

2005 WHARF ROAD #8020

**CAPITOLA LIBRARY – 2005 WHARF ROAD
APN 034-541-34**

LESSOR: CITY OF CAPITOLA

LESSEE: COUNTY OF SANTA CRUZ, a political subdivision of the State of California

**LEASE AGREEMENT
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LEASE AGREEMENT

This Lease is entered into this ____ day of _____, 20__, between the **City of Capitola** (“City” or “Lessor”) and the **County of Santa Cruz** (“County” or “Lessee”). The City and County are sometimes referred to herein individually as “Party” or collectively as “Parties.”

This Lease is entered into upon the following facts, understandings and intentions of the City and County.

ARTICLE 1 PREMISES

1.1 Premises. City owns that certain real property commonly known as 2005 Wharf Road Capitola, CA 95010 on assessor’s parcel number 034-541-34, more particularly described in Exhibit “A” attached hereto and made a part hereof and referred to herein as “Premises”. The Premises are currently improved with an 11,700 square foot building, a parking lot and landscaped areas. Assessor’s parcel number 034-541-34 also contains a children’s playground, known as the “Library Tot Lot”, which is specifically excluded from the Premises and is not included in this Lease.

ARTICLE 2 TERM

2.1 Term. The term of this Lease shall commence upon execution by all Parties hereto, and shall continue for 99 years (“Term”).

2.2 Compliance with California Government Code Section 37380. On October 28, 2021, the City passed Ordinance No. 1045, which established procedures pursuant to Cal. Government Code Section 37380 to authorize the City to enter into a lease of up to 99 years for the property that is the subject of this Lease.

2.3 Hold Over. If Lessee remains in possession of the Premises beyond the term of this Lease or any extension or renewal hereof without executing a new written Lease with City, such holding over shall not constitute a renewal or extension of this Lease, but Lessee shall be a tenant on a month to month basis terminable with ninety (90) days’ notice by either party.

2.4 Extension. While Government Code Section 37380 does not permit an extension of this Lease beyond its 99 year Term, the parties agree to meet and confer regarding a subsequent lease of the Premises prior to or upon expiration of this Lease.

2.5 Termination. This lease may be terminated at any time, for any reason, by mutual written agreement of the Parties hereto. The Parties agree to negotiate in good faith regarding the terms and conditions surrounding a request for termination and agreement to terminate will not be unreasonably withheld. The Parties further agree that if City detaches from the County Library Fund, a special revenue fund that includes property taxes assessed in the City, during the Term of this Lease, this Lease and any subleases will automatically terminate and City and Lessee mutually agree that all obligations of Lessee set forth in the First Implementation Agreement to Redevelopment Pass-Through Agreement and Library Agreement shall be deemed fulfilled in their entirety, including but not limited to, Lessee’s obligations to

provide staffing levels and service hours for the Library that are not less than the comparable staffing levels and service hours provided at the Aptos County Branch Library; Lessee's responsibility for maintenance, repairs, and operation of the Library and the Premises; and Lessee's obligation to provide for customary indemnifications for the benefit of the City for 99 years from the date of execution of this Lease.

2.6 Consistency with First Implementation Agreement. The Parties agree that this Lease, including the provisions of this Article 2, is consistent with the Parties' obligations as defined in the First Implementation Agreement to Redevelopment Pass-Through Agreement and Library Agreement, executed on August 17, 2004.

ARTICLE 3 CONSIDERATION

3.1 Base Annual Rent. Lessee shall pay as rent for the use and occupancy of the Premises an annual fee of \$1.00, due on the anniversary date of the execution of Lease. Rent shall remain the same for the entire Term of this Lease unless adjusted by written amendment executed by all parties hereto.

3.1.1 Delivery of Rent Payments. All rent due under this Lease shall be made payable to the City of Capitola and shall be considered paid when delivered to:

CITY OF CAPITOLA
420 Capitola Avenue
Capitola, CA 95010

City may, at any time, by written notice to Lessee, designate a different address to which Lessee shall deliver the rent payments. City may, but is not obligated to, send rent invoices to Lessee.

3.1.2 Failure to Pay Base Rent or Additional Rent; Late Charge. If Lessee fails to pay rent due hereunder at the time it is due and payable, or within thirty (30) days thereafter, such unpaid amounts shall bear interest at the rate of ten percent (10%) per year from the date due to the date of payment, computed on the basis of monthly compounding with actual days elapsed compared to a 365-day year. However, City may in its sole discretion waive any delinquency payment or late charge upon written application of Lessee.

3.2 Library Operations. In addition to the payments of Base Annual Rent, Lessee shall assume responsibility for maintenance, repairs, and operation of the Library and the premises, as more fully described in this Lease.

ARTICLE 4 POSSESSION AND USE

4.1 Permitted Uses. Lessee shall use the Premises solely for public library services. No one other than Lessee, its agents, volunteers and employees, or any Lessee approved by City as provided in Article 13, "Assignment and Subletting," is permitted to use the Premises for the purposes described herein, and Lessee shall be fully responsible for the activities of its agents, volunteers and employees and Lessees, if any, on the Premises.

4.2 Hours of Operation. Lessee will provide staffing levels and service hours for the Library that are not less than the comparable staff levels and service hours provided at the Aptos County Branch Library, as said staffing levels at the Aptos County Branch Library may change from time to time.

4.3 Duties and Prohibited Conduct. Where Lessee is reasonably in doubt as to the propriety of any particular use, Lessee may request the written determination of City that such use is or is not permitted, and Lessee will not be in breach or default under this Lease if Lessee abides by such determination. Notwithstanding the foregoing, however, Lessee shall not use nor permit the use of the Premises in any manner that will tend to create waste or a nuisance. Lessee shall, at Lessee's expense, comply promptly with all applicable statutes, laws, ordinances, rules, regulations, orders, covenants and restrictions of record, and requirements in effect during the term, regulating the use by Lessee of the Premises. Lessee shall not use, or permit any person or persons to use, the Premises for the sale or display of any goods and/or services, which, in the sole discretion of City, are inconsistent with the permitted uses of the Premises pursuant to this Lease. The sale of books, educational services, fundraising and other goods/services incidental to library purposes are deemed consistent with the permitted use of the Premises. Lessee shall keep the Premises, and every part thereof, in a decent, safe and sanitary condition, free from any objectionable noises or odors, except as may be typically present for the permitted uses specified above.

