

**LEASE AGREEMENT
BY AND BETWEEN
COUNTY OF HUMBOLDT
AND
CITY OF FORTUNA**

This Lease Agreement (“Lease”) entered into this ____ day of _____, 2023, by and between the County of Humboldt, a political subdivision of the State of California, hereinafter referred to as “COUNTY,” and the City of Fortuna, a California municipal corporation, hereinafter referred to as “CITY,” is made upon the following considerations:

WHEREAS, COUNTY desires to continue leasing the premises located at 753 Fourteenth Street, Fortuna, California 95540 for the purpose of operating the Fortuna Library; and

WHEREAS, CITY is willing to continue leasing the premises located at 753 Fourteenth Street, Fortuna, California 95540 to COUNTY for the purpose of operating the Fortuna Library; and

WHEREAS, CITY is willing to continue providing housing, building maintenance, utilities, gardening, janitorial, trash disposal and property insurance associated with the premises located at 753 Fourteenth Street, Fortuna, California 95540; and

WHEREAS, COUNTY is willing to continue providing library staff, furnishings, materials, liability insurance, property insurance for its personal property and library contents, phone service, and maintenance contracts for equipment that requires it.

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereby mutually agree as follows:

1. PREMISES:

Subject to the terms and conditions of this Lease, CITY hereby leases to COUNTY, and COUNTY leases from CITY, the premises located at 753 Fourteenth Street, Fortuna, California 95540, as more particularly described in Exhibit A – Property Description, which is attached hereto and incorporated herein by reference as if set forth in full.

2. USE OF PREMISES:

A. Intended Use. The leased premises shall be used by COUNTY for the purpose of operating the Fortuna Library. COUNTY shall determine the size of the collection and the hours of service offered at the Fortuna Library. The Fortuna Library shall be treated in the same manner as the other libraries operated by COUNTY, receiving an equitable share of the COUNTY library resources based upon population served, resources available and local demand for service.

B. Unusable due to Destruction. In the event the leased premises is destroyed in whole or in part by fire or other casualty to the extent that they are substantially unusable, COUNTY reserves the right to forthwith terminate this Lease upon written notice within seven (7) days following the date of loss. In the event that the leased premises is destroyed in whole or in part by fire or other casualty, CITY shall have the option to rebuild or to terminate this Lease. Such option shall be exercised by CITY by providing written notice to COUNTY within seven (7) days following the date of loss. In the event CITY does not provide notice within the seven (7) day period, CITY shall be deemed to have elected to terminate the Lease. CITY’s option to rebuild shall not affect COUNTY’s right to terminate this Lease as set forth herein.

- C. Unusable due to Illegality or Condemnation. If it becomes unlawful for COUNTY to conduct its intended operations on the premises, or if a portion of the premises thereto is condemned by a public authority to the extent that it becomes impossible to use the premises, or if any highway or street change is made diverting or re-routing traffic away from the premises to the extent that the premises becomes impossible to use, COUNTY shall have the right at any time thereafter to terminate this Lease by giving CITY seven (7) days advance written notice of such termination.
- D. Unusable for Intended Operations. If the premises becomes unusable from a practical standpoint for a period of ten (10) consecutive days or longer as a result of causes, including, without limitation, flood, strikes, riots, insurrection, or other similar or different causes, COUNTY may terminate this Lease upon seven (7) days written notice to CITY.
- E. Continuity of Library Services. In the event the premises becomes unusable for any reason, CITY shall be responsible for providing a legally compliant alternative temporary facility within the City of Fortuna for operation of the Fortuna Library that is mutually agreed upon by both parties hereto throughout the term of this Lease and any extensions thereof. Parties shall be responsible for bearing the cost and expenses for providing the alternative facility required pursuant to the terms and conditions of this lease as mutually agreed upon.

3. QUIET ENJOYMENT:

Subject to the terms and conditions of this Lease, CITY shall secure to COUNTY the quiet and peaceful possession of the premises and all rights and privileges appertaining thereto.

4. TERM OF LEASE:

- A. Initial Term. This Lease shall begin upon execution by both parties hereto and shall remain in full force and effect for a period of fifteen (15) years, unless extended or sooner terminated as set forth herein.
- B. Extension. This Lease shall be automatically extended for three (3) successive five (5) year terms, upon the same terms and conditions set forth herein, unless either party provides written notice of non-renewal to the other party at least ninety (90) days prior to the end of the initial term or any subsequent five (5) year extension thereof.
- C. Holding Over. Any holding over beyond the term of this Lease shall be a month-to-month tenancy which is subject to all of the terms and conditions set forth herein.

