

**EXHIBIT "E"**  
**FORM OF USE AGREEMENT**

**PROPERTY USE AGREEMENT**

**BY AND BETWEEN**

**THE CITY OF OCEANSIDE**

**AND**

**FRIENDS OF THE OCEANSIDE PUBLIC LIBRARY**

**FOR THE USE OF CITY OWNED REAL PROPERTY**

**LOCATED AT**

**615 MISSION AVENUE**

**DATED**

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FOR PROPERTY AT 615 MISSION AVENUE**

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This Property Use Agreement (“Agreement”) dated \_\_\_\_\_ 20\_\_\_\_, (for identification purposes only), is executed by and between the City of Oceanside, a municipal corporation (“City”) and Friends of the Oceanside Public Library, a California nonprofit corporation (“Lessee”), collectively referred to as (“Parties”).

**RECITALS**

WHEREAS, CITY is the lawful owner of that certain real property, located at 615 Mission Avenue, also known as APN: 147-28-01, in the City of Oceanside which contains a building consisting of approximately 10,000 square feet (“Property”) as illustrated in **Exhibit “A,”** attached hereto and as more particularly described herein below; and

WHEREAS, at this time Lessee desires to enter into an Agreement with the City for use of a portion of the building located at 615 Mission Avenue, and City is willing to lease the space to Lessee as set forth within this Agreement.

**AGREEMENT**

NOW THEREFORE in consideration of the covenants, conditions and provisions contained herein, the Parties hereto mutually agree as follows:

**SECTION 1: RECITALS**

**1.01 Incorporation of Recitals.** The terms and provisions of the foregoing Recitals are incorporated herein, as though set forth in full herein.

**SECTION 2: USES:**

**2.01 Premises.**

City hereby authorizes Lessee, in accordance with the terms, covenants, conditions and provisions of this Agreement, the exclusive use of a portion of that certain real property located at 615 Mission Avenue, in the City of Oceanside, County of San Diego, State of California, consisting of approximately 7,000 square feet (to be confirmed prior to occupancy), as more particularly described and depicted in **Exhibit “A”**, attached hereto and by this reference, made part of this Agreement (hereinafter referred to as the “Premises”).

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**2.02 Parking Lot.**

Lessee will have the non-exclusive use of the public parking lot located at 115 N. Ditmar Street, on a first-come first-serve basis, as defined and depicted on **Exhibit “A”**, and herein collectively referred to as “Public Parking Lot.”

**2.03 Uses.**

It is expressly agreed that the Premises are leased to the Lessee exclusively for the purpose of operating a facility for the intake, sorting, processing and storage of books and other donated items, which will be located in the basement area of the Premises, along with a retail bookstore in the portion of the leased space on the street level. This use may include such other administrative and clerical functions as needed for the foregoing purpose. No other use of the Premises is permitted without approval in writing by the City Manager.

Lessee covenants and agrees to actively and continuously use and operate the Premises for the above specified, limited and particular exclusive use and to diligently pursue said purposes throughout the term of this Agreement, except for failure to so use caused by reasons or events beyond the reasonable control of Lessee and acts of God. In the event that Lessee fails to continuously use the Premises for said purposes, or uses the Premises for purposes not expressly authorized herein, Lessee shall be deemed in default under this Agreement. Lessee shall not use the Premises in any manner that disrupts the quiet enjoyment of surrounding occupants of the remainder of the building.

**2.04 Related Discretionary Actions.**

By the granting of this Agreement, neither City nor the Council of City is obligating itself to any other governmental agent, board, commission, or agency with regard to any other discretionary action relating to occupancy of the Premises. Discretionary action includes, but is not limited to rezoning, variances, conditional use permits, environmental clearances or any other governmental agency approvals which may be required for the development and operation of the Premises.

**2.05 Quiet Possession.**

Lessee, providing the authorized programs and services to the general public and performing the covenants and agreements herein, shall at all times during the term peaceably and quietly have, hold and enjoy the Premises. If during the term Lessee is temporarily dispossessed through action or claim of a title superior to City's, then and in either of such events, this Agreement shall not be voidable nor

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shall City be liable to Lessee for any loss or damage resulting therefrom. In the event that such dispossession causes an extraordinary economic burden on Lessee, Lessee shall have the option to terminate this Agreement by submitting to the City a **thirty (30) day** written notice together with its justifications for such termination. The City shall have the right to approve such termination and shall provide Lessee with a written determination thereof. Said approval shall not be unreasonably withheld.

**2.06 Reservation of Rights.**

City shall not unreasonably or substantially interfere with Lessee's use of the Premises while Lessee is in possession of the Premises; however, the City specifically retains the following rights:

- A. Subsurface Rights.** City hereby reserves all rights, title and interest in any and all subsurface natural gas, oil, minerals and water on or within the Premises.
- B. Easements.** City reserves the right to grant and use easements or to establish and use rights-of-way over, under, along and across the leased Premises for utilities, thoroughfares, or access as it deems advisable for the public good.
- C. Right to Enter.** City has the right to enter the Premises for the purpose of performing maintenance, inspections, repairs or improvements, or developing municipal resources and services.

