

2005 WHARF ROAD #410

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

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

SUBLESSEE: SANTA CRUZ PUBLIC LIBRARIES

**SUBSUBLEASE AGREEMENT
TABLE OF CONTENTS**

ARTICLE NO.	PAGE NO.
SUBSUBLEASE AGREEMENT.....	1
ARTICLE 1 PREMISES.....	3
1.1 PREMISES.....	3
ARTICLE 2 TERM.....	3
2.1 TERM.....	3
2.2 EXTENSION.....	3
2.3 TERMINATION.....	3
ARTICLE 3 RENT.....	3
3.1 BASE ANNUAL RENT.....	3
3.2 DELIVERY OF RENT PAYMENTS.....	3
3.3 FAILURE TO PAY BASE MONTHLY RENT OR ADDITIONAL RENT; LATE CHARGE.....	4
3.4 CAPITAL TRUST.....	4
ARTICLE 4 POSSESSION AND USE.....	4
4.1 COMPLIANCE WITH MASTER LEASE.....	4
4.2 PERMITTED USES.....	4
4.3 HOURS OF OPERATION.....	4
4.4 DUTIES AND PROHIBITED CONDUCT.....	4
4.5 COMPLIANCE WITH STORMWATER LAWS.....	5
ARTICLE 5 SUBORDINATION CLAUSE.....	5
5.1 SUBORDINATION.....	5
ARTICLE 6 UTILITIES.....	6
6.1 UTILITY SERVICES.....	6
6.2 ENERGY CONSERVATION BY SUBLESSEE.....	6
6.3 ENERGY CONSERVATION BY COUNTY.....	6
ARTICLE 7 MECHANICS' LIENS.....	6
7.1 MECHANICS LIENS.....	6
ARTICLE 8 SECURITY.....	6
8.1 SECURITY.....	6
ARTICLE 9 TAXES, ASSESSMENTS AND FEES.....	6
9.1 RESPONSIBILITY FOR PAYMENT OF TAXES AND ASSESSMENTS.....	6
9.2 DEFINITION OF TAXES.....	7
9.3 CREATION OF POSSESSORY INTEREST.....	7
ARTICLE 10 REPAIRS; MAINTENANCE.....	7
10.1 ACCEPTANCE OF PREMISES.....	7
10.2 SUBLESSEE'S REPAIR AND MAINTENANCE OBLIGATIONS.....	7
10.3 MINOR MAINTENANCE AND REPAIRS.....	7
10.4 MAJOR MAINTENANCE AND REPAIRS.....	8
10.5 EMERGENCY REPAIRS OF CRITICAL SYSTEMS.....	8
10.6 SUBLESSEE'S FAILURE TO MAINTAIN.....	8
10.7 RIGHT TO ENTER.....	9
10.8 COUNTY NOT OBLIGATED TO REPAIR OR MAINTAIN; SUBLESSEE'S WAIVER OF CALIFORNIA CIVIL CODE SECTION 1942.....	9

ARTICLE 11 INDEMNITY AND INSURANCE.....9
 11.1 SUBLESSEE’S INDEMNITY9
 11.2 COUNTY’S INDEMNITY9
 11.3 SUBLESSEE'S INSURANCE OBLIGATIONS.....9

ARTICLE 12 HAZARDOUS MATERIALS10
 12.1 HAZARDOUS MATERIALS LAWS-DEFINITION10
 12.2 HAZARDOUS MATERIALS - DEFINITION.....10
 12.3 SUBLESSEE'S REPRESENTATIONS AND WARRANTIES10
 12.4 INDEMNIFICATION BY SUBLESSEE12
 12.5 REMEDIES CUMULATIVE; SURVIVAL.....12
 12.6 INSPECTION12

ARTICLE 13 ASSIGNMENT AND SUBLETTING12

ARTICLE 14 COUNTY'S RIGHT OF ACCESS.....13

ARTICLE 15 QUIET ENJOYMENT13

ARTICLE 16 NOTICES.....13
 16.1 NOTICES13
 16.2 DEFAULT NOTICES14

ARTICLE 17 WAIVER OF RELOCATION ASSISTANCE BENEFITS14
 17.1 RELOCATION ASSISTANCE BENEFITS14
 17.2 SUBLESSEE'S WAIVER AND RESUBLEASE OF RELOCATION BENEFITS14

ARTICLE 18 GENERAL PROVISIONS15
 18.1 AUTHORITY15
 18.2 BROKERS.....15
 18.3 CAPTIONS.....15
 18.4 COUNTY APPROVAL15
 18.5 CUMULATIVE REMEDIES15
 18.6 ENTIRE AGREEMENT15
 18.7 ESTOPPEL CERTIFICATE15
 18.8 EXHIBITS16
 18.9 FORCE MAJEURE16
 18.10 GOVERNING LAW16
 18.11 INTERPRETATION.....16
 18.12 JOINT AND SEVERAL LIABILITY.....16
 18.13 SUBLEASE ADMINISTRATION.....16
 18.14 SUBLESSEE'S SUBLEASE ADMINISTRATION16
 18.15 LIQUIDATED DAMAGES16
 18.16 MODIFICATION17
 18.17 PARTIAL INVALIDITY17
 18.18 PAYMENTS17
 18.19 SUCCESSORS & ASSIGNS17
 18.20 TIME OF ESSENCE.....17
 18.21 WAIVER17

SIGNATURE PAGE.....18
 EXHIBIT A - MASTER LEASE.....A1
 EXHIBIT B - MAP OF THE PREMISES.....B1
 EXHIBIT C - INSURANCE REQUIREMENTS.....C1

SUBSUBLEASE AGREEMENT

This sublease is entered into this ____ day of _____, 20__, by and between the **County of Santa Cruz** as "County" and **Santa Cruz Public Libraries** as "Sublessee". The County and Sublessee are sometimes referred to herein individually as "Party" or collectively as "Parties." A copy of the master lease is attached hereto as Exhibit "A" and is incorporated herein.

WHEREAS, the Lessor, City of Capitola ("City"), in executing this Sublease herein approves of the Sublessee's occupancy of the Premises and the terms and conditions set forth herein.

This Sublease is entered into upon the following facts, understandings and intentions of the County and Sublessee.

ARTICLE 1 PREMISES

1.1 Premises. The premises consist of 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 "B" 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 Sublease.

ARTICLE 2 TERM

2.1 Term. The term of this Sublease shall commence upon execution by all Parties hereto, and shall expire when that specific agreement entitled Fourth Amendment to the Joint Powers Agreement Between the City of Santa Cruz and the County of Santa Cruz and the Cities of Capitola and Scotts Valley relating to Library Services ("JPA Agreement") naturally terminates at 11:59 PM on December 31, 2025, or at the expiration of the term established by future amendment(s) of the JPA Agreement, whichever is later, referred to herein as "Term".

2.2 Extension. The Term of this Sublease may only be extended by written amendment of this Sublease executed by all Parties hereto.

2.3 Termination. The County may terminate this Lease at any time, for any reason, by giving one hundred and eighty (180) days prior written notice to the other Party. This Sublease shall terminate by operation of law if the Master Lease included herein expires or is terminated.

ARTICLE 3 RENT

3.1 Base Annual Rent. Sublessee shall pay as rent for the use and occupancy of the Premises an annual fee of \$1.00. Rent shall remain the same for the entire term of this Sublease unless adjusted by mutual written agreement.

3.2 Delivery of Rent Payments. All rent due under this Sublease shall be made payable to the County of Santa Cruz, and shall be considered paid when delivered to:

COUNTY OF SANTA CRUZ
Department of Public Works – Real Property
701 Ocean Street, Room 410
Santa Cruz, CA 95060

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

3.3 Failure to Pay Base Rent or Additional Rent; Late Charge. If Sublessee fails to pay rent due hereunder at the time it is due and payable, 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, County may in its sole discretion waive any delinquency payment or late charge upon written application of Sublessee.

3.4 Capital Trust. County shall establish a trust account (“Capital Trust”) to hold funds for the benefit of major maintenance and property management as determined by a facility assessment. Funds will be deposited in the Capital Trust from the County Library Fund once the facility assessment and major maintenance budget has been approved by the Board of Supervisors. The Capital Trust shall be managed solely by County. Any interest earned on the Capital Trust shall remain or be redeposited in the Capital Trust for these purposes. This account shall remain the sole property of County and the funds held therein shall be restricted to providing for the maintenance of the Premises.

ARTICLE 4 POSSESSION AND USE

4.1 Compliance with Master Lease. Sublessee agrees to comply with all terms of and conditions in the Master Lease.

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

4.3 Hours of Operation. Sublessee 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.

4.4 Duties and Prohibited Conduct. Where Sublessee is reasonably in doubt as to the propriety of any particular use, Sublessee may request the written determination of County that such use is or is not permitted, and Sublessee will not be in breach or default under this Sublease if Sublessee abides by such determination. Notwithstanding the foregoing, however, Sublessee shall not use nor permit the use of the Premises in any manner that will tend to create waste or a nuisance. Sublessee shall, at Sublessee'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 Sublessee of the Premises. Sublessee 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 County, are inconsistent with the permitted uses of the Premises pursuant to this Sublease. 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. Sublessee 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.

4.5 Compliance with Stormwater Laws. Sublessee'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 Sublessee to develop, install, implement and maintain pollution prevention measures, source control measures and Best Management Practices ("BMPs"). Sublessee further agrees to develop, install, implement and/or any BMPs or similar pollution control devices required by federal, state and/or local law and any implementing regulations. Any costs associated with such installations will be handled consistent with other maintenance and repair costs as outlined in Article 10.

Sublessee understands and acknowledges that the storm water and non-storm water requirements applicable to Sublessee'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 Sublessee's activities or development or redevelopment by Sublessee or County. To the extent there is a conflict between any federal, state, or local law, Sublessee shall comply with the more restrictive provision. If County receives any fine or fines from any regulatory agency as a result of Sublessee's failure to comply with applicable storm water laws as set forth in this Article, Sublessee shall reimburse County for the entire fine amount.

ARTICLE 5 SUBORDINATION CLAUSE

5.1 Subordination. The Parties acknowledge that pursuant to the terms of the Master Lease attached hereto as Exhibit "A", the 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 any such 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, the County and City desire that this Sublease and Sublessee'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 Sublease and all of Sublessee'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. Sublessee shall make all arrangements for and pay for all utilities and municipal services supplied to the Premises or used by Sublessee, including but not limited to water, gas, electricity, garbage collection, sewage charges, and telephone, and for all connection charges. County 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 Sublessee. Sublessee shall endeavor to promote energy conservation measures in the operation of all activities at the Sublease Premises. Sublessee shall cooperate with the County in all forms of energy conservation including energy-efficient lighting, heating and air-conditioning systems, and fixtures and equipment. Sublessee shall comply with all Federal, State and City laws, by-laws, regulations, etc., relating to the conservation of energy. Sublessee shall comply with all reasonable requests and demands of the County pertaining to the installation and maintenance of energy conservation systems, fixtures, and equipment installed by the County.

6.3 Energy Conservation by County. County is required to comply with all laws and regulations requiring the installation of energy-efficient systems, fixtures, and equipment at County buildings and facilities. In accordance with all laws and regulations and this Sublease; Sublessee 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. Sublessee 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, Sublessee shall cause the lien to be discharged of record within ten (10) days after it is filed. Sublessee shall indemnify, defend and hold County harmless from any and all liability, loss, damage, costs, attorneys' fees and all other expenses on account of claims of lien of laborers or materialmen or others for work performed or materials or supplies furnished for Sublessee or persons claiming under Sublessee.

ARTICLE 8
SECURITY

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

ARTICLE 9
TAXES, ASSESSMENTS AND FEES

9.1 Responsibility for Payment of Taxes and Assessments. County shall not be obligated to pay any taxes or assessments accruing against Sublessee on the Premises or any interest of Sublessee therein before, during or after the Term, or any extension thereof; all such payments

shall be the sole responsibility of Sublessee. In addition, Sublessee 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 Sublessee 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 Sublessee's failure to pay taxes, (v) any increases in taxes attributable to the sale of Sublessee's Subleasehold 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, Sublessee is hereby advised that the terms of this Sublease may result in the creation of a possessory interest. If such a possessory interest is vested in Sublessee, Sublessee may be subjected to the payment of real property taxes levied on such interest. Sublessee shall be solely responsible for the payment of any such real property taxes. Sublessee 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 Sublessee 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. Sublessee acknowledges that Sublessee has made a thorough inspection of the Premises prior to the commencement date of this Sublease, and that it accepts the Premises as of the commencement date in their condition at that time. Sublessee further acknowledges that County has made no oral or written representations or warranties to Sublessee regarding the condition of the Premises, and that Sublessee is relying solely on its inspection of the Premises with respect thereto. Sublessee agrees not to make changes to the built environment without obtaining the County's prior written approval.

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

10.3 Minor Maintenance and Repairs. Sublessee is responsible for, at its sole cost and expense and without cost to the County, performing all minor maintenance and repairs for the Premises. Minor maintenance and Repairs are defined as any and all maintenance or repairs, costing up to a maximum of \$10,000 per item, and with an annual cap of \$50,000, necessary to maintain the Premises in good and tenantable condition, and shall include but not be limited to: custodial services

and maintenance and/or repairs of grounds, landscaping including bio detention system cleaning and inspections, roof, fencing, heating, ventilation, air conditioning (HVAC), mechanical, security or information technology upgrades, electrical systems, pipes, conduits, equipment, components and facilities (whether or not within the Premises) that supply the Premises exclusively with utilities (except to the extent the appropriate utility company has assumed these duties), all fixtures and other equipment installed in the Premises, all exterior and interior glass installed in the Premises, all signs, lock and closing devices all interior window sashes, casements and frames, doors and door frames (except for the painting of the exterior surfaces thereof), floor coverings, and all such items of repair, maintenance, alteration, improvement or reconstruction as may be required at any time or from time to time by a governmental agency having jurisdiction thereof. Sublessee's obligations hereunder shall apply regardless of whether the repairs, restorations and replacements are ordinary or extraordinary, foreseeable or unforeseeable, capital or noncapital, or the fault or not the fault of Sublessee, its agents, employees, invitees, visitors or contractors. All replacements made by Sublessee in accordance with this Section shall be of like size, kind and quality to the items replaced and shall be subject to County's approval, which shall be timely and not unreasonably withheld. Sublessee shall utilize its own maintenance staff or outside contractors, however, Sublessee shall only use appropriately licensed staff or contractors for any item requiring a building permit. Any reoccurring expenses incurred for custodial, landscaping and bio detention, or other recurring maintenance operational activities are not eligible to be applied towards the \$10,000 or \$50,000 limits listed above.

10.4 Major Maintenance and Repairs. County is responsible for, at its sole cost and expense and without cost to Sublessee, performing all major maintenance and repairs. Major maintenance and repairs are further defined as any and all maintenance or repairs, costing more than \$10,000 per item, necessary to maintain the Premises in good and tenable condition. Examples include but are not limited to: painting of building exterior; repair and resurfacing of parking areas; structural repairs involving foundation, exterior walls and bearing walls; and major repair or replacement of failed roof, gutters, downspouts, HVAC system, unexposed plumbing and electrical, fire sprinkler system, fencing, and fire alarm system. The Major Maintenance shall be accomplished in a timely manner in conformance with all applicable laws, according to specifications established by the County.

For all Major Maintenance that cannot be completed by the County and upon approval from County, Sublessee shall contract for services, in concurrence with County purchasing policies and procedures, which services shall be reimbursed from the Capital Trust. All proposed work shall be approved by the County, such approval shall be timely and not unreasonably withheld.

10.5 Emergency Repairs of Critical Systems. If a problem develops with a critical building system that, if left unrepaired for any length of time, could reasonably impact the health or safety of the occupants or the continued occupancy of the Premises, Sublessee will immediately contact the County to report the problem. If the problem falls under Minor Maintenance or Repairs, Sublessee shall proceed under the guidelines of Article 10.3. If the problem falls under Major Maintenance, Sublessee and County shall proceed under the guidelines of Article 10.4.

If Sublessee is unable to quickly resolve the problem using Sublessee's maintenance staff or outside contractors, Sublessee shall contact County who shall arrange for repairs to be completed by the County or assist Sublessee with identifying an outside contractor that can complete the work.

10.6 Sublessee's Failure to Maintain. If Sublessee refuses or neglects to repair, replace, or maintain the Premises, or any part thereof, in a manner reasonably satisfactory to County, County

may, upon giving Sublessee reasonable written notice of its election to do so, make such repairs or perform such maintenance on behalf of and for the account of Sublessee. If County makes or causes any such repairs to be made or performed, as provided for herein, Sublessee shall pay the cost thereof to County, as additional rent, promptly upon receipt of an invoice therefore. If Major Maintenance is required as a direct result of the failure or negligence of Sublessee to perform the required Minor Maintenance, then Sublessee shall be solely responsible for the repair and cost associated with the resulting Major Maintenance.

10.7 Right to Enter. Sublessee shall permit County, 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) County may deem necessary to prevent waste or deterioration in connection with the Premises if Sublessee 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 County, and (c) County may deem necessary in connection with the expansion, reduction, remodeling, protection or renovation of any County-constructed or owned facilities on or off of the Premises. Nothing herein shall imply any duty on the part of County to do any such work which, under any provision of this Sublease, Sublessee may be required to do, nor shall County's performance of any repairs on behalf of Sublessee constitute a waiver of Sublessee's default in failing to do the same. If County exercises any of its rights under this Section, Sublessee shall not be entitled to any compensation, damages or abatement of rent from County for any injury or inconvenience occasioned thereby.

10.8 County Not Obligated to Repair or Maintain; Sublessee's Waiver of California Civil Code Section 1942. To the extent that any remedies specified in this Sublease conflict or are inconsistent with any provisions of California Civil Code section 1942, or any successor statute thereto ("CC §1942"), the provisions of this Sublease shall control. Sublessee 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 County under this Sublease.

ARTICLE 11 INDEMNITY AND INSURANCE

11.1 Sublessee's Indemnity. County shall not be liable for, and Sublessee shall defend and indemnify County, 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 Sublease and arising either directly or indirectly from any act, error, omission or negligence of Sublessee 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 County. Sublessee shall have no obligation, however, to defend or indemnify County 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 County.

11.2 County's Indemnity. County shall defend and indemnify Sublessee and hold it harmless from and against any Claims arising out of this Sublease that arise solely from any act, omission or negligence of County, or County's employees, agents, elected officials, or volunteers.

11.3 Sublessee's Insurance Obligations. Without limiting Sublessee's indemnification obligations to County under this Sublease, Sublessee 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 "C," attached hereto.

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 County or Sublessee with respect to any third person under any Hazardous Materials Law.

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

- a. Sublessee shall not cause or permit any Hazardous Materials to be brought, kept or used in or about the Premises by Sublessee, its agents, employees, assignees, contractors or invitees, except as required by Sublessee's permitted use of the Premises, as described in Section 5.1, "Permitted Uses."
- b. Any handling, transportation, storage, treatment or usage by Sublessee 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 Sublessee, or disposal of Hazardous Materials owned by Sublessee, which may occur on the Premises during the Term shall be promptly and thoroughly cleaned and removed from the

Premises by Sublessee at its sole expense, and any such discharge shall be promptly reported in writing to County, and to any other appropriate governmental regulatory authorities.

d. No friable asbestos shall be constructed, placed on, deposited, stored, disposed of, or located by Sublessee 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 Sublessee on the Premises without County's prior written consent.

f. Sublessee 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 County.

g. Activities proposed by Sublessee 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 County, as follows:

Prior to conducting asbestos related activities, Sublessee shall notify County 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 County 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 Sublessee 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. Sublessee shall promptly supply County with copies of all notices, reports, correspondence, and submissions made by Sublessee 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. Sublessee shall promptly notify County 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, Sublessee 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 County in an amount not less than the claim from which

the lien arises, or (2) other security satisfactory to County in an amount not less than that which is sufficient to discharge the claim from which the lien arises. At the end of this Sublease, Sublessee shall surrender the Premises to County free of any and all Hazardous Materials and in compliance with all Hazardous Materials' Laws affecting the Premises.

12.4 Indemnification by Sublessee. Sublessee (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 County), reimburse and hold County and its officers, employees, agents and volunteers 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 County) 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 Sublessee during the course of Sublessee'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 Sublessee may have to County, and any remedies and the environmental indemnities provided for herein shall survive the expiration or termination of this Sublease and/or any transfer of all or any portion of the Premises, or of any interest in this Sublease, and shall be governed by the laws of the State of California.

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

ARTICLE 13 ASSIGNMENT AND SUBLETTING

Sublessee shall not voluntarily or involuntarily assign, Sublease, mortgage, encumber, or otherwise transfer (collectively, a "Transfer") all or any portion of the Premises or its interest in this Sublease without County's prior written consent. County may reasonably withhold its consent to any

Transfer. Any attempted Transfer without County's consent shall be void and shall constitute a material breach of this Sublease. 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 Sublessee.

ARTICLE 14
COUNTY'S RIGHT OF ACCESS

County, 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 Sublessees, (c) determine whether Sublessee is complying with its obligations in this Sublease (including its obligations with respect to compliance with Hazardous Materials Laws), (d) supply cleaning service and any other service that this Sublease requires County to provide, (e) post notices of non-responsibility or similar notices, or (f) make repairs that this Sublease requires County 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 Sublessee as reasonably possible.