4.4 Compliance with Stormwater Laws. Lessee's use of the Premises is subject to federal, state and local laws regarding the discharge into the stormwater conveyance system of pollutants. Compliance with these laws may require Lessee to develop, install, implement and maintain pollution prevention measures, source control measures and Best Management Practices ("BMPs"). Lessee further agrees to develop, install, and/ or implement any BMPs or similar pollution control devices required by federal, state and/or local law and any implementing regulations. Any costs associated with such implementation will be handled consistent with other maintenance and repair costs as outlined in Article 10.

Lessee understands and acknowledges that the storm water and non-storm water requirements applicable to Lessee's use of the Premises may be changed from time to time by federal, state and/or local authorities, and that additional requirements may become applicable based on changes in Lessee's activities or development or redevelopment by Lessee or City. To the extent there is a conflict between any federal, state, or local law, Lessee shall comply with the more restrictive provision. If City receives any fine or fines from any regulatory agency as a result of Lessee's failure to comply with applicable storm water laws as set forth in this Article, Lessee shall reimburse City for the entire fine amount.

ARTICLE 5 SUBORDINATION CLAUSE

5.1 Subordination. The Parties acknowledge that City may enter into one or more lease/leaseback financing arrangements consisting generally of a site lease, lease agreement, assignment agreement and related agreements (collectively, the "Financing Leases") with a financing authority or another public agency in order to assist the City in connection with financing and refinancing certain capital improvements of the City.

Under the Financing Leases, the City may lease and lease back certain real property and improvements that may include the Premises subject to one or more library leases.

In order to facilitate the execution and delivery of any Financing Leases, Lessee and City desire that this Lease and Lessee's right, title and interest in the Premises be subordinate to the rights, titles, and interests of the parties to the Financing Leases.

Therefore, it is agreed that this Lease and all of Lessee's right, title, and interest in and to the Premises thereunder shall be, and the same are expressly made subject to, subordinate and inferior to any Financing Leases, and to all extensions, renewals, modifications, consolidations and replacements of the Financing Leases.

ARTICLE 6 UTILITIES

6.1 Utility Services. Lessee shall make all arrangements for and pay for all utilities and municipal services supplied to the Premises or used by Lessee, including but not limited to water, gas, electricity, garbage collection, sewage charges, and telephone, and for all connection charges. City shall have no responsibility either to provide or pay for such services. Notwithstanding the above, the City may assume responsibility for garbage collection services at the Premises, as currently provided in the City's franchise agreement with its waste hauling franchisee. The City may continue to provide garbage collection services in the future at the City's sole discretion.

6.2 Energy Conservation by Lessee. Lessee shall endeavor to promote energy conservation measures in the operation of all activities on the Premises. Lessee shall cooperate with the City in all forms of energy conservation including energy-efficient lighting, heating and air-conditioning systems, and fixtures and equipment. Lessee shall comply with all federal, State and City laws, by-laws, regulations, etc., relating to the conservation of energy. Lessee shall comply with all reasonable requests and demands of the City pertaining to the installation and maintenance of energy conservation systems, fixtures, and equipment installed by the City.

6.3 Energy Conservation by City. City is required to comply with all laws and regulations requiring the installation of energy-efficient systems, fixtures, and equipment at City buildings and facilities. In accordance with all laws and regulations and this Lease, Lessee shall maintain or repair, or cause to maintain or repair, the building, and related systems in accordance with current energy conservation standards.

ARTICLE 7 MECHANICS' LIENS

7.1 Mechanics Liens. Lessee shall pay, or cause to be paid, all costs for work done by it, or caused to be done by it, on the Premises, and for all materials furnished for or in connection with any such work. If any lien is filed against the Premises, Lessee shall cause the lien to be discharged within ten (10) days after it is filed. Lessee shall indemnify, defend and hold City harmless from any and all liability, loss, damage, costs, attorneys' fees and all other expenses on account of claims of lien of laborers or others for work performed or materials or supplies furnished for Lessee or persons acting on behalf of Lessee.

ARTICLE 8
SECURITY

8.1 Security. Lessee shall be responsible for and shall provide for the security of the Premises, and City shall have no responsibility therefor.

ARTICLE 9
TAXES, ASSESSMENTS AND FEES

9.1 Responsibility for Payment of Taxes and Assessments. City shall not be obligated to pay any taxes or assessments accruing against Lessee on the Premises or any interest of Lessee therein before, during or after the Term, or any extension thereof; all such payments shall be the sole responsibility of Lessee. In addition, Lessee shall be solely responsible for payment of any taxes or assessments levied upon any improvements, fixtures or personal property located on the Premises, to the extent that such taxes or assessments result from the business or other activities of Lessee upon, or in connection with, the Premises.

9.2 Definition of Taxes. As used herein, the term "taxes" means all taxes, governmental bonds, special assessments, Mello-Roos assessments, charges, rent income or transfer taxes, license and transaction fees, including, but not limited to, (i) any state, local, federal, personal or corporate income tax, or any real or personal property tax, (ii) any estate inheritance taxes, (iii) any franchise, succession or transfer taxes, (iv) interest on taxes or penalties resulting from Lessee's failure to pay taxes, (v) any increases in taxes attributable to the sale of Lessee's Leasehold interest in the Premises, or (vi) any taxes which are essentially payments to a governmental agency for the right to make improvements to the Premises.

