open Session (6:45)

NOTICE AND CALL FOR A SPECIAL MEETING OF THE CUPERTINO CITY COUNCIL

NOTICE IS HEREBY GIVEN that a special meeting of the Cupertino City Council is hereby called for Monday, July 08, 2019, commencing at 5:30 p.m. for a Closed Session in City Hall Conference Room A, 10300 Torre Avenue, Cupertino, California 95014 and an Open Session at 6:45 p.m. in Community Hall Council Chamber, 10350 Torre Avenue, Cupertino, California 95014. Said special meeting shall be for the purpose of conducting business on the subject matters listed below under the heading, "Special Meeting." The next regular meeting is scheduled on July 16, 2019 at 6:45 p.m. in Community Hall Council Chamber, 10350 Torre Avenue, Cupertino, California.

SPECIAL MEETING

CLOSED SESSION - 5:30 PM

10300 Torre Avenue, City Hall Conference Room A

1. Subject: Conference with Legal Counsel pursuant to Government Code section 54956.9(d)(1); Re: Pending Litigation; Friends of Better Cupertino, et al. v. City of Cupertino; Santa Clara County Superior Court, Case No. 18CV330190 (SB 35 Vallco Project)

RECESS

OPEN SESSION - 6:45 PM

10350 Torre Avenue, Community Hall Council Chamber

PLEDGE OF ALLEGIANCE

ROLL CALL

POSTPONEMENTS

ORAL COMMUNICATIONS

This portion of the meeting is reserved for persons wishing to address the council on any matter not on the agenda. Speakers are limited to three (3) minutes. In most cases, State law will prohibit the council from making any decisions with respect to a matter not listed on the agenda.

CONSENT CALENDAR

Unless there are separate discussions and/or actions requested by council, staff or a member of the public, it is requested that items under the Consent Calendar be acted on simultaneously.

2. **Subject:** Settlement Agreement between the City of Cupertino and its former City Attorney, Randolph Hom.
Recommended Action: Approve and authorize the City Manager to execute a Settlement Agreement and Mutual General Release between the City of Cupertino and Randolph Hom.
[Staff Report](#)
[A - Settlement Agreement with R. Hom](#)

3. **Subject:** Community Hall license agreement with Santa Clara County Library District
Recommended Action: Authorize the City Manager to execute a Temporary Use Agreement and License with Santa Clara County Library Joint Powers Authority for library use of Cupertino Community Hall (10350 Torre Avenue)
[Staff Report](#)
[A - Draft Temporary Use Agreement and License](#)

ADJOURNMENT

The City of Cupertino has adopted the provisions of Code of Civil Procedure §1094.6; litigation challenging a final decision of the City Council must be brought within 90 days after a decision is announced unless a shorter time is required by State or Federal law.

Prior to seeking judicial review of any adjudicatory (quasi-judicial) decision, interested persons must file a petition for reconsideration within ten calendar days of the date the City Clerk mails notice of the City's decision. Reconsideration petitions must comply with the requirements of Cupertino Municipal Code §2.08.096. Contact the City Clerk's office for more information or go to <http://www.cupertino.org/index.aspx?page=125> for a reconsideration petition form.

In compliance with the Americans with Disabilities Act (ADA), anyone who is planning to attend the next City Council meeting who is visually or hearing impaired or has any disability that needs special assistance should call the City Clerk's Office at 408-777-3223, 48 hours in advance of the Council meeting to arrange for assistance. Upon request, in advance, by a person with a disability, City Council meeting agendas and writings distributed for the meeting that are public records will be made available in the appropriate alternative format. Also upon request, in advance, an assistive listening device can be made available for use during the meeting.

Any writings or documents provided to a majority of the Cupertino City Council after publication of the packet will be made available for public inspection in the City Clerk's Office located at City Hall, 10300 Torre Avenue, during normal business hours and in Council packet archives linked from the agenda/minutes page on the Cupertino web site.

IMPORTANT NOTICE: Please be advised that pursuant to Cupertino Municipal Code 2.08.100 written communications sent to the Cupertino City Council, Commissioners or City staff concerning a matter on the agenda are included as supplemental material to the agendized item. These written communications are accessible to the public through the City's website and kept in packet archives. You are hereby admonished not to include any personal or private information in written communications to the City that you do not wish to make public; doing so shall constitute a waiver of any privacy rights you may have on the information provided to the City.

