

LIBRARY LEASE

and

SERVICE AGREEMENT

Between

COUNTY OF CONTRA COSTA

and

THE CITY OF BRENTWOOD

October 24, 2016

LIBRARY LEASE AND SERVICE AGREEMENT

BETWEEN

COUNTY OF CONTRA COSTA AND THE CITY OF BRENTWOOD

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**LIBRARY LEASE
And
SERVICE AGREEMENT**

This lease and service agreement (“**Lease**”) is dated October 24, 2016 (“**Effective Date**”), and is between the City of Brentwood, California, a municipal corporation (the “**City**”), and the County of Contra Costa, a political subdivision of the State of California (the “**County**”).

Recitals

- A. The City and the County are parties to a lease dated October 25, 2011, under which the City leased certain property located at 104 Oak Street, Brentwood, California to the County for use as a public library (the “**2011 Lease**”). The City has approved the demolition of the site of the 2011 Lease and the construction of a new library.
- B. While the new library is under construction, the City and the County agree that the County will provide Library Services, as defined below, from that portion of the City-owned building located at 35 Oak Street in Brentwood, California that is shown on the floor plan attached to this Lease as Exhibit A – Library Floor Plan (the “**Library**” or the “**Premises**”).
- C. The City and the County agree that the presence of a public library in a community enhances the quality of life in that community. The City and the County therefore desire to work cooperatively to permit the County to operate the Library as a public library. Toward this end, the City desires to lease the Library to the County and the County desires to lease the Library from the City on the terms set forth herein.

The parties therefore agree as follows:

AGREEMENT

1. **DEFINITIONS.** The following terms have the following meanings:

“**Actual Hours**” means the number of hours of Library Services that the County will provide each week in a Fiscal year at the Library and is the sum of Base Hours and Extra Hours.

“**Base Hours**” means the number of hours of Library Services that the County will provide each week in a Fiscal Year, or portion thereof, to all County-operated libraries. The County is responsible for the cost of providing Library Services during Base Hours.

“**Community Library Manager**” means the person designated as the on-site manager by the Librarian.

“**Extra Hours**” means the number of hours of Library Services that the City elects to obtain from the County each week at the Library that are in excess of Base Hours. The City is responsible for the cost of Extra Hours.

“**Fiscal Year**” means a twelve-month period beginning July 1.

“**Lease Supplement**” means a supplement to this Lease in substantially the form of Exhibit B – Form of Lease Supplement.

“**Librarian**” means the person designated by the County as the County Librarian.

“**Library Services**” includes lending books and other media to the public, offering programs to the public, and providing collection management and technical services in the course of operating a library. Except as otherwise provided herein, Library Services does not include maintenance of the Building.

2. **EFFECTIVENESS**. This Lease supersedes and replaces the 2011 Lease.

3. **LEASE OF LIBRARY**. The City hereby leases to the County and the County hereby leases from the City, the Library.

4. **CONSIDERATION**. In exchange for the use of the Library, the County shall perform Library Services and related activities at the Library during the Term of this Lease. No rent is due or payable from the County to the City during the Term of this Lease.

5. **TERM**. The “**Term**” of this Lease begins on October 24, 2016 and ends when the new Brentwood Library opens. The new library is expected to open in July 2018.

6. **USE**.

A. County’s Use of Library. The County may use the Library for the purpose of providing Library Services for the public and related activities.

B. City’s Use of Library. The City may use the Library during and outside the Library’s normal operating hours, so long as such use does not interfere directly with normal community library functions. The City is entirely responsible for any use of the Library that it schedules and shall hold harmless and indemnify the County, its officers, agents and employees for such use as provided for in Section 13, Indemnification.

Any use of the Library scheduled by the City is subject to the City’s guidelines and the City’s rules and regulations. The City may not close the Library during its normal operating hours without the prior written consent of the Librarian.

C. County's Use of Parking Lot. City may designate Library Staff parking areas. Alternately, Library staff may park within designated library parking areas subject to the same provisions or restrictions that apply to the general public.