Sublessee waives any claim of injury or inconvenience to Sublessee's business, interference with Sublessee's business, loss of occupancy or quiet enjoyment of the Premises, or any other loss occasioned by such entry. If necessary, Sublessee shall provide County with keys to unlock all of the doors in the Premises (excluding Sublessee's vaults, safes, and similar areas designated in writing by Sublessee in advance). County will have the right to use any means that County may deem proper to open doors in the Premises and to the Premises in an emergency. No entry to the Premises by County 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 Sublessee from the Premises, or any part of the Premises, nor shall the entry entitle Sublessee to damages or an abatement of rent or other charges that this Sublease requires Sublessee to pay.

ARTICLE 15
QUIET ENJOYMENT

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

ARTICLE 16
NOTICES

16.1 Notices. Whenever in this Sublease it shall be required or permitted that notice or demand be given or served by either party to this Sublease 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 County:
Department of Public Works –
Real Property
701 Ocean Street, Room 410
Santa Cruz, California 95060

To Sublessee:
Director of Libraries
Santa Cruz Public Libraries
117 Union Street
Santa Cruz, CA 95060
(831) 427-7700

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 County is required or authorized to deliver to Sublessee in order to advise Sublessee of alleged violations of Sublessee's covenants under this Sublease must be in writing but shall be deemed to have been duly given or served upon Sublessee by County attempting to deliver at the Premises during normal business hours a copy of such notice to Sublessee or its managing employee and by County mailing a copy of such notice to Sublessee in the manner specified in the preceding Section.

ARTICLE 17 WAIVER OF RELOCATION ASSISTANCE BENEFITS

17.1 Relocation Assistance Benefits. Sublessee is hereby informed and acknowledges the following:

a. By entering into this Sublease and becoming a tenant of County, Sublessee may become entitled to receipt of "relocation assistance benefits" ("Relocation Benefits") pursuant to the Federal Uniform Relocation Assistance Act (42 U.S.C. Section 4601 *et seq.*) and/or the California Relocation Assistance Law (Cal. Gov. Code Section 7270 *et seq.*) (collectively, the "Relocation Statutes"), should County at some time make use of the Premises in such a way as to "displace" Sublessee from the Premises. Pursuant to the Relocation Statutes, County may then become obligated to make such payments to Sublessee even where such displacement of Sublessee does not otherwise constitute a breach or default by County of its obligations pursuant to this Sublease.

b. Under the Relocation Statutes in effect as of the Date of Commencement of this Sublease, Relocation Benefits may include payment to such a "displaced person" of (i) the actual and reasonable expense of moving himself or herself and a family, business, or farm operation, including personal property, (ii) the actual direct loss of reestablishing a business or farm operation, but not to exceed Ten Thousand Dollars (\$10,000), or (iii) payment in lieu of moving expenses of not less than One Thousand Dollars (\$1,000) or more than Twenty Thousand Dollars (\$20,000).

17.2 Sublessee's Waiver and Release of Relocation Benefits. In consideration of County's agreement to enter into this Sublease, Sublessee hereby waives any and all rights it may now have, or may hereafter obtain, to Relocation Benefits arising out of the County's assertion or exercise of its contractual rights to terminate this Sublease pursuant to its terms, whether or not such

rights are contested by Sublessee or any other entity, and releases County from any liability for payment of such Relocation Benefits; provided, however, that Sublessee does not waive its rights to Relocation Benefits to the extent that Sublessee's entitlement thereto may arise out of any condemnation or pre-condemnation actions taken by the County or any other public agency with respect to the Premises. Sublessee shall in the future execute any further documentation of the release and waiver provided hereby as County may reasonably require.

ARTICLE 18 GENERAL PROVISIONS

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

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

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

18.4 County Approval. Except where stated herein to the contrary, the phrases "County's approval," and "County's written approval" or such similar phrases shall mean approval *of County's Sublease Administrator or said Administrator's representative as authorized by said administrator in writing*.

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

18.6 Entire Agreement. This Sublease, 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.

18.7 Estoppel Certificate. Sublessee shall at any time during the term of this Sublease, within five (5) business days of written notice from County, execute and deliver to County a statement in writing certifying that this Sublease is unmodified and in full force and effect or, if modified, stating the nature of such modification. Sublessee's statement shall include other details requested by County, such as the date on which rent and other charges are paid, the current ownership and name of Sublessee, Sublessee's knowledge concerning any outstanding defaults with respect to County's obligations under this Sublease and the nature of any such defaults. Any such statement may be relied upon conclusively by any prospective purchaser or encumbrancer of the Premises. Sublessee's failure to deliver such statements within such time shall be conclusively deemed to mean that this Sublease is in full force and effect, except to the extent any modification has been represented by County, that there are no uncured defaults in the County's performance, and

that not more than one month's rent has been paid in advance.

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

18.9 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 Sublessee, 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 Sublease or the County's occupancy of the Premises, or any other casualties beyond the reasonable control of either party except casualties resulting from Sublessee'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.

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

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

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

18.13 Sublease Administration. This Sublease shall be administered on behalf of County by the Department of Public Works – Real Property, County of Santa Cruz, or by such person's duly-authorized designee (referred to collectively herein as "County's Sublease Administrator"), and on behalf of Sublessee by: Director of Libraries, Santa Cruz Public Libraries, 117 Union Street, Santa Cruz, CA 95060, 831-427-7700 ext. 7611, or by such other person as may be designated in writing by Sublessee (referred to collectively herein as "Sublessee's Sublease Administrator").

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

18.15 Liquidated Damages. Any payments by Sublessee to County under this Sublease described as liquidated damages represent the parties' reasonable estimate of County'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. County may, at its election, take any of the liquidated damages assessed in any portion of this Sublease as direct monetary payments from Sublessee and/or as an increase of rent due from Sublessee under this Sublease.

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

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

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

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

18.20 Time of Essence. Time is of the essence of each and every provision of this Sublease.

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

SIGNATURE PAGE TO FOLLOW

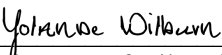
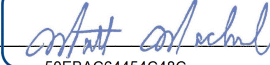
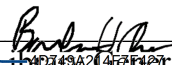
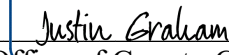
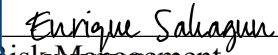
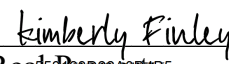
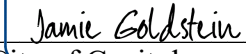
SANTA CRUZ PUBLIC LIBRARIES	COUNTY OF SANTA CRUZ
<p>DocuSigned by:  Johanna Wilburn Director of Libraries Date: 1/19/2022</p>	<p>DocuSigned by:  Matt Machado Director Department of Public Works Date: 1/14/2022</p>
<p>APPROVED AS TO FORM: DocuSigned by:  Brad White Library General Counsel Date: 1/18/2022</p>	<p>APPROVED AS TO FORM: DocuSigned by:  Justin Graham Office of County Counsel Date: 1/14/2022</p>
	<p>APPROVED AS TO INSURANCE: DocuSigned by:  Enrique Salazar Risk Management Date: 1/14/2022</p>
	<p>RECOMMENDED FOR APPROVAL: DocuSigned by:  Kimberly Finley Real Property Date: 1/14/2022</p>
	<p>RECOMMENDED FOR APPROVAL: DocuSigned by:  Jamie Goldstein City of Capitola Date: 1/14/2022</p>

EXHIBIT "A"
Master Lease

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
TABLE OF CONTENTS**

ARTICLE NO.	PAGE NO.
SUBLEASE AGREEMENT.....	1
ARTICLE 1 PREMISES.....	3
1.1 PREMISES.....	3
ARTICLE 2 TERM.....	3
2.1 TERM.....	3
2.2 COMPLIANCE WITH CALIFORNIA GOVERNMENT CODE SECTION 37380.....	3
2.3 HOLD OVER.....	3
2.4 EXTENSION	3
2.5 TERMINATION.....	3
2.6 CONSISTENCY WITH FIRST IMPLEMENTATION AGREEMENT	4
ARTICLE 3 CONSIDERATION	4
3.1 BASE ANNUAL RENT.....	4
3.1.1 DELIVERY OF RENT PAYMENTS.....	4
3.1.2 FAILURE TO PAY BASE RENT OR ADDITIONAL RENT; LATE CHARGE.....	4
3.2 LIBRARY OPERATIONS.....	4
ARTICLE 4 POSSESSION AND USE.....	4
4.1 PERMITTED USES.....	4
4.2 HOURS OF OPERATION.....	5
4.3 DUTIES AND PROHIBITED CONDUCT	5
4.4 COMPLIANCE WITH STORMWATER LAWS.....	5
ARTICLE 5 SUBORDINATION CLAUSE	5
5.1 SUBORDINATION	5
ARTICLE 6 UTILITIES.....	6
6.1 UTILITY SERVICES.....	6
6.2 ENERGY CONSERVATION BY LESSEE.....	6
6.3 ENERGY CONSERVATION BY CITY.....	6
ARTICLE 7 MECHANICS' LIENS.....	6
7.1 MECHANICS' LIENS.....	6
ARTICLE 8 SECURITY.....	7
8.1 SECURITY.....	7
ARTICLE 9 TAXES, ASSESSMENTS AND FEES.....	7
9.1 RESPONSIBILITY FOR PAYMENT OF TAXES AND ASSESSMENTS	7
9.2 DEFINITION OF TAXES	7
9.3 CREATION OF POSSESSORY INTEREST	7
ARTICLE 10 REPAIRS; MAINTENANCE.....	7
10.1 ACCEPTANCE OF PREMISES	7
10.2 LESSEE'S REPAIR AND MAINTENANCE OBLIGATIONS.....	8
10.3 LESSEE'S FAILURE TO MAINTAIN.....	8
10.4 RIGHT TO ENTER	8
10.5 CITY NOT OBLIGATED TO REPAIR OR MAINTAIN; LESSEE'S WAIVER OF CALIFORNIA CIVIL CODE SECTION 1942	8
ARTICLE 11 INDEMNITY AND INSURANCE.....	8

11.1	LESSEE’S INDEMNITY	8
11.2	CITY’S INDEMNITY	9
11.3	LESSEE'S INSURANCE OBLIGATIONS.....	9
11.4	LESSOR'S INSURANCE OBLIGATIONS	9
ARTICLE 12 HAZARDOUS MATERIALS.....		9
12.1	HAZARDOUS MATERIALS LAWS-DEFINITION	9
12.2	HAZARDOUS MATERIALS - DEFINITION.....	9
12.3	LESSEE'S REPRESENTATIONS AND WARRANTIES.....	10
12.4	INDEMNIFICATION BY LESSEE	11
12.5	REMEDIES CUMULATIVE; SURVIVAL.....	11
12.6	INSPECTION	12
ARTICLE 13 ASSIGNMENT AND SUBLETTING.....		12
ARTICLE 14 CITY'S RIGHT OF ACCESS.....		12
ARTICLE 15 QUIET ENJOYMENT.....		13
ARTICLE 16 NOTICES.....		13
16.1	NOTICES	13
16.2	DEFAULT NOTICES	13
ARTICLE 17 GENERAL PROVISIONS.....		14
17.1	AUTHORITY	14
17.2	BROKERS.....	14
17.3	CAPTIONS	14
17.4	CITY APPROVAL.....	14
17.5	CUMULATIVE REMEDIES	14
17.6	ENTIRE AGREEMENT	14
17.7	ESTOPPEL CERTIFICATE	14
17.8	EXHIBITS	14
17.9	FORCE MAJEURE	15
17.10	GOVERNING LAW	15
17.11	INTERPRETATION.....	15
17.12	JOINT AND SEVERAL LIABILITY.....	15
17.13	LEASE ADMINISTRATION.....	15
17.14	LESSEE'S LEASE ADMINISTRATION.....	15
17.15	LIQUIDATED DAMAGES	15
17.16	MODIFICATION	16
17.17	PARTIAL INVALIDITY	16
17.18	PAYMENTS	16
17.19	SUCCESSORS & ASSIGNS	16
17.20	TIME OF ESSENCE.....	16
17.21	WAIVER	16
SIGNATURE PAGE		17
EXHIBIT A - MAP OF THE PREMISES.....		A1
EXHIBIT B - INSURANCE REQUIREMENTS.....		B1

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

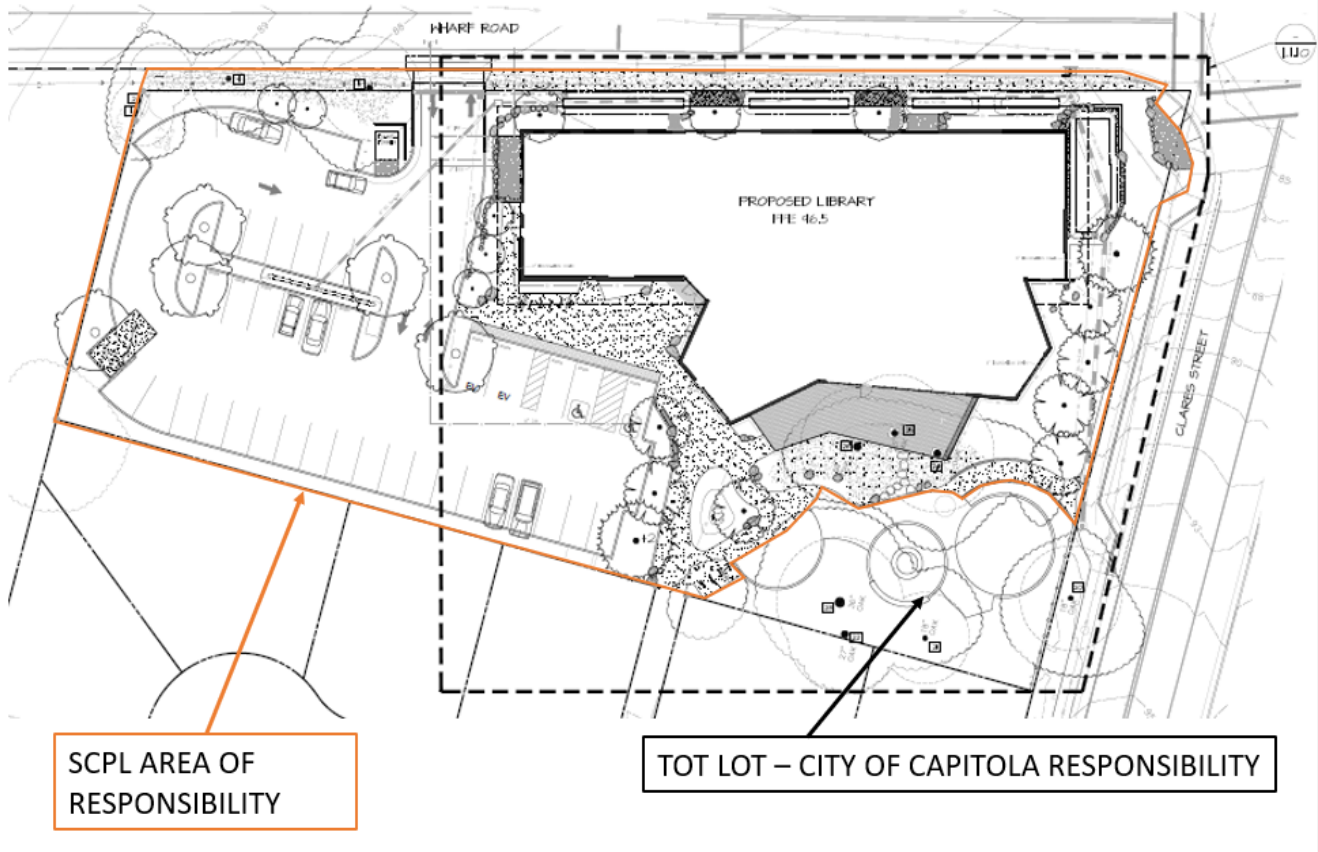


EXHIBIT "B"
INSURANCE REQUIREMENTS

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

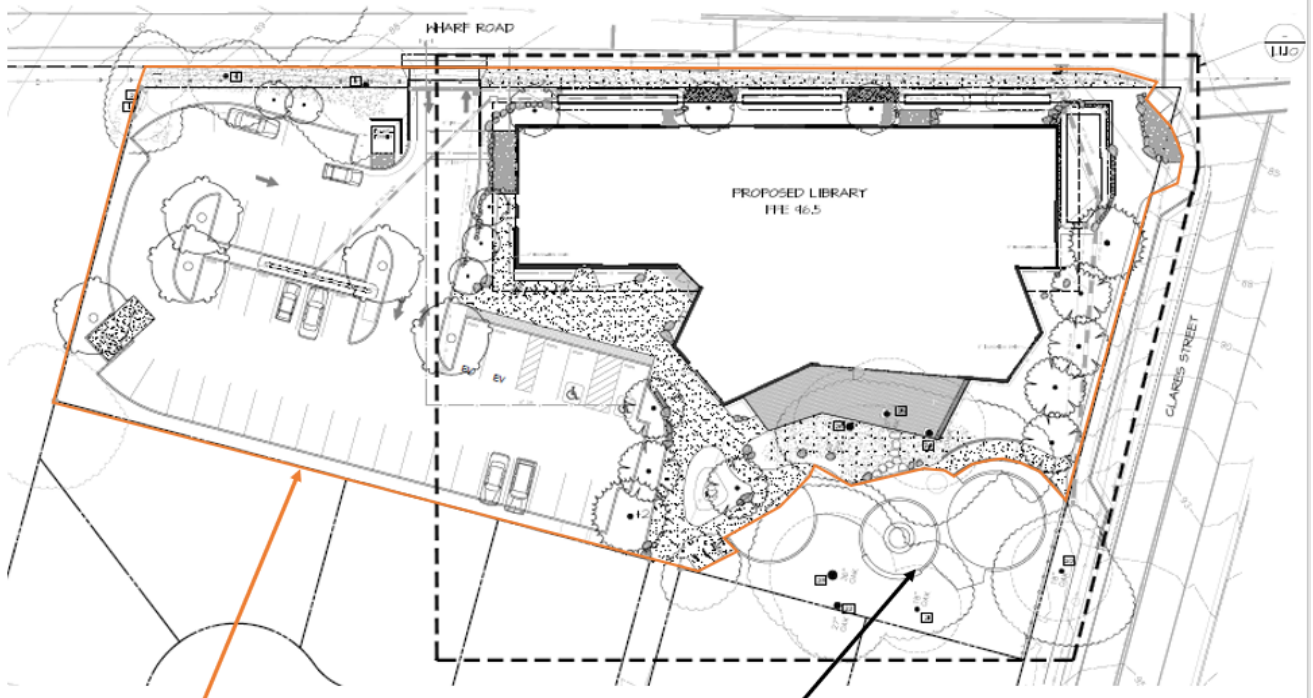
Lessee shall require any sub-Lessee, of all or any portion of the Premises to provide the insurance coverage described herein prior to occupancy of the Premises.

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.

EXHIBIT "B"
Premises

CAPITOLA BRANCH LIBRARY – SCPL & CAPITOLA SITE PLAN



SCPL AREA OF
RESPONSIBILITY

TOT LOT – CITY OF CAPITOLA RESPONSIBILITY

EXHIBIT C
INSURANCE REQUIREMENTS

INSURANCE REQUIREMENTS

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

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 against all risk or special form perils, including Replacement Cost coverage, without deduction for depreciation, for Sublessee's merchandise, fixtures owned by Sublessee, any items identified in this Sublease as improvements to the Premises constructed and owned by Sublessee, and the personal property of Sublessee, its agents and employees, including coverage for earthquake and flood.

2. Minimum Limits of Insurance

Sublessee 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 County of Santa Cruz and 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 County's Risk Manager. The property insurance deductible shall not exceed \$5,000 per occurrence and shall be borne by Sublessee.

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 Sublessee shall contain an additional insured endorsement applying coverage to the County of Santa Cruz, the members of the Board of Supervisors of the County and the officers, agents, employees and volunteers of the County, individually and collectively and the City of Capitola.

B. Primary Insurance Endorsement

For any claims related to this Sublease, the Sublessee's insurance coverage shall be primary insurance as respects the County, the members of the Board of Supervisors of the County and the officers, agents, employees and volunteers of the County, individually and collectively and the City of Capitola. Any insurance or self-insurance maintained by the County, the members of the Board of Supervisors of the County, its officers, officials, employees, or volunteers and the City of Capitola shall be excess of the Sublessee'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 County at the address shown in section of Sublease 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 County's Risk Manager.

6. Proof of Insurance

Sublessee 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 County certified copies of the actual insurance policies specified herein, together with appropriate separate endorsements thereto, evidencing that Sublessee has obtained such coverage for the period of the Contract. Thereafter, copies of renewal policies, and appropriate separate endorsements thereof, shall be delivered to County within thirty (30) days prior to the expiration of the term of any policy required herein.

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

Sublessee'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 Sublease, and County may, at its option, terminate the Sublease for any such default by Sublessee.

8. No Limitations of Obligations

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

9. Review of Coverage

County retains the right at any time to review the coverage, form and amount of insurance required herein and may require Sublessee 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

Sublessee may, with the prior written consent of County's Risk Manager, fulfill some or all of the insurance requirements contained in this Sublease under a plan of self-insurance. Sublessee shall only be permitted to utilize such self-insurance if in the opinion of County's Risk Manager, Sublessee's (i) net worth, and (ii) reserves for payment of claims of liability against Sublessee, are sufficient to adequately compensate for the lack of other insurance

coverage required by this Sublease. Sublessee's utilization of self-insurance shall not in any way limit liabilities assumed by Sublessee under this Sublease.

11. Sublessees' Insurance

Sublessee shall require any sub-sublessee, 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

Sublessee and County 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, Sublessee's improvements, and alterations of either County or Sublessee in or on the Premises and the Property, to the extent that the proceeds received from any insurance carried by either County or Sublessee, 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 Sublessee shall be a standard waiver of rights of subrogation against County by the insurance company issuing said policy or policies.