



STAFF REPORT

TOWN COUNCIL MEETING OF JUNE 14, 2016

To: Town Council

From: Town Manager
Town Attorney

Subject: Hear 2nd Reading and adopt an ordinance imposing a ¼% Transaction and Use Tax; Adopt Resolution ordering election on the tax and advisory measures; Approve \$6,000 for election and \$6,000 for gap funding until November election; Authorize the Town Manager to sign the attached Lease agreement with Placer County for the Library Building and Premises subject to Approval by the Placer County Board of Supervisors.

Date: June 5, 2016

RECOMMENDATION:

Hear staff presentation, hold discussion and hear public testimony. Hold 2nd Reading and adopt an ordinance imposing a ¼% Transaction and Use Tax; Adopt Resolution ordering election on the tax and advisory measures; Approve \$6,000 for election and \$6,000 for gap funding until November election; Authorize the Town Manager to sign the Lease agreement with Placer County for Library Building and Premises in substantially the form attached, together with such other changes as may be approved by the Town Manager and the Mayor.

DISCUSSION:

At the May 10, 2016 Town Council meeting, the Council held the 1st Reading of an ordinance imposing a ¼% Transaction and Use Tax and directed staff to return with the necessary forms and actions to place a Ballot Measure on the November 2016 general election. In addition, the Town Council directed staff to continue negotiations for lease of the Library Building from Placer County.

SCHEDULE FOR COUNCIL ACTION AND DISCUSSION:

June 14:

- 2nd reading of ordinance establishing transaction and use tax **2/3 vote required (4 affirmative votes)** (See Attachment A).

- Adopt resolution ordering election on tax and advisory measures (See Attachment B).
- Approve \$6,000 for election costs and \$6,000 for gap funding until November election.
- Approve Lease agreement with Placer County.

Future Actions:

- Withdraw from County Free Library System:
 - Two week published notice of date and time when Council will consider withdrawal.¹
 - Approve ordinance withdrawing.² Ordinance requires 2 readings, 30 days to be effective.
 - Notify Board of Supervisors of withdrawal from County system.³ Notice must be accompanied by a statement of boundaries on State Board of Equalization form, and must include certified copy of the ordinance.⁴
- Appoint Library Board. Appointed by Mayor "with the consent" of the Town Council.⁵ Timing not specified in statutes.
- Contract with non-profit to provide library services.
- Negotiate property tax allocation.⁶

The Council had previously directed staff to prepare the necessary resolution and ordinance to place a general tax measure on the June, 2016 election. Attached is the Resolution and Ordinance necessary to place the general tax measure on the November, 2016 election.

RESOLUTION AND ORDINANCE:

Attachment A and B are the Ordinance and Resolution needed to place the Transaction and Use Tax on the November election. The Ballot Measure language is contained in the Resolution, which will need approval at the June 14 Town Council meeting. Although the ordinance does not require urgency findings, it still will require 4/5 affirmative votes at both the 1st and 2nd reading.

FUTURE NON-TIME SPECIFIC REQUIRED ACTIONS:

- Withdraw from County Free Library System:
 - Two week published notice of date and time when Council will consider withdrawal.
 - Approve ordinance withdrawing. Ordinance requires 2 readings, 30 days to be effective.

¹ Ed Code §19106

² Ed Code §18900

³ Ed Code §19104(a)

⁴ Ed Code §19104; Govt Code §§54900, 54901

⁵ Ed Code §18910

⁶ Rev and Tax Code §§99(a)(1), 95(a) and (m)

- Notify Board of Supervisors of withdrawal from County system. Notice must be accompanied by a statement of boundaries on State Board of Equalization form, and must include certified copy of the ordinance.
- Appoint Library Board. Appointed by Mayor "with the consent" of the Town Council. Timing not specified in statutes.
- Contract with non-profit to provide library services.
- Negotiate property tax allocation.

Lease:

Attachment C is the proposed 10 year lease for the Library Building and grounds. Town staff and the Town Attorney have reviewed the lease, made some modifications and recommend authorizing the Town Manager to sign the lease once approved by the Placer County Board of Supervisors. Staff has been advised that the lease will be before the Placer County Board of Supervisors at their June 21, 2016 meeting.

CEQA :

The proposed actions are exempt from CEQA.

FINANCIAL IMPLICATIONS:

Financial impacts to the Town will be dependent on the actions taken.

Attachments:

Attachment A: Ordinance

Attachment B: Resolution placing a Ballot Measure on the November, 2016 Election

Attachment C: Proposed Lease

ORDINANCE NO. _____

**AN ORDINANCE OF THE TOWN OF LOOMIS
IMPOSING A TRANSACTIONS AND USE TAX TO BE
ADMINISTERED BY THE STATE BOARD OF EQUALIZATION**

Section 1. TITLE. This ordinance shall be known as the Loomis Transactions and Use Tax Ordinance. The Town of Loomis hereinafter shall be called "Town." This ordinance shall be applicable in the incorporated territory of the Town.

Section 2. OPERATIVE DATE. "Operative Date" means the first day of the first calendar quarter commencing more than 110 days after the adoption of this ordinance, the date of such adoption being as set forth below.

Section 3. PURPOSE. This ordinance is adopted to achieve the following, among other purposes, and directs that the provisions hereof be interpreted in order to accomplish those purposes:

A. To impose a retail transactions and use tax in accordance with the provisions of Part 1.6 (commencing with Section 7251) of Division 2 of the Revenue and Taxation Code and Section 7285.9 of Part 1.7 of Division 2 which authorizes the Town to adopt this tax ordinance which shall be operative if a majority of the electors voting on the measure vote to approve the imposition of the tax at an election called for that purpose.

B. To adopt a retail transactions and use tax ordinance that incorporates provisions identical to those of the Sales and Use Tax Law of the State of California insofar as those provisions are not inconsistent with the requirements and limitations contained in Part 1.6 of Division 2 of the Revenue and Taxation Code.

C. To adopt a retail transactions and use tax ordinance that imposes a tax and provides a measure therefore that can be administered and collected by the State Board of Equalization in a manner that adapts itself as fully as practicable to, and requires the least possible deviation from, the existing statutory and administrative procedures followed by the State Board of Equalization in administering and collecting the California State Sales and Use Taxes.

D. To adopt a retail transactions and use tax ordinance that can be administered in a manner that will be, to the greatest degree possible, consistent with the provisions of Part 1.6 of Division 2 of the Revenue and Taxation Code, minimize the cost of collecting the transactions and use taxes, and at the same time, minimize the burden of record keeping upon persons subject to taxation under the provisions of this ordinance.

ATTACHMENT A

Section 4. CONTRACT WITH STATE. Prior to the operative date, the Town shall contract with the State Board of Equalization to perform all functions incident to the administration and operation of this transactions and use tax ordinance; provided, that if the Town shall not have contracted with the State Board of Equalization prior to the operative date, it shall nevertheless so contract and in such a case the operative date shall be the first day of the first calendar quarter following the execution of such a contract.

Section 5. TRANSACTIONS TAX RATE. For the privilege of selling tangible personal property at retail, a tax is hereby imposed upon all retailers in the incorporated territory of the Town at the rate of .25% of the gross receipts of any retailer from the sale of all tangible personal property sold at retail in said territory on and after the operative date of this ordinance.

Section 6. PLACE OF SALE. For the purposes of this ordinance, all retail sales are consummated at the place of business of the retailer unless the tangible personal property sold is delivered by the retailer or his agent to an out-of-state destination or to a common carrier for delivery to an out-of-state destination. The gross receipts from such sales shall include delivery charges, when such charges are subject to the state sales and use tax, regardless of the place to which delivery is made. In the event a retailer has no permanent place of business in the State or has more than one place of business, the place or places at which the retail sales are consummated shall be determined under rules and regulations to be prescribed and adopted by the State Board of Equalization.

Section 7. USE TAX RATE. An excise tax is hereby imposed on the storage, use or other consumption in the Town of tangible personal property purchased from any retailer on and after the operative date of this ordinance for storage, use or other consumption in said territory at the rate of .25% of the sales price of the property. The sales price shall include delivery charges when such charges are subject to state sales or use tax regardless of the place to which delivery is made.

Section 8. ADOPTION OF PROVISIONS OF STATE LAW. Except as otherwise provided in this ordinance and except insofar as they are inconsistent with the provisions of Part 1.6 of Division 2 of the Revenue and Taxation Code, all of the provisions of Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code are hereby adopted and made a part of this ordinance as though fully set forth herein.

Section 9. LIMITATIONS ON ADOPTION OF STATE LAW AND COLLECTION OF USE TAXES. In adopting the provisions of Part 1 of Division 2 of the Revenue and Taxation Code:

A. Wherever the State of California is named or referred to as the taxing agency, the name of this Town shall be substituted therefor. However, the substitution shall not be made when:

1. The word "State" is used as a part of the title of the State Controller, State Treasurer, State Victim Compensation & Government Claims Board, State Board of Equalization, State Treasury, or the Constitution of the State of California;

2. The result of that substitution would require action to be taken by or against this Town or any agency, officer, or employee thereof rather than by or against the State Board of Equalization, in performing the functions incident to the administration or operation of this Ordinance.

3. In those sections, including, but not necessarily limited to sections referring to the exterior boundaries of the State of California, where the result of the substitution would be to:

a. Provide an exemption from this tax with respect to certain sales, storage, use or other consumption of tangible personal property which would not otherwise be exempt from this tax while such sales, storage, use or other consumption remain subject to tax by the State under the provisions of Part 1 of Division 2 of the Revenue and Taxation Code, or;

b. Impose this tax with respect to certain sales, storage, use or other consumption of tangible personal property which would not be subject to tax by the state under the said provision of that code.

4. In Sections 6701, 6702 (except in the last sentence thereof), 6711, 6715, 6737, 6797 or 6828 of the Revenue and Taxation Code.

B. The word "Town" shall be substituted for the word "State" in the phrase "retailer engaged in business in this State" in Section 6203 and in the definition of that phrase in Section 6203.

Section 10. PERMIT NOT REQUIRED. If a seller's permit has been issued to a retailer under Section 6067 of the Revenue and Taxation Code, an additional transactor's permit shall not be required by this ordinance.

Section 11. EXEMPTIONS AND EXCLUSIONS.

A. There shall be excluded from the measure of the transactions tax and the use tax the amount of any sales tax or use tax imposed by the State of California or by any Town, Town and county, or county pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law or the amount of any state-administered transactions or use tax.

B. There are exempted from the computation of the amount of transactions tax the gross receipts from:

1. Sales of tangible personal property, other than fuel or petroleum products, to operators of aircraft to be used or consumed principally outside the county in which the sale is made and directly and exclusively in the use of such aircraft as common carriers of persons or property under the authority of the laws of this State, the United States, or any foreign government.

2. Sales of property to be used outside the Town which is shipped to a point outside the Town, pursuant to the contract of sale, by delivery to such point by the retailer or his agent, or by delivery by the retailer to a carrier for shipment to a consignee at such point. For the purposes of this paragraph, delivery to a point outside the Town shall be satisfied:

a. With respect to vehicles (other than commercial vehicles) subject to registration pursuant to Chapter 1 (commencing with Section 4000) of Division 3 of the Vehicle Code, aircraft licensed in compliance with Section 21411 of the Public Utilities Code, and undocumented vessels registered under Division 3.5 (commencing with Section 9840) of the Vehicle Code by registration to an out-of-Town address and by a declaration under penalty of perjury, signed by the buyer, stating that such address is, in fact, his or her principal place of residence; and

b. With respect to commercial vehicles, by registration to a place of business out-of-Town and declaration under penalty of perjury, signed by the buyer, that the vehicle will be operated from that address.

3. The sale of tangible personal property if the seller is obligated to furnish the property for a fixed price pursuant to a contract entered into prior to the operative date of this ordinance.

4. A lease of tangible personal property which is a continuing sale of such property, for any period of time for which the lessor is obligated to lease the property for an amount fixed by the lease prior to the operative date of this ordinance.

5. For the purposes of subparagraphs (3) and (4) of this section, the sale or lease of tangible personal property shall be deemed not to be obligated pursuant to a contract or lease for any period of time for which any party to the contract or lease has the unconditional right to terminate the contract or lease upon notice, whether or not such right is exercised.

C. There are exempted from the use tax imposed by this ordinance, the storage, use or other consumption in this Town of tangible personal property:

1. The gross receipts from the sale of which have been subject to a transactions tax under any state-administered transactions and use tax ordinance.

2. Other than fuel or petroleum products purchased by operators of aircraft and used or consumed by such operators directly and exclusively in the use of such aircraft as common carriers of persons or property for hire or compensation under a certificate of public convenience and necessity issued pursuant to the laws of this State, the United States, or any foreign government. This exemption is in addition to the exemptions provided in Sections 6366 and 6366.1 of the Revenue and Taxation Code of the State of California.

3. If the purchaser is obligated to purchase the property for a fixed price pursuant to a contract entered into prior to the operative date of this ordinance.

4. If the possession of, or the exercise of any right or power over, the tangible personal property arises under a lease which is a continuing purchase of such property for any period of time for which the lessee is obligated to lease the property for an amount fixed by a lease prior to the operative date of this ordinance.

5. For the purposes of subparagraphs (3) and (4) of this section, storage, use, or other consumption, or possession of, or exercise of any right or power over, tangible personal property shall be deemed not to be obligated pursuant to a contract or lease for any period of time for which any party to the contract or lease has the unconditional right to terminate the contract or lease upon notice, whether or not such right is exercised.

6. Except as provided in subparagraph (7), a retailer engaged in business in the Town shall not be required to collect use tax from the purchaser of tangible personal property, unless the retailer ships or delivers the property into the Town or participates within the Town in making the sale of the property, including, but not limited to, soliciting or receiving the order, either directly or indirectly, at a place of business of the retailer in the Town or through any representative, agent, canvasser, solicitor, subsidiary, or person in the Town under the authority of the retailer.

7. "A retailer engaged in business in the Town" shall also include any retailer of any of the following: vehicles subject to registration pursuant to Chapter 1 (commencing with Section 4000) of Division 3 of the Vehicle Code, aircraft licensed in compliance with Section 21411 of the Public Utilities Code, or undocumented vessels registered under Division 3.5 (commencing with Section 9840) of the Vehicle Code. That retailer shall be required to collect use tax from any purchaser who registers or licenses the vehicle, vessel, or aircraft at an address in the Town.

D. Any person subject to use tax under this ordinance may credit against that tax any transactions tax or reimbursement for transactions tax paid to a district imposing, or retailer liable for a transactions tax pursuant to Part 1.6 of Division 2 of the Revenue and Taxation Code with respect to the sale to the person of the property the storage, use or other consumption of which is subject to the use tax.

Section 12. AMENDMENTS. All amendments subsequent to the effective date of this ordinance to Part 1 of Division 2 of the Revenue and Taxation Code relating to sales and use taxes and which are not inconsistent with Part 1.6 and Part 1.7 of Division 2 of the Revenue and Taxation Code, and all amendments to Part 1.6 and Part 1.7 of Division 2 of the Revenue and Taxation Code, shall automatically become a part of this ordinance, provided however, that no such amendment shall operate so as to affect the rate of tax imposed by this ordinance.

Section 13. ENJOINING COLLECTION FORBIDDEN. No injunction or writ of mandate or other legal or equitable process shall issue in any suit, action or proceeding in any court against the State or the Town, or against any officer of the State or the Town, to prevent or enjoin the collection under this ordinance, or Part 1.6 of Division 2 of the Revenue and Taxation Code, of any tax or any amount of tax required to be collected.

Section 14. SEVERABILITY. If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the ordinance and the application of such provision to other persons or circumstances shall not be affected thereby.

Section 15. EFFECTIVE DATE. This ordinance relates to the levying and collecting of the Town transactions and use taxes and shall take effect immediately.

Section 16. TERMINATION DATE. The authority to levy the tax imposed by this ordinance shall expire March 31, 2027.

PASSED AND ADOPTED by the Town Council of the Town of Loomis, State of California, on June 14, 2016, by the following vote:

AYES:
NOES:
ABSENT:

Brian Baker, Mayor

Attest: _____
Crickett Strock, Town Clerk

RESOLUTION NO. _____

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF LOOMIS
CALLING A SPECIAL MUNICIPAL ELECTION TO BE HELD ON NOVEMBER 8, 2016, FOR THE
PURPOSES OF APPROVING AN ORDINANCE IMPOSING A ONE-QUARTER PERCENT
TRANSACTION AND USE TAX FOR LIBRARY AND OTHER GENERAL COMMUNITY SERVICES;
APPROVING AN ADVISORY BALLOT MEASURE; REQUESTING THAT THE PLACER COUNTY
BOARD OF SUPERVISORS CONSOLIDATE THE ELECTION WITH THE STATEWIDE ELECTION;
AUTHORIZING THE TOWN COUNCIL TO PREPARE A WRITTEN ