

LIBRARY MAINTENANCE

and

SERVICE AGREEMENT

Between

COUNTY OF CONTRA COSTA

and

THE CITY OF PINOLE

July 1, 2019

LIBRARY MAINTENANCE AND SERVICE AGREEMENT

BETWEEN

COUNTY OF CONTRA COSTA AND THE CITY OF PINOLE

1. DEFINITIONS..... 1

2. TERM 2

3. CONSIDERATION – BASE HOURS 2

4. CONSIDERATION – EXTRA HOURS 3

5. OPERATIONS: HOURS; COSTS 3

 A. Initial Period..... 3

 B. Annual Modifications..... 3

 C. City Election: Extra Hours 3

 D. Invoices; Payment 4

6. DEFAULT; REMEDIES. 4

 A. City Default..... 4

 B. County Default 4

7. MISCELLANEOUS. 4

 A. Notices 4

 B. Governing Law..... 5

 C. Severability..... 5

 D. Entire Agreement 5

 E. Construction; Modification 6

EXHIBITS

Exhibit A Form of Agreement Supplement

**LIBRARY
MAINTENANCE AND SERVICE
AGREEMENT**

This library maintenance and service agreement is dated July 1, 2019 (the “**Effective Date**”), and is between the CITY OF PINOLE, a California municipal corporation (the “**City**”), and the COUNTY OF CONTRA COSTA, a political subdivision of the State of California (the “**County**”).

Recitals

- A. The County is the owner of the real property located at 2935 Pinole Valley Road, Pinole, CA 94564 (the “**Property**”).
- B. The Property has been improved with a building, a parking lot and landscaping. The building is the site of the Pinole Library (the “**Library**”). The County operates the Library as a public library that lends books and other media to the public and offers programs to the public.
- 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 (i) to contribute to the cost of maintaining the Library in exchange for receiving Library Services at the Library for Base Hours, and (ii) to pay for the cost of Library Services made available at the Library through Extra Hours.

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.

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

“**Base Hours**” means the number of hours of Library Services that the County will provide each week in a Fiscal Year at the Library, as shown on each Agreement Supplement in accordance with Section 5 below.

“**Countywide Base Hours**” means the number of hours of Library Services the County provides each week in a Fiscal Year to County-operated City-owned libraries.

“**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.

“**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 the Library. Except as otherwise provided herein, Library Services does not include Maintenance Costs.

“**Maintenance Costs**” means the cost of maintaining the Library, as reasonably determined by the County, and includes the cost of landscaping, pest control, utilities, custodial services and routine maintenance.

“**Payment Reduction Factor**” means 1 minus a fraction, the numerator of which is the number of Base Hours provided by the County to the City over the relevant period of time and the denominator of which is the Countywide Base Hours over the same period of time.

2. **TERM.** The “**Initial Term**” of this agreement begins on the Effective Date and ends on June 30, 2020.
 - A. **Automatic Renewal.** This agreement will automatically renew on a yearly basis unless written notice is given by either party of their intent to terminate the agreement at least one year in advance in accordance with Section 2.B, Termination, below. Each annual renewal period is a “**Renewal Term.**” Each Renewal Term will automatically commence on the day following the last day of the prior Term. Upon commencement of a Renewal Term, the “Term” of this agreement will be deemed to mean the Initial Term and each Renewal Term.
 - B. **Termination.** Either party may terminate this agreement at any time by giving the other party written notice at least one year prior to the proposed termination date; provided, however, if the City experiences a substantial budget shortfall, as determined by the City, due to circumstances beyond its reasonable control, the City may terminate this agreement by providing the County with a 120-day written termination notice. In the event of termination, (i) the County shall discontinue invoicing the City, and the City will not be required to pay, for Library Services delivered after the termination date, and (ii) the County shall reduce the number of hours the Library is operated to that number that leaves the County indifferent to the City’s reduced contribution to Maintenance Costs, even if such reduction results in the closure of the Library.
3. **CONSIDERATION – BASE HOURS.** In exchange for the City paying the Maintenance Costs in accordance with this agreement, the County shall perform Library Services at the Library for that number of hours equal to Base Hours.

4. **CONSIDERATION – EXTRA HOURS.** In exchange for the City paying for the cost of Extra Hours, as such costs are determined by the County, the County shall perform Library Services at the Library for the number of Extra Hours determined by the City and the County in accordance with Section 5.C, City Election; Extra Hours, below.

5. **OPERATIONS: HOURS; COSTS.**

A. **Initial Period.** For the Initial Term (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 (iv) the cost to the City for Maintenance Costs and Extra Hours (such costs, the “**City’s Obligation**”) are set forth in Agreement Supplement No. 1, which supplement is substantially in the form of Exhibit A.

