

LEASE AGREEMENT CUPERTINO LIBRARY

THIS LEASE AGREEMENT (this "Agreement") is made and entered into between the CITY OF CUPERTINO, a Municipal Corporation ("Landlord"), and the LIBRARY JOINT POWERS AUTHORITY OF SANTA CLARA COUNTY, created by the Amended and Restated Joint Exercise of Powers Agreement dated August 9, 2001 ("Library JPA") under California Government Code Sections 6500 et seq., a California Joint Powers Agency ("Tenant"), as of the Effective Date specified below. Landlord and Tenant are each a "Party" and collectively "the Parties."

WHEREAS,

A. Landlord is a member of Tenant along with the County of Santa Clara and other cities in Santa Clara County. Tenant's purpose is to provide public library services to residents and visitors to Santa Clara County.

B. Landlord owns the Civic Center Complex bounded by Torre Avenue, Pacifica Drive, and Rodrigues Avenue in the City of Cupertino, County of Santa Clara, State of California, as described in Exhibit A ("Property"). Landlord currently leases to Tenant the building known as 10800 Torre Avenue on the Property, more commonly known as Cupertino Library, which lease includes exclusive use of the interior space, façade, and roof of the building ("Building Interior and Exterior"), non-exclusive use of landscaping and hardscaping on the exterior of the building ("Exterior Improvements"), and non-exclusive use of outside parking facilities on the Property ("Parking Facilities") (collectively, "Existing Premises") for the operation of a public library ("Library") for the Santa Clara County Library.

C. Landlord plans to add approximately 5,000 square feet of interior space to the Existing Premises ("New Space"). The New Space and the Existing Premises shall be referred to collectively in this Agreement as the "Premises" as shown on Exhibit B. Under this Agreement, Tenant shall lease the Premises from Landlord for the Cupertino Branch Library, effective on _____, 2021. Tenant's payments to Landlord to occupy the Premises under this Agreement shall be equivalent to Landlord's actual annual maintenance and capital costs for the Building Interior and Exterior for the prior year (currently yearly average expenses for maintenance costs is \$137,000 and for capital maintenance costs is \$40,000).

D. Tenant shall provide, install, and operate at its own cost and expense all furniture, fixtures, and equipment, including but not limited to computer equipment, telephones, copy machine equipment, and all other unattached personal property and improvements necessary for the operation of a public library in the Premises ("Tenant FF&E"). Tenant shall own the Tenant FF&E during the Term as defined in Section 2.B of this Agreement.

E. This Agreement shall supersede any existing agreement between Landlord

and Tenant concerning the Property and the Premises,

NOW, THEREFORE, in consideration of the foregoing and the mutual promises set forth below, and subject to the terms and conditions hereinafter set forth, Landlord and Tenant agree as follows:

1. Description of the Premises.

Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord the Premises, to be used exclusively as a public library to be operated and maintained as part of the Santa Clara County Library.

2. Effective Date; Library Payment Commencement Date; Term of Agreement.

- A. The "Effective Date" of this Agreement is the date the City Council of the City of Cupertino as Landlord and the Governing Board of the Santa Clara County Library District Joint Powers Authority as Tenant sign this Agreement. The "Library Payment Commencement Date" is January 1, 2019, irrespective of the Effective Date.
- B. The "Term" of this Agreement shall commence on the Effective Date and continue until December 31, 2044, unless shortened by operation of Sections 2.C or 9.C. Landlord and Tenant shall meet and confer regarding the possible extension of this Agreement concurrently with its expiration but shall be under no obligation to do so in the absence of mutually acceptable terms.
- C. If Landlord withdraws from Tenant at any time during the Term under Section 3.6 of the Library JPA, this Agreement is automatically terminated on the effective date of the withdrawal as provided in Section 3.6 of the Library JPA, subject to Section 14 of this Agreement.

