

**LIBRARY LEASE**

**and**

**SERVICE AGREEMENT**

**Between**

**COUNTY OF CONTRA COSTA**

**and**

**THE TOWN OF MORAGA**

**February 9, 2022**

**LIBRARY LEASE AND SERVICE AGREEMENT**

**BETWEEN**

**COUNTY OF CONTRA COSTA AND THE TOWN OF MORAGA**

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**LIBRARY LEASE  
And  
SERVICE AGREEMENT**

This lease and service agreement (“**Lease**”) is dated February 9, 2022 (the “**Effective Date**”), and is between the Town of Moraga, California, a municipal corporation (the “**Town**”), and the County of Contra Costa, a political subdivision of the State of California (the “**County**”).

**Recitals**

- A. The Town owns that certain property located at 1500 St. Mary’s Road in Moraga, California (the “**Property**”).
- B. The Property has been improved with a building (the “**Building**”), a parking lot, and landscaping.
- C. A portion of the Building is used to provide Library Services, as defined below, (and is the “**Library**” or the “**Premises**”). The Premises includes the meeting room and the Friends of the Library Bookshop. Excluded from the Premises is a single room in the Building that is used by the Moraga Historical Society.
- D. The Town and County are parties to a lease dated July 1, 1993, under which the County leases the Premises from the Town (the “**1993 Lease**”). The Town and the County desire to replace the 1993 Lease with this lease. Upon commencement of this lease, the 1993 Lease will terminate.
- E. The Town and the County agree that the presence of a public library in a community enhances the quality of life in that community. The Town and the County therefore desire to work cooperatively to permit the County to operate the Library as a public library. Toward this end, the Town desires to lease the Library to the County and the County desires to lease the Library from the Town 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 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.

“**Components**” means computers, charging stations (e.g., laptop kiosks), mobile devices, printers, scanners, monitors, keyboards, and related equipment and software used in the Library by the public and staff.

“**Data Communication Equipment**” means routers, switches, servers, uninterrupted power supply (UPS) and wireless access points.

“**Data Communication Services**” means broadband and wireless access.

“**Extra Hours**” means the number of hours of Library Services that the Town elects to obtain from the County each week at the Library that are in excess of Base Hours. The Town 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 A – 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.

“**Meeting Rooms**” are rooms in the Library that are used for meetings and/or events. Meeting Rooms may be used for library and other Town business; and may be reserved by community groups in accordance with Town guidelines.

“**Specialized Equipment**” means equipment that supports library operations that is not otherwise defined in this Lease, including, but not limited to, book security gates, self-check machines, remote lockers, self-service library access system (e.g., Open+) and any automated material handling equipment used at the Library.

2. **EFFECTIVENESS**. This lease supersedes and replaces the 1993 Lease.
3. **LEASE OF LIBRARY**. The Town hereby leases to the County and the County hereby leases from the Town, 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 Town during the Term of this Lease.

5. **TERM.** The “**Initial Term**” of this lease begins on July 1, 2021 and ends on June 30, 2022.

A. Automatic Renewal. The Lease will automatically renew on a yearly basis unless written notice is given by either party of their intent to terminate the Lease at least one year in advance in accordance with Section 5.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 Lease will be deemed to mean the Initial Term and each Renewal Term.

B. Termination. Either party may terminate this Lease at any time by giving the other party written notice at least one year prior to the proposed termination date. In the event of termination, the County shall leave the Premises and all Town Materials, as defined in Section 11.B below, in good working order, and shall remove only County Materials, as defined in Section 11.A below.

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. Town’s Use of Library. The Town may use the Library (including Meeting Rooms) during and outside the Library’s normal operating hours, so long as such use does not interfere directly with normal community library functions. The Town 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. The Town shall establish use guidelines for the use of Meeting Rooms, schedule use of the Meeting Rooms, and collect and retain any fees.

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

C. County’s Use of Meeting Rooms. Town staff will work cooperatively to schedule use of the Meeting Rooms. Library sponsored programs are to be given priority use of Meeting Rooms during library hours of operation, provided that a Library program may not displace a previously scheduled use of a Meeting Room. The County will have an opportunity to place Meeting Room reservations before the Town takes general reservations. At no time will the County be charged for use of Meeting Rooms for Library programs.