City will not reimburse Lessee for damages, if any, to the improvements located on the Premises resulting from the City exercising the rights reserved in this Agreement. City will pay the costs of the maintenance and repair of all City installations made pursuant to these reserved rights. City's use of the Premises is paramount to that of the Lessee's use.

**SECTION 3: TERM**

**3.01 Commencement.**

The term of this Agreement shall be for ten (10) years, commencing on the first day of the month immediately following the date the City provides Lessee access to use the Premises ("Commencement Date") and terminating ten (10) years thereafter ("Expiration Date") together referred to as the ("Term"). The Commencement Date and Leased Premises will be confirmed through a

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Memorandum of Commencement and Leased Premises, attached hereto as Exhibit "C".

**3.02 Renewal Option.**

At the end of the Term, Lessee may request an extension of the Term of this Agreement for the Premises for **three (3) consecutive ten (10) year** periods under the same terms and conditions of this Agreement at the rental rate calculated in Section 4.02 below, provided that the Lessee is not in default or breach of any term, condition, or covenant of this Agreement. Lessee shall provide City with written request to extend the Term of the Agreement, and such notice is to be provided no later than **thirty (30) days** prior to the Expiration Date of the Term of this Agreement. Any renewal options exercised by Lessee as part of this Agreement shall not require additional Council action beyond approval of this Agreement.

In no event shall the term of this Agreement be extended in excess of **thirty (30) years** beyond the Expiration Date of the Term of this Agreement without the mutual written agreement of the Parties and the prior approval by the City Manager or his/her designee.

**3.03 Holdover.**

Any holding over by Lessee after the Expiration Date or termination of the Agreement shall not be considered as a renewal or extension of this Agreement. The occupancy of the Premises by Lessee or by Lessee's property after the expiration or termination of this Agreement constitutes a month-to-month tenancy, and all other terms and conditions of this Agreement shall continue in full force and effect. City may have the right to apply a reasonable monetary rent and to terminate the holdover tenancy at will.

**3.04 Abandonment by Lessee.**

Even if Lessee breaches the Agreement and abandons the Premises, this Agreement shall continue in effect for so long as City does not terminate this Agreement, and City may enforce all its rights and remedies hereunder, including but not limited to the right to recover the rent as it becomes due, plus damages.

**3.05 Quitclaim of Lessee's Interest.**

On termination of this Agreement for any reason, Lessee shall deliver to City a quitclaim deed in recordable form quitclaiming all its rights in and to the Premises.

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Lessee or its successor in interest shall deliver the same within five (5) days after receiving written demand therefor. City may record such deed only on the expiration or earlier termination of this Agreement. If Lessee fails or refuses to deliver the required deed, the City may prepare and record a notice reciting Lessee's failure to execute this lease provision and the notice will be conclusive evidence of the termination of this Agreement and all Lessee's rights to the Premises.

**3.06 Surrender of Premises.**

At the expiration or earlier termination of this Agreement, Lessee shall surrender the Premises to City free and clear of all liens and encumbrances created by Lessee, except those liens and encumbrances which existed on the date of the execution of this Agreement by City. The Premises, when surrendered by Lessee, shall be in a safe and sanitary condition and shall be in as good or better condition as the condition at commencement of this Agreement, absent normal wear and tear.

**3.07 Termination.**

Notwithstanding any other provisions contained in this Agreement, Lessee, but not City, may terminate this Agreement as to all or a portion of the Premises, for any reason, by giving the City at least **ninety (90) days** prior written notice of such termination, unless different terms are agreed to in writing between the Parties for a shorter notice period.

**3.08 Time is of Essence.**

Time is of the essence for all of the terms, covenants, conditions and provisions of this Agreement.

**SECTION 4: RENT**

**4.01 Time and Place of Payment.**

The Lessee shall make all rental payments monthly in advance on or before the tenth day of each new month. Checks should be made payable to the City of Oceanside and delivered to: City of Oceanside, Central Cashiering, 300 North Coast Highway, Oceanside, CA 92054. The place and time of payment may be changed at any time by City upon **thirty (30) days'** written notice to Lessee. Lessee assumes all risk of loss and responsibility for late payment charges. Lessee agrees to pay City an additional **Thirty and NO/100 Dollars (\$30.00)** for

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any returned check, which is not honored by the financial institution from which the check is drawn.

**4.02 Rent.**

**A. Initial Rent Amount.** The initial monthly rent begins on the Commencement Date of the Agreement for the first five (5) years of the Agreement, shall be payable monthly in advance at the rate of **Three Thousand Dollars and NO/100 (\$3,000)** on or before the first day of each month ("Monthly Rent").

City hereby agrees that the programs and services provided by Lessee to the public, on a non-discrimination basis, except for reasonable admission fees and service charges that are usual and customary for similar service at the Premises, are valuable consideration received from Lessee, and that the provision of such programs, services and activities shall constitute a portion of the rent to be paid by Lessee for its use of the Premises in accordance with the terms, covenants, conditions and provisions of this Agreement. Provided that Lessee continues to provide programs and services serving the City of Oceanside, Lessee shall be provided with the discounted rent as set forth herein.