3. Library Payments.

- A. Tenant has agreed to make annual payments to Landlord equivalent to Landlord's maintenance and capital costs for the Building Interior and Exterior for the prior year ("Library Payments"). Landlord's annual maintenance costs include City employee compensation and materials for maintenance of the Building Interior and Exterior, excluding maintenance costs related to the aquarium which shall be paid by Landlord under Section 5.C, and excluding janitorial costs which shall be paid by Tenant monthly under Section 5.F. Landlord's capital costs include capital projects necessary for the continued operation of the Building Interior and Exterior as a fully functioning, safe, and code compliant public library ("Mandatory Capital Projects"). Library Payments are not rent. Tenant has an obligation to make the Library Payments, and Landlord has a right to receive the Library Payments, independent of all other rights and obligations of the Parties under this

Agreement. In the event of the early termination of this Lease for any reason, the Library Payments shall cease on the date of termination.

- B. On August 1st of each year, Landlord's Finance Manager shall provide an invoice to Tenant stating the amount of the Library Payment due for Landlord's maintenance and capital costs for the Building Interior and Exterior incurred during the one-year period prior to July 1 of that year. Tenant shall direct payments to Landlord's Finance Manager at the address identified as the Landlord contact in Section 12 of this Agreement within 30 days after receiving the annual invoice from Landlord. Landlord's failure to issue an invoice for the Library Payment shall not affect Tenant's obligation to make the Library Payments. Landlord's Finance Manager shall provide monthly reports outlining the Landlord's maintenance and capital costs for the Building Interior and Exterior for the previous month, on or before the 15th of each month.
- C. Landlord shall provide capital improvements for the Library at Landlord's sole and absolute discretion ("Landlord Improvements"). With the exception of the addition of "New Space" as set forth in Recital C of this Agreement and any capital projects other than Mandatory Capital Projects as defined in Section 3.A, Tenant shall reimburse Landlord for the cost of Landlord Improvements through the Library Payments as set forth in this Section 3.A. Landlord shall own the Landlord Improvements.

4. Use of Premises.

- A. Tenant shall use the Premises exclusively for the operation of a public library governed by the policies and rules adopted by the Santa Clara County Library District Joint Powers Authority.
- B. Tenant shall not lease or sublease the whole or any part of the Premises, nor sell or assign this Agreement, either voluntarily or by operation of law, nor allow the Premises to be occupied by anyone contrary to the terms hereof, nor permit their use for any purpose other than as specified in Section 4.A, nor abandon or vacate the Premises, nor fail or refuse to actively cause the Premises to be used as specified in Section 4.A without the prior written consent of Landlord.
- C. Landlord shall have the right to reserve available community meeting facilities at the Premises during both scheduled and non-scheduled library hours of operation. Landlord shall notify Tenant in writing at least one week before the intended use of the meeting facilities. Tenant's rights to use the facilities for library purposes shall take priority over Landlord's use of community meeting facilities. If Landlord uses community meeting facilities, it shall leave them in a clean condition, ready for use by the Library on the following business day.

D. Parking for Library staff, visitors, and patrons shall include only the unreserved parking generally made available to the public in the Parking Facilities shown in Exhibit B and generally available street parking. Landlord shall reserve all or part of the Parking Facilities for Library use when a City Special Event is scheduled during Library operating hours. No overnight parking for Library staff, visitors, and patrons shall be allowed in the Parking Facilities except as may be expressly allowed by Landlord in Landlord's sole and absolute discretion. Tenant shall abide by all rules and regulations which Landlord shall prescribe from time to time for the orderly operation and use of the Parking Facilities, including any sticker or other identification system established by Landlord. Tenant shall see that Tenant's staff, visitors, and patrons comply with such rules and regulations. Landlord specifically reserves the right to change the size, configuration, design, layout, and all other aspects of the Parking Facilities at any time and Tenant acknowledges and agrees that Landlord may, without incurring any liability to Tenant and without any abatement of Library Payments under this Agreement, from time to time, close-off or restrict access to the Parking Facilities to permit or facilitate any construction, alteration, or improvements of Landlord's property. Tenant may not transfer any parking rights (or permit the use of the Parking Facilities by any third party) without Landlord's prior written approval in Landlord's sole and absolute discretion.

5. Maintenance, Alterations, Additions, and Janitorial.

- A. Landlord shall maintain the Building Interior and Exterior, which shall include standard maintenance, emergency maintenance response, mechanical/electrical systems or equipment maintenance, graffiti removal or other vandalism remediation, landscape or hardscape maintenance, or other maintenance needs as may arise. Tenant shall maintain, repair, and replace the Tenant FF&E in a clean and serviceable condition at Tenant's sole cost and expense. Tenant shall not maintain any part of the Premises without obtaining prior written consent of Landlord, which consent shall be within Landlord's sole and absolute discretion. Any maintenance of the Premises conducted by Tenant shall be at Tenant's sole cost and expense.
- B. Landlord shall maintain, repair, and replace the aquarium and all Exterior Improvements and Parking Facilities to keep them in good and tenantable condition at its sole cost.
- C. Tenant shall give Landlord at least two complete sets of keys and the security access codes to the Premises for access by Landlord's maintenance personnel for emergency access to the Premises. If Tenant rekeys or changes security access codes, Tenant shall immediately provide new keys and codes to Landlord.
- D. Tenant shall not make any structural alterations, changes, modifications, or

additions to, or construct capital improvements on, the Premises ("Tenant Improvements") without obtaining prior written consent of Landlord, which consent shall be within Landlord's sole and absolute discretion. Any Tenant Improvements installed by Tenant shall be at Tenant's sole cost and expense. Landlord shall own all Tenant Improvements.

- E. Landlord may choose to expand the Premises during the Term of this Agreement. Landlord will provide notice and give the Tenant a reasonable opportunity to comment on the expansion design. If the expansion occurs, Tenant will not be entitled to any reduction or abatement of Library Payments.
- F. Landlord shall furnish all janitorial and maintenance services to the Premises. Tenant shall reimburse Landlord monthly for the actual costs of janitorial services.

6. Utilities.

Tenant shall pay for all water, gas, heat, light, power, security monitoring service, telephone, sewage, elevator maintenance and monitoring of the emergency phones system, and any and all other utilities and services which may be furnished to or used in or upon the Premises during the Term. Gas and water utilities for the Premises shall be separately metered, under Tenant's name, and billed directly to Tenant. All other utilities shall be billed directly to Landlord from the utility service provider. Landlord shall then invoice Tenant monthly for its proportionate share of utilities other than gas and water. The terms of this Section 6 shall survive the expiration or termination of this Agreement.

7. Taxes.

Tenant shall pay all taxes and special assessments for improvements as may be levied against the Premises or any part thereof. The terms of this Section 7 shall survive the expiration or termination of this Agreement.

8. Indemnity and Liability Insurance.

- A. Tenant hereby agrees to defend, indemnify, and hold harmless Landlord, its City Council, boards and commissions, officers, officials, employees, agents, representatives, and volunteers ("Landlord Indemnitees") from any and all claims, demands, actions, losses, or liabilities for bodily injury or death to persons or damage to property ("Claims") arising out of or in connection with: (A) Tenant's use and occupancy of the Premises; (B) the conduct of Tenant's operations or any design, construction, activity, work, maintenance, repairs, or alterations, or things done or permitted by Tenant in or on the Premises; (C) any failure by Tenant to perform or observe any of the obligations or conditions required to be performed or observed by Tenant under this Agreement; and (D) any negligence or other misconduct of Tenant with

respect to the Premises or the exercise of Tenant's rights or performance of Tenant's obligations under this Agreement; and (E) Tenant's negligent operation, occupation, use, or repairs of the Premises. Landlord hereby agrees to defend, indemnify, and hold harmless Tenant, its Governing Board, officers, officials, employees, agents, representatives, and volunteers ("Tenant Indemnitees") from Claims arising out of or in connection with (A) Landlord's negligent design, construction, use, maintenance, repairs, or alterations of the Building Interior and Exterior or Parking Facilities; (B) the conduct of Landlord's operations or any activity, work, or thing done or permitted by Landlord in or on the Premises; (C) any failure by Landlord to perform or observe any of the obligations or conditions required to be performed or observed by Landlord under this Agreement; and (D) any negligence or other misconduct of Landlord with respect to the Premises or the exercise of Landlord's rights or performance of Landlord's obligations under this Agreement; and (E) Landlord's negligent operation, occupation, use, or repairs of the Premises. The obligation of a Party to defend the Indemnitees of the other Party from Claims shall accrue immediately upon the filing of any litigation against the Indemnitees and shall not be contingent on a final determination in the litigation that the Indemnitees are liable for the Claims. This mutual indemnification agreement is adopted pursuant to Government Code section 895.4 and in lieu of and notwithstanding the pro rata risk allocation which might otherwise be imposed between the Parties pursuant to Government Code section 895.6. Under Government Code section 895.4, each Party shall be liable for and contribute to the payment of Claims in proportion to that Party's fault.

- B. During the Term, each Party shall maintain comprehensive general liability insurance with limits of not less than Two Million Dollars (\$2,000,000) per occurrence. Such insurance shall be written on a commercial general liability form or on a comprehensive general liability form covering the hazards of premises operations, products/completed operations, independent contractors, advertising, contractual, broad form of property damage, and personal injury. If at any time during the Term either Party shall elect to become self-insured or carry deductible liability insurance, it is agreed that the responsibility of each Party under this paragraph shall be comparable to the responsibility of a commercial insurance carrier providing public liability insurance. If Tenant elects to self-insure such risks (which election shall automatically be deemed to have been made by Tenant to the extent of any failure by Tenant to carry the insurance required by this Agreement), then, as between Landlord and Tenant, Landlord and Tenant shall maintain all rights and obligations between themselves as if Tenant maintained the insurance with a third-party insurer, including any waivers of any rights of recovery and/or subrogation against one another or their insurers for any losses which would have been covered had Tenant maintained such third-party insurance.
- C. Such insurance shall name by endorsement "City of Cupertino and its elected

officials, officers, employees, agents, and representatives” and “Santa Clara County Joint Powers Authority, its officers, employees, agents, and representatives,” respectively as additional insured parties. Tenant's insurance shall also be endorsed to state that this insurance shall be primary and not contributing with any other insurance, self-insurance, or re-insurance in effect for Landlord. All endorsements effecting Landlord's additional insured status shall be acceptable to Landlord and shall be at least as broad as additional insured endorsement form number CG 20 26 11 85 promulgated by the Insurance Services Office.

- D. Landlord and Tenant shall furnish, each to the other, Certificates of Liability Insurance (or certificates of self-insurance) endorsements demonstrating the coverages specified herein and stating that at least 10 days' notice of cancellation or material change shall be given to the certificate holder.
- E. The terms of this Section 8 shall survive the expiration or termination of this Agreement.