D. County’s Use of Parking Lot. Town 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 Town shall provide the maintenance and repairs described below in order to keep and maintain the Building in good order, condition, and repair. Maintenance and repairs are to be carried out in a manner that is at least consistent with the caliber

of maintenance and repairs applied by the Town to other Town facilities, or as mutually agreed by the Town and the County. Town 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. Town shall notify the Community Library Manager prior to selecting a contractor to provide custodial services. Alternately, Town may provide such service using Town staff.

8. **CAPITAL IMPROVEMENTS**. If the Town and County agree that capital improvements to the Building or the Property are necessary (such improvements, “**Capital Improvements**”), then (i) the Town shall provide the Capital Improvements at its sole cost and expense, and (ii) the Town 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 Town’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 Initial Term (i) the number of Base Hours the County will provide, (ii) the number of Extra Hours the Town elects to obtain from the County, (iii) the resulting number of Actual Hours, and (iii) the cost to the Town of the Extra Hours (such cost, the “**Town’s Obligation**”) are set forth in Lease Supplement No. 1, which supplement is substantially in the form of Exhibit B.

B. Annual Modifications. For each Renewal Term, the Librarian will provide a Lease Supplement to the Town 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 Town will elect to obtain from the County at the Library in the upcoming Fiscal Year (in the absence of more current information from the Town, 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 Town’s Obligation.

C. Town Election: Extra Hours. Within 60 days of receiving the Lease Supplement, the Town 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 Town.

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 Town 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 Town 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 Town.

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 Town 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. If the Town elects, Extra Hours, pursuant to Subsection C, the County will invoice the Town quarterly for the cost of Extra Hours incurred in the prior quarter. The Town shall pay the County the amount due to the County within thirty (30) days of receipt of the invoice. In no event is the Town obligated to pay an amount greater than the amount identified as the Town's Obligation in the Lease Supplement in effect for that Fiscal Year.

11. **OPERATIONS: COST OF UTILITIES**. The Town shall pay for all utilities provided to the Premises, including gas, electrical, phone line, water, sewer, fire alarm, intrusion alarm, garbage, and recycling.

12. **OPERATIONS: TECHNOLOGY AND EQUIPMENT; COSTS**. The County and the Town shall share responsibility for providing and maintaining technological equipment and services as follows:

A. Components. The County shall provide technology support at the Library, including determining the quantity, type, configuration, and location of all Components used in the Library. The County shall acquire Components for use in the Library and maintain them in good working order. The County is responsible for the cost of obtaining and maintaining Components in the Library.

B. Voice Communication System. The Town, at its expense, shall acquire and provide voice communication equipment and on-going voice services to the Library.



C. Data Communication System. The County shall acquire and configure the Data Communication Equipment and select Data Communication Services for the Library to create the Library's data communication system. The Town is responsible for the actual cost of obtaining and maintaining the Data Communication Equipment. To ensure the Town is able to properly budget for the cost of the Data Communication Equipment, prior to placing an order for Data Communication Equipment, (i) the County will provide a written estimate of the cost of the Data Communication Equipment to the Town, and (ii) must receive the Town's written consent to the acquisition. At the parties' discretion, such writings may be in the form of emails. The Town acknowledges that it is responsible for the actual cost of the Data Communication Equipment, even if it varies from the estimate through no fault of the County's.

1. Connection. The County will connect the Library's data communication system to the County Library wireless network. It is expressly understood and agreed that such wireless network is for the exclusive use of the County in providing Library Services. The Town shall provide CAT5 or better Ethernet cabling throughout the Library and replace or upgrade as needed.

2. Monthly Cost. The County is responsible for the cost of the monthly usage fee for Data Communication Services.

D. Miscellaneous Equipment.

1. Specialized Equipment. The County shall acquire any Specialized Equipment used in the Library. The Town is responsible for the actual cost of obtaining and maintaining any Specialized Equipment. To ensure the Town is able to properly budget for the cost of any Specialized Equipment, prior to placing an order for Specialized Equipment, (i) the County will provide a written estimate of the cost of the Specialized Equipment to the Town, and (ii) must receive the Town's written consent to the acquisition. At the parties' discretion, such writings may be in the form of emails between the Town and County employees for purchases at the Library. The Town acknowledges that it is responsible for the actual cost of the Specialized Equipment, even if it varies from the estimate through no fault of the County's.

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. Should the Town elect to procure any audio-visual equipment for use, either by the Town or County, at the Library, the Town shall provide such equipment, at its sole cost and expense. The Town shall also maintain, at its sole cost and expense, any audio-visual equipment it procures. All such audio-visual equipment will be Town Materials, as defined in Section 13(B) of this Lease.

E. Obsolescence Avoidance. The Town and County are both responsible and shall work together in good faith to ensure that all equipment and technology services at the Library, including the voice communication system, the data communication System, Data Communication Services,

and Specialized Equipment, and excluding copiers and Components, are adequate for the Library's needs and that costs that are the responsibility of the Town are within the Town's fiscal parameters and approved by the Town in advance.

### 13. 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. Town. All books, furnishings, fixtures, equipment and materials purchased by the Town, or foundations or private or public fundraising efforts on behalf of the Town, are owned by the Town. Together, these books, materials, furnishings, fixtures, and equipment are the "**Town Materials**." Town Materials will be identified in the County's Integrated Library System.

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

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

### 14. 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 Town, 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 Town with respect to liability imposed on the County under this agreement, and (iii) contain a severability of interest clause.

2. Town. Throughout the Term, the Town 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 Town 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 Town 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 Town, 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. Town. Throughout the Term, the Town 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 Town 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.

15. **INDEMNIFICATION**

A. By County. County shall indemnify, defend and hold the Town 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 Town, (ii) the design of the Library, (iii) Town-owned fixtures in the Library, and/or (iv) the negligent acts, errors, or omissions of the Town, its officers, agents or employees.

B. By Town. The Town shall indemnify, defend and hold the County harmless from Town’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 Town, its officers, agents or employees with respect to the Property, or the Town’s performance under this Lease, the Town’s use of the Property, the structural, mechanical or other failure of buildings owned or maintained by the Town, the design of the Library, or Town-owned fixtures in the Library, except to the extent caused or contributed to by the negligent acts, errors, or omissions of the County, its officers, agents, or employees. The Town is responsible for all claims that result from the design of the Library and from Town-owned fixtures in the Library, except for any claims resulting from a change in the design of the Library

that is requested by the County and approved by the Board of Supervisors after the date of this Lease.

16. **HAZARDOUS MATERIAL**. The Town warrants to the County that the Town 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 Town 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 Town 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.

17. **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 Town 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 Town**. The Town'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 Town 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 Town'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 Town commences curing such breach within thirty (30) days after receipt of the notice of the breach and thereafter diligently proceeds to cure such breach.

18. **REMEDIES**

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



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

With a copy to: Real Estate Manager  
Contra Costa County  
Public Works Department  
255 Glacier Drive  
Martinez, CA 94553  
Phone: (925) 313-2000

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) the next business day, if sent by overnight courier, and (ii) three days after being deposited in the United States Postal system, if sent by registered or certified mail.

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

**COUNTY**

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

By: \_\_\_\_\_  
Alison McKee  
County Librarian

**TOWN**

TOWN OF MORAGA, a municipal corporation of the State of California

By: \_\_\_\_\_  
Cynthia Battenberg  
Town Manager

**RECOMMENDED FOR APPROVAL:**

By: \_\_\_\_\_  
Brian M. Balbas  
Public Works Director

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Michelle Marchetta Kenyon  
Town Attorney

By: \_\_\_\_\_  
Jessica L. Dillingham  
Principal Real Property Agent

**APPROVED AS TO FORM:**

MARY ANN McNETT MASON, COUNTY COUNSEL

By: \_\_\_\_\_  
Kathleen M. Andrus  
Deputy County Counsel

**EXHIBIT A**

**Form of Lease Supplement**

SUPPLEMENT No. [ ]

This Lease Supplement No. [ ] is dated \_\_\_\_\_ and supplements the Lease dated \_\_\_\_\_ (the “**Lease**”) between the Town of \_\_\_\_\_, a municipal corporation of the State of California (the “**Town**”), 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 in the Fiscal Year beginning July 1, 20\_\_ is \_\_.
2. The number of Extra Hours to be provided in the Fiscal Year beginning July 1, 20\_\_ is \_\_.
3. The number of Actual Hours to be provided in the Fiscal Year beginning July 1, 20\_\_ is \_\_.
4. The Town’s Obligation for the Fiscal Year beginning July 1, 20\_\_ is \$\_\_\_\_\_.
5. This Lease Supplement No. [ ] is effective in accordance with the terms of the Lease.

**COUNTY**

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

**TOWN**

TOWN OF \_\_\_\_\_,  
municipal corporation of the State of  
California

By: \_\_\_\_\_  
Name  
County Librarian

By: \_\_\_\_\_  
Name  
Town Manager