B. **Annual Modifications.** For each Renewal Term, the Librarian will provide an Agreement Supplement to the City in substantially the form of Exhibit A by March 31 of each year. The Agreement 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 Service 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 Agreement 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 Agreement 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 Agreement Supplement issued by the Librarian for the upcoming Fiscal Year will be effective until the City makes its final determination and a revised Agreement Supplement for that Fiscal Year is executed. The final, revised, Agreement 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 Agreement Supplement issued by the Librarian for the upcoming Fiscal year, which Agreement 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 Maintenance Costs and Extra Hours, if applicable, 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 Agreement Supplement in effect for that Fiscal Year.

6. **DEFAULT; REMEDIES.**

A. City Default.

1. Default. If the City fails to pay the full amount of the City's Obligation, it is a default under this agreement, with the exception of circumstances provided for in Section 2.B.
2. Remedy. Upon the occurrence of a default by the City, the County may reduce the number of hours the Library is operated to that number that leaves the County indifferent to the City's failure to pay, even if such reduction results in the closure of the Library.

B. County Default.

1. Default. If the Base Hours provided to the City by the County in any 30-day period is less than the Countywide Base Hours and no City default exists pursuant to Section 6.A, it is a default under this agreement; provided, however, no County default will exist if the Base Hours are less than the Countywide Base Hours as a result of circumstances beyond the County's reasonable control.
2. Remedy. Upon the occurrence of a default by the County, the City will not be required to pay the full Maintenance Costs for the period of time that the Base Hours were less than the Countywide Base Hours. The reduction in the amount the City will be required to pay for Maintenance Costs will be equal to the result obtained by multiplying the Maintenance Costs for such period by the Payment Reduction Factor.

7. **MISCELLANEOUS.**

- A. 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 of Pinole City Manager
 2131 Pear Street, Pinole, CA 94564
 Phone: (510) 724-9837
 Facsimile: (510) 724-9826

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

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.

- B. Governing Law. The laws of the State of California govern all matters arising out of this agreement.
- C. Severability. In the event that any provisions of this agreement are held to be invalid or unenforceable in any respect, the validity and enforceability of the remaining provisions of this agreement will not in any way be affected or impaired.
- D. Entire Agreement. Neither party has relied on any promise or representation not contained in this agreement. All previous conversations, negotiations and understandings are of no further force or effect.

[Remainder of Page Intentionally Left Blank]

E. Construction; Modification. This agreement 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 agreement may be modified only by a writing signed by both parties.

The parties are executing this agreement as of the date set forth in the introductory paragraph.

COUNTY

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

By: _____
Melinda S. Cervantes
County Librarian

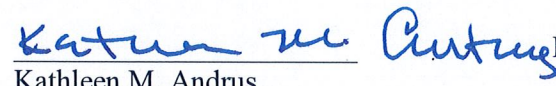
CITY

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

By:  _____
Michelle Fitzer
City Manager

APPROVED AS TO FORM:

SHARON L. ANDERSON, COUNTY COUNSEL

By:  _____
Kathleen M. Andrus
Deputy County Counsel

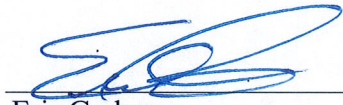
By:  _____
Eric Casher
City Attorney

EXHIBIT A

Form of Agreement Supplement

AGREEMENT SUPPLEMENT No. []

This Agreement Supplement No. [] is dated _____ and supplements the Library Maintenance and Service Agreement dated July 1, 2019, between the City of Pinole, 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 Library Maintenance and Service Agreement.

1. In exchange for the payment of the Maintenance Costs by the City, the number of Base Hours to be provided by the County in the Fiscal Year beginning July 1, 2019, is ___ per week.
2. The number of Extra Hours to be provided in the Fiscal Year beginning July 1, 2019 is ___.
3. The number of Actual Hours to be provided in the Fiscal Year beginning July 1, 2019 is ___ per week.
4. The Maintenance Costs for the Fiscal Year beginning July 1, 2019 is _____.
5. The cost of the Extra Hours for the Fiscal Year beginning July 1, 2019 is _____.
6. The City’s Obligation for the Fiscal Year beginning July 1, 2019 is _____.
7. This Agreement Supplement No. [] is effective in accordance with the terms of the Library Maintenance and Service Agreement.

COUNTY

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

By: _____
Melinda S. Cervantes
County Librarian

CITY

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

By: _____
Michelle Fitzer
Pinole City Manager