



## Staff Report

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**TO:** Honorable Mayor and Members of the Town Council  
**FROM:** Sean Rabé, Town Manager  
**DATE:** March 9, 2021  
**RE:** Loomis Library Parking Lot Use Agreement

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### **Recommendation**

Staff recommends the Town Council adopt the attached resolution approving a Parking Lot Use Agreement with Placer County for the Loomis Library parking lot and authorize the Town Manager to sign the agreement.

### **Issue Statement and Discussion**

As the Council knows, the Town and Placer County entered into a purchase agreement for the Loomis Library and Community Learning Center property in December 2020. One of the provisions of that purchase agreement was the establishment of an agreement for the use of the parking lot between the Library and the Veterans Hall. This is needed because ownership of the parking lot remains with the County. A signed agreement for the use of the lot is required to close escrow.

Attached to this staff report is that agreement. The terms of the use agreement have been negotiated and agreed to by both the Town and County.

Key provisions of the use agreement are as follows:

- The term of the agreement is 10 years, with an automatic 10-year extension as long as the Town is providing services to the public on the Library property. There are termination provisions included that are common to these types of agreements.
- No rent is required under the agreement
- The County shall maintain exclusive control and management at all times of the Parking Lot. The Town is granted the non-exclusive use of the parking area comprised of approximately thirty-four (34) regular parking spaces and three (3) handicapped spaces. There will be no assigned parking.
- Any maintenance and repairs to the lot are to be shared equally between the County and Town, with the County performing the work.
- County shall maintain the three light standards in the lot, while Town pays the utility bill (the standards were recently converted to LED).

This has been a long process, but one that has borne out an incredible opportunity for the Town to fully control its own Library. Staff strongly recommends the Council adopt the attached resolution approving the parking lot use agreement.

**CEQA Requirements**

There are no CEQA implications associated with the recommended action.

**Financial and/or Policy Implications**

Ongoing utility costs, which should be nominal given the standards have been converted to LED. There will be occasional costs for maintenance and repairs, of which the Town will need to pay 50 percent. The Town has adequate funding for those in the Library Department's budget. Revenue for those activities comes through the 1/4-cent sales and use tax.

**Attachments**

1. Resolution
2. Parking Lot use Agreement

TOWN OF LOOMIS

RESOLUTION 21- \_\_\_\_

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF LOOMIS  
APPROVING PARKING LOT USE AGREEMENT WITH PLACER COUNTY**

**WHEREAS**, the County of Placer ("County") and the Town of Loomis entered into a Purchase and Sale Agreement of certain property located at 6050 Library Drive, Loomis, California (Assessor's Parcel Number 043-100-029-000), as shown in Exhibit A attached hereto ("Library Property"); and

**WHEREAS**, the Purchase and Sale Agreement did not include the parking lot as shown in Exhibit A attached hereto; and

**WHEREAS**, the Purchase and Sale Agreement included a provision that a Parking Lot Use Agreement ("Agreement") was required to close escrow on the purchased property; and

**WHEREAS**, Town and County have negotiated terms of said Parking Lot Agreement to provide adequate access to parking for both the Loomis Library and Community Learning Center and the Veterans Memorial Hall.

**NOW THEREFORE, BE IT RESOLVED** by the Town Council of the Town of Loomis that the Town Manager is hereby authorized to sign the Parking Lot Use Agreement between the Town of Loomis and Placer County for the parking lot used by the Veterans Memorial Hall and Loomis Library and Community Learning Center.

PASSED AND ADOPTED this 9<sup>th</sup> day of March , 2021 by the following vote:

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

\_\_\_\_\_  
Jeff Duncan, Mayor

Attest:

APPROVED AS TO FORM:

\_\_\_\_\_  
Crickett Strock, Town Clerk

\_\_\_\_\_  
Jeffrey Mitchell, Town Attorney

**PARKING LOT USE AGREEMENT  
VETERANS MEMORIAL HALL  
LIBRARY BUILDING**

**BETWEEN**

**COUNTY OF PLACER**

**AND**

**TOWN OF LOOMIS**

**PARKING LOT USE AGREEMENT  
VETERANS MEMORIAL HALL  
LIBRARY BUILDING**

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**PARKING LOT USE AGREEMENT  
VETERANS MEMORIAL HALL  
LIBRARY BUILDING**

This Parking Lot Use Agreement ("**Agreement**") is entered into as of \_\_\_\_\_, by and between the County of Placer, a political subdivision of the State of California ("**County**") and the Town of Loomis, a public body, corporate and politic ("**Town**"). County and Town are sometimes hereinafter each singularly referred to as a ("**Party**") and collectively referred to as the ("**Parties**").

**R E C I T A L S:**

This Agreement is entered into on the basis of the following facts, understandings and intentions of the Parties:

WHEREAS, County owns real property at 6050 Library Drive, Loomis, CA, which is designated as Assessor's Parcel No. 043-100-029-000 ("**County Property**"); and

WHEREAS, County intends to grant a portion of the County Property to Town following a survey and preparation of a legal description ("**Transferred Property**") as depicted on **Exhibit A**; and

WHEREAS, County will retain ownership of the parking lot on APN 043-100-029-000 that provides parking for both the library building located on the Transferred Property and the Veterans Memorial Hall, which is on adjacent APN 043-100-001-000 and which is also owned by County; and

WHEREAS, Town desires to continue using a portion of the County Property to provide parking for Town's library building operations; and

WHEREAS, County is willing to allow Town to continue using the parking lot upon the promises, terms, conditions, and covenants set forth below:

NOW, THEREFORE, in consideration of the promises, terms, conditions, and covenants set forth below, County and Town hereby mutually agree as follows:

**ARTICLE 1. SPECIAL CONDITIONS**

**1.01 PARKING LOT**

The County-owned paved parking lot ("**Parking Lot**") abutting the west side of the Transferred Property, including without limitation, sidewalks, landscaped areas, loading areas, and road adjacent to Parking Lot, shall be the subject of this Agreement as depicted on **Exhibit A** attached hereto and incorporated herein by this reference.

**1.02 TERM**

Commencing on the date this Agreement is executed by the County (the "Effective Date"), the term of this Agreement shall be for a term of Ten (10) years ("**Term**"). So long as the Town continues to own the Transferred Property and is providing services on the Transferred Property to the general public, and is not in default of this Agreement, the Term shall automatically be extended for one (1) additional Ten (10) year period unless terminated by mutual consent of the Parties. Notwithstanding the foregoing, the Town may terminate this Agreement upon Ninety

(90) days written notice if it determines that the Parking Lot is no longer needed for Town purposes.

### **1.03 RENT**

In consideration of mutual maintenance responsibilities, no rent shall be required for the Term of this Agreement.

### **1.04 ADDITIONAL FEES, CHARGES AND RENTALS**

Town shall pay to County the following additional fees, charges and rentals:

- A. In the event the County has paid any sum or sums, or has incurred any obligation or expense under this Agreement, for which Town has agreed to pay or reimburse County, or for which Town is otherwise responsible.

### **1.05 SHARED USE**

The County shall maintain exclusive control and management at all times of the Parking Lot, including all vehicle parking areas, driveways, entrances and exits thereto subject to the shared rights and responsibilities of Town as set forth below. Throughout the Term of this Agreement, Town is granted the non-exclusive use of the parking area comprised of approximately thirty-four (34) regular parking spaces and three (3) handicapped spaces. There will be no assigned parking. Vehicles not in regular use and commercial trucks may not be kept or stored in the Parking Lot.

Town is authorized to use the Parking Lot for the use of its employees, agents, guests, patrons, invitees, visitors, suppliers, or contractors for the parking of vehicles on a temporary and intermittent basis. Town and County will share the costs to maintain the Parking Lot in a manner consistent with all applicable laws and regulations. Operational permits required by local, state, or federal agencies (hereinafter "**Permitted Use**") required solely as a result of Town's use or operation of the Parking Lot shall be the sole responsibility of the Town.

County shall take no action within the Parking Lot to limit the ability of the public to access the Parking Lot via Library Drive, which is a public street. In addition, Town shall have the non-exclusive right of ingress to and egress from the Parking Lot over and across the roadways and driveways on County Property. County shall have the non-exclusive right of ingress to and egress from the Parking Lot to access roadways and driveways on County Property.

Town and County shall work together in a cooperative manner to address and/or remedy disputes that may arise between the Town and County from time to time. Both Town and County may require overflow parking for Town or County operations or for community events sponsored by Town, County or other community agencies. Should such use be required, the Party requiring such use shall provide advance written notice to the other Party of such event and specify the date, time, and number of spaces required. Each Party shall make reasonable efforts to accommodate the other Party's request.

### **1.06 PARKING LOT CONDITION AND POSSESSION**

Town acknowledges and represents that it has had a reasonable opportunity to access the Parking Lot and conduct any inspections and/or investigations of the Parking Lot, which it

considers necessary or prudent, and that Town has determined that the Parking Lot is satisfactory to its purpose. Town therefore agrees that it shall use the Parking Lot "as is" as of the Effective Date and shall thereafter share responsibility of the condition of the Parking Lot during the Term, pursuant to the terms, conditions, and improvements specified in this Agreement.

#### **1.07 IMPROVEMENTS BY TOWN**

No Parking Lot improvements are scheduled by Town as of the date of execution of this document. Any future or potential improvements required by Town will require the prior written approval of the County and will require an amendment to this Agreement.

#### **1.08 OWNERSHIP OF IMPROVEMENTS**

Upon expiration or sooner termination of this Agreement, title to any future Parking Lot improvements, and/or alterations shall vest in the County without payment of any further consideration to Town.

#### **1.09 TITLE TO PROPERTY**

Title to the County Property underlying the Parking Lot and any Parking Lot improvements, shall remain vested in County. Town shall not encumber in any way the Parking Lot.

#### **1.10 SURRENDER**

Upon expiration or sooner termination of the Term, Town shall have removed all of its personal property and vehicles remaining on the Parking Lot. Town shall be prepared to surrender the Parking Lot in satisfactory condition as determined by County in the reasonable exercise of its discretion, reasonable wear and tear excepted.

#### **1.11 MAINTENANCE AND REPAIRS**

Except as otherwise set forth herein, the Parties shall share equally in the cost to maintain all portions of the Parking Lot, and any Parking Lot improvements made thereon. Parking Lot improvements designed specifically for the benefit of Town, including any underground utility distribution systems used solely by Town within or outside the Parking Lot in accordance with all applicable laws and regulations, whether now or hereafter enacted, shall be maintained by Town. Parking Lot improvements designed specifically for the benefit of County, including any underground utility distribution systems used solely by County within or outside the Parking Lot in accordance with all applicable laws and regulations, whether now or hereafter enacted, shall be maintained by County. Each Party, at its own cost and expense, shall repair or replace any damage done to the Parking Lot, County Property, or Transferred Property by the other Party or its representatives, vendors, contractors or agents. The Parties agree the Parking Lot shall at all times be kept in a clean, safe, and orderly condition and appearance.

The Parties shall cooperate and share in the cost of the routine maintenance and repair of the Parking Lot including slurry seal and parking stall striping applied to the parking lot surfaces, hereinafter the ("**Pavement Maintenance**"). The County shall provide parking lot slurry coating and stall striping every 5 to 10 years as determined necessary by the County in the reasonable exercise of its discretion. The County shall provide adequate notice and take reasonable efforts to schedule such Pavement Maintenance at times and dates least disruptive to Town's use of the Parking Lot and surrounding County Property or Transferred Property. County shall

maintain the three (3) light standards on the Transferred Property including upgrading light bulbs to LED with the cost of maintenance of lights shared with the Town. The LED upgrade cost will not be shared with the Town. The Town agrees to keep the parking lot lights on from dusk to dawn unless otherwise agreed to with the County in writing and shall pay the cost of said lighting without offset. County shall perform the maintenance at County's available schedule and shall invoice Town for fifty percent (50%) of the actual costs. Costs shall include County project management fees and overhead costs in the maximum amount of five percent (5%) of the actual costs. Town shall remit such fees within thirty (30) days following receipt of such invoice.

#### **1.12 TRASH, GARBAGE, STORAGE AND PARKING LIMITATIONS**

Town shall, at its sole cost and expense, provide a complete and proper arrangement for the adequate sanitary handling and disposal away from the Parking Lot of all trash, waste, garbage, and other refuse resulting from, or in any way associated with, Town's operations hereunder. Town shall not store or permit to be stored any materials, parts or vehicles in, on or about the Parking Lot which are not incidental to Town's operation of the Transferred Property. Town shall not permit any vehicle to be parked in the Parking Lot for more than seventy-two (72) consecutive hours.

County shall, at its sole cost and expense, provide a complete and proper arrangement for the adequate sanitary handling and disposal away from the Parking Lot of all trash, waste, garbage, and other refuse resulting from, or in any way associated with, County's operations hereunder. County shall not store or permit to be stored any materials, parts or vehicles in, on or about the Parking Lot which are not incidental to County's operation of the County Property. County shall not permit any vehicle to be parked in the Parking Lot for more than seventy-two (72) consecutive hours.

#### **1.13 SIGNS**

Town shall not erect, install, or construct any sign on the Parking Lot without the prior written consent of County. County reserves the right to install signs on the Parking Lot and reserves the right to remove any unauthorized signs without notice, and at Town's sole expense. In the event County determines that any of Town's signs present on the County Property prior to the Effective Date of this Agreement are unacceptable, then Town shall remove said signage within thirty (30) days following receipt of a notice to remove said signage.

#### **1.14 POSSESSORY INTEREST TAXES (RESERVED)**

#### **1.15 INSURANCE**

Town shall for itself and any of its contractors or operators, keep in full force and effect during the entire Term of this Agreement and any extensions or renewals thereof the forms of insurance or self-insurance specified in Exhibit B. Failure to comply with this section shall be considered a material default of this Agreement.

#### **1.16 INDEMNIFICATION**

County agrees to indemnify and hold harmless Town and Town's employees, agents and elective and appointive boards from and against any damages, including costs and attorney's fees, incurred by any third party (including Town employees or agents) in the Parking Lot, but

only to the extent said damages are caused by the active negligence or intentional acts of County, its employees or agents.

Town agrees to indemnify and hold harmless County, its employees, agents and elective and appointive boards from and against any damages, including costs and attorney's fees, incurred by any third party (including County employees or agents) in the Parking Lot, but only to the extent said damages are caused by the active negligence or intentional acts of Town, its employees or agents.

#### **1.17 WAIVER OF SUBROGATION**

Town hereby waives any right of recovery from County, its officers and employees for any loss or damage (including consequential loss) resulting from any of the perils insured against in the standard form fire insurance policy with extended coverage endorsement if agreeable by Town's insurance carrier. Town shall cause each insurance policy obtained by it to provide that the insurance company waives all right of recovery by way of subrogation against the County in connection with any damage covered by any policy. If any insurance cannot be obtained with a waiver of subrogation, Town shall notify County of this fact. County shall have a period of ten (10) days after receiving the notice either to place the insurance with a company that is reasonably satisfactory to the other party and that will carry the insurance with a waiver of subrogation, or to agree to pay the additional premium if such a policy is obtainable at additional cost.

#### **1.18 GOOD NEIGHBOR POLICY**

Town and County may, as necessary, jointly develop and adopt a Good Neighbor Policy addressing policies and procedures related to the Parking Lot. Such policies and procedures may address the use and parking areas so as to ensure the safe and appropriate use of Town and County facilities. Said policies may also address the control of access to parking areas on the Parking Lot and on the County Property, and establish procedures by which the Parking Lot may be temporarily closed to allow for outdoor events such as an outdoor book fair or book sale to support the Loomis Library. Initially, County and Town shall meet to jointly develop such policies and procedures. Thereafter, the Parties shall meet annually, prior to the close of the Fiscal Year, to discuss operational issues, review existing policies and procedures, and develop and agree upon new or updated policies and procedures.

### **ARTICLE 2. GENERAL CONDITIONS**

#### **2.01 ASSIGNMENT AND SUBLETTING**

Town shall not assign, transfer, or hypothecate this Agreement or any right or privilege thereto or permit any other person/party (the agents, clients and servants of Town excepted) to occupy or use the Parking Lot or any portion thereof.

#### **2.02 RESERVED**

#### **2.03 DEFAULT; REMEDIES**

##### **A. Default by Town**

Town shall be in default of this Agreement for failure to perform any of the terms, covenants and conditions of this Agreement, such failure remaining uncured for thirty (30) days after

written notice thereof. If by reason of the nature of the breach, it cannot be cured within thirty (30) days, then within a time that would be reasonable if Town were to proceed with diligence to remedy the breach. Upon lapse of the aforesaid cure periods, County shall have all remedies available at law and in equity, including, without limitation, the right to terminate this Agreement with no further obligation to Town.

#### **B. Default by County**

If the County materially breaches this Agreement, Town shall give County written notice of such breach, which requests that the breach be cured. If the breach is not cured: (i) within thirty (30) days after receipt by the County of the notice of breach or (ii) if by reason of the nature of the breach, it cannot be cured within thirty (30) days, then within a time that would be reasonable if County were to proceed with diligence to remedy the breach, Town shall be entitled to any remedy available to it at law or equity.

### **2.04 NOTICES**

A. "Notice" means any notice, demand, request or other communication or document to be provided under this Agreement to a Party to this Agreement.

B. The Notice shall be in writing and shall be given to the Party at its address or facsimile number set forth below, or such other address or facsimile number as the Party may later specify for that purpose by Notice to the other Party. Each Notice shall, for all purposes, be deemed given and received:

1. If given by facsimile, when the facsimile is transmitted to the Party's facsimile number specified below and confirmation of complete receipt is received by the transmitting Party during normal business hours or on the next business day if not confirmed during normal business hours; or
2. If hand-delivered to a Party against receipted copy, when the copy of Notice is receipted; or
3. If given by a nationally-recognized and reputable overnight delivery service, the day on which the Notice is actually received by the Party; or
4. If any Notice is sent by facsimile or other electronic means, the transmitting Party as a courtesy may send a duplicate copy of the Notice to the other Party by regular mail. In all events, however, any Notice sent by electronic transmission shall govern all matters dealing with delivery of the Notice, including the date on which the Notice is deemed to have been received by the other Party.

#### If to County:

Placer County, Facilities Management  
Attention: Property Manager  
11476 C Avenue  
Auburn, CA 95603  
Telephone: (530) 886-4900  
Facsimile: (530) 889-6857  
Email: [FACPropMgmt@placer.ca.gov](mailto:FACPropMgmt@placer.ca.gov)

If to Town:

Town of Loomis  
Attention: Town Manager  
3665 Taylor Road  
Loomis, CA 95650  
Telephone: (916) 652-1840  
Facsimile: (916) 652-1847  
Email: srabe@loomis.ca.gov

- C. The provisions above governing the date on which a Notice is deemed to have been received by a Party to this Agreement shall mean and refer to the date on which a Party to this Agreement, and not its counsel or other recipient, to which a copy of the Notice may be sent, is deemed to have received the Notice.
- D. If Notice is tendered under the provisions of this Agreement and is refused by the intended recipient of the Notice, the Notice shall nonetheless be considered to have been given and shall be effective as of the date provided in this Agreement. The contrary notwithstanding, any Notice given to either Party in a manner other than that provided in this Agreement that is actually received by the noticed Party, shall be effective with respect to such Party on receipt of Notice.

## **2.05 NON-LIABILITY OF OFFICIALS, EMPLOYEES AND AGENTS**

The liability of Town for its obligations under this Agreement is limited solely to Town's use of the Parking Lot as the same may from time to time be encumbered. No member, official, employee or agent of the Town, shall be personally liable to the Town, or any successor in interest, in the event of any default or breach by the Town or for any amount, which may become due to the County, successor or assignee on any obligation under the terms of this Agreement.

## **2.06 TIME**

Time is of the essence of every provision and obligation of this Agreement.

## **2.07 SEVERABILITY**

If any term, covenant, condition or provision of this Agreement, or the application thereof to any person or circumstance, shall to any extent be held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, covenants, conditions or provisions of this Agreement, or the application thereof to any person or circumstance, shall remain in full force and effect to the maximum extent possible and shall in no way be affected, impaired or invalidated.

## **2.08 APPLICABLE LAW**

This Agreement is subject to the laws and jurisdiction of the State of California. In the event that any court action should be brought in conjunction with this Agreement, it shall be subject to interpretation under the laws of the State of California, and any legal proceedings shall be brought under the jurisdiction of the Superior Court of the County of Placer, State of

California. The Parties each waive any federal court removal and/or original jurisdiction rights that they may have.

## **2.09 HAZARDOUS MATERIALS**

Each Party agrees that during the Term of this Agreement, it shall not be in violation of any federal, state or local law, ordinance or regulation relating to industrial hygiene, soil, water, or environmental conditions on, under or about the Parking Lot including, but not limited to, Hazardous Material Laws. Each Party further agrees that during the Term of this Agreement, there shall be no use, presence, disposal, storage, generation, release, or threatened release of Hazardous Materials on, from or under the Parking Lot in violation of any Hazardous Material Laws.

**A. "Hazardous Materials" means:**

1. Any "hazardous substance" as defined in Section 101(14) of CERCLA (42 U.S.C. Section 9601(14)) or Sections 25281(d) or 25316 of the California Health and Safety Code at such time;
2. Any "hazardous waste", "infectious waste" or "hazardous material" as defined in Sections 25117, 25117.5 or 25501 (j) of the California Health and Safety Code at such time;
3. Any other waste, substance or material designated or regulated in any way as "toxic" or "hazardous" in the RCRA (42 U.S.C. Section 6901 et seq.), CERCLA, Federal Water Pollution Control Act (33 U.S.C. Section 1251 et seq.), Safe Drinking Water Act (42 U.S.C. Section 300(f) et seq.), Toxic Substances Control Act (15 U.S.C. Section 2601 et seq.), Clean Air Act (42 U.S.C. Section 7401 et seq.), California Health and Safety Code (Section 25100 et seq., Section 3900 et seq.), or California Water Code (Section 13000 et seq.) at such time; and
4. Any additional wastes, substances or materials which at such time are classified, considered or regulated as hazardous or toxic under any other present or future environmental or other similar laws relating to the Parking Lot.

The term "Hazardous Materials" shall not include the following, so long as such materials and substances are stored, used and disposed of in compliance with all applicable Hazardous Materials Laws: (i) construction materials, gardening materials, household products, office supply products or janitorial supply products customarily used in the construction, maintenance, rehabilitation, or management of commercial properties, buildings and grounds, or (ii) certain substances which may contain chemicals listed by the State of California pursuant to California Health and Safety Code Section 25249.8 et seq., which substances are commonly used by a significant portion of the population living within the region of the Parking Lot, including, but not limited to, alcoholic beverages, aspirin, tobacco products, nutrasweet and saccharine.

- B. "Hazardous Materials Laws" also means all federal, state, and local laws, ordinances, regulations, orders and directives pertaining to Hazardous Materials in, on or under the Parking Lot or any portion thereof.**

## **2.10 ENTRY BY COUNTY**

County reserves and shall at any and all reasonable times, and upon reasonable notice, have the right to enter the Parking Lot to (a) inspect the same, (b) supply any service to be provided by County hereunder, (c) post notices of non-responsibility, and (d) to use the Parking Lot and Improvements as provided for in Section 1.05.

## **2.11 COUNTY'S RIGHT TO PERFORM TOWN'S OBLIGATIONS**

If Town fails to make any payment required of it hereunder, or defaults in the performance of any other promise, term, covenant, or condition required of it under this Agreement, County may, at its sole option, without being under any obligation to do so and without thereby waiving such default, may make such payment and/or remedy such other default, for the account of and at the expense of Town. County may do so immediately and without notice to Town in the case of an emergency, or in any other case if Town fails to make such payment or remedy such default with all reasonable dispatch after County has notified Town in writing of the same.

## **2.12 ENTIRE AGREEMENT**

This Agreement sets forth all covenants, promises, agreements, conditions and understandings between the County and Town concerning the Parking Lot and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between County and Town other than as are herein set forth. Except as herein otherwise provided, no subsequent alteration, amendment, change or addition to this Agreement shall be binding upon the County or Town unless reduced to writing and signed by County and Town.

## **2.13 WAIVER**

A Party's waiver of any term, covenant, condition shall not be deemed to be a waiver of such term, covenant or condition of any subsequent breach of the same or any other term, covenant or condition. The acceptance of payment by County shall not be deemed to be waiver of any prior breach by Town of any term, covenant or condition of this Agreement. A Party's failure to exercise any right, option or privilege hereunder shall not be deemed a waiver of such right, option or privilege nor shall it relieve the other Party from its obligation to perform each day and every covenant and condition to be performed nor from damages or other remedy for failure to perform the obligations of this Agreement.

## **2.14 FORCE MAJEURE**

Town shall not be deemed to be in default under this Agreement where Town delays or defaults are due to war; acts of terrorism, insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; quarantine restrictions; freight embargoes; lack of transportation; or court order; or any other similar causes (other than lack of funds of Town) beyond the control or without the fault of Town.

## **2.15 AUTHORITY AND EXECUTION**

Each person executing this Agreement on behalf of a Party represents and warrants that such person is duly and validly authorized to do so on behalf of the entity which it purports to bind.

## **2.16 FURTHER ASSURANCES**

Each Party, whenever and as often as shall be requested by the other Party, shall perform or cause to be performed, all acts, and execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, all instruments and documents, as may be reasonably required to carry out the intent and purpose of this Agreement.

## **2.17 CAPTIONS, DEFINED TERMS**

The captions of the sections and paragraphs of this Agreement are for convenience only and shall not be deemed to be relevant in resolving any question of interpretation or construction of any section of this Agreement. All references to paragraph and section numbers refer to paragraphs and sections in this Agreement.

The words "County" and "Town" used herein shall include the plural as well as the singular. Words used in neuter general include the masculine and feminine and words in the masculine or feminine gender include the neuter.

The Parties agree that all provisions in this Agreement are to be construed as both covenants and conditions as though the words imparting such covenants and conditions were used in each separate section or paragraph hereof.

## **2.18 JOINT AND SEVERAL LIABILITY**

All the terms, covenants and conditions contained in this Agreement to be performed by either Party, if such Party shall consist of more than one person or organization, shall be deemed to be joint and several.

## **2.19 BINDING EFFECT**

The provisions of this Agreement shall be binding upon and inure to the benefit of both Parties and their heirs, administrators and assigns of each.

## **2.20 REASONABLE CONSENT**

Except as limited elsewhere in this Agreement, wherever in this Agreement County or Town is required to give its consent or approval to any action on the part of the other, such consent or approval shall not be unreasonably withheld.

## **2.21 AMENDMENTS**

This Agreement shall not be modified by either Party by oral representations made before or after the execution of this Agreement; all amendments to this Agreement must be in writing and signed by Town and County.

## **2.22 NOT A PARTNERSHIP**

The provisions of this Agreement are not intended to create nor shall they be in any way interpreted or construed to create a joint venture, partnership or any other similar relationship between the Parties. Each Party shall be considered a separate Party, and no Party shall have the right to act as an agent for the other.

## **2.23 INTERPRETATION**

Each Party and its counsel have reviewed this Agreement. Any rule of construction holding that ambiguities are to be resolved against the drafting Party shall not apply in the interpretation of this Agreement. Unless otherwise expressly stated to the contrary, the word "including" shall be construed in its nonexclusive sense, whether or not words of non-limitation (such as "but not limited to" or "without limitation") are used.

## **2.24 CALCULATION OF TIME PERIODS**

If any date for performance under this Agreement falls on a Saturday, Sunday or bank holiday, then the date for performance shall be the next day which is not a Saturday, Sunday or bank holiday, and the next time period shall be calculated from and after the date of such actual performance. Unless specifically described herein as working days, all time periods shall be calculated as calendar days. Any time periods in this Agreement which are calculated in terms of "months" shall be calculated by using the same dates of the months being counted, regardless of the number of days in each month (for example, the period from April 15 to June 15 would be counted as two months, the period from April 15 to July 15 would be counted as three months, etc.).

## **2.25 AUTHORITY OF THE DIRECTOR**

The Director of Facilities Management, or his or her designee, shall administer this Agreement on behalf of County. Unless otherwise provided herein or required by applicable law, the Director shall be vested with all rights, powers, and duties of County hereunder. With respect to matters hereunder subject to the approval, satisfaction, or discretion of County or the Director, the decision of the Director in such matters shall be final.

**[REMAINDER OF THIS PAGE LEFT INTENTIONALLY BLANK]**

IN WITNESS WHEREOF, County and Town have executed this Agreement as of the date of execution by the County.

**COUNTY:** County of Placer

By: \_\_\_\_\_  
Steve Newsom, Director  
Facilities Management

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

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
County Counsel

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

**TOWN:** Town of Loomis

By: \_\_\_\_\_  
Sean Rabe, Town Manager  
Town of Loomis

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

**APPROVED AS TO FORM:**

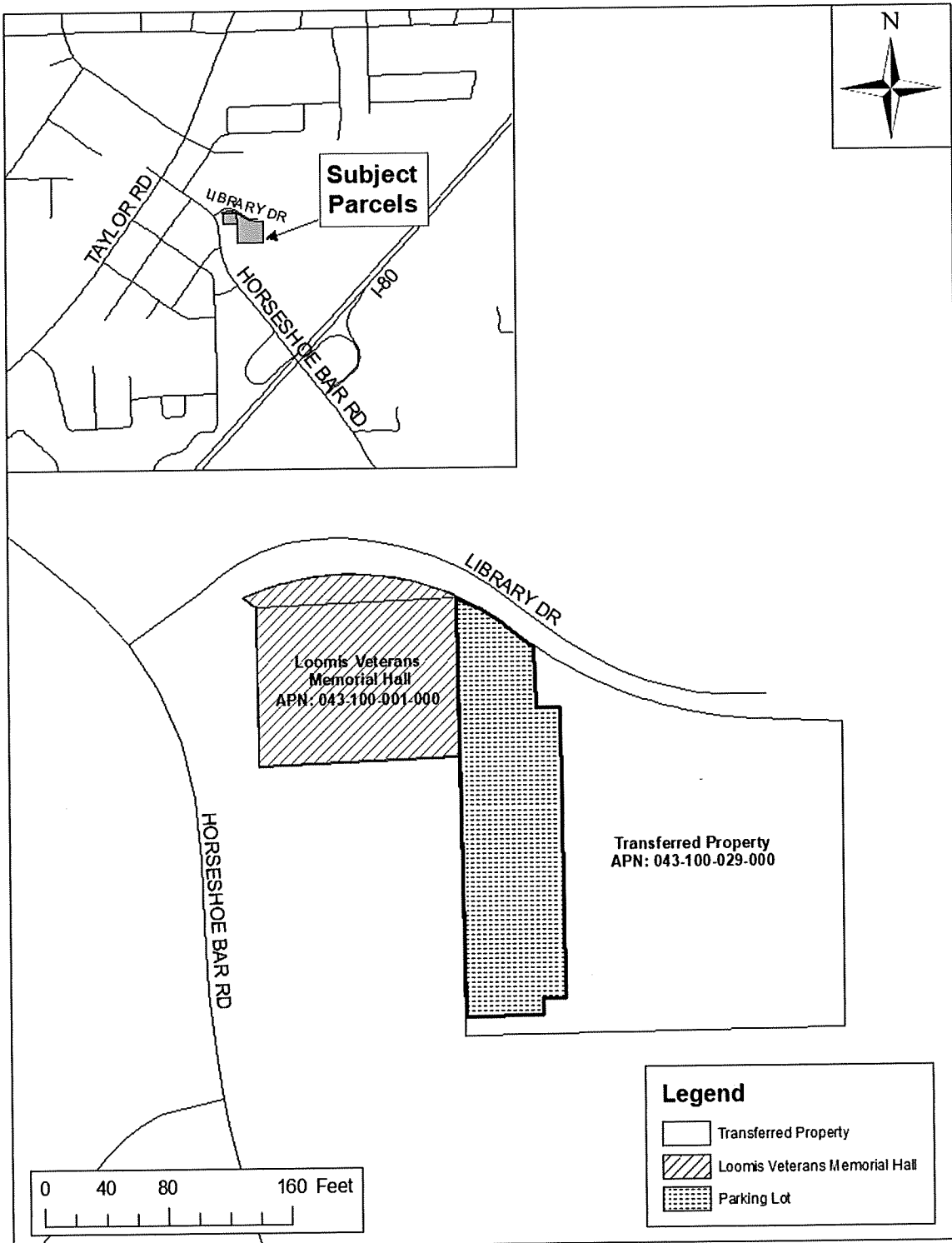
By: \_\_\_\_\_  
Town Attorney

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

Attachments: EXHIBIT A – PARKING LOT  
EXHIBIT B – INSURANCE REQUIREMENTS

**EXHIBIT A**

**PARKING LOT**



## **EXHIBIT B**

### **INSURANCE REQUIREMENTS**

Town shall file with COUNTY concurrently with the execution of the Agreement provide letter of self-insurance or a Certificate of Insurance, in companies acceptable to COUNTY, with a Best's Rating of no less than A-:VII showing.