9.3 Creation of Possessory Interest. Pursuant to the provisions of Revenue and Taxation Code Section 107.6, Lessee is hereby advised that the terms of this Lease may result in the creation of a possessory interest. If such a possessory interest is vested in Lessee, Lessee may be subjected to the payment of real property taxes levied on such interest. Lessee shall be solely responsible for the payment of any such real property taxes. Lessee shall pay all such taxes when due, and shall not allow any such taxes, assessments or fees to become a lien against the Premises or any improvement thereon; provided, however, that nothing herein shall be deemed to prevent or prohibit Lessee from contesting the validity of any such tax, assessment or fee in a manner authorized by law.

ARTICLE 10
REPAIRS; MAINTENANCE

10.1 Acceptance of Premises. Lessee acknowledges that Lessee has made a thorough inspection of the Premises prior to the commencement date of this Lease, and that it accepts the Premises as of the commencement date in their condition at that time. Lessee further acknowledges that City has made no oral or written representations or warranties to Lessee regarding the condition of the Premises, and that Lessee is relying solely on its inspection of the Premises with respect thereto. Lessee agrees not to make changes to the built environment without obtaining the City's prior written approval. The Parties agree and acknowledge that Lessee has procured and is currently undergoing a full facility assessment of the Premises to determine the appropriate amount of funding needed to maintain the Premises.

10.2 Lessee's Repair and Maintenance Obligations. Lessee shall at all times during the Term, repair and maintain the Premises in good and tenantable condition and coordinate all Maintenance and Repairs. Upon surrender of the Premises, Lessee shall deliver the Premises to City in good order, condition and state of repair, but shall not be responsible for damages resulting from ordinary wear and tear. Lessee shall maintain all trash receptacles and trash areas in a clean, orderly and first-class condition. Any proposed remodel of the Library by Lessee, that involves reconstruction of structural building elements, relocation of interior walls, or removal of building finishes, must be approved in advance by the City. Approval by City shall not be unreasonably withheld.

10.3 Lessee's Failure to Maintain. If Lessee refuses or neglects to repair, replace, or maintain the Premises, or any part thereof, in a manner reasonably satisfactory to City, City may, upon giving Lessee sixty (60) days' written notice of its election to do so, make such repairs or perform such maintenance itself or using vendors selected by City. In the event of an emergency, danger to life or safety, or threat to the integrity of the Premises, City may perform necessary repairs and maintenance without prior notice. Lessee shall reimburse the City for the cost of all such repairs within thirty (30) days of receipt of an invoice from the City. If City staff performs the repairs, Lessee shall reimburse the City for staff time at the City's standard rate.

10.4 Right to Enter. Lessee shall permit City, or its authorized representatives, to enter the Premises at all times during usual business hours to inspect the same, and to perform any work therein that (a) may be necessary to comply with any laws, ordinances, rules or regulations of any public authority, (b) City may deem necessary to prevent waste or deterioration in connection with the Premises if Lessee does not make, or cause to be made, such repairs or perform, or cause to be performed, such work promptly after receipt of written demand from City, and (c) City may deem necessary in connection with the expansion, reduction, remodeling, protection or renovation of any City-constructed or owned facilities on or off of the Premises. Nothing herein shall imply any duty on the part of City to do any such work which, under any provision of this Lease, Lessee may be required to do, nor shall City's performance of any repairs on behalf of Lessee constitute a waiver of Lessee's default in failing to do the same. If City exercises any of its rights under this Section, Lessee shall not be entitled to any compensation, damages or abatement of rent from City for any injury or inconvenience occasioned thereby.

10.5 City Not Obligated to Repair or Maintain; Lessee's Waiver of California Civil Code Section 1942. To the extent that any remedies specified in this Lease conflict or are inconsistent with any provisions of California Civil Code section 1942, or any successor statute thereto ("CC §1942"), the provisions of this Lease shall control. Lessee specifically waives any right it may have pursuant to CC §1942 to effect maintenance or repairs to the Premises and to abate the costs thereof from rent due to the City under this Lease.

ARTICLE 11 INDEMNITY AND INSURANCE

11.1 Lessee's Indemnity. City shall not be liable for, and Lessee shall defend and indemnify City, including its employees and agents, against any and all claims, demands, liability, judgments, awards, fines, mechanics' liens or other liens, labor disputes, losses, damages, expenses, charges or costs of any kind or character, including attorneys' fees and court costs (hereinafter collectively referred to as "Claims"), related to this Lease and arising either

directly or indirectly from any act, error, omission or negligence of Lessee or its contractors, licensees, agents, volunteers, servants or employees, including, without limitation, Claims caused by the concurrent negligent act, error or omission, whether active or passive, of City. Lessee shall have no obligation, however, to defend or indemnify City from a Claim if it is determined by a court of competent jurisdiction that such Claim was caused by the sole negligence or willful misconduct of City.

11.2 City's Indemnity. City shall defend and indemnify Lessee and hold it harmless from and against any Claims related to this Lease that arise solely from any act, omission or negligence of City Parties.

11.3 Lessee's Insurance Obligations. Without limiting Lessee's indemnification obligations to City under this Lease, Lessee shall provide and maintain, during the Term and for such other period as may be required herein, at its sole expense, insurance in the amounts and form specified in Exhibit "B," attached hereto.

Lessee maintains a policy of All-Risk Insurance covering the City's personal property in the Premises, including any fixtures or equipment in the Premises leased by Lessee. Lessee utilizes a program of self-funding with regard to any liability it may incur for personal injury or property damage arising out its use or occupancy of the Premises.

11.4 Lessor's Insurance Obligations. Lessor shall provide and maintain, during the Term and for such other period as may be required herein, at its sole expense, general liability insurance to cover the Premises in the minimum amount of \$2,000,000.