9. Responsibility for Property Damage and Property Insurance.

- A. Tenant shall be responsible for all loss or damage to the Tenant FF&E, Landlord Improvements, and Building Interior and Exterior, unless caused by Landlord's active negligence or willful misconduct. Landlord shall be responsible for loss or damage to the Exterior Improvements and Parking Facilities, unless caused by Tenant's active negligence or willful misconduct.
- B. Tenant agrees to provide insurance for the Premises, Tenant FF&E, and Tenant's other personal property for the benefit of Landlord and Tenant on the same terms and conditions, forms, and against loss from the same perils as provided for County-owned buildings and contents; provided, however, the Tenant agrees to provide any additional insurance as may be required by the financing or bonding entities utilized by Landlord to finance construction of the New Space. Neither insurance nor the absence thereof shall abrogate or limit the responsibility of Tenant for damage or loss to the Premises. Tenant's maximum liability for total destruction of the Premises under this paragraph shall be limited to the replacement cost of the Premises with like kind and quality.
- C. If the Premises is partially destroyed from any cause, Landlord shall repair the Premises, provided that the cost of such repairs is covered at least ninety percent (90%) by insurance. Such partial destruction shall not void this Agreement. Tenant shall be responsible for any cost of tenant repairs referenced in Section 5.A. that are not covered by insurance, excluding the cost to repair the Exterior Improvements and Parking Facilities unless the Exterior Improvements and Parking Facilities are destroyed due to Tenant's negligence. If the cost to repair the Building exceeds the available insurance

proceeds by more than ten percent (10%), Landlord may elect to terminate this Agreement and Tenant shall be released from making Library Payments not yet due. Landlord shall not be obligated to replace any of the Tenant FF&E or personal property which may be damaged or destroyed.

D. The terms of this Section 9 shall survive the expiration or termination of this Agreement.

10. Exemption from Liability.

Excepting only Landlord's indemnification obligation for property damage or personal injury caused by construction or design defects described in Section 8.A of this Agreement, Landlord shall not be liable for damages to the Tenant Improvements, Tenant FF&E, or Tenant's other personal property in the Premises arising from the failure of the supply of water, gas, electricity, or power, nor for the stoppage of any machinery and equipment, if any, in the Premises, for necessary repairs or otherwise, nor for the stoppage, leakage, or bursting of any gas, water, steam, sewer, or other pipe, tank, water closet, or other fixtures, or for any annoyance, inconvenience or damage caused by any electric or other wire, in the Premises. The terms of this Section 10 shall survive the expiration or termination of this Agreement.

11. Dispute Resolution.

Should disputes arise between the Parties, the matter shall be referred to the City Manager on behalf of Landlord and the County Librarian on behalf of Tenant to resolve the dispute. If the Parties are unable to resolve such matters between themselves by negotiation after the complaining Party has provided the other Party written notice of the complaint and a reasonable opportunity to cure the problem, then such disputes shall be resolved in the courts of the County of Santa Clara in accordance with applicable law and procedure, including any claims procedures that may be required by law with respect to a general law city.

12. Notices.

Any notice required or permitted to be given under this Agreement must be in writing and may be given by personal delivery, certified mail, or overnight express delivery service. Notices shall be deemed communicated immediately if personally delivered. Notices shall be deemed communicated within forty-eight (48) hours after the time of mailing if mailed by certified mail, and within twenty-four (24) hours if mailed by express delivery service, excluding Saturdays, Sundays, and holidays. Any such notice shall be deemed sufficiently given if addressed to Landlord or Tenant at the address specified below. Either Party may specify a different address for notice purposes or specify that a copy of any notice given to such Party be concurrently given to another person, by giving

appropriate notice to the other Party.

To Landlord:

City Manager
City of Cupertino
10300 Torre Avenue
Cupertino, CA 95014

To Tenant:

County Librarian
Santa Clara County Library
1370 Dell Avenue
Campbell, CA 95008

13. Non-Waiver of Breach.

In the event of a breach of any term, covenant, or condition of this Agreement by Tenant, Landlord may with knowledge of such breach permit Tenant to continue in possession of the Premises, but any waiver by Landlord of any term, covenant, or condition herein contained, or of any breach thereof, shall neither vitiate the same, nor any other term, covenant, or condition contained herein, nor operate as a waiver of any other or future breach.