5. TERMINATION:

- A. Termination for Cause. Either party may, in its sole discretion, terminate this Lease, if the other party fails to comply with the terms or conditions set forth herein, or violates any local, state or federal law, regulation or standard applicable to its performance hereunder; provided however, that before a party may terminate the Lease, the party must provide the other party notice of the breach and a fifteen (15) day period to remedy the breach.
- B. Termination without Cause. COUNTY may terminate this Lease without cause upon ninety (90) days advance written notice which states the effective date of the termination.

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- C. Termination due to Insolvency. Either party may immediately terminate this Lease, if the other party files for bankruptcy, becomes insolvent or makes an assignment of a substantial part of its

property for the benefit of creditors.

D. Termination due to Insufficient Funding. COUNTY's obligations under this Lease are contingent upon the availability of local, state and/or federal funds. In the event such funding is reduced or eliminated, COUNTY shall, at its sole discretion, determine whether this Lease shall be terminated. COUNTY shall provide CITY seven (7) days advance written notice of its intent to terminate this Lease due to insufficient funding.

E. Surrender of Premises. Upon termination of this Lease, COUNTY shall surrender the premises to CITY in good condition and repair, except for normal wear and tear. COUNTY shall be under no obligation to repair or restore the whole or any portion of the premises which may be damaged by reason of fire, earthquake, the elements or other casualty, except to the extent such damage is caused by a negligent act or omission of COUNTY.

6. CONSIDERATION:

The consideration for COUNTY's use of the premises shall be the public benefit resulting from the operation of the Fortuna Library.

7. COMPLIANCE WITH APPLICABLE LAWS, REGULATIONS AND STANDARDS:

A. Construction Requirements. CITY hereby covenants and warrants that the premises have been constructed, and any remodeling will be done, in accordance with any and all local, state and federal laws, regulations and standards.

B. Licensure, Certification and Accreditation Requirements. For new construction, CITY and COUNTY hereby agree to comply with any and all applicable licensure, certification and accreditation standards or criteria established by any local, state or federal governmental agency.

C. Life, Safety and Fire Protection Requirements. CITY shall supply, install and maintain life, safety and fire protection systems, including, without limitation, fire extinguishers, fire alarms and other applicable fire protection and suppression devices, in compliance with any and all applicable local, state and federal building and fire codes.

D. Smoking Requirements. CITY hereby agrees to comply with any and all applicable provisions of Sections 971-1, *et seq.* of the Humboldt County Code, which prohibit smoking in any and all facilities owned, leased, licensed or otherwise controlled by COUNTY.

8. UTILITIES:

CITY hereby agrees to furnish, and pay any and all charges related to, propane, gas, refuse collection, electricity, water and sewer services supplied to, and used in, the premises. COUNTY shall pay for its own telephone and communications services.

9. JANITORIAL:

CITY shall be responsible for providing any and all necessary janitorial services to the premises as set forth in Exhibit B – Janitorial Services, which is attached hereto and incorporated herein by reference as if set forth in full.

10. MAINTENANCE AND REPAIRS:

- A. General Maintenance Requirements. During the term of this Lease or any extension thereof, CITY shall maintain the premises in good repair and tenantable condition so as to minimize breakdowns and loss of COUNTY's use of the premises caused by deferred or inadequate maintenance. CITY shall be responsible for all reasonably necessary maintenance and repairs to the premises, including, without limitation, the interior and exterior of the building, including, but not limited to, landscaping, heating, ventilation and air conditioning system, fire extinguishers, window glass, exterior and interior doors with associated fixtures and flooring, except for the following: minor plumbing, such as repairing faucets, toilets and the unstopping of toilets and sinks. CITY hereby guarantees to rectify, at its own cost and expense, any defects, shrinkage or faults in any maintenance and repairs performed by CITY pursuant to the terms and conditions of this Lease.
- B. Heating, Ventilation and Air Conditioning System Maintenance Requirements. The Heating, Ventilation and Air Conditioning ("HVAC") system shall be maintained and operated by CITY to provide at least the quantity of outdoor air required by the state building standards in effect at the time the building permit was issued. COUNTY may request inspection of HVAC system if there are any concerns of whether it is operating properly or in need of maintenance. CITY shall inspect HVA system and notify the OCUNTY as to the result and make any repairs necessary. CITY shall change HVAC filters on a regular basis.
- C. Life, Safety and Fire Protection System Maintenance Requirements. CITY shall service fire extinguishers at least annually and as requested by COUNTY if it is determined more frequent service is needed.
- D. Performance Requirements. CITY shall have twenty (20) days after receiving notice from COUNTY to begin performing its obligations set forth herein, except that CITY shall perform its obligations immediately if the nature of the problem presents a material hazard or emergency as determined by COUNTY. If CITY does not perform its obligations within the time limitations set forth herein, COUNTY, after providing notice to CITY, can perform the obligations and has the right to be reimbursed for the sums actually and reasonably expended, including, without limitation, charges for COUNTY labor and equipment, in the performance of CITY's obligations. Any notice or demand concerning a material hazard or emergency may be made orally, by telephone or otherwise, provided that written confirmation is given within two (2) days after the oral notice or demand is made.
- E. Access to Premises. CITY shall provide COUNTY with at least forty-eight (48) hours advance written notice of any access to the premises that is needed to perform any maintenance, repairs or inspections required pursuant to the terms and conditions of this Lease.