Members of the public are entitled to address the City Council concerning any item that is described in the notice or agenda for this meeting, before or during consideration of that item. If you wish to address the Council on any issue that is on this agenda, please complete a speaker request card located in front of the Council, and deliver it to the Clerk prior to discussion of the item. When you are called, proceed to the podium and the Mayor will recognize you. If you wish to address the City Council on any other item not on the agenda, you may do so by during the public comment portion of the meeting following the same procedure described above. Please limit your comments to three (3) minutes or less.



CITY OF CUPERTINO

Agenda Item

19-5722

Agenda Date: 7/8/2019
Agenda #: 1.

Subject: Conference with Legal Counsel pursuant to Government Code section 54956.9(d)(1);
Re: Pending Litigation; Friends of Better Cupertino, et al. v. City of Cupertino; Santa Clara County Superior Court, Case No. 18CV330190 (SB 35 Vallco Project)



CITY OF CUPERTINO

Agenda Item

19-5718

Agenda Date: 7/8/2019
Agenda #: 2.

Subject: Settlement Agreement between the City of Cupertino and its former City Attorney, Randolph Hom.

Approve and authorize the City Manager to execute a Settlement Agreement and Mutual General Release between the City of Cupertino and Randolph Hom.



ADMINISTRATIVE SERVICES DEPARTMENT

CITY HALL
10300 TORRE AVENUE • CUPERTINO, CA 95014-3255
TELEPHONE: (408) 777-3220 • FAX: (408) 777-3109
CUPERTINO.ORG

CITY COUNCIL STAFF REPORT Special Meeting: July 8, 2019

Subject

Settlement Agreement between the City of Cupertino and its former City Attorney, Randolph Hom.

Recommended Action

Approve and authorize the City Manager to execute a Settlement Agreement and Mutual General Release between the City of Cupertino and Randolph Hom.

Discussion

On October 22, 2018 and on February 8, 2019, former City Attorney Randolph Hom filed Government Tort Claims with the City, the first claiming he was fired in retaliation for whistleblowing, as well as discrimination and breach of contract claims, and seeking millions in compensation. In the second claim, he claimed that he was entitled to six months severance payment (equaling \$191,700), plus interest and attorney's fees, under his employment contract.

While the City disputed liability on all claims, after a confidential mediation with Judge James Kleinberg, a retired judge of the Santa Clara County Superior Court, the parties reached agreement on a total settlement payment of \$205,000. This amount will eliminate the potential expense of defending a lawsuit in court.

Sustainability Impact

No sustainability impact.

Fiscal Impact

Within ten (10) business days following the effective date of the agreement, the City will incur an expenditure of two-hundred five thousand (\$205,000) for the settlement payment.

Prepared by: Zach Korach, Finance Manager

Reviewed by: Kristina Alfaro, Director of Administrative Services

Approved for Submission by: Deborah Feng, City Manager
Attachments:
A - Settlement Agreement and Mutual General Release

SETTLEMENT AGREEMENT AND MUTUAL GENERAL RELEASE

THIS SETTLEMENT AGREEMENT AND MUTUAL GENERAL RELEASE (hereinafter, this "Agreement") is entered into by the City of Cupertino, State of California, a Municipal Corporation, by and through its City Council (hereinafter "the City"), and Randolph Hom (hereinafter "Hom").

RECITALS

A. From January 2016 to October 2018, Hom was employed by the City as its City Attorney.

B. On October 22, 2018 ("October Claim"), and on February 8, 2019 ("February Claim"), Hom filed Government Tort Claims with the City alleging retaliatory discharge for engaging in protected activity in violation of state and federal law, racial discrimination, intentional and negligent infliction of emotional distress, and breach of his Second Amended Employment Contract, based on, among other things, the failure to pay nine months severance as required by the contract for any termination.

C. The City expressly denies and disclaims any liability for any and all claims or damages asserted in both claims, and in no way admits the truth of the allegations in the claims. If Hom is entitled to the severance, nine months severance under Hom's contract totals \$191,700; with prejudgment interest, the amount would be nearly \$205,000.

D. In the interest of avoiding the expense, distraction, and inconvenience of litigation, the parties have agreed to settle. Each party agrees and understands that this Agreement constitutes a compromise settlement of disputed claims. The furnishing of the consideration for this Agreement shall not at any time for any purpose be deemed or construed by Hom or by anyone else as an admission of liability or responsibility by the City.

AGREEMENT

1. Employment Ending Date. Hom understands and agrees that his employment and any other relationship with the City terminated on October 12, 2018. Hom agrees that he will not seek re-employment with the City. Apart from the consideration for signing this Agreement provided in Paragraph 2 below, Hom affirms that he has been paid all outstanding salary, benefits, and other compensation (paid administrative leave, accrued leave) arising from his City employment.

2. Consideration. In consideration of the covenants undertaken and releases given herein by Hom, the City agrees, within ten (10) business days following (1) the Effective Date of this Agreement (as defined in Paragraph 15), and (2) delivery to the City of a fully executed and valid withdrawal of the October Claim and the February Claim, to pay the total amount of Two Hundred Five Thousand Dollars and Zero Cents (\$205,000.00) (the "Settlement Payment"), allocated as follows: (1) \$85,200 less standard payroll taxes and withholdings, in a check payable to Randolph Hom as compensation for lost wages; (2) \$64,797.31 in a check payable to Randolph Hom for emotional distress damages; and (3) \$55,002.69 to Cotchett, Pitre & McCarthy for attorney's fees and costs, made by wire transfer to the client trust account of Cotchett, Pitre & McCarthy [Wells Fargo Bank, 490 Broadway, Millbrae, California 94030; Routing Number: 121000248; Account Number: 3697751026]. Checks payable to Randolph Hom shall be mailed via certified mail to an address provided by Randolph Hom to the Director of Administrative Services and shall be deemed paid as of the date mailed.

3. Valid Consideration. The City and Hom agree that the consideration described in Paragraph 2 of this Agreement is not required by the City's policies or procedures or by any

4. Return of Property. Hom confirms and agrees that he has returned to the City all property received from the City or any of its current or former employees or generated by Hom in the course of employment. Nothing in this provision shall limit the City's right to ask Hom for return of property in the future should the City or Hom later learn that Hom's electronic files still contain City property.

5. Mutual General Release.

a. By Hom. In consideration of the payments and other promises contained herein, Hom expressly waives any and all claims against the City and, to the maximum extent permitted by law, releases the City, all current and former members of the City Council, and all of the City's managers, agents, employees, and representatives ("Releasees") from any and all actual or potential actions, claims, causes of action, damages, and rights to attorneys' fees or costs, known or unknown, that he may have or claim to have based on any action or inaction by any Releasee, including but not limited to those asserted in the October Claim and February Claim. It is understood that this release includes, but is not limited to, any claims for retaliation, discrimination, wrongful discharge, as well as any claims for wages, bonuses, employment benefits (including claims under continuing employee benefit plans or claims under ERISA), or damages of any kind whatsoever, arising out of any common law torts, any contracts, express or implied, any covenant of good faith and fair dealing, express or implied, any theory of wrongful termination, any theory of negligence, any theory of retaliation, any theory of discrimination or harassment in any form, any legal restriction on Releasees' right to terminate employees, or any federal, state, or other governmental statute or ordinance, including, without limitation, Title VII of the Civil Rights Act of 1964 as amended, the Americans with Disabilities Act, the Family and Medical Leave Act, the Equal Pay Act, the Age Discrimination in Employment Act, the Older Workers Benefit Protection Act, the California Fair Employment and Housing Act, the California Family Rights Act, the California Labor Code, California Government Code § 910, et seq., or any other statutory or common law limitation or regulation of the employment relationship under state or federal law.

b. By the City. In consideration of the promises contained herein, the City expressly waives any and all claims against Hom and, to the maximum extent permitted by law, releases Hom, and all of his agents, employees, servants, representatives, heirs and assigns ("Hom Releasees") from any and all actual or potential actions, claims, causes of action, damages, and rights to attorneys' fees and costs, known or unknown, that the City may have or claim to have based on any action or inaction by any Hom Releasee through the date of the mediation in this matter, including by not limited to those asserted by the City in response to the October Claim and/or the February Claim. It is understood that this release includes, but is not limited to, any claims or damages of any kind whatsoever, arising out of any common law torts, any contract, express or implied, any cause of action or theory based on violation of the attorney-client privilege, attorney work-product doctrine or privilege, defamation, conversion, confidentiality, malpractice, right to privacy, negligence, discrimination or harassment, in any form, or any statutory or common law limitation under state or federal laws. For the avoidance of doubt, the City does not hereby release future claims it may have against Hom if Hom has violated or does violate any duty to the City, including without limitation the obligation of confidentiality owed by attorneys to former clients, either since the mediation in this matter or in the future.

c. It is the intention of Hom and the City in executing this Agreement that the same shall be effective as a waiver and bar to each and every claim, including any potential unknown or unsuspected claims. Hom and the City therefore expressly waive any and all rights and benefits conferred by the provisions of SECTION 1542 OF THE CALIFORNIA CIVIL CODE, which provides:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT

TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.”

The parties expressly waive any right, claim or cause of action that might arise as a result of information later learned by them.

6. No Admission of Wrongdoing. This Agreement shall not be construed as an admission by the City of any wrongful act, unlawful discrimination, or breach of contract, and the City specifically disclaims any liability to or unlawful discrimination against Hom.

7. Other Charges or Complaints. Hom represents that he has not filed any complaints, claims, charges, appeals, or actions against Releasees with any state, federal, or local agency or court, and that Hom will not do so at any time hereafter. Nothing in this Agreement is intended to waive claims (i) for unemployment or workers' compensation benefits, (ii) for vested rights under ERISA-covered employee benefit plans as applicable on the date Hom signs this Agreement, (iii) that may arise after Hom signs this Agreement, or (iv) which cannot be released by private agreement. In addition, nothing in this Agreement prevents Hom from filing a charge or complaint with or from participating in an investigation or proceeding conducted by the EEOC, National Labor Relations Board, or any other any federal, state or local agency charged with the enforcement of any laws, or from exercising rights under Section 7 of the NLRA to engage in joint activity with other employees, although by signing this release Hom is waiving rights to individual relief based on claims asserted in such a charge or complaint, or asserted by any third-party on his behalf, except where such a waiver of individual relief is prohibited.

8. Severability. The provisions of this Agreement are severable, and, if any part of it is found to be unlawful or unenforceable, the other provisions of this Agreement shall remain fully valid and enforceable to the maximum extent consistent with applicable law.

9. Applicable Law. This Agreement is entered into in Cupertino, California and shall be interpreted under the laws of the State of California without regard to California's conflicts of laws principles. Any disputes arising under this Agreement shall be brought in a court of competent jurisdiction within Santa Clara County, California.

10. Entire Agreement. This Agreement sets forth the entire understanding between the City and Hom and supersedes any prior agreements or understandings, express or implied, pertaining to the terms of Hom's employment with the City and the termination of the employment relationship. Hom acknowledges that in executing this Agreement, he does not rely on any representation or statement by any representative of the City concerning the subject matter of this Agreement, except as expressly set forth in the text of this Agreement.

11. Employment References. The City agrees to answer all potential employment inquiries regarding Hom by only verifying Hom's dates of employment and job title while working for the City. Hom agrees to direct all potential employment inquires to the Director of Administrative Services at Phone (408) 777-3220, Fax (408) 777-3109.

12. No Assignment of Rights. Hom warrants and represents that he has not heretofore assigned or transferred to any person not a party to this Agreement any released matter or any part or portion thereof and each shall defend, indemnify and hold harmless any Releasee from and against any claim (including the payment of attorneys' fees and costs actually incurred whether or not litigation is commenced) based on or in connection with or arising out of any such assignment or transfer made, purported or claimed.

13. Consult with Counsel. In entering into this Agreement, the parties represent that they have relied upon the advice of their attorneys, who are attorneys of their own choice, and that the terms of this Agreement have been completely read and explained to them by their attorneys, and that those terms are fully understood and voluntarily accepted by them.

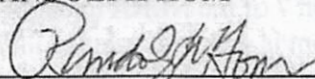
14. **Taxes.** Hom agrees that he shall be exclusively liable for the payment of all federal and of 23 state taxes (other than payroll taxes required to be paid by the employer) which may be due as the result of the consideration received from the settlement of disputed claims as set forth herein, and Hom hereby represents that he shall make payments on such taxes at the time and in the amount required of them. In addition, Hom hereby agrees fully to defend, indemnify and hold harmless The City from payment of taxes, interest and/or penalties that are required of the City by any government agency at any time as the result of payment of the consideration set forth herein.