**B. Rental Adjustment Date.** The rental adjustment date shall be on the **sixty-first (61<sup>st</sup>) month** following the Commencement Date (as defined in Section 3.01) of this Agreement. The Monthly Rent amount shall be adjusted on such date as set forth below in Sections 4.02 C and D.

**C. Adjustment Index.** The index used will be the semi-annual Consumer Price Index for "All Urban Consumers" for San Diego, California. If this index is no longer published, the index for adjustment will be the U.S. Department of Labor's "Comprehensive Official Index" most comparable to the aforesaid index.

If the Department of Labor indices are no longer published, another index generally recognized as authoritative will be substituted by agreement of City and Lessee. If the Parties cannot agree within **60 days** after demand by either Party, a substitute index will be selected by the Chief Officer of the Regional Office of the Bureau of Labor Statistics or its successor. Any reference in this Agreement to "CPI" or "index" shall mean the index used in accordance with this Subsection.

Regardless of the index publication dates, the minimum rent adjustment dates shall be on the date defined by Subsection 4.02 B above. Until the minimum rent adjustment can be actually calculated in accordance with this Agreement, Lessee shall continue to make payments at the existing rental rate. When the

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adjustment is calculated, the balance of rents due at the adjusted rate, from the rental adjustment date through the date of calculation, will be paid to City within **30 days** of written notice by the City. In no event shall the adjusted rent as established by the CPI be less than the rent in existence immediately prior to the adjustment date.

**D. Rent Adjustment Computation.** The rent adjustment shall be computed in accordance with the following definitions and formulas:

Definitions:

**Initial Monthly Rent:** The monthly rent at the Commencement Date of this Agreement as listed in Subsection 4.02. A above.

**Existing Monthly Rent:** The existing monthly rent shall be the amount in effect on the date preceding the rental adjustment date.

**Percent change in the CPI:** The percent change in the CPI shall be the percent change in the San Diego All Consumer Index over the preceding **12 month** period covered by the most recent publication of the Index.

Rent Adjustment Formulas:

**First Adjustment:** Initial monthly rent + (Initial monthly rent x the percent change in the CPI) = New monthly rent.

For example:  $\$200 + (\$200 \times 2\%) = \$204.00$

**Subsequent Adjustments:** New monthly rent + (new monthly rent x the percent change in the CPI) = Adjusted monthly rent.

For example:  $\$204 + (\$204 \times 4\%) = \$212.16$

**4.03 Rent During Renewal Terms.**

The Monthly Rent in effect in the previous month to the effective date of each renewal term shall be adjusted to increase at the commencement of each renewal term and thereafter on each **sixty-first (61<sup>st</sup>) month** of each renewal term. The Monthly Rent increase shall be calculated by the current CPI as outlined in Sections 4.02 C and D above.

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**4.04 Delinquent Rent.**

If applicable at any time during the term of the Agreement, if Lessee fails to pay the rent when due, Lessee will pay in addition to the unpaid rents, five percent (5%) of the delinquent rent. If the rent is still unpaid at the end of fifteen (15) days from the due date, Lessee shall pay an additional five percent (5%) [being a total of ten percent (10%)] which is hereby mutually agreed by the parties to be appropriate to compensate City for loss resulting from rental delinquency, including lost interest, opportunities, legal costs, and the cost of servicing the delinquent account.

**4.05 Security Deposit.**

None

**4.06 Annual Program Reporting.**

As additional consideration, Lessee shall be required to provide City with a written annual financial and operations reports regarding all phases of Lessee's use and occupation of the Premises. Lessee shall submit said report to City within **sixty (60) days** following each anniversary date of this Agreement.

**4.07 Inspection of Records.**

Lessee agrees to make any and all records and accounts available to City for inspection at all reasonable times, so that City can determine Lessee's compliance with this Agreement. These records and accounts will be made available by Lessee at the Premises and will be complete and accurate showing all income and receipts from the use of the Premises, as well as all records supporting Section 4.06, Annual Program Reporting, as defined therein. Lessee's failure to keep and maintain such records and make such records available for inspection by City shall be deemed a default of this Agreement. All such operations and financial reports and related information shall be deemed to be public records. Lessee shall maintain all such records and accounts for a minimum period of **five (5) years**.

**SECTION 5: INSURANCE RISKS/SECURITY**

**5.01 Indemnity.**

Lessee, on behalf of itself and any of its agents, shall indemnify, defend and to the greatest extent allowed by law, hold harmless City, its City Council, boards and commissions, officers, directors, employees, agents and volunteers

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(collectively, the “Indemnified Parties”) from and against any and all claims (including, without limitation, claims for bodily injury, death or damage to property), demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorneys’ fees, disbursements and court costs) of every kind and nature whatsoever (individually, a “Claim”, collectively “Claims”), arising from or in any manner related (directly or indirectly) to any breach of the terms and conditions of this Agreement by Lessee or its agents; Lessee’s use or occupation of the Premises; any work performed or services provided under this Agreement by Lessee or its agents, including, without limitations, defects in workmanship or materials; or Lessee’s or its agents’ presence or activities that relate in any way to this Agreement (including the negligent and/or willful acts, errors and/or omissions of Lessee, its employees, vendors, agents, suppliers, and anyone employed directly or indirectly by any of them or for whose acts they may be liable ). Notwithstanding the foregoing, nothing herein shall be construed to require Lessee to indemnify the Indemnified Parties from any Claim arising from the sole negligence or willful misconduct of the Indemnified Parties. Nothing in this indemnity shall be construed as authorizing any award of attorneys’ fees in any action on or to enforce the terms of this Agreement. This indemnity shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by the Lessee.

**5.02 Insurance.**

Without limiting Lessee’s indemnification of the Indemnified Parties provided for herein, and prior to commencement of this Agreement, Lessee shall obtain, provide and maintain at its own expense during the term of this Agreement, policies of insurance with the endorsements of the type, amounts, terms and conditions described in the Insurance Requirements attached hereto as Exhibit “B” and incorporated herein by reference.

**5.03 Accident Reports.**

Lessee shall report to City any accident within **seventy-two (72) hours** relating to property damage or any serious injury to persons on the Premises. This report shall contain the names and addresses of the parties involved, a statement of the circumstances, the date and hour of the incident, the names and addresses of any witnesses and other pertinent information.

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**5.04 Waiver of Subrogation**

Notwithstanding anything herein to the contrary, neither party shall be liable to the other for any business interruption or any loss or damage to property or injury to or death of persons occurring in or on the Premises, or in any manner growing out of or connected with Lessee's uses and occupation of the Premises, or the condition thereof, whether caused by the negligence or other fault of City or Lessee, or of their respective agents, employees, subtenants, licensees, or assignees. This release shall apply to the extent that such business interruption, loss, or damage to property or injury to or death of persons is covered by insurance, regardless of whether such insurance is payable to or protects City or Lessee, or both. Nothing herein shall be construed to impose any other or greater liability upon either City or Lessee than would have existed in the absence of this provision. This release shall be in effect only so long as the applicable insurance policies contain a clause to the effect that this release shall not affect the right of the insured and additional insured to recover under such policies. Such clauses shall be obtained whenever possible.

**SECTION 6: IMPROVEMENTS/ALTERATIONS/REPAIRS**

**6.01 Acceptance of Premises.**

Lessee represents and warrants that it has independently inspected the Premises and made all tests, investigations, and observations necessary to satisfy itself of the condition of the Premises. Lessee acknowledges it is relying solely on such independent inspection, tests, investigations, and observations in making this Agreement. Lessee further acknowledges that the Premises are in an "as-is" condition and that Lessee does not hold City responsible for any defects in the Premises.

**6.02 Waste, Damage, or Destruction.**

Lessee shall give notice to City of any fire or other damage that occurs on the Premises within **forty-eight (48) hours** of such fire or damage. Lessee shall not commit or suffer to be committed any waste or injury or any public or private nuisance, to the Premises and shall keep the Premises clean and clear of refuse and obstructions, and dispose of all garbage, trash, and rubbish in a manner satisfactory to City. If the Premises shall be damaged by any cause which puts the Premises into a condition which is not decent, safe, healthy and sanitary, Lessee agrees to make or cause to make full repair of said damage and/or to restore the Premises to the condition which existed prior to said damage; or, at City's option, and upon receipt of written demand thereof, Lessee agrees to clear

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and remove from the Premises all debris resulting from said damage and rebuild the Premises in accordance with plans and specifications previously submitted to City and approved in writing in order to replace in kind and scope the operation that existed prior to such damage. Lessee shall be responsible for all costs incurred in the repair and restoration, or rebuilding of the Premises.

**6.03 Maintenance.**

City agrees to assume full responsibility for maintenance of the Premises throughout the term of the Agreement. City will make all repairs and replacements necessary to maintain and preserve the Premises in a decent, safe, healthy, and sanitary condition and in compliance with all applicable laws. In addition, City will keep the roof, foundation structural columns in good repair. City shall not, however, be liable to Lessee hereunder unless Lessee has given City prior written notice of the necessity for such repairs and/or maintenance, and any damage arising therefrom shall not have been caused, in whole or in part by the negligent or willful act or omission of Lessee, its employees, agents or invitees, or by the failure of Lessee to perform any of its obligations under this Agreement, or caused by any risk which Lessee is required to insure pursuant to Section 5 of this Agreement.

In the event that the Premises are not in a decent, safe, healthy, and sanitary condition, City shall have the right, upon written notice to Lessee, to enter the Premises to have any necessary work done. The rights reserved in this section shall not create or increase any obligations elsewhere in this Agreement imposed on City.

**6.04 Improvements/Alterations.**

No improvements, structures, or installations shall be constructed on the Premises, and the Premises may not be altered by Lessee without prior written approval by the City Manager or designee. Further, Lessee agrees that major structural or architectural design alterations to approved improvements, structures, or installations may not be made on the Premises without prior written approval by the City Manager or designee and that such approval shall not be unreasonably withheld. This provision shall not relieve Lessee of any obligation under this Agreement to maintain the Premises in a decent, safe, healthy, and sanitary condition. City shall not be obligated by this Agreement to make or assume any expense for any improvements or alterations installed by Lessee, except for the improvements that will be completed prior to the Commencement Date of this Agreement by the City, that include adding a demising wall on the first floor of the Property to separate the bookstore from the remainder of the first floor, the addition

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of a private entry door to this space, painting the interior and installation of carpet or luxury vinyl flooring to the first floor only. City will also be installing an elevator on the Property for access to the basement. Any alternations or improvements made by Lessee to the Premises shall be made at that the Lessee's sole cost.

**6.05 Utilities.**

City agrees to order, obtain, and pay for gas, electricity, water, trash and sewer services and installation charges in connection with the operation of these utility services at the Premises. Lessee shall order, obtain, and pay for all installation in connection with the operation of phone and internet services at the Premises.

**6.06 Liens.**

Lessee shall not, directly or indirectly, create, incur, assume or suffer to exist any mortgage, pledge, lien, charge, encumbrance or claim on or with respect to all or any portion of the Premises without the prior written consent of the City Manager. Lessee shall promptly, at its own expense, take such action as may be necessary to duly discharge or remove any such mortgage, pledge, lien, charge, encumbrance or claim on or with respect to all or any portion of the Premises for which Lessee does not have the prior written consent of the City Manager or designee.

**6.07 Taxes.**

Lessee shall pay, before delinquency, all taxes, assessments, and fees assessed or levied upon Lessee for its machines, equipment, appliances, or other improvements or property of any nature whatsoever erected, installed, or maintained by Lessee or levied by reason of the business or other Lessee activities related to the Premises, including any licenses or permits.

Lessee recognizes and agrees that this Agreement may create a possessory interest subject to property taxation, and that Lessee may be subject to the payment of taxes levied on such interest, and that Lessee shall pay all such possessory interest taxes.

**6.08 Signage.**

Lessee shall not erect or display any banners, pennants, flags, posters, signs, decorations, marquees, awnings, or similar devices or advertising without the prior written consent of City as owner of the property. If any such unauthorized item is found on the Premises, Lessee shall remove the item at its expense within 24 hours

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of written notice thereof by City, or City may thereupon remove the item at Lessee's cost.

**6.09 Ownership of Improvements and Personal Property.**

Any and all leasehold improvements, structures, and installations or additions to the Premises now existing or constructed on the Premises by Lessee shall at Agreement expiration or termination be deemed to be part of the Premises and shall become, at City's option, City's property, free of all liens and claims except as otherwise provided in this Agreement.

**6.10 Entry and Inspection.**

City reserves and shall always have the right to enter said Premises for the purpose of viewing and ascertaining the condition of the same, or to protect its interest in the Premises, or to inspect the operations conducted thereon. In the event that such entry or inspection by City discloses that said Premises are not in decent, safe, healthy, and sanitary condition (and Lessee has not previously notified City of such condition), City shall have the right, after five (5) days written notice to Lessee, to have any necessary maintenance or repair work done at the expense of Lessee, and Lessee hereby agrees to pay promptly any and all costs incurred by City in having such necessary maintenance or repair work done, in order to keep said Premises in a decent, safe, healthy, and sanitary condition.

In addition to the above, City or any contractor or subcontractor representing City shall have the right to enter the premises for the purpose of conducting any maintenance operations. All such maintenance work shall be in accordance with plans and specifications approved by City and shall be accomplished in a manner so as to minimize interference with Lessee's operation of the leasehold.

**SECTION 7: GENERAL PROVISIONS**

**7.01 Notices.**

All notices, demands, requests, consents or other communications which this Agreement contemplates or authorizes, or requires or permits either party to give to the other, shall be in writing and shall be personally delivered or mailed to the respective party as follows:

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PROPERTY USE AGREEMENT  
FRIENDS OF THE OCEANSIDE PUBLIC LIBRARY  
FOR PROPERTY AT 615 MISSION AVENUE**

To City:

City of Oceanside  
Property Management  
300 North Coast Highway  
Oceanside, CA 92054  
ATTN: Real Estate Manager  
Phone: (760) 435-5014  
Email: [vgutierrez@oceansideca.org](mailto:vgutierrez@oceansideca.org)

To Lessee:

Friends of the Oceanside Public Library  
ATTN: Chris Wilson, President  
330 N Coast Hight  
Oceanside, CA 92054  
Email: [gwsuperfan@gmail.com](mailto:gwsuperfan@gmail.com)  
Phone: (760) 560-8752

Either Party may change its address by notice to the other party as provided herein. Communications shall be deemed to have been given and received on the first to occur of (i) actual receipt at the offices of the party to whom the communication is to be sent, as designated above, or (ii) three working days following the deposit in the United States Mail of registered or certified mail, postage prepaid, return receipt requested, addressed to the offices of the party to whom the communication is to be sent, as designated above.

**7.02 City Approval.**

The City Manager shall be the City's authorized representative in the interpretation and enforcement of all work performed in connection with this Agreement. The City Manager may delegate authority in connection with this Agreement to the City Manager's designee(s). For the purposes of directing Lessee in accordance with this Agreement, which does not result in a change to this Agreement, the City Manager delegates authority to the City's Real Estate Manager.

**7.03 Nondiscrimination.**

Lessee agrees not to discriminate in any manner against any person or persons on account of race, marital status, sex, religious creed, color, ancestry, national origin, age, or physical handicap in Lessee's use of the Premises.

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**7.04 Equal Opportunity.**

Lessee agrees to abide by City's Equal Opportunity Policy as it exists or is amended to the extent that the program is applicable to this Agreement. A copy of the program effective as of the date of this Agreement is on file with the City Clerk's Office.

**7.05 Entire Agreement.**

This Agreement comprises the entire integrated understanding between City and Lessee concerning the use and occupation of the Premises and supersedes all prior negotiations, representations, or Agreements. Each party has relied on its own examination of the Premises, advice from its own attorneys, and the warranties, representations, and covenants of the Agreement itself.

**7.06 Interpretation of the Agreement.**

The interpretation, validity and enforcement of the Agreement shall be governed by and construed under the laws of the State of California. The Agreement does not limit any other rights or remedies available to City. The Lessee shall be responsible for complying with all Local, State, and Federal laws whether or not said laws are expressly stated or referred to herein. Should any provision herein be found or deemed to be invalid, the Agreement shall be construed as not containing such provision, and all other provisions which are otherwise lawful shall remain in full force and effect, and to this end the provisions of this Agreement are severable.

This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

**7.07 Agreement Modification.**

This Agreement may not be modified orally or in any manner other than by an Agreement in writing signed by the parties hereto.

**7.08 Waiver.**

Any City waiver of a default is not a waiver of any other default. Any waiver of a default must be in writing and be executed by the City Manager in order to constitute a valid and binding waiver. City delay or failure to exercise a remedy or right is not a waiver of that or any other remedy or right under this lease. The use of one remedy or right for any default does not waive the use of another remedy or right for the same default or for another or later default. City's acceptance of

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any rents is not a waiver of any default preceding the rent payment. City and Lessee specifically agree that the property constituting the Premises is City-owned and held in trust for the benefit of the citizens of the City of Oceanside and that any failure by the City Manager or City staff to discover a default or take prompt action to require the cure of any default shall not result in an equitable estoppel, but City shall at all times, subject to applicable statute of limitations, have the legal right to require the cure of any default when and as such defaults are discovered or when and as the City Council directs the City Manager to take action or require the cure of any default after such default is brought to the attention of the City Council by the City Manager or by any concerned citizen.

**7.09 Dispute Resolution.**

Any controversy or claim arising out of or relating to this Agreement, or concerning the breach or interpretation thereof, shall be settled first by submission of the matter to mediation the cost of which shall be borne equally by the parties hereto.

**7.10 Assignment and Subletting-No Encumbrance.**

This Agreement and any portion thereof shall not be assigned, transferred, or sublet, nor shall any of the Lessee's duties be delegated, without the express written consent of City, said consent shall not be unreasonably withheld. Any attempt to assign or delegate this Agreement without the express written consent of City shall be void and of no force or effect. A consent by City to one assignment, transfer, sublease, or delegation shall not be deemed to be a consent to any subsequent assignment, transfer, sublease, or delegation.

**7.11 Defaults and Termination.**

If either party ("demanding party") has a good faith belief that the other party ("defaulting party") is not complying with the terms of this Agreement, the demanding party shall give written notice of the default (with reasonable specificity) to the defaulting party and demand the default to be cured within thirty (30) days of the notice.

If the defaulting party is actually in default of this Agreement and fails to cure the default within thirty (30) days of the notice, or, if more than thirty (30) days are reasonably required to cure the default and the defaulting party fails to give adequate assurance of due performance within ten (10) days of the notice, the demanding party may terminate this Agreement upon written notice to the defaulting party.

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City may also terminate this Agreement upon written notice to Lessee in the event that:

- A.** Lessee has previously been notified by City of Lessee's default under this Agreement and Lessee, after beginning to cure the default, fails to diligently pursue the cure of the default to completion; or
  - B.** Lessee shall voluntarily file or have involuntarily filed against it any petition under any bankruptcy or insolvency act or law; or
  - C.** Lessee shall be adjudicated a bankruptcy; or
  - D.** Lessee shall make a general assignment for the benefit of creditors.
- Upon termination, City may immediately enter and take possession of the Premises.

**SECTION 8: SPECIAL PROVISIONS**

**8.01 Standards of Operation.**

Lessee agrees that it shall operate and manage the services and facilities offered upon or from the Premises in a first-class manner and comparable to other similar facilities within San Diego County and Southern California areas which provide like products and services.

**8.02 Hours of Operation.**

Lessee agrees that it shall conduct business on the Premises to conform with the published hours and days of operation as established, and in the best interest of the public.

**8.03 Continued Occupancy.**

Lessee covenants and agrees to, and it is the intent of this Agreement that the Lessee shall, continuously and uninterrupted during the term of the Agreement, occupy and use the Premises for the purposes herein above specified, except while Premises are untenable by reason of fire, flood, or other unavoidable casualty, and, in that event, City shall be promptly notified by Lessee.