ARTICLE 12 HAZARDOUS MATERIALS

12.1 Hazardous Materials Laws-Definition. As used in this section, the term "Hazardous Materials' Laws" means any and all federal, state or local laws or ordinances, rules, decrees, orders, regulations or court decisions (including the so-called "common law"), including without limitation the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. 9601 et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C. 1801 et seq.), the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6901 et seq.), and the California Environmental Quality Act of 1970, relating to hazardous substances, hazardous materials, hazardous waste, toxic substances, environmental conditions on, under or about the Premises, soil and ground water conditions or other similar substances or conditions.

12.2 Hazardous Materials - Definition. As used in this section the term "Hazardous Materials" means any chemical, compound, material, substance or other matter that:

- a. Is a flammable, explosive, asbestos, radioactive nuclear medicine, vaccine, bacteria, virus, hazardous waste, toxic, overtly injurious or potentially injurious material, whether injurious or potentially injurious by itself or in combination with other materials;
- b. Is controlled, referred to, designated in or governed by any Hazardous Materials Laws;

c. Gives rise to any reporting, notice or publication requirements under any Hazardous Materials Laws; or

d. Is any other material or substance giving rise to any liability, responsibility or duty upon the City or Lessee with respect to any third person under any Hazardous Materials Law.

12.3 Lessee's Representations and Warranties. Lessee represents and warrants that, during the Term or any extension thereof, or for such longer period as may be specified herein, Lessee shall comply with the following provisions unless otherwise specifically approved in writing by City:

a. Lessee shall not cause or permit any Hazardous Materials to be brought, kept or used in or about the Premises by Lessee, its agents, employees, assignees, contractors or invitees, except as required by Lessee's permitted use of the Premises, as described in Section 5.1, "Permitted Uses."

b. Any handling, transportation, storage, treatment or usage by Lessee of Hazardous Materials that is to occur on the Premises following the Commencement Date shall be in compliance with all applicable Hazardous Materials Laws.

c. Any leaks, spills, release, discharge, or emission of Hazardous Materials caused by Lessee, or disposal of Hazardous Materials owned by Lessee, which may occur on the Premises during the Term shall be promptly and thoroughly cleaned and removed from the Premises by Lessee at its sole expense, and any such discharge shall be promptly reported in writing to City, and to any other appropriate governmental regulatory authorities.

d. No friable asbestos shall be constructed, placed on, deposited, stored, disposed of, or located by Lessee in the Premises.

e. No underground improvements, including but not limited to treatment or storage tanks, or water, gas or oil wells shall be located by Lessee on the Premises without City's prior written consent.

f. Lessee shall conduct and complete all investigations, studies, sampling, and testing procedures and all remedial, removal, and other actions necessary to clean up and remove all Hazardous Materials on, from, or affecting the Premises in accordance with all applicable Hazardous Materials' Laws and to the satisfaction of City.

g. Activities proposed by Lessee that involve disturbing asbestos materials on site shall only be conducted in accordance with all federal, state and local asbestos rules and regulations including, but not limited to, the California Occupational Safety and Health Administration (Cal/OSHA), Environmental Protection Agency (EPA) and Air Pollution Control District (APCD), with prior written consent of the City, as follows:

Prior to conducting asbestos related activities, Lessee shall notify City of the proposed work at least one month in advance. The notification shall include the location of work, type of asbestos containing material (ACM) to be removed and a work plan indicating the work practices and methods of control to be used during the abatement activity to control

asbestos fiber release. The City Occupational Health Program shall review the work plan and may modify the plans as necessary.

Any asbestos related activities shall be performed by a contractor that is registered with Cal/OSHA and certified by the California Contractors State Licensing Board to perform asbestos work. Any asbestos related activities shall be overseen by a California Certified Asbestos Consultant (CAC), or a Certified Site Surveillance Technician under the direction of a CAC.

Replacement products used in tenant improvements or other construction activities shall not contain asbestos. Any replacement products used by Lessee shall be verified as non-asbestos products by using Material Safety Data Sheets (MSDS) and/or having the architect or project engineer verify that ACMs were not used.

h. Lessee shall promptly supply City with copies of all notices, reports, correspondence, and submissions made by Lessee to the United States Environmental Protection Agency, the United Occupational Safety and Health Administration, and any other local, state or federal authority which requires submission of any information concerning environmental matters or hazardous wastes or substances pursuant to applicable Hazardous Materials' Laws.

i. Lessee shall promptly notify City of any liens threatened or attached against the Premises pursuant to any Hazardous Materials' Law. If such a lien is filed against the Premises, then within twenty (20) days following such filing or before any governmental authority commences proceedings to sell the Premises pursuant to the lien, whichever occurs first, Lessee shall either: (a) pay the claim and remove the lien from the Premises; or (b) furnish either (1) a bond or cash deposit reasonably satisfactory to City in an amount not less than the claim from which the lien arises, or (2) other security satisfactory to City in an amount not less than that which is sufficient to discharge the claim from which the lien arises. At the end of this Lease, Lessee shall surrender the Premises to City free of any and all Hazardous Materials and in compliance with all Hazardous Materials' Laws affecting the Premises.

12.4 Indemnification by Lessee. Lessee (and, if applicable, each of its general partners) and its successors, assigns, and guarantors, if any, jointly and severally agree to protect, indemnify, defend (with counsel selected by City), reimburse and hold City and its officers, employees and agents harmless from any claims, judgments, damages, penalties, fines, costs or expenses (known or unknown, contingent or otherwise), liabilities (including sums paid in settlement of claims), personal injury (including wrongful death), property damage (real or personal) or loss, including attorneys' fees, consultants' fees, and experts' fees (consultants and experts to be selected by City) which arise during or after the Term from or in connection with the presence or suspected presence of Hazardous Materials, including the soil, ground water or soil vapor on or under the Premises. Without limiting the generality of the foregoing, the indemnification provided by this section shall specifically cover costs incurred in connection with investigation of site conditions or any cleanup, remedial, removal or restoration work required by any Hazardous Materials Laws because of the presence of Hazardous Materials in the soil, ground water or soil vapor on the Premises, and the release or discharge of Hazardous Materials by Lessee during the course of Lessee's alteration or improvement of the Premises.