14. Surrender of Possession on Termination.

Upon the expiration or termination of this Agreement for any reason, Tenant shall surrender the Premises in broom clean, good condition and repair, reasonable wear and tear excepted. Any Tenant Improvements installed by Tenant pursuant to Section 5.F of this Agreement shall be the property of Landlord, unless Landlord requires the removal thereof at time of expiration or termination of this Agreement, or the Parties agree on installation that the Tenant Improvement shall remain the property of Tenant. The Tenant FF&E shall be the property of Tenant unless the Parties agree on installation that an item of Tenant FF&E shall be the property of Landlord. Upon expiration or termination of this Agreement, Tenant shall have thirty (30) days to remove, at its sole cost and expense, any Tenant Improvement or Tenant FF&E which are Tenant's property so long as Tenant repairs damage to the Premises caused by such removal. If a Tenant Improvement or item of Tenant FF&E cannot be removed without irreparable damage to the Premises, the Tenant Improvement or item of Tenant FF&E shall be the property of Landlord and shall remain on the Premises.

15. Successors and Assigns.

This Agreement shall be binding upon and shall inure to the benefit of the

successors and permitted assigns of the Parties.

16. Non-Discrimination Provisions.

Tenant covenants by and for itself, its successors, executors, administrators and assigns, and all persons claiming under or through it, and this Agreement is made and accepted upon and subject to the condition that there shall be no discrimination against or segregation of any person or group of persons, on account or race, color, creed, religion, sex, sexual orientation, marital status, national origin, actual or perceived gender identity, ancestry or disability in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the Premises.

17. Conflict Between JPA Rules and this Agreement.

If any provision of this Agreement conflicts with any policy or rule adopted by Tenant, the provisions of this Agreement shall control.

18. Miscellaneous.

- A. Tenant covenants and agrees to keep the Premises free of any lien or encumbrances except as may be approved in advance by Landlord.
- B. Time is of the essence in this Agreement.
- C. Exhibit A and Exhibit B attached hereto are incorporated by this reference.
- D. Amendments to this Agreement shall be effective only upon the mutual agreement in writing of the Parties.
- E. If any provisions of this Agreement are held invalid, the remainder of this Agreement shall not be affected if such remainder would then continue to conform to the terms and requirements of applicable law.
- F. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

19. Counterparts.

This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

signatures on next page

IN WITNESS WHEREOF, the parties subscribe their names below.

LANDLORD: City of Cupertino

By: _____
City Manager
Deborah Feng

ATTEST:

The City Council of the City of Cupertino approved this Agreement on
_____, 2020

By: _____
City Clerk

APPROVED AS TO FORM:

By: _____
City Attorney

TENANT: Santa Clara County Library District Joint Powers Authority

By: _____
Chair, Santa Clara County Library District Joint Powers Authority

ATTEST:

APPROVED AS TO FORM:

By: _____

Jennifer Weeks
County Librarian

Deputy County Counsel

Santa Clara County Library District Joint Powers Authority

Exhibit List

Exhibit A – Description of Premises

Exhibit B – Diagram of Premises

EXHIBIT A

Description of Property

[legal description of Civic Center Complex]

EXHIBIT A

Legal Description of Property

Real property in the City of Cupertino, County of Santa Clara, State of California, described as follows:

PARCEL ONE:

LOT 7, AS SHOWN ON THAT CERTAIN MAP ENTITLED TRACT NO. 3743 CUPERTINO TOWN CENTER, WHICH MAP WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA ON OCTOBER 16, 1964, IN BOOK 186 OF MAPS PAGE(S) 36 AND 37.

PARCEL TWO:

PARCELS A, B, C & D, AS SHOWN ON THAT CERTAIN PARCEL MAP ENTITLED, "PARCEL MAP, BEING ALL OF LOT 4, TRACT NO. 3743, CITY OF CUPERTINO", WHICH PARCEL MAP WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA ON MARCH 7, 1974 IN BOOK 337 OF MAPS, AT PAGE 11.

APN: 369-31-033

EXHIBIT B

Diagram of Premises

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Exhibit B