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**8.04 Hazardous Substances.**

No goods, merchandise or material shall be kept, stored or sold in or on the Premises which are in any way explosive or hazardous, except that ordinary business materials that may be classified as hazardous may be kept in or on the Premises if such materials are stored and disposed of in accordance with all applicable laws; and no offensive or dangerous trade, business or occupation shall be carried on therein or thereon, and nothing shall be done on said Premises, which will cause an increase in the rate of or cause a suspension or cancellation of the insurance upon the demised Premises or other premises and the improvements thereon; provided, however, that if anything done by Lessee causes an increase in the rate of insurance on the Premises, Lessee may, at its option, pay such increase and Lessee shall not thereafter be considered in default under this Agreement.

No machinery or apparatus shall be used or operated on or about the Premises which will in any way injure the Premises or improvements thereon, or adjacent or other premises, or improvements thereon, or to persons; provided, however, that nothing contained in this section shall preclude Lessee from bringing, keeping or using on or about the Premises such materials, supplies, equipment and machinery as are appropriate or customary in carrying on its said business, or from carrying on its business in all usual respects.

Open flame welding or burning, gasoline, or other fuel storage is expressly prohibited without prior written consent of the City.

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**SECTION 9: SIGNATURES**

**9.01 Signature Page.**

The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity and authority to enter into and to execute this Agreement on behalf of the respective legal entities of the Lessee and the City.

IN WITNESS WHEREOF the parties hereto for themselves, their heirs, executors, administrators, successors, and assigns do hereby agree to the full performance of the covenants herein contained and have caused this Property Lease Agreement to be executed by setting hereunto their signatures on the day and year respectively written hereinbelow.

**CITY**

**APPROVED AS TO FORM**

THE CITY OF OCEANSIDE  
a municipal corporation

By \_\_\_\_\_  
City Attorney

By \_\_\_\_\_  
Jonathan Borrego, City Manager

Date: \_\_\_\_\_

**PERMITTEE**

FRIENDS OF THE OCEANSIDE PUBLIC LIBRARY  
a California nonprofit corporation

By \_\_\_\_\_  
Chris Wilson, President

Date: \_\_\_\_\_

**NOTARY ACKNOWLEDGMENTS OF LESSEE'S SIGNATURE(S) MUST BE ATTACHED**

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**Exhibit "A"  
PROPERTY, PREMISES & PUBLIC PARKING LOT**



**Premises:** Consisting of approximately 7,000 square feet of the building on City Property shown above.

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**Exhibit "B"  
Insurance Requirements**

1. **Provision of Insurance.** Without limiting Lessee's indemnification of the Indemnified Parties, and prior to commencement of this Agreement, Lessee shall obtain, provide and maintain at its own expense during the term of this Agreement, policies of insurance with the endorsements of the type, amounts, terms and conditions described below, and in a form satisfactory to City. Lessee agrees to provide insurance in accordance with the requirements set forth herein. If Lessee uses existing coverage to comply and that coverage does not meet these requirements, Lessee agrees to amend, supplement or endorse the existing coverage.
  
2. **Acceptable Insurers.** All insurance policies shall be issued by an insurance company currently admitted by the Insurance Commissioner to transact business of insurance in the State of California, or with an assigned policyholders' rating of A- (or higher) and Financial Size Category Class VII (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the City Attorneys' Office.
  
3. **Insurance Coverage Requirements.**

A. **General Liability Insurance.**

Combined Single Limit Per Occurrence	\$2,000,000
General Aggregate	\$4,000,000

Lessee shall maintain general liability insurance, and if necessary, umbrella liability insurance, with coverage at least as broad as provided by Insurance Services Office form CG 00 01, in an amount not less than two million dollars (\$2,000,000) per occurrence, four million dollars (\$4,000,000) general aggregate. The policy shall cover liability arising from premises, operations, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract) with no endorsement or modification limiting the scope of coverage for liability assumed under a contract.

B. **Automobile Liability Insurance.**

Combined Single Limit	\$1,000,000
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Lessee shall maintain automobile insurance at least as broad as Insurance

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Services Office form CA 00 01 covering bodily injury and property damage for all activities of Lessee arising out of Lessee's use of the Premises under this Agreement or in connection with work to be performed under this Agreement, including coverage for any owned, hired, non-owned or rental vehicles, in an amount not less than one million dollars (\$1,000,000) combined single limit each accident.

C. **Workers' Compensation Insurance.**  
Statutory Limits

D. **Umbrella or Excess Insurance Policy.**

Lessee may use Umbrella or Excess Policies to provide the liability limits as required in this Agreement. This form of insurance will be acceptable provided that all of the Primary and Umbrella or Excess Policies shall provide all of the insurance coverages herein required, including, but not limited to, primary and non-contributory, additional insured, indemnity, and defense requirements. The Umbrella or Excess policies shall be provided on a true "following form" or broader coverage basis, with coverage as least as broad as provided on the underlying Commercial General Liability insurance. No insurance policies maintained by the Additional Insureds, whether primary or excess, and which also apply to a loss covered hereunder, shall be called upon to contribute to a loss until Lessee's primary and excess liability policies are exhausted.