7. **MAINTENANCE AND REPAIRS.** The City shall provide the maintenance and repairs described below in order to keep and maintain the Building in good order, condition and repair. Such maintenance and repair is to be carried out in a manner that is at least consistent with the caliber of maintenance and repairs applied by the City to other City facilities, or as mutually agreed by the City and the County. City responsibilities for maintenance and repair include:

A. Exterior. All exterior building maintenance including but not limited to the roof, landscaping, hardscape, grounds, pest control, lighting and parking.

B. Interior. All interior building maintenance including but not limited to mechanical and electrical systems, including gas, electrical, water, plumbing, elevators, voice and data communication systems infrastructure, heating, ventilating, air-conditioning (HVAC) systems, pest control, and all interior lighting systems, including the replacement of all fixtures and bulbs.

C. Fixtures and Furnishings. Maintenance and replacement of Building fixtures and furnishings including shelving, lighting, furniture, carpeting, window treatments, and appliances.

D. Custodial Services. City shall notify the Community Library Manager prior to selecting a contractor to provide custodial services. Alternately, City may provide such service using City staff.

8. **CAPITAL IMPROVEMENTS.** If the City and County agree that capital improvements to the Building or the Property are necessary (such improvements, "**Capital Improvements**"), then (i) the City shall provide the Capital Improvements at its sole cost and expense, and (ii) the City shall coordinate the schedule associated with the construction of all Capital Improvements with the Librarian.

9. **ALTERATIONS; FIXTURES; SIGNS.** The County may make any lawful and proper minor alterations to the Library and may attach fixtures and signs in or upon the Property with the City's prior written approval. The County is responsible for the cost of such alterations and attachments. All alterations and attachments must comply with existing code requirements.

10. **OPERATIONS: HOURS; COSTS.**

A. Initial Period. For the period October 24, 2016 through June 30, 2017 (i) the number of Base Hours the County will provide, (ii) the number of Extra Hours the City elects to obtain from the County, (iii) the resulting number of Actual Hours, and (iii) the cost to the City of the Extra Hours (such cost, the "**City's Obligation**") are set forth in Exhibit B – Form of Lease Supplement.

B. Annual Modifications. For each Fiscal Year following June 30, 2017, during the Term, the Librarian will provide a Lease Supplement to the City in substantially the form of

Exhibit B by March 31 of each year. The Lease Supplement will set forth (i) the number of Base Hours the County will provide in the upcoming Fiscal Year, (ii) the number of Extra Hours of Library Services the County anticipates that the City will elect to obtain from the County at the Library in the upcoming Fiscal Year (in the absence of more current information from the City, the County will assume the number of Extra Hours in the upcoming Fiscal Year will be equal to the number of Extra Hours then in effect), (iii) the resulting number of Actual Hours during which Library Services will be conducted at the Library in the upcoming Fiscal Year, and (iv) the cost of the City's Obligation.

C. City Election: Extra Hours. Within 60 days of receiving the Lease Supplement, the City shall notify the Librarian in writing if it intends to modify the number of Extra Hours at the Library in the upcoming Fiscal Year. Such modification may be based on fiscal or other considerations identified by the City.

1. Change in Extra Hours from Prior Fiscal Year. If the County receives a notice modifying the number of Extra Hours desired in the upcoming Fiscal Year within the time allotted, the parties shall use good faith efforts to finalize a revised Lease Supplement for the upcoming Fiscal Year before the July 1 start of that Fiscal Year. If the City fails to make a final determination regarding the number of Extra Hours before the start of the upcoming Fiscal Year, the Lease Supplement issued by the Librarian for the upcoming Fiscal Year will be effective until the City makes its final determination and a revised Lease Supplement for that Fiscal Year is executed. The final, revised, Lease Supplement will be effective upon its execution by the County and the City.

2. No Change in Extra Hours from Prior Fiscal Year. If the County does not receive a notice modifying the number of Extra Hours desired in the upcoming Fiscal Year within the time allotted, the County and the City shall each execute the original Lease Supplement issued by the Librarian for the upcoming Fiscal Year, which Lease Supplement will become effective on July 1 of the Fiscal Year to which it applies.

D. Invoices; Payment. The County will invoice the City quarterly for the cost of Extra Hours incurred in the prior quarter. The City shall pay the County the amount due to the County within thirty (30) days of receipt of the invoice. In no event is the City obligated to pay an amount greater than the amount identified as the City's Obligation in the Lease Supplement in effect for that Fiscal Year.

E. Utilities. The City shall pay for all utilities provided to the Premises, including gas, electricity, voice communication services, water, sewer, fire alarm, intrusion alarm, garbage, and recycling.

F. Technology and Equipment. The County and City agree that provision and maintenance of technological equipment and services are essential in providing a high level of library service. The parties' operating plan for technology and equipment at the Library is set forth in Exhibit C – Operations Plan.

11. OWNERSHIP OF CONTENTS.

A. County. All books, furnishings, fixtures, equipment, and materials purchased by the County, or foundations or private or public fundraising efforts on behalf of the County, are owned by the County. Together, these books, materials, furnishings, fixtures, and equipment are the “**County Materials.**”

B. City. All books, furnishings, fixtures, equipment and materials purchased by the City, or foundations or private or public fundraising efforts on behalf of the City, are owned by the City. Together, these books, materials, furnishings, fixtures, and equipment are the “**City Materials.**” City Materials will be identified in the County’s Integrated Library System.

C. Replacement of FF&E. From time to time, City and County will jointly determine if City-owned furnishings, fixtures and equipment are in need of repair or replacement, or, if applicable, a schedule for replacing City-owned furnishings, fixtures and equipment. The City shall carry out, and bear the cost of, such repair or replacement as soon as is practically and fiscally possible.

D. Public Art. The City is responsible for the selection, cost, maintenance, installation, and removal of, and any liability for, all interior and exterior public art to be displayed at the Library.

12. INSURANCE

A. Liability Insurance

1. County. Throughout the Term, the County shall maintain in full force and effect, at its sole expense, either (i) comprehensive general liability insurance in commercially reasonable amounts, but in no event in an amount less than \$3,000,000 per occurrence, protecting and insuring against claims for bodily injury, death, property damage, and personal injury occurring within or resulting from use of the Property, or (ii) a general self-insurance program covering bodily injury, death, property damage, and personal injury occurring within or resulting from use of the Property. Any policy of insurance obtained by the County must (i) name the City, its officers, agents, and employees, as additional insureds, (ii) be endorsed to provide that the insurance is primary to and non-contributory to insurance carried by the City with respect to liability imposed on the County under this agreement, and (iii) contain a severability of interest clause.

2. City. Throughout the Term, the City shall maintain in full force and effect, at its sole expense, either (i) comprehensive general liability insurance in commercially reasonable amounts, but in no event in an amount less than \$3,000,000 per occurrence, protecting and insuring against claims for bodily injury, death, property damage, and personal injury occurring within or resulting from use of the Property, or (ii) a general self-insurance program covering bodily injury, death, property damage, and personal injury occurring within or resulting from use of the Property. Any policy of insurance obtained by the City must (i) name the County, its officers, agents, and employees, as additional insureds thereunder, (ii) be endorsed to provide

that the insurance is primary to and non-contributory to insurance carried by the County with respect to liability imposed on the City under this agreement, and (iii) contain a severability of interest clause.

B. Property Insurance.

1. County. Throughout the Term, the County shall maintain in full force and effect, at its sole expense, fire insurance and a standard "all risk" policy covering the County-owned property within the Library, and any other personal property owned by the County located at the Property. Such coverage must (i) contain a waiver of subrogation endorsement in favor of the City, and (ii) cover loss or damage to the County-owned property in the amount of the full replacement value. Covered perils are to include fire, all risk, vandalism, malicious mischief, and sprinkler leakage.

2. City. Throughout the Term, the City shall maintain in full force and effect, at its sole expense, fire insurance and a standard "all risk" policy covering all structures and improvements at the Property and any personal property owned by the City located at the Property. Such coverage must contain a waiver of subrogation endorsement in favor of the County. Covered perils are to include fire, all risk, vandalism, malicious mischief and sprinkler leakage.

C. Workers Compensation and Employers Liability. Both parties shall maintain in full force and effect Workers Compensation Insurance or self-insurance, and Employers Liability Insurance or self-insurance with limits that conform to legal requirements.

13. INDEMNIFICATION

A. By County. County shall indemnify, defend and hold the City harmless from the County's share of any and all claims, costs and liability for any damage, injury or death of or to any person or the property of any person, including attorneys' fees, caused by the willful misconduct or the negligent acts, errors, or omissions of the County, its officers, agents or employees in using the Property pursuant to this Lease, except to the extent caused or contributed to by (i) the structural, mechanical, or other failure of buildings owned or maintained by the City, and/or (ii) the negligent acts, errors, or omissions of the City, its officers, agents or employees.

B. By City. The City shall indemnify, defend and hold the County harmless from City's share of any and all claims, costs and liability for any damage, injury or death of or to any person or the property of any person, including attorneys' fees, caused by the willful misconduct or the negligent acts, errors or omissions of the City, its officers, agents or employees with respect to the Property, or the City's performance under this Lease, or the City's use of the Property, or the structural, mechanical or other failure of buildings owned or maintained by the City, except to the extent caused or contributed to by the negligent acts, errors, or omissions of the County, its officers, agents, or employees.

14. **HAZARDOUS MATERIAL.** The City warrants to the County that the City does not have any knowledge of the presence of Hazardous Material (as defined below) or contamination

of the Building or Property in violation of environmental laws. The City shall defend, save, protect and hold the County harmless from any loss arising out of the presence of any Hazardous Material on the Property that was not brought to the Property by or at the request of the County, its agents, contractors, invitees or employees. The City acknowledges and agrees that the County has no obligation to clean up or remediate, or contribute to the cost of clean up or remediation, of any Hazardous Material unless such Hazardous Material is released, discharged or spilled on or about the Property by the County or by any of County's agents, employees, contractors, invitees or other representatives. The obligations of this Section shall survive the expiration or earlier termination of this Lease.

"Hazardous Material" means any substance, material or waste, including lead based paint, asbestos and petroleum (including crude oil or any fraction thereof), that is or becomes designated as a hazardous substance, hazardous waste, hazardous material, toxic substance, or toxic material under any federal, state or local law, regulation, or ordinance.

15. **DEFAULT.** The occurrence of any of the following events is a default ("**Default**") under this Lease:

A. By County. If the County fails to operate the Library as a public library and such failure continues for thirty (30) days after receipt of a written notice of failure from the City to the Librarian with a copy to the County Administrator; provided, however, that the County will have additional time, up to an additional one hundred twenty (120) days, if its failure is due to circumstances beyond its reasonable control, including, without limitation, failure of the County's Board of Supervisors to adopt a budget, work stoppages, and acts of God.

B. By City. The City's failure to perform any of its obligations under this Lease if such failure is not remedied within thirty (30) days after receipt of a written notice of failure from the County to the City specifying the nature of the breach in reasonably sufficient detail; provided, however, if such breach cannot reasonably be remedied within such thirty (30) day period, then a Default will not be deemed to occur until the occurrence of the City's failure to perform within the period of time that may be reasonably required to remedy the breach, up to an aggregate of one hundred twenty (120) days, provided the City commences curing such breach within thirty (30) days after receipt of the notice of the breach and thereafter diligently proceeds to cure such breach.

16. **REMEDIES**

A. By County. Upon the occurrence of a Default by the City, the County may (i) terminate this Lease and quit the Premises, or (ii) suspend operation of Library Services until the default is cured.

B. By City. Upon the occurrence of a Default by the County, the City may, after giving the County written notice of the Default, and in accordance with due process of law, reenter and repossess the Premises and remove all persons and property from the Premises.

17. MISCELLANEOUS.

A. Use of Volunteers. Volunteers are vital and welcome in enhancing the level of service offered in providing Library Services. The City's Volunteer Coordinator shall work with the County's library volunteer coordinator to recruit and schedule volunteers to assist with community library operation. Volunteers will be utilized to perform services as mutually agreed upon by the County and the City.

B. Assignment and Sublease. The County does not have the right to assign this Lease or sublease the Premises or any part thereof at any time during the Term.

C. Quiet Enjoyment. Provided the County is in compliance with the material terms of this Lease, the City shall warrant and defend the County in its quiet enjoyment and possession of the Premises during the Term.

D. Waste. The County shall not commit, or suffer to be committed, any waste upon the Premises.

E. Surrender of Premises. On the last day of the Term, or earlier termination of this Lease, the County shall peaceably and quietly leave and surrender the Library to the City, in good condition, ordinary wear and tear, and damage by casualty, condemnation, acts of God, and the City's failure to make repairs required of the City excepted. Upon termination of this Lease, the County shall remove the County Materials from the Premises within one hundred eighty (180) days, unless otherwise agreed to in writing by the City.

F. Holding Over. Any holding over after the Term of this Lease is a tenancy from month to month and is subject to the terms of this Lease.

G. Notices. Any notice required or permitted under this Lease must be in writing and sent by facsimile with written transmission confirmation, overnight delivery service or registered or certified mail, postage prepaid and directed as follows:

To City: City Manager
 150 City Park Way
 Brentwood, CA 94513
 Phone: (925) 516-5400
 Facsimile: (925) 516-5441

To County: County Librarian
 Contra Costa County
 777 Arnold Drive, Suite 210
 Martinez, CA 94553
 Phone: (925) 608-7700
 Facsimile: (925) 608-7761

With a copy to: Real Estate
 Contra Costa County
 Public Works Department
 255 Glacier Drive
 Martinez, CA 94553
 Phone: (925) 313-7250
 Facsimile: (925) 646-0288

Either party may at any time designate in writing a substitute address for that set forth above, and thereafter notices are to be directed to such substituted address. If sent in accordance with this Section, all written notices will be deemed effective (i) upon confirmed facsimile transmission, (ii) the next business day, if sent by overnight courier, and (iii) three days after being deposited in the United States Postal system.

H. Time is of the Essence. Time is of the essence in fulfilling all terms and conditions of this Lease.

I. Governing Law. The laws of the State of California govern all matters arising out of this Lease.

J. Severability. In the event that any provision herein contained is held to be invalid or unenforceable in any respect, the validity and enforceability of the remaining provisions of this Lease will not in any way be affected or impaired.

[Remainder of Page Intentionally Left Blank]

K. Entire Agreement; Construction; Modification. Neither party has relied on any promise or representation not contained in this Lease. All previous conversations, negotiations, and understandings are of no further force or effect.

This Lease is not to be construed as if it has been prepared by one of the parties, but rather as if both parties have prepared it. This Lease may be modified only by a writing signed by both parties.

The City and the County are executing this Lease on the execution date, but intend and agree that it is effective as of the Effective Date (as defined in the introductory paragraph), including, but not limited to, the provisions of Sections 12 and 13 above, with the same force and effect as if executed on the Effective Date.

COUNTY

COUNTY OF CONTRA COSTA, a
political subdivision of the State of
California

By:

Julia R. Bueren
Director of Public Works

CITY

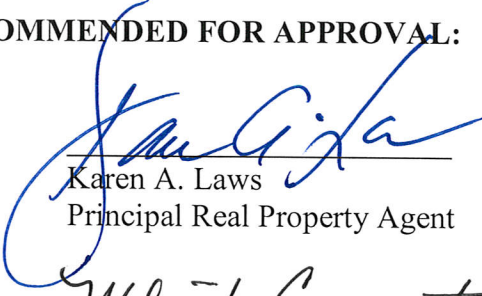
CITY OF BRENTWOOD, a
municipal corporation of the State of
California

By:

Gustavo Vina
City Manager


RECOMMENDED FOR APPROVAL:

By



Karen A. Laws
Principal Real Property Agent

By



Melinda Cervantes
County Librarian

APPROVED AS TO FORM:


By:

Damien Brower
City Attorney

APPROVED AS TO FORM:

SHARON L. ANDERSON, COUNTY COUNSEL

By:



Kathleen M. Andrus
Deputy County Counsel

EXHIBIT B

Form of Lease Supplement

LEASE SUPPLEMENT No. 5

This Lease Supplement No. 5 is dated October 24, 2016 and supplements the Lease dated October 24, 2016 (the "**Lease**") between the City of Brentwood, a municipal corporation of the State of California (the "**City**"), and the County of Contra Costa, a political subdivision of the State of California (the "**County**").


Unless otherwise defined herein, capitalized terms have the meanings given to such terms in the Lease.

1. The number of Base Hours to be provided by the County for the period beginning October 24, 2016, and ending June 30, 2017 (the "**Stub Period**"), for the Brentwood Library is thirty-five (35).
2. The number of Extra Hours to be provided during the Stub Period is five (5).
3. The number of Actual Hours to be provided during the Stub Period is forty (40).
4. The City's Obligation for the Stub Period is \$19,351.00.
5. This Lease Supplement No. 5 is effective in accordance with the terms of the Lease.

COUNTY

COUNTY OF CONTRA COSTA, a
Political subdivision of the State of
of
California

By:


Melinda Cervantes
County Librarian

CITY

CITY OF BRENTWOOD, a
Municipal Corporation of the State

California

by:

Gus Vina
City Manager

EXHIBIT C

Operations Plan

A. Technology Equipment and Services. The County shall provide technology support services at the Library including:

1. Oversight: determining the quantity, type, configuration, and location of computers, printers, scanners, monitors, keyboards, and related equipment and software used in the Library by the public and staff (together, “**Components**”)
2. Acquisition of Components for use in the Library.
3. Maintaining Components in good working order. The City is responsible for the cost of the Components.

B. Communications Equipment.

1. Voice Communication. The City shall provide voice communication equipment and on-going voice services to the Library (together, “**Voice Services**”); provided, however, the City is not obligated to purchase from the County, or manage, any component of Voice Services that is owned by the County and in place at the Library on the Effective Date.

2. Data Communications System. The County will configure a data communications system for the Library, including routers, switches, servers and wireless access (together, “**Data Services**”). The City is responsible for the cost of Data Services; provided, however, the City is not obligated to purchase from the County any component of Data Services that is owned by the County and in place at the Library on the Effective Date.

The County shall bear the monthly usage fee for Data Services and shall pay the vendor directly for such service.

3. Wireless Network Service. The data communications system will include a wireless data network service that will connect the Library to the County’s library system (such network service, “**Wireless Services**”). It is expressly understood and agreed that the Wireless Services are for the exclusive use of the County in providing Library Services.

C. Miscellaneous Equipment.

1. The City shall reimburse the County for the actual costs of acquiring and maintaining the book security gates, and any automated material handling equipment used at the Library (together, “**Specialized Equipment**”); provided, however, the City is not obligated to purchase from the County any equipment that is owned by the County and in place at the Library on the Effective Date.

2. Copiers. The County shall provide, at its sole cost and expense, one or more copy machines for use by library staff at the Library. The County may provide, at its sole cost and expense, one or more copy machines for use by the public at the Library. The County shall also obtain, at its sole cost and expense, a maintenance contract for each such copy machine. Any revenue collected for the use of copy machines will be retained by the County.

3. Audio Visual Equipment. The City shall provide, at its sole cost and expense, any audio-visual equipment used at the Library. The City shall also obtain, at its sole cost and expense, a maintenance contract for all audio-visual equipment.

D. Obsolescence Avoidance. The County and the City shall work together in good faith to ensure that all equipment and technology services at the Library, including Components, Voice Services, Data Services, Wireless Services, and Specialized Equipment, and excluding copiers (together, “**Technology**”), are adequate for the Library’s needs and that costs are within the City’s fiscal parameters and approved by the City in advance.

(i) Planned Replacements. From time to time, City and County will jointly determine whether or when Technology is in need of replacement. The City is responsible for the cost of replacing such Technology as soon as is practically and fiscally possible.

(ii) Unforeseen Replacements. In the event an item of Technology unexpectedly malfunctions and must be replaced, the Community Library Manager will notify the City of the need to replace the Technology and the expected cost of the replacement as soon as practicable. The City is responsible for the cost of replacing such Technology as soon as is practically and fiscally possible.