

**LIBRARY PROJECT AND USE AGREEMENT BETWEEN CITY OF YUCAIPA,  
YUCAIPA-CALIMESA JOINT UNIFIED SCHOOL DISTRICT,  
AND SAN BERNARDINO COUNTY**

This Project and Use Agreement (“Agreement”) is made and entered into on \_\_\_\_\_, 2024, between City of Yucaipa (“City”), Yucaipa-Calimesa Joint Unified School District (“District”) and San Bernardino County (“County”). City, District, and County are each a “Party” and collectively, or any two entities are “Parties.”

**RECITALS**

WHEREAS, County built the Yucaipa Branch Library (the “Yucaipa Branch Library”) in 1969, and County expanded it to its current size of 11,717 square feet in 1987; and

WHEREAS, while the Yucaipa Branch Library has been modestly improved over the years, it stands much as it was originally constructed more than fifty years ago when the Yucaipa Branch Library facility served fewer than 10,000 residents; and

WHEREAS, County has historically operated and continues to operate the Yucaipa Branch Library; and

WHEREAS, County’s Library Master Facility Plan (“MFP”), published in 2001, addressed the inadequacies in the existing Yucaipa Branch Library facility and recommended construction of a new facility. County recommended construction of a 25,000 square foot facility based on a projected 20-year population growth in City to approximately 60,000 people by the year 2021; and

WHEREAS, in 2009, City initiated a Library Needs Assessment Study which based the size of the facility on the projected 2030 population growth and resulted in a finding similar to the one presented in County’s MFP; and

WHEREAS, today, City’s population is approximately 54,420 people; and

WHEREAS, development of a new Yucaipa Branch Library facility, which would serve the needs of City’s larger population, is estimated to cost approximately nineteen million dollars (\$19,000,000); and

WHEREAS, the California State Library Building Forward Library Infrastructure Program awarded City a nine million dollar (\$9,000,000) grant (the “Grant”) to assist in funding a new Yucaipa Branch Library facility (“Project”); and

WHEREAS, the Grant requires a local match of nine million dollars (\$9,000,000, and City has secured the requisite matching funds; and

WHEREAS, City will continue to pursue additional funding that may be used to fund site development and enhancements to the Project; and

WHEREAS, City, District, and County have a common interest in developing the Yucaipa Branch Library to serve the needs of the community, and this Agreement is intended to delineate the duties and funding responsibilities for the Parties for the Project; and

NOW, THEREFORE, City, District, and County agree to the following terms:

**ARTICLE 1**  
**LIBRARY CONSTRUCTION**

Section 1. **Party Contributions.** Each Party to this Agreement shall contribute to the construction and furnishing of Project, as outlined below.

- a. City. City shall contribute three million dollars (\$3,000,000) towards construction of Project. City's contribution shall be the first funds expended on Project ("City Contribution").
- b. District. District shall provide a portion of District-owned real property located at 33002 Yucaipa Boulevard, Yucaipa California, (See Exhibit "A"; APN: 0303-071-28) ("Property") for the Project. Property is approximately 4.22 acres. District shall retain all rights and remedies pursuant to California Education Code Section 17050 as may be required. The portion contributed shall be sufficient to accommodate the Project and necessary landscaping, and parking (approximately two acres), as depicted in Exhibit "B" ("District Contribution").
- c. County.
  - i. The County shall contribute four million dollars (\$4,000,000) to the City for reimbursement of construction costs of the Project ("County Construction Contribution"). The City shall invoice the County upon completion of construction of the Project. The County shall provide the County Construction Contribution within sixty (60) days of receipt of such invoice.
  - ii. The County shall contribute one million dollars (\$1,000,000) towards furniture, fixtures, and equipment for the Project, as needed, which County shall inventory annually ("County Fixtures Contribution").

Section 2. **Project Description.** The Parties intend to build a 15,000 to 18,000 square foot library facility with requisite parking, landscaping, and other site improvements on Property ("Facility"). City shall provide proof that all funds contributed under this Agreement are used for this purpose. District will continue to own Property, City will own Facility, and County will continue to operate the Yucaipa Branch Library. City shall seek approval of Project by the Division of the State Architect.

Section 3. **City's Duty to Construct Project.** City will be the lead agency for Project with respect to associated grant applications, project funding, Facility design, documentation required by the California Environmental Quality Act ("CEQA"), acquisition of regulatory permits,

and construction. City shall be fully responsible for entering into all agreements required for, and relating to, the approval and construction of Project. City shall be responsible for complying with all State and local laws relating to the construction of library facilities. The City covenants to utilize the City Contribution, County Construction Contribution, and County Fixtures Contribution for construction of the Project.

Section 4. **Ownership.** During the initial term of this Agreement, City will own Facility including all improvements constructed using funds from the Grant. District will retain ownership of Property. Ownership of furnishings and equipment shall be inventoried annually by the Parties and remain the property of the Party that supplied or purchased any furnishings or equipment. Upon City's one year notice of termination of the initial term of this Agreement, ownership of Facility, including all improvements, will transfer to District. County and District shall enter good faith negotiations for County to continue day-to-day operations of the Facility, and all furnishing and equipment will remain the property of the Party that supplied or purchased any furnishings or equipment.

District and County may purchase, own, inventory annually, and place additional furnishings, equipment and library materials in the Facility, subject to approval by City during the initial term only, and subject to the agreement that such additional furnishings, equipment and library materials will be available to all library patrons on the same basis as all other furnishings, equipment and materials purchased pursuant to this Agreement.

Section 5. **Design.** Prior to any construction on the Project, the City shall consult and obtain approval from the other Parties in the design process to ensure that Project meets the standards of a modern library and facilitates future District use of the remaining portion of the Property.

Section 6. **Construction.** In the event City contracts for the construction of the Project or any portion thereof, City shall comply with the provisions of the California Public Contract Code Sections 22000 through 22045 regarding bidding procedures and Labor Code Section 1770 et seq. regarding general prevailing wages, if applicable under California law.

## **ARTICLE 2** **TERMS**

Section 1. **Term of Agreement.** The initial term of Agreement shall commence upon execution by Parties and shall remain in effect for twenty-five (25) years. The Parties may extend this Agreement after the initial 25-year term by mutual written agreement. If the City terminates the Agreement after the initial 25-year term by providing a one-year notice of termination, the District and County shall enter good faith negotiations for County to continue day-to-day operations of the Facility.

Section 2. **Facility Use.** The Parties agree that Facility will operate as a public library for the term of this Agreement with details of day-to-day operations specified in a separate lease

agreement. The separate facility use agreement between the County and District will be executed prior to any construction.

Section 3. **Operations**. The Parties agree to operate the Facility as follows:

- a. **Day-to-Day Operations**. County shall provide day-to-day operations at the Facility, including staffing, programming, and custodial services, and consumable supplies.
- b. **Facility Costs**. County shall be responsible for Facility costs, including water and sewer, electricity, gas, refuse disposal, and custodial maintenance.
- c. **Maintenance**. City shall be responsible for pest management, and the safety, security, and satisfactory performance of Facility, including painting, floor re-finishing, electrical, plumbing, mechanical systems, and fixtures.

Section 4. **Renovations and Upgrades**. The Parties must agree to any renovation or Facility upgrade.

Section 5. **Insurance**. Each Party shall, at its sole cost and expense, provide coverage for its activities in connection with this Agreement by maintaining in full force and effect programs of insurance and/or self-insurance as specified in Exhibit “C”, attached hereto and incorporated herein by reference.

District shall provide property insurance in the same manner and at the same level as it does for other District facilities located on property owned by District, except that it shall add by endorsement City and County, its officers, agents, employees, independent contractors and elected and appointed official, as additional insureds.

Section 6. **Indemnification and Hold Harmless**. Each Party agrees to indemnify, defend (with counsel approved by City and County) and hold harmless the other Parties (“Indemnitees”) and their authorized officers, employees, agents and volunteers from any and all claims, actions, losses, damages, and/or liability arising out of this Agreement, but only to the extent actually caused by the negligent acts, errors or omissions of the indemnifying Party and its authorized officers, employees, agents, and volunteers, and for any costs or expenses incurred by Indemnitees on account of any claim except where such indemnification is prohibited by law.

If the Parties are determined to be comparatively at fault for any claim, action, loss, or damage which results from their respective obligations under this Agreement, each Party shall indemnify the others to the extent of its comparative fault as determined in a legal action.

Section 7. **Termination Events**. This Agreement shall terminate upon the occurrence of the following events:

- (a) Division of the State Architect does not approve Facility within one (1) year of execution of this Agreement,
- (b) State of California revokes the Grant,
- (c) City is unable to perform according to Grant requirements,
- (d) City loses a substantial amount of funding to render Project infeasible,
- (e) Construction bids exceed available Project funds,
- (f) District fails to provide the Property,
- (g) One or more of the Parties breach the terms of this Agreement, or
- (h) City fails to complete construction of the Project by March 31, 2026.

Upon termination of the Agreement, pursuant to Article 2, Section 7, subsections (a)-(h) herein, the City shall return to the County any unused funds remaining from the County Construction Contribution and County Fixtures Contribution.

Section 8. **Modifications.** The Parties understand that there are no oral agreements between the Parties to this Agreement, and this Agreement supersedes and cancels all previous negotiations, arrangements, oral agreements, and understandings, if any, between the parties, and none shall be used to interpret this Agreement. This Agreement may only be varied, modified, or altered by the mutual written consent of the Parties. No alterations, amended modifications, or variations of the terms of this Agreement shall be valid unless made in writing and signed by authorized representatives of the Parties.

Section 9. **Notices and Contacts.** All notices, demands, requests, consents, approvals, or communications from one Party to another shall be personally delivered, sent by facsimile, or electronic mail to the positions set forth below and shall be deemed given one (1) business day after it is sent. Notice shall be deemed given five (5) calendar days after deposit in the United States mail, certified and postage prepaid, return receipt requested, and addressed as follows, or at such other address as either may from time to time specify to the other Parties in writing.

To CITY:                      City of Yucaipa  
                                     Attn: City Manager  
                                     34272 Yucaipa Blvd.  
                                     Yucaipa, California 92399

To DISTRICT:                Yucaipa-Calimesa Joint Unified School District  
                                     Office of the Superintendent  
                                     Attn: Superintendent  
                                     12797 Third St.,  
                                     Yucaipa CA 92399

To COUNTY:                 San Bernardino County Library  
                                     Office of the County Librarian  
                                     Attn: County Librarian

268 W. Hospitality Lane, 3<sup>rd</sup> Floor, Suite 301  
San Bernardino, CA 92415

The Parties agree to accept facsimile or scanned signed documents and agree to rely upon such documents as if they bore original signatures. The Parties agree to provide, within seventy-two (72) hours after transmission of such a facsimile or scan, the original documents that bear the original signatures.

Section 10. **Compliance with Applicable Law**. The Parties agree to comply with all applicable Federal, State and local laws and regulations pertaining to Project. The validity, interpretation, and performance of this Agreement shall be controlled by and construed under the laws of the State of California.

Section 11. **Venue**. The venue of any action or claim brought by any Parties to this Agreement shall be the Superior Court of California, County of San Bernardino, San Bernardino District. If any action or claim concerning this Agreement is brought by any third-party and filed in another venue, the Parties hereto agree to use their best efforts to obtain a change of venue to the Superior Court of California, County of San Bernardino, San Bernardino District.

Section 12. **Interpretation**. The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against any Party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply. The section headings are for purposes of convenience only.

Section 13. **Severability**. In the event that part of this Agreement shall be declared invalid or unenforceable by a valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining portions of this Agreement which are hereby declared as severable and shall be interpreted to carry out the intent of the parties hereunder unless the invalid provision is so material that its invalidity deprives either party of the basic benefit of their bargain or renders this Agreement meaningless.

Section 14. **Representatives**. District's Superintendent or designee ("District Representative") and County's Librarian or designee is designated as being the principal and representative for District and County, respectively, authorized to act in its behalf with respect to the work, services, and activities specified herein. City Manager or designee ("City Representative") is designated as being the representative of City authorized to act on its behalf with respect to work, services, and activities, specified herein.

Section 15. **Execution**. The Parties may execute this Agreement in counterparts, each of which shall be an original but all of which shall constitute the same instrument. The Parties shall be entitled to sign and transmit an electronic signature of this Agreement (whether by facsimile, PDF, or other mail transmission), which signature shall be binding on the party whose name is contained therein. Each party providing an electronic signature agrees to promptly execute and deliver to the other party an original signed Agreement upon request.

Section 16. **Waiver**. The failure of any party to insist upon strict performance of any of the terms, conditions or covenants in this Agreement shall not be deemed a waiver of any right or remedy for a subsequent breach or default of the terms, conditions or covenants herein contained.

Section 17. **Time**. Time is of the essence of every provision of this Agreement in which time is an element.

Section 18. **Evaluation/Dispute Resolution**. In the event of any dispute, claim, question or disagreement arising from or relating to this Agreement or breach thereof, the Parties hereto shall use their best efforts to settle the dispute, claim, question or disagreement. To this effect, they shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both parties.

The City and the District shall establish a Joint Use Interagency Team, composed of staff representatives of the City, County and the District, to monitor the joint use project and Agreement or its duration. The Interagency Team shall hold conference calls or meetings on a quarterly basis to review the performance of the project and to confer to discuss interim problems during the term of the Agreement. If the Joint Use Interagency Team is unable to reach a solution on a particular matter, it will be referred to the City Manager, County Librarian and District Superintendent, or their designees, for resolution.

The Joint Use Interagency Team shall review the Agreement by each designee each year to evaluate the Project and to propose amendments to this Agreement.

Neither party is waiving any rights herein by agreement to the instant conflict resolution provision as may be bestowed upon them, should conflict resolution not prove fruitful, by California law; however, the parties shall be required to engage in a good faith effort to reach a resolution per this clause prior to initiation of litigation.

Section 19. **Authorized Signatories**. The Parties to the Agreement represent that the signatories executing this document are fully authorized to enter into this Agreement.

[SIGNATURES APPEAR ON NEXT PAGE]

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the day and year adopted by the last Party.

CITY OF YUCAIPA

By: \_\_\_\_\_  
Chris Mann,  
City Manager

Dated:

Attest:

\_\_\_\_\_  
Ana V. Sauseda, MMC  
Director of General Services/City Clerk

Approved as to Form:

\_\_\_\_\_  
Steven Graham Pacifico  
City Attorney

SAN BERNARDINO COUNTY

By: \_\_\_\_\_  
Dawn Rowe, Chair, Board of Supervisors

Dated:

SIGNED AND CERTIFIED THAT A COPY OF THIS  
DOCUMENT HAS BEEN DELIVERED TO THE  
CHAIR OF THE BOARD  
Lynna Monell  
Clerk of the Board of Supervisors of  
San Bernardino County

Approved as to Legal Form

\_\_\_\_\_  
Deputy County Counsel

[Signatures Continue on Next Page]



YUCAIPA-CALIMESA JOINT UNIFIED  
SCHOOL DISTRICT

Approved as to Form:

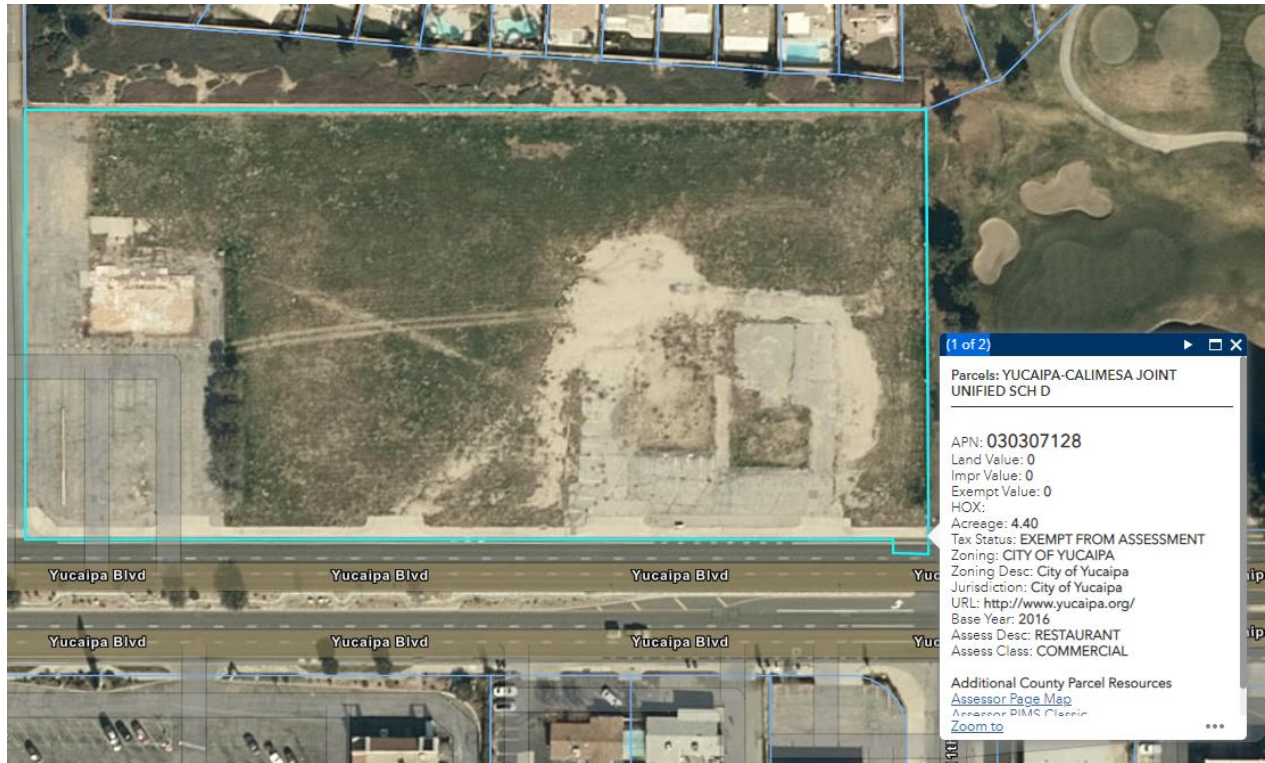
\_\_\_\_\_  
District Counsel

Dated:

By: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT A**

**PROPERTY DESCRIPTION**



**EXHIBIT B**  
**PROJECTED PROJECT**



## EXHIBIT C

### INSURANCE REQUIREMENTS

- A.** The District is a member of a risk retention pool for purposes of Professional Liability, General Liability, Automobile Liability and Workers' Compensation. The remaining parties are authorized self-insured public entities for purposes of Professional Liability, General Liability, Automobile Liability and Workers' Compensation. The Parties warrant that through their respective programs of self-insurance or membership in a risk retention pool, as applicable, they have adequate coverage or resources equivalent to the requirements in Section B. below, to protect against liabilities arising out of the performance of the terms, conditions or obligations of this Agreement.