**Endorsements Required To Be Provided to City.**

**A. Additional Insured Status.** All liability policies including general liability, excess liability, umbrella coverage, and automobile liability, if required, but not including professional liability, shall provide or be endorsed to provide that City and its officers, officials, directors, employees, agents and volunteers shall be included as additional insureds under such policies.

**B. Waiver of Subrogation.** All insurance coverage maintained or procured pursuant to this Agreement shall be endorsed to waive subrogation against City, its elected and appointed officers, officials, agents, directors, employees and volunteers. Lessee hereby waives its own right of recovery against City, and shall require similar written express waivers from each of its subcontractors and/or sub-lessees, if any.

**C. Primary and Non-Contributory.** All liability coverage shall apply on a primary basis and shall not require contribution from any insurance or self-

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insurance maintained by City.

**D. Notice of Cancellation.** All policies shall provide City with thirty (30) calendar days' notice of cancellation (except for nonpayment for which ten (10) calendar days' notice is required) or nonrenewal of coverage for each required coverage.

**4. Additional Provisions.**

- A. **Evidence of Insurance.** Lessee shall provide certificates of insurance to City as evidence of the insurance coverage required herein, along with the other required endorsements specified above. Insurance certificates and endorsements must be approved by the City Attorneys' Office (or City's Risk Manager) prior to commencement of performance. Current certification of insurance and endorsements shall be kept on file with City at all times during the term of this Agreement. City reserves the right to require complete, certified copies of all required insurance policies, at any time.
- B. **City's Right to Revise Requirements.** City reserves the right at any time during the term of this Agreement to change the amounts and types of insurance required by giving Lessee sixty (60) calendar days advance written notice of such change.
- C. **Requirements not Limiting.** Requirements of specific coverage features or limits contained in this **Exhibit "C"** are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type.
- D. **Self-Insured Retentions.** Any self-insured retentions must be declared to and approved by City. City reserves the right to require that self-insured retentions be eliminated, lowered, or replaced by a deductible. Self-insurance will not be considered to comply with these requirements unless approved by the City.
- E. **City Remedies for Non-Compliance.** If Lessee or any subcontractor fails to provide and maintain insurance as required herein, then City shall have the right but not the obligation, to purchase such insurance at Lessee's expense, to terminate this Agreement, or to suspend Lessee's right to proceed until proper evidence of insurance is provided.

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- F. **Timely Notice of Claims.** Lessee shall give City prompt and timely notice of claims made or instituted that arise out of or result from Lessee's operations or performance under this Lease, and that involve or may involve coverage under any of the required liability policies. City assumes no obligation or liability by such notice, and has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve City.
- G. **Lessee's Insurance.** Lessee may also procure and maintain, at its own cost and expense, any additional kinds of insurance which, in its own judgment, may be necessary for its proper protection and prosecution of its operations and work.
- H. **Accident Reporting.** Lessee shall, within 72 hours after occurrence, report to City any accident causing property damage or any serious injury to persons on the Leased Premises. This report shall contain the names and addresses of the parties involved, a statement of the circumstances, the date and hour, the names and addresses of any witnesses and other pertinent information.
- I. **Available Excess Insurance.** If Lessee maintains broader coverage and/or higher limits than the minimums shown above, City requires and shall be entitled to the broader coverage and/or the higher limits maintained by Lessee. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.
- J. **Enforcement of Agreement Provisions.** Lessee acknowledges and agrees that any actual or alleged failure on the part of City to inform Lessee on non-compliance with any requirement imposes no additional obligations on City nor does it waive any rights hereunder.

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**Exhibit "C"  
MEMORANDUM OF COMMENCEMENT**

This Commencement Date Memorandum, dated \_\_\_\_\_, 20\_\_ is executed between the CITY OF OCEANSIDE, a municipal corporation ("City") and FRIENDS OF THE OCEANSIDE PUBLIC LIBRARY, a California non-profit corporation ("Lessee").

**RECITALS**

WHEREAS, City and Lessee have entered into that certain Property Use Agreement ("Agreement") dated \_\_\_\_\_, 20\_\_, for the use of real property located at 615 Mission Avenue in the City of Oceanside, County of San Diego, State of California; and

WHEREAS, pursuant to the terms of the Agreement, the parties are to execute a memorandum to confirm the commencement date of the Agreement.

**AGREEMENT**

NOW, THEREFORE, in consideration of the conditions and covenants contained herein, the parties hereto mutually agree as follows:

The City and Lessee agree that the commencement date of the Agreement is \_\_\_\_\_, 20\_\_ and the termination date is \_\_\_\_\_, 20\_\_, unless further extended pursuant to the terms of the Agreement.

IN WITNESS WHEREOF, the parties hereto for themselves, their heirs, executors, administrators, successors and assigns do hereby agree to the above, as of the day and year first written above.

**"CITY"**

THE CITY OF OCEANSIDE  
a municipal corporation

By: \_\_\_\_\_  
Jonathan Borrego  
City Manager

**"LESSEE"**

FRIENDS OF THE OCEANSIDE PUBLIC LIBRARY  
a California non-profit corporation

By: \_\_\_\_\_  
Chris Wilson, President