11. IMPROVEMENTS AND ALTERATIONS:

- A. Non-Structural Modifications. Upon the receipt of CITY's prior written consent, which shall not be unreasonably withheld, COUNTY may, at its own cost and expense, make non-structural modifications to the premises in order to accommodate COUNTY's use thereof, including, without limitation, installing additional equipment or fixtures, which shall include, but not be limited to: security, telephone, key, intercom and sound masking systems and related equipment, including, but not limited to, cameras, wiring, data cable, keypads, answering machines; access control devices and associated hardware; and fire alarms and other life and safety devices beyond those required pursuant to the terms and conditions of this Lease. Upon termination of this Lease, COUNTY shall have the right to remove from the premises any such equipment installed thereby.

B. Library Furnishings and Supplies. Furniture and supplies purchased for operation of the Fortuna Library with funds raised for that specific purpose, as set forth in Exhibit C – Library Furnishings and Supplies, which is attached hereto and incorporated herein by reference as if set forth in full, shall be added to COUNTY’s property inventory for insurance purposes. Although such items shall carry COUNTY’s inventory markings, each party hereby agrees that the furniture and supplies shall remain in the Fortuna Library. In the event the Fortuna Library no longer needs an item, COUNTY may transfer the item to another COUNTY library or dispose of the item in the same manner as prescribed for all other COUNTY owned assets. In the event that COUNTY cannot continue operation of the Fortuna Library, for any reason whatsoever, the furniture and supplies shall remain COUNTY property.

12. INSTALLATION AND REMOVAL OF TRADE FIXTURES, SIGNS AND EQUIPMENT:

COUNTY may cause or permit to be installed and/or affixed to the premises such fixtures, signs and equipment as COUNTY deems desirable, and all such fixtures, signs and equipment shall remain the property of COUNTY and may be removed at any time provided that COUNTY, at its own cost and expense, shall repair any damage caused by reason of such removal. CITY hereby agrees that no signs or advertising matter of any nature other than COUNTY’s shall be permitted upon the premises. CITY shall cooperate with COUNTY in obtaining any variances from restrictions placed on the use of signs by local authorities. The parties shall mutually agree upon the location, size and style of any signs.

13. REAL PROPERTY TAXES:

CITY shall pay any and all real property taxes and general and special assessments levied and assessed against the premises.

14. INDEMNIFICATION:

A. Mutual Indemnity. Each party hereto shall hold harmless, defend and indemnify the other party, and its agents, officers, officials, employees and volunteers, from and against any and all claims, demands, losses, damages, liabilities, costs and expenses of any kind or nature, including, without limitation, attorney’s fees and other costs of litigation, arising out of, or in connection with, the negligent performance of, or failure to comply with, any of the duties and/or obligations contained herein, and any amendments hereto, except such loss or damage which was caused by the sole negligence or willful misconduct of the other party or its agents, officers, officials, employees or volunteers.

B. Comparative Liability. Notwithstanding anything to the contrary, in the event that both parties are held to be negligently or willfully responsible, each party will bear its proportionate share of liability as determined in any such proceeding. In such cases, each party will bear its own costs and attorney’s fees.

C. Effect of Insurance. Acceptance of the insurance required by this Lease shall not relieve either party from liability under this provision. This provision shall apply to all claims for damages related to either party’s performance hereunder, regardless of whether any insurance is applicable or not.

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15. INSURANCE REQUIREMENTS:

A. General Insurance Requirements. Without limiting either party’s indemnification obligations set forth herein, each party shall take out and maintain in full force and effect, at its own expense,

any and all appropriate comprehensive general liability, comprehensive automobile, workers compensation, and professional liability policies.