A. **WORKER'S COMPENSATION AND EMPLOYERS LIABILITY INSURANCE:**

Worker's Compensation Insurance shall be provided as required by any applicable law or regulation. Employer's liability insurance shall be provided in amounts not less than one million dollars (\$1,000,000) each accident for bodily injury by accident, one million dollars (\$1,000,000) policy limit for bodily injury by disease, and one million dollars (\$1,000,000) each employee for bodily injury by disease.

If there is an exposure of injury to Town's employees under the U.S. Longshoremen's and Harbor Worker's Compensation Act, the Jones Act, or under laws, regulations, or statutes applicable to maritime employees, coverage shall be included for such injuries or claims.

Each Worker's Compensation policy shall be endorsed with the following specific language:

Cancellation Notice - "This policy shall not be changed without first giving thirty (30) days prior written notice and ten (10) days prior written notice of cancellation for non-payment of premium to the County of Placer."

Town shall require all SUBCONTRACTORS to maintain adequate Workers' Compensation insurance. Certificates of Workers' Compensation shall be filed forthwith with the County upon demand.

Waiver of Subrogation - The workers' compensation policy shall be endorsed to state that the workers' compensation carrier waives its right of subrogation against the County, its officers, directors, officials, employees, agents or volunteers, which might arise by reason of payment under such policy in connection with performance under this agreement by the Town.

B. **PROPERTY INSURANCE:** Town shall procure and maintain full replacement cost with no coinsurance penalty provision.

C. **GENERAL LIABILITY INSURANCE:**

- (1) Comprehensive General Liability or Commercial General Liability insurance covering all operations by or on behalf of Town, providing insurance for

bodily injury liability and property damage liability for the limits of liability indicated below and including coverage for:

- a. Fire Damage Legal Liability Insurance to protect against any liability incidental to the use of the Premises or resulting from any accident occurring in or about the Premises. Town shall also provide All Risk Property Insurance for any tenant improvements installed by Town. Such coverage shall be an amount equal to the value of the tenant improvements.
- b. Contractual liability insuring the obligations assumed by Town in this Agreement.

(2) One of the following forms is required:

- a. Comprehensive General Liability;
- b. Commercial General Liability (Occurrence); or
- c. Commercial General Liability (Claims Made).

(3) If Town carries a Comprehensive General Liability policy, the limits of liability shall not be less than a Combined Single Limit for bodily injury, property damage, and Personal Injury Liability of:

- One million dollars (\$1,000,000) each occurrence
- Two million dollars (\$2,000,000) aggregate

(4) If Town carries a Commercial General Liability (Occurrence) policy:

- a. The limits of liability shall not be less than:
  - One million dollars (\$1,000,000) each occurrence (combined single limit for bodily injury and property damage)
- b. If the policy does not have an endorsement providing that the General Aggregate Limit applies separately, or if defense costs are included in the aggregate limits, then the required aggregate limits shall be two million dollars (\$2,000,000).

(5) Special Claims Made Policy Form Provisions:

Town shall not provide a Commercial General Liability (Claims Made) policy without the express prior written consent of Count, which consent, if given, shall be subject to the following conditions:

- a. The limits of liability shall not be less than:
  - One million dollars (\$1,000,000) each occurrence (combined single limit for bodily injury and property damage)

→Two million dollars (\$2,000,000) General Aggregate

- b. The insurance coverage provided by Town shall contain language providing coverage up to one (1) year following the expiration of the Term in order to provide insurance coverage for the hold harmless provisions herein if the policy is a claims-made policy.

D. ENDORSEMENTS:

Each Comprehensive or Commercial General Liability policy shall be endorsed with the following specific language:

- (1) "The County of Placer, its officers, agents, employees, and volunteers are to be covered as an additional insured with respect to liability arising out of ownership, maintenance or use of that part of the premises leased to Town".
- (2) "The insurance provided by the Town, including any excess liability or umbrella form coverage, is primary coverage to the County of Placer with respect to any insurance or self-insurance programs maintained by the County of Placer and no insurance held or owned by the County of Placer shall be called upon to contribute to a loss."
- (3) "This policy shall not be changed without first giving thirty (30) days prior written notice and ten (10) days prior written notice of cancellation for non-payment of premium to the County of Placer."

ADDITIONAL REQUIREMENTS:

Premium Payments - The insurance companies shall have no recourse against the County and funding agencies, its officers and employees or any of them for payment of any premiums or assessments under any policy issued by a mutual insurance company.

Policy Deductibles - The Town shall be responsible for all deductibles in all of the Town's insurance policies. The amount of deductible for insurance coverage required herein should be reasonable and subject to County's approval.

Town's Obligations - Town's indemnity and other obligations shall not be limited by the foregoing insurance requirements and shall survive the expiration of this agreement.

Verification of Coverage - Town shall furnish the County with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the County before occupancy commences. However, failure to obtain the required documents prior to occupancy shall not waive the Town's obligation to provide them. The County reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

Material Breach - Failure of the Town to maintain the insurance required by this agreement, or to comply with any of the requirements of this section, shall constitute a material breach of the entire agreement.