12.5 Remedies Cumulative; Survival. The provisions of this Article shall be in addition to any and all common law obligations and liabilities Lessee may have to City, and any

remedies and the environmental indemnities provided for herein shall survive the expiration or termination of this Lease and/or any transfer of all or any portion of the Premises, or of any interest in this Lease, and shall be governed by the laws of the State of California.

12.6 Inspection. City and City's agents, servants, and employees including, without limitation, legal counsel and environmental consultants and engineers retained by City, may (but without the obligation or duty so to do), at any time and from time to time, on not less than five (5) business days' notice to Lessee (except in the event of an emergency in which case no notice shall be required), inspect the Premises to determine whether Lessee is complying with Lessee's obligations set forth in this Article, and to perform environmental inspections and samplings, during regular business hours (except in the event of an emergency) or during such other hours as City and Lessee may agree. If Lessee is not in compliance, City shall have the right, in addition to City's other remedies available at law and in equity, to enter upon the Premises immediately and take such action as City in its sole judgment deems appropriate to remediate any actual or threatened contamination caused by Lessee's failure to comply. City will use reasonable efforts to minimize interference with Lessee's use of Premises but shall not be liable for any interference caused by City's entry and remediation efforts. Upon completion of any sampling or testing City will (at Lessee's expense if City's actions are a result of Lessee's default under this section) restore the affected area of the Premises from any damage caused by City's sampling and testing.

ARTICLE 13 ASSIGNMENT AND SUBLETTING

Lessee shall not voluntarily or involuntarily assign, Lease, mortgage, encumber, or otherwise transfer (collectively, a "Transfer") all or any portion of the Premises or its interest in this Lease without City's prior written consent. City may reasonably withhold its consent to any Transfer. Any attempted Transfer without City's consent shall be void and shall constitute a material breach of this Lease. As used herein, the term "Transfer" shall include an arrangement (including without limitation management agreements, concessions, and licenses) that allows the use and occupancy of all or part of the Premises by anyone other than Lessee.

ARTICLE 14 CITY'S RIGHT OF ACCESS

City, its agents, employees, and contractors may enter the Premises at any time in response to an emergency, and at reasonable hours to (a) inspect the Premises, (b) exhibit the Premises to prospective purchasers or Lessees, (c) determine whether Lessee is complying with its obligations in this Lease (including its obligations with respect to compliance with Hazardous Materials Laws), (d) supply cleaning service and any other service that this Lease requires City to provide, (e) post notices of non-responsibility or similar notices, (f) make repairs that this Lease requires or permits City to make, or make repairs to any adjoining space or utility services, or make repairs, alterations, or improvements to any other portion of the Premises; provided, however, that all work will be done as promptly as reasonably possible and so as to cause as little interference to Lessee as reasonably possible, or (g) for any other reason permitted by this Lease.

Lessee waives any claim of injury or inconvenience to Lessee's business, interference with Lessee's business, loss of occupancy or quiet enjoyment of the Premises, or any other loss occasioned by such entry. If necessary, Lessee shall provide City with keys to unlock all of the

doors in the Premises (excluding Lessee's vaults, safes, and similar areas designated in writing by Lessee in advance). City will have the right to use any means that City may deem proper to open doors in the Premises and to the Premises in an emergency. No entry to the Premises by City by any means will be a forcible or unlawful entry into the Premises or a detainer of the Premises or an eviction, actual or constructive, of Lessee from the Premises, or any part of the Premises, nor shall the entry entitle Lessee to damages or an abatement of rent or other charges that this Lease requires Lessee to pay.

ARTICLE 15
QUIET ENJOYMENT

If Lessee is not in breach under the covenants made in this Lease, City covenants that Lessee shall have peaceful and quiet enjoyment of the Premises without hindrance on the part of City. City will defend Lessee in the peaceful and quiet enjoyment of the Premises against claims of all persons claiming through or under the City.

ARTICLE 16
NOTICES

16.1 Notices. Whenever in this Lease it shall be required or permitted that notice or demand be given or served by either party to this Lease to or on the other, such notice or demand shall be in writing, mailed or delivered to the other party at the following addresses:

To City:

City of Capitola
420 Capitola Avenue
Capitola, CA 95010
(831) 475-7300

To Lessee:

County of Santa Cruz- Real Property Section
701 Ocean Street, Room 410
Santa Cruz, California 95060
(831) 454-2160

Mailed notices shall be sent by United States Postal Service, certified or registered mail, postage prepaid and shall be deemed to have been given, delivered and received three (3) business days after the date such notice or other communication is posted by the United States Postal Service. All other such notices or other communications shall be deemed given, delivered and received upon actual receipt. Either party may, by written notice delivered pursuant to this provision, at any time designate a different address to which notices shall be sent.

16.2 Default Notices. Notwithstanding anything to the contrary contained within this Article, any notices City is required or authorized to deliver to Lessee in order to advise Lessee of alleged violations of Lessee's covenants under this Lease must be in writing but shall be deemed to have been duly given or served upon Lessee by City attempting to deliver at the Premises during normal business hours a copy of such notice to Lessee or its managing

employee and by City mailing a copy of such notice to Lessee in the manner specified in the preceding Section.

ARTICLE 17 GENERAL PROVISIONS

17.1 Authority. Lessee represents and warrants that it has full power and authority to execute and fully perform its obligations under this Lease pursuant to its governing instruments, without the need for any further action, and that the person(s) executing this Lease on behalf of Lessee are the duly designated agents of Lessee and are authorized to do so.