15. **Opportunity to Consider and Revoke Agreement.** Hom acknowledges that he has been encouraged to seek legal counsel to review this Agreement, has been provided the opportunity to consider for twenty-one (21) days whether to enter this Agreement, and has knowingly and voluntarily chosen to enter the Agreement on this date. Hom may revoke this Agreement for a period of seven (7) days following the execution of this Agreement; this Agreement shall become effective following expiration of this seven (7) day period (the "Effective Date"). Hom acknowledges that he has carefully read and fully understands all aspects of this Agreement, that Hom has not relied upon any representations or statements not set forth herein, that he has been advised to consult with an attorney of his choice prior to executing the Agreement, that he has had the opportunity to consult with an attorney of his choice as to the subject matter and effect of this Agreement, and that he enters into this Agreement freely and without duress of any kind or nature.

CITY OF CUPERTINO

RANDOLPH HOM

By: _____



Randolph Hom

Title: _____

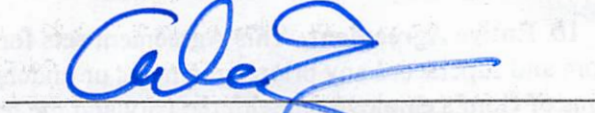
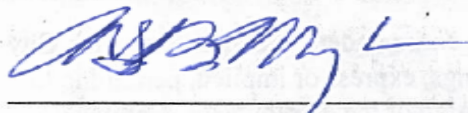
Dated: 6/21/2019

Dated: _____

Approved as to form and content:

FARELLA BRAUN & MARTEL LLP

COTCHETT, PITRE & MCCARTHY, LLP



Thomas Mayhew

Adam Zapala

Counsel for City of Cupertino

Counsel for Randolph Hom

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CITY OF CUPERTINO

Agenda Item

19-5719

Agenda Date: 7/8/2019
Agenda #: 3.

Subject: Community Hall license agreement with Santa Clara County Library District

Authorize the City Manager to execute a Temporary Use Agreement and License with Santa Clara County Library Joint Powers Authority for library use of Cupertino Community Hall (10350 Torre Avenue)



PUBLIC WORKS DEPARTMENT

CITY HALL
10300 TORRE AVENUE • CUPERTINO, CA 95014-3255
TELEPHONE: (408) 777-3354 • FAX: (408) 777-3333
CUPERTINO.ORG

CITY COUNCIL STAFF REPORT **Special Meeting: July 8, 2019**

Subject

Community Hall license agreement with Santa Clara County Library District

Recommended Action

Authorize the City Manager to execute a Temporary Use Agreement and License with Santa Clara County Library Joint Powers Authority for library use of Cupertino Community Hall (10350 Torre Avenue)

Background

Santa Clara County Library District has utilized the Cupertino Community Hall space for programming and classes on a routine basis for many years. The process for the Library to reserve Community Hall has consisted of contacting Parks and Recreation staff, reserving the room at least 10 days prior to the event, and completing the permit application, which involved signing a waiver. Towards the end of last year, Library staff indicated that the Library Joint Powers Authority (JPA) Board would need to approve these waivers, resulting in a cumbersome process to utilize Community Hall. The Library requested that the City look into ways to streamline their reservation process and stopped making reservations in the meantime.

City and Library staff have now negotiated terms for a temporary use and license agreement that will allow the Library JPA Board to approve one document for the Library's use of Community Hall. During the term of the agreement, Library staff would be able to submit requests to reserve the facility, without having the JPA Board signoff on each waiver, thus streamlining the process for them.

Discussion

The negotiated agreement includes the following substantive terms for the Library's use of Community Hall:

1. Term – The initial term of the license agreement is for one year, and the agreement will continue thereafter on a month-to-month basis. The agreement may be terminated by either party upon 30 days written notice.

2. Rental Rate – The Library would pay to the City the standard Cupertino Non-Profit fees for each use.
3. Scheduling and Use – The Library would be permitted 120 uses per year with no more than 15 uses per month.
4. Indemnity and Insurance – City and Library have negotiated reasonable indemnities between the two organizations, and the Library will maintain insurance for use of Community Hall.

Execution of this license agreement will facilitate streamlining of the Library's use of Community Hall, and will enable the Library to resume programming of the facility.

Sustainability Impact

No sustainability impact.

Fiscal Impact

The Library would pay to the City the standard non-profit rental rates for Community Hall of approximately \$80/hour for each use Friday through Sunday and \$30/hour for each use Monday through Thursday. The estimated annual revenue to the City would be approximately \$9,600. This revenue would fluctuate based on the length of each rental and the total number of rentals per year.