All approved subcontractors shall be subject to the provisions of this Agreement applicable to the Parties. The subcontractor shall agree to provide insurance set forth in accordance with the requirements herein. If the subcontractor uses existing coverage to comply with these requirements and that coverage does not meet the specified requirements, the subcontractor agrees to amend, supplement or endorse the existing coverage to do so.

For any subcontractor, City shall:

- A.1 Be responsible for subcontractor compliance with the Agreement and the subcontract terms and conditions; and
  - A.2 Ensure that the subcontractor follows County's reporting formats and procedures as specified by County; and
  - A.3 Include in the subcontractor's subcontract substantially similar terms as are provided in Article I and Article II and Exhibit "C" - Insurance Requirements.
- B.** Without in anyway affecting the indemnity herein provided and in addition thereto, the Parties shall secure and maintain throughout the contract term the following types of insurance with limits as shown:
- B.1** Workers' Compensation/Employer's Liability – A program of Workers' Compensation insurance or a state-approved, self-insurance program in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employer's Liability with one million dollars (\$1,000,000) limits covering all persons including volunteers providing services on behalf of the Parties and all risks to such persons under this Agreement.
  - B.2** Commercial/General Liability Insurance – The Parties and subcontractor shall carry General Liability Insurance covering all operations performed

by or on behalf of the Parties providing coverage for bodily injury and property damage with a combined single limit of not less than ten million dollars (\$10,000,000), per occurrence. The policy coverage shall include:

- a. Premises operations and mobile equipment.
- b. Products and completed operations.
- c. Broad form property damage (including completed operations).
- d. Explosion, collapse and underground hazards.
- e. Personal injury.
- f. Contractual liability.
- g. Ten million dollar (\$10,000,000) general aggregate limit.

**B.3**      Automobile Liability Insurance – Primary insurance coverage shall be written on ISO Business Auto coverage form for all owned, hired and non-owned automobiles or symbol 1 (any auto). The policy shall have a combined single limit of not less than five million dollars (\$5,000,000) for bodily injury and property damage, per occurrence.

**B.4**      Umbrella Liability Insurance – An umbrella (over primary) or excess policy may be used to comply with limits or other primary coverage requirements. When used, the umbrella policy shall apply to bodily injury/property damage, personal injury/advertising injury and shall include a “dropdown” provision providing primary coverage for any liability not covered by the primary policy. The coverage shall also apply to automobile liability.

**B.5**      Professional Liability – Professional Liability Insurance with limits of not less than one million dollars (\$1,000,000) per claim and two million dollars (\$2,000,000) aggregate limits;

**or**

Errors and Omissions Liability Insurance – Errors and Omissions Liability Insurance with limits of not less than one million dollars (\$1,000,000) and two million dollars (\$2,000,000) aggregate limits;

**or**

Directors and Officers Insurance coverage with limits of not less than one million dollars (\$1,000,000) shall be required for contracts with charter labor committees or other not-for-profit organizations advising or acting on behalf of the County.

If insurance coverage is provided on a “claims made” policy, the “retroactive date” shall be shown and must be before the date of the state of the contract work. The claims made insurance shall be maintained or “tail” coverage provided for a minimum of five (5) years after contract completion.

## **B.6 Environmental Contracts**

- a. Environmental Liability Insurance with a combined single limit of not less than five million dollars (\$5,000,000) per claim or occurrence and a separate aggregate for the contract project. The required additional insured endorsement shall protect the Parties without any restrictions.
- b. If insurance coverage is provided on a “claims made” policy, the “retroactive date” shall be shown and must be before the date of the start of the contract work. The claims made insurance shall be maintained or “tail” coverage provided for a minimum of five (5) years after contract completion.

**B.7** Builder’s Risk (Course of Construction) insurance utilizing an “All Risk” (Special Perils) coverage form, with limits equal to the completed value of the project and no coinsurance penalty provisions.

## **C. Additional Insurance Requirements**

- a. **Additional Insured.** All policies, except for Worker’s Compensation, Errors and Omissions and Professional Liability policies shall upon written request from a Party, contain additional endorsements naming the Parties and Parties’ officers, employees, agents and volunteers as additional named insured with respect to liabilities arising out of the performance of services hereunder. The additional insured endorsements shall not limit the scope of coverage for the Party to vicarious liability but shall allow coverage for the Party to the full extent provided by the policy. Such additional insured coverage shall be at least as broad as Additional Insured (Form B) endorsement form ISO, CG 2010.11 85.
- b. **Waiver of Subrogation Rights.** The Parties and subcontractor(s) shall require the carriers of required coverages to waive all rights of subrogation against the Party, the Party’s officers, employees, agents, volunteers, contractors and subcontractors. All general or auto liability insurance coverage provided shall not prohibit the Parties or Subcontractor(s) and their employees or agents from waiving the right of subrogation prior to a loss or claim.
- c. **Policies Primary and Non-Contributory.** All policies required herein are to be primary and non-contributory with any insurance or self-insurance programs carried or administered by each Party.
- d. **Severability of Interests.** City agrees to ensure that coverage provided to meet these requirements is applicable separately to each insured and there will be no cross-liability exclusions that preclude coverage for suits between City and other

Parties or between other Parties and any other insured or additional insured under the policy.

- e. **Proof of Coverage.** Upon written request, the Parties shall furnish Certificates of Insurance to the requesting Party evidencing the insurance coverage at the time the Agreement is executed, additional endorsements, as required shall be provided prior to the commencement of performance of services hereunder, which certificates shall provide that such insurance shall not be terminated or expire without thirty (30) days written notice to the other Parties, and the Parties shall maintain such insurance from the time City commences performance of services hereunder until the completion of such services. Within fifteen (15) days of the commencement of this Agreement, City shall furnish a copy of the Declaration page for all applicable policies and will provide complete certified copies of the policies and endorsements immediately upon request.
- f. **Acceptability of Insurance Carrier.** Unless otherwise approved by Risk Management, insurance shall be written by insurers authorized to do business in the State of California and with a minimum “Best” Insurance Guide rating of “A- VII”.
- g. **Deductibles and Self-Insured Retention.** Any and all deductibles or self-insured retentions in excess of ten thousand dollars (\$10,000) shall be declared to and approved by Risk Management.
- h. **Failure to Procure Coverage.** In the event that any policy of insurance required under this Agreement does not comply with the requirements, is not procured, or is canceled and not replaced, subject to the terms set forth under Section 7 (Termination Events), The Parties have the right but not the obligation or duty to cancel the Agreement or upon notice to City, obtain insurance if the Parties deem it necessary and any premiums paid by the Parties will be promptly reimbursed by City or the Parties’ payments to City will be reduced to pay for the Parties’ purchased insurance.
- i. **Insurance Review.** Insurance requirements are subject to Parties periodic review. City acknowledges that Parties’ Director(s) of Risk Management or designee are authorized, but not required, to reduce, waive or suspend any insurance requirements whenever Risk Management determines that any of the required insurance is not available, is unreasonably priced, or is not needed to protect Parties’ interests. In addition, if County Risk Management reasonably determines that heretofore unreasonably priced or unavailable types of insurance coverage or coverage limits become reasonably priced or available, the County Director of Risk Management or designee is authorized, but not required, to change the above insurance requirements to require additional types of insurance coverage or higher coverage limits, provided that any such change is reasonable in light of past claims against Parties, inflation, or any other item reasonably

related to Parties' risk. Any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this Agreement. City agrees to execute any such amendment within thirty (30) days of receipt. Any failure, actual or alleged, on Parties' part to monitor or enforce compliance with any of the insurance and indemnification requirements will not be deemed as a waiver of any rights on Parties' part.