17.2 Brokers. Lessee warrants that it has not been represented by any real estate broker or agent in connection with the negotiation and/or execution of this Lease. In the event any broker makes claim for monies owed, Lessee shall indemnify, defend and hold City harmless therefrom.

17.3 Captions. The captions, headings and index appearing in this Lease are inserted for convenience only and in no way define, limit, construe, or describe the scope or intent of the provisions of this Lease.

17.4 City Approval. Except where stated herein to the contrary, the phrases "City's approval," and "City's written approval" or such similar phrases shall mean approval *of City Manager or City's Manager's representative.*

17.5 Cumulative Remedies. In the event of a default under this Lease, each Party's remedies shall be limited to those remedies set forth in this Lease. Any such remedies are cumulative and not exclusive of any other remedies under this Lease to which the non-defaulting Party may be entitled.

17.6 Entire Agreement. This Lease, together with all addenda, exhibits and riders attached hereto, constitutes the entire agreement between the Parties with respect to the subject matter hereof, and all prior or contemporaneous agreements, understandings and representations, oral or written, are superseded.

17.7 Estoppel Certificate. Lessee shall at any time during the term of this Lease, within five (5) business days of written notice from City, execute and deliver to City a statement in writing certifying that this Lease is unmodified and in full force and effect or, if modified, stating the nature of such modification. Lessee's statement shall include other details requested by City, such as the date on which rent and other charges are paid, the current ownership and name of Lessee, Lessee's knowledge concerning any outstanding defaults with respect to City's obligations under this Lease and the nature of any such defaults. Any such statement may be relied upon conclusively by any prospective purchaser or encumbrancer of the Premises. Lessee's failure to deliver such statements within such time shall be conclusively deemed to mean that this Lease is in full force and effect, except to the extent any modification has been represented by City, that there are no uncured defaults in the City's performance, and that not more than one month's rent has been paid in advance.

17.8 Exhibits. All exhibits referred to herein are attached hereto and incorporated by reference.

17.9 Force Majeure. In the event either party is prevented or delayed from performing any act or discharging any obligation hereunder, except for the payment of rent by Lessee, because of any and all causes beyond either party's reasonable control, including unusual delays in deliveries, abnormal adverse weather conditions, unavoidable casualties, strikes, labor disputes, inability to obtain labor, materials or equipment, acts of God, governmental restrictions, regulations or controls, any hostile government actions, civil commotion and fire or other casualty, legal actions attacking the validity of this Lease or the City's occupancy of the Premises, or any other casualties beyond the reasonable control of either party except casualties resulting from Lessee's negligent operation or maintenance of the Premises ("Force Majeure"), performance of such act shall be excused for the period of such delay, and the period for performance of such act shall be extended for a period equivalent to the period of such delay. Force Majeure shall not include any bankruptcy, insolvency, or other financial inability on the part of either party hereto.

17.10 Governing Law. This Lease shall be governed, construed and enforced in accordance with the laws of the State of California.

17.11 Interpretation. The language of this Lease shall be construed simply according to its plain meaning and shall not be construed for or against either party.

17.12 Joint and Several Liability. If more than one person or entity executes this Lease as Lessee, each of them is jointly and severally liable for all of the obligations of Lessee hereunder.

17.13 Lease Administration. This Lease shall be administered on behalf of the City of Capitola, by its Public Works Director, City of Capitola, 420 Capitola Avenue, Capitola, California 95010, 831-475-7300, or by such person's duly-authorized designee (referred to collectively herein as "City's Lease Administrator"), and on behalf of Lessee by its Chief Real Property Agent, County of Santa Cruz, 701 Ocean Street, Room 410, Santa Cruz, California 95060, 831-454-2160, or by such other person as may be designated in writing by Lessee (referred to collectively herein as "Lessee's Lease Administrator").

17.14 Lessee's Lease Administration. Lessee confirms that Lessee's Lease Administrator has been given full operational responsibility for compliance with the terms of this Lease. Lessee shall provide City with a written schedule of its normal hours of business operation on the Premises, and Lessee's Lease Administrator or a representative designated thereby shall be (i) available to City on a twenty-four (24) hour a day, seven (7) days a week, basis, and (ii) present on the Premises during Lessee's normal business hours, to resolve problems or answer question pertaining to this Lease and Lessee's operations on the Premises.

17.15 Liquidated Damages. Any payments by Lessee to City under this Lease described as liquidated damages represent the parties' reasonable estimate of City's actual damages under the described circumstances, such actual damages being uncertain and difficult to ascertain in light of the impossibility of foreseeing the state of the leasing market at the time of the various deadlines set forth herein. City may, at its election, take any of the liquidated damages assessed in any portion of this Lease as direct monetary payments from Lessee and/or as an increase of rent due from Lessee under this Lease.

17.16 Modification. The provisions of this Lease may not be modified, except by a written instrument signed by both parties.

17.17 Partial Invalidity. If any provision of this Lease is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Lease shall not be affected thereby. Each provision shall be valid and enforceable to the fullest extent permitted by law.

17.18 Payments. Except as may otherwise be expressly stated, each payment required to be made by Lessee shall be in addition to, and not a substitute for, other payments to be made by Lessee.

17.19 Successors & Assigns. This Lease shall be binding on and inure to the benefit of the parties and their successors and assigns, except as may otherwise be provided herein.