Prepared by: Chad Mosley, Acting Assistant Director of Public Works/City Engineer

Approved for Submission by: Deborah Feng, City Manager

Attachments:

A – Draft Temporary Use Agreement and License – Santa Clara County Library Joint Powers Authority

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**

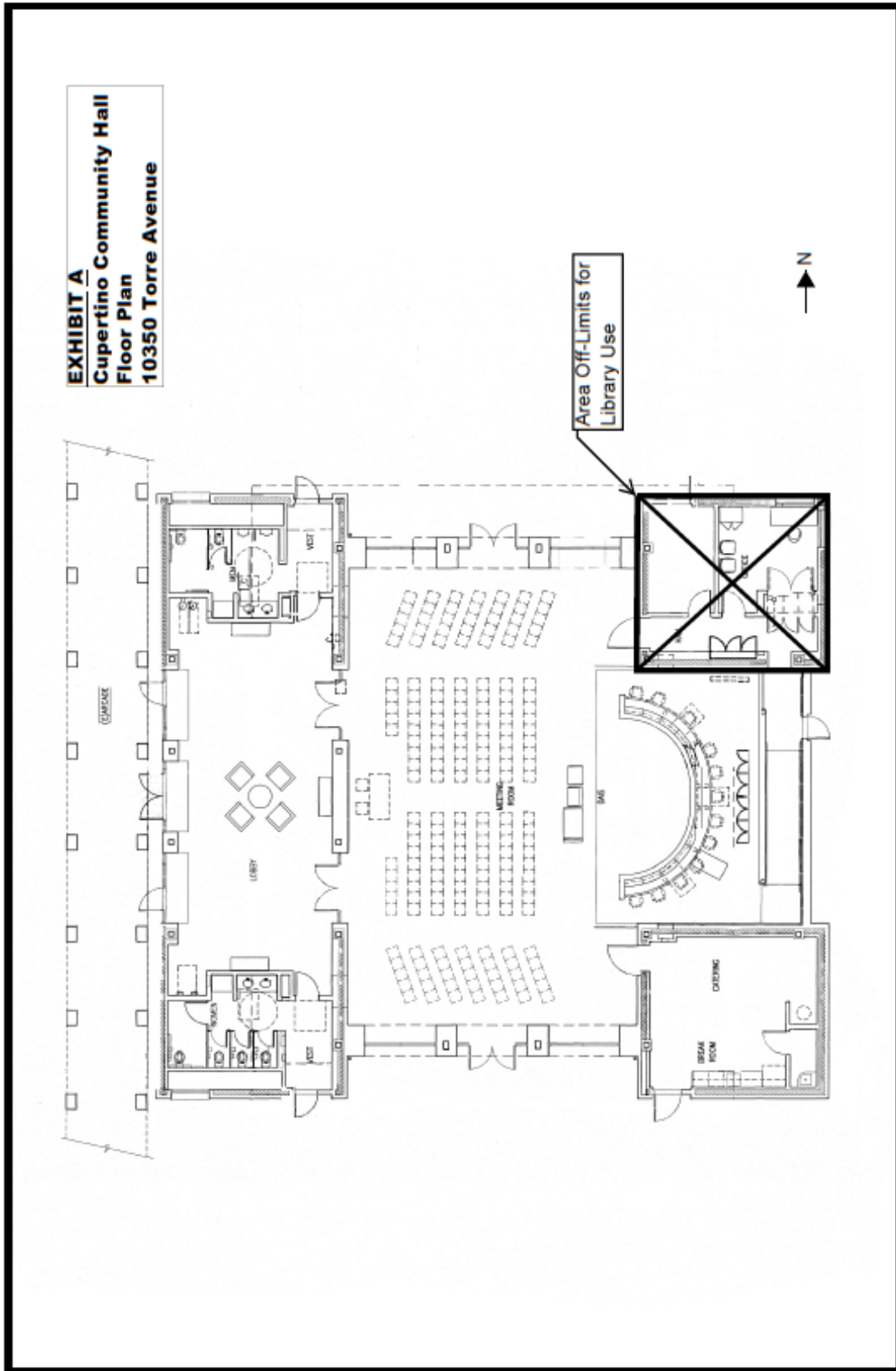
By: _____
Name: _____
Title: _____

APPROVED AS TO FORM:

Name:
Title: County Counsel

Exhibit A – LICENSE AREA

Exhibit A



1120333.8

Exhibit A

OAK #4833-3675-8150 v7