- B. Insurance Notices. Any and all notices regarding the insurance required hereunder shall be sent to the addresses set forth below in accordance with the notice requirements contained herein.

COUNTY: County of Humboldt
Attention: Risk Management
825 Fifth Street, Room 131
Eureka, California 95501

CITY: City of Fortuna
Attention: Merritt Perry, City Manager
621 Eleventh Street
Fortuna, California 95540

16. NUCLEAR-FREE HUMBOLDT COUNTY ORDINANCE COMPLIANCE:

By executing this Lease, CITY certifies that it is not a Nuclear Weapons Contractor, in that CITY is not knowingly or intentionally engaged in the research, development, production or testing of nuclear warheads, nuclear weapons systems or nuclear weapons components as defined by the Nuclear-Free Humboldt County Ordinance. CITY agrees to notify COUNTY immediately if it becomes a Nuclear Weapons Contractor, as defined above. COUNTY may immediately terminate this Lease if it determines that the foregoing certification is false or if CITY subsequently becomes a Nuclear Weapons Contractor.

17. REMEDIES ON DEFAULT:

COUNTY may, at any time after CITY is in default, terminate this Lease as set forth herein or cure the default at the expense of CITY. If COUNTY at any time, by reason of CITY's default, pays any sum, or does any act that requires the payment of any sum, the sum paid by COUNTY shall be due from CITY to COUNTY within thirty (30) days of receiving written notice of such sum, and if paid at a later date shall bear interest at the maximum rate COUNTY is permitted by law to charge from the date the sum is paid by COUNTY until COUNTY is reimbursed by CITY. The remedies set forth herein are in addition to, and do not in any manner limit, any other applicable legal remedies available to COUNTY.

18. REMEDY FOR BREACH:

In the event of any breach of this Lease by either party, each party hereto shall have all rights and remedies provided by law.

19. NOTICES:

Any and all notices required to be given pursuant to the terms and conditions of this Lease shall be in writing and either served personally or sent by certified mail, return receipt requested, to the respective addresses set forth below. Notice shall be effective upon actual receipt or refusal as shown on the receipt obtained pursuant to the foregoing. Each party may at any time change its address for notice by giving written notice of such change to the other party in the manner provided in this section.

CITY: City of Fortuna
Attention: Merritt Perry, City Manager

621 Eleventh Street
Fortuna, California 95540

COUNTY: Humboldt County Public Library System
Attention: Chris Cooper, Director of Library Services
1313 Third Street
Eureka, California 95501

20. ASSIGNMENT:

Neither party shall delegate its duties or assign its rights hereunder, either in whole or in part, without the other party's prior written consent, which shall not be unreasonably withheld. Any assignment by CITY in violation of this provision shall be void, and shall be cause for immediate termination of this Lease. This provision shall not be applicable to service agreements or other arrangements usually or customarily entered into by either party to obtain supplies, technical support or professional services.

21. AMENDMENT:

This Lease may be amended at any time during the term hereof upon the mutual consent of both parties. No addition to, or modification of, the terms of this Lease shall be valid unless made in writing and signed by authorized representatives of the parties hereto.

22. RELATIONSHIP OF PARTIES:

It is understood that this Lease is by and between two (2) independent entities and is not intended to, and shall not be construed to, create the relationship of agent, servant, employee, partnership, joint venture or any other similar association. Each party hereto shall be responsible for the acts and omissions of its agents, officers, officials, directors, employees, licensees, invitees, assignees and subcontractors.

23. ATTORNEY'S FEES:

If either party shall commence any legal action, including, without limitation, an action for declaratory relief, against the other by reason of the alleged failure of the other to perform any of its obligations hereunder, the prevailing party shall be entitled to recover court costs and reasonable attorneys' fees, including, but not limited to, the reasonable value of services rendered by the Humboldt County Counsel's Office, to be fixed by the court, and such recovery shall include court costs and attorneys' fees on appeal, if applicable. As used herein, the term "prevailing party" means the party who dismisses an action in exchange for payment of substantially all sums allegedly due, performance of provisions allegedly breached, or other considerations substantially equal to the relief sought by said party, as well as the party in whose favor final judgment is rendered.

24. WAIVER OF BREACH:

The waiver by either party of any breach of this Lease shall not shall not be deemed to be a waiver of any such breach in the future, or of the breach of any other requirement of this Lease.

25. BINDING EFFECT:

All provisions of this Lease shall be fully binding upon, and inure to the benefit of, the parties and to each of their heirs, executors, successors and permitted assigns.