17.20 Time of Essence. Time is of the essence of each and every provision of this Lease.

17.21 Waiver. No provision of this Lease or the breach thereof shall be deemed waived, except by written consent of the party against whom the waiver is claimed. The waiver by City of any breach of any term, covenant or condition contained in this Lease shall not be deemed to be a waiver of such term, covenant or condition of any subsequent breach thereof, or of any other term, covenant or condition contained in this Lease. City's subsequent acceptance of partial rent or performance by Lessee shall not be deemed to be an accord and satisfaction or a waiver of any preceding breach by Lessee of any term, covenant or condition of this Lease or of any right of City to a forfeiture of the Lease by reason of such breach, regardless of City's knowledge of such preceding breach at the time of City's acceptance. The failure on the part of City to require exact or full and complete compliance with any of the covenants, conditions of agreements of this Lease shall not be construed as in any manner changing or waiving the terms of this Lease or as estopping City from enforcing in full the provisions hereof. No custom or practice which may arise between the parties hereto in the course of administering this Lease shall be construed to waive, estop or in any way lessen City's right to insist upon Lessee's full performance of, or compliance with, any term, covenant or condition of this Lease or to inhibit or prevent City's exercise of its rights with respect to any default, dereliction or breach of this Lease by Lessee.

SIGNATURE PAGE TO FOLLOW

CITY OF CAPITOLA	COUNTY OF SANTA CRUZ
<p>Jamie Goldstein City Manager</p> <p>DocuSigned by: <u>Jamie Goldstein</u> 1/11/2022 Date</p> <p>08F95DF2E8BA4AC...</p>	<p>Matt Machado, Director Department of Public Works</p> <p>DocuSigned by: <u>Matt Machado</u> 1/11/2022 Date</p> <p>50EBAC64454C48C...</p>
<p>APPROVED AS TO FORM:</p> <p>DocuSigned by: <u>Samantha Butler</u> 1/11/2022 Date</p> <p>City Attorney</p>	<p>APPROVED AS TO FORM:</p> <p>DocuSigned by: <u>Justin Graham</u> 1/10/2022 Date</p> <p>Office of County Counsel</p>
	<p>APPROVED AS TO INSURANCE:</p> <p>DocuSigned by: <u>Enrique Salazar</u> 1/10/2022 Date</p> <p>Risk Management</p>
	<p>RECOMMENDED FOR APPROVAL:</p> <p>DocuSigned by: <u>Kimberly Finley</u> 12/10/2021 Date</p> <p>Real Property</p>
	<p>RECOMMENDED FOR APPROVAL:</p> <p>_____</p> <p>Date</p>

EXHIBIT "A"
Premises

CAPITOLA BRANCH LIBRARY – SCPL & CAPITOLA SITE PLAN

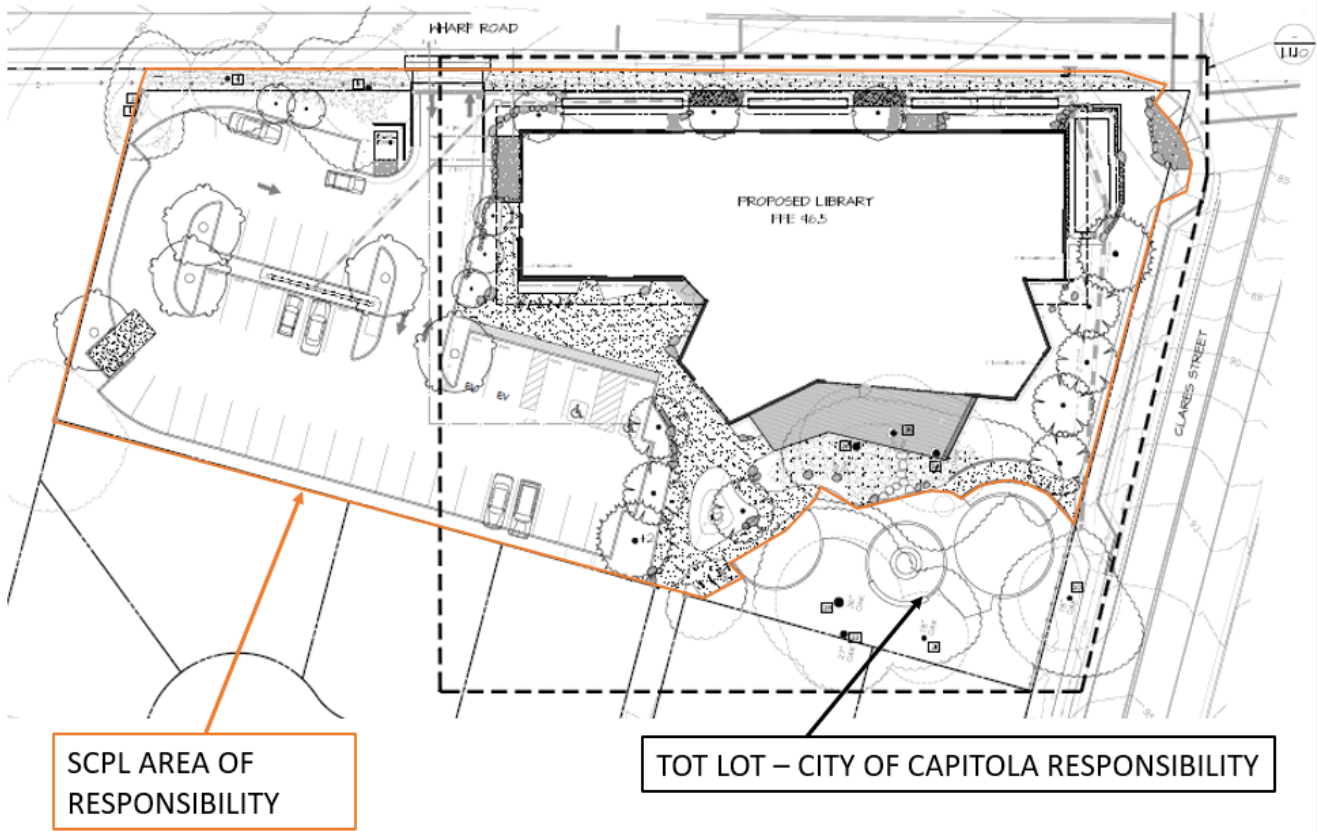


EXHIBIT "B"
INSURANCE REQUIREMENTS

INSURANCE REQUIREMENTS

Without limiting Lessee's indemnification obligations to City under this Lease, Lessee shall provide and maintain for the duration of this Lease insurance against claims for injuries to persons or damages to property which may arise from or in connection with the Lessee's operation and use of the Leased Premises. The cost of such insurance shall be borne by the Lessee.

1. Minimum Scope of Insurance

Coverage shall be at least as broad as:

- A. Commercial General Liability, Occurrence form, Insurance Services Office Form CG0001.
- B. Automobile Liability covering all owned, non-owned and hired auto, Insurance Services Office form CA0001.
- C. Workers Compensation, as required by State of California and Employer's Liability Insurance.
- D. Property Insurance: Lessee shall maintain property insurance coverage for all real property being leased at full replacement value, including improvements and betterments. Lessee shall also provide property insurance for all City-owned personal property contained within or on the leased Premises. The policy must be written on an "all risks" basis, including coverage for earthquake. The contract shall insure for not less than ninety (90) percent of the actual cash value of the personal property, and Lessee shall name City as an additional insured and loss payee.

2. Minimum Limits of Insurance

Lessee shall maintain limits no less than:

- A. Commercial General Liability including Premises, Operations, Products and Completed Operations, Contractual Liability and Independent Contractors: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. The General Aggregate limit shall be \$2,000,000 and shall be a Per Location Aggregate. Fire Damage Limit (Any One Fire) \$300,000 and Medical Expense Limit (Any One Person) \$5,000.

- B. Automobile Liability: \$1,000,000 each accident for bodily injury and property damage. Coverage will include contractual liability.
- C. Employers Liability: \$1,000,000 each accident for bodily injury or disease. Coverage shall include a waiver of subrogation endorsement in favor of City of Capitola.
- D. Property: Full replacement cost with no coinsurance penalty provision.

3. Deductibles and Self-Insured Retentions

Any liability deductible or self-insured retention must be declared to and approved by the City's Risk Manager.

4. Other Insurance Provisions

The general liability and automobile liability policies are to contain, or be endorsed to contain the following provisions:

A. Additional Insured Endorsement

Any general liability policy provided by Lessee shall contain an additional insured endorsement applying coverage to the City of Capitola, the members of the Board of Supervisors of the County and the officers, agents, employees and volunteers of the City, individually and collectively.

B. Primary Insurance Endorsement

For any claims related to this Lease, the Lessee's insurance coverage shall be primary insurance as respects the City, the members of the Board of Supervisors of the County and the officers, agents, employees and volunteers of the City, individually and collectively. Any insurance or self-insurance maintained by the City, the members of the Board of Supervisors of the County, its officers, officials, employees, or volunteers shall be excess of the Lessee's insurance and shall not contribute with it.

C. Notice of Cancellation

Each required insurance policy shall be endorsed to state that coverage shall not be canceled by either party, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City at the address shown in section of Lease entitled "Notices".

GENERAL PROVISIONS

5. Qualifying Insurers

All required policies of insurance shall be issued by companies which have been approved to do business in the State of California by the State Department of Insurance, and which hold a current policy holder's alphabetic and financial size category rating of not less than A- VII according to the current Best's Key Rating guide, or a company of equal financial stability that is approved in writing by City's Risk Manager.

6. Proof of Insurance

Lessee shall, as soon as practicable following the placement of insurance required hereunder, but in no event later than the effective date of the Contract, deliver to City certified copies of the actual insurance policies specified herein, together with appropriate separate endorsements thereto, evidencing that Lessee has obtained such coverage for the period of the Contract. Thereafter, copies of renewal policies, and appropriate separate endorsements thereof, shall be delivered to City within thirty (30) days prior to the expiration of the term of any policy required herein.

7. Failure to Obtain or Maintain Insurance; City's Remedies

Lessee's failure to provide insurance specified or failure to furnish certificates of insurance, amendatory endorsements and certified copies of policies, or failure to make premium payments required by such insurance, shall constitute a material breach of the Lease, and City may, at its option, terminate the Lease for any such default by Lessee.

8. No Limitations of Obligations

The foregoing insurance requirements as to the types and limits of insurance coverage to be maintained by Lessee, and any approval of said insurance by the City are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by Lessee pursuant to the Lease, including, but not limited to, the provisions concerning indemnification.

9. Review of Coverage

City retains the right at any time to review the coverage, form and amount of insurance required herein and may require Lessee to obtain insurance reasonably sufficient in coverage, form and amount to provide adequate protection against the kind and extent of risk which exists at the time a change in insurance is required.

10. Self-Insurance

Lessee may, with the prior written consent of City's Risk Manager, fulfill some or all of the insurance requirements contained in this Lease under a plan of self-insurance. Lessee shall only be permitted to utilize such self-insurance if in the opinion of City's Risk

Manager, Lessee's (i) net worth, and (ii) reserves for payment of claims of liability against Lessee, are sufficient to adequately compensate for the lack of other insurance coverage required by this Lease. Lessee's utilization of self-insurance shall not in any way limit liabilities assumed by Lessee under this Lease.

11. Lessees' Insurance

Lessee shall require any sub-Lessee, of all or any portion of the Premises to provide the insurance coverage described herein prior to occupancy of the Premises.

12. Waiver of Subrogation

Lessee and City waive all rights to recover against each other or against any other tenant or occupant of the building, or against the officers, directors, shareholders, partners, employees, agents or invitees of each other or of any other occupant or tenant of the building, from any Claims (as defined in the Article entitled "Indemnity") against either of them and from any damages to the fixtures, personal property, Lessee's improvements, and alterations of either City or Lessee in or on the Premises and the Property, to the extent that the proceeds received from any insurance carried by either City or Lessee, other than proceeds from any program of self-insurance, covers any such Claim or damage. Included in any policy or policies of insurance provided by Lessee shall be a standard waiver of rights of subrogation against City by the insurance company issuing said policy or policies.