26. JURISDICTION AND VENUE:

This Lease shall be construed under the laws of the State of California. Any dispute arising hereunder, or relating hereto, shall be litigated in the State of California and venue shall lie in the County of Humboldt unless transferred by court order pursuant to California Code of Civil Procedure Sections 394 or 395.

27. INSPECTION OF PREMISES BY CERTIFIED ACCESS SPECIALIST:

A. Inspection Requirements. A Certified Access Specialist (“CASp”) may inspect the premises and determine whether the premises complies with any and all applicable accessibility requirements set forth in the Americans with Disabilities Act and any other applicable local, state and federal laws, regulations and standards. CITY may not prohibit COUNTY from obtaining a CASp inspection of the premises, if requested thereby. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection and the payment of the fee for the CASp inspection.

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28. INTERPRETATION:

This Lease, as well as its individual provisions, shall be deemed to have been prepared equally by both parties hereto, and shall not be construed or interpreted more favorably for one (1) party on the basis that the other party prepared it.

29. INDEPENDENT CONSTRUCTION:

The titles of the sections, subsections, paragraphs and clauses set forth herein are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of the provisions of this Lease.

30. SEVERABILITY:

If any provision contained herein is declared by a court of competent jurisdiction to be void or unenforceable as written, the parties intend and desire that such provision be enforced and enforceable to the fullest extent permitted by law and that the invalidity or unenforceability of such provision shall not affect the validity or enforceability of the balance of this Lease.

31. PROVISIONS REQUIRED BY LAW:

This Lease is subject to any additional local, state and federal restrictions, limitations or conditions that may affect the terms, conditions or funding of this Lease. This Lease shall be read and enforced as though all legally required provisions are included herein, and if for any reason any such provision is not included, or incorrectly stated, the parties agree to amend the pertinent section to make such insertion or correction.

32. REFERENCE TO LAWS, REGULATIONS AND STANDARDS:

In the event any law, regulation or standard referred to herein is amended during the term of this Lease, the parties agree to comply with the amended provision as of the effective date of such amendment.

33. SURVIVAL OF PROVISIONS:

Portions of this Lease are intended to survive any expiration or termination of this Lease. Accordingly, all provisions hereof which contemplated performance after any such event shall so survive, as shall all indemnity and restoration obligations, and the right to exercise remedies for default.

34. ENTIRE AGREEMENT:

This Lease contains all of the terms and conditions agreed upon by the parties hereto and no other agreements, oral or otherwise, regarding the subject matter of this Lease shall be deemed to exist or to bind either of the parties hereto. In addition, this Lease shall supersede in their entirety any and all prior agreements, promises, representations, understandings and negotiations between the parties, whether oral or written, concerning the same subject matter. Any and all acts which may have already been consummated pursuant to the terms and conditions of this Lease are hereby ratified.

35. COUNTERPART EXECUTION:


This Lease, and any amendments hereto, may be executed in one (1) or more counterparts, each of which shall be deemed to be an original and all of which, when taken together, shall be deemed to be one (1) and the same agreement. This Lease, and any amendments hereto, may be signed by manual or electronic signatures in accordance with any and all applicable local, state and federal laws, regulations and standards, and such signatures shall constitute original signatures for all purposes. A signed copy of this Lease, and any amendments hereto, transmitted by email or by other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original executed copy of this Lease, and any amendments hereto, for all purposes.

36. AUTHORITY TO EXECUTE:

Each person executing this Lease represents and warrants that he or she is duly authorized and has legal authority to execute and deliver this Lease. Each party represents and warrants to the other that the execution and delivery of this Lease and the performance of such party's obligation hereunder have been duly authorized.

IN WITNESS WHEREOF, the parties have entered into this Lease as of the first date written above.

CITY OF FORTUNA:

By: 
Name: Merritt Perry
Title: City Mgr.

Date: 4/17/23

COUNTY OF HUMBOLDT:

By: _____
Steve Madrone, Chair
Humboldt County Board of Supervisors

Date: _____

INSURANCE AND INDEMNIFICATION REQUIREMENTS APPROVED:

By: Krista Freeman
Risk Management

Date: 4-20-2023

LIST OF EXHIBITS:

- Exhibit A – Property Description
- Exhibit B – Janitorial Services
- Exhibit C – Library Furnishings and Supplies

EXHIBIT A
PROPERTY DESCRIPTION
City of Fortuna



Leased premises at 753 Fourteenth Street, Fortuna, California 95540 (Assessors Parcel Number: 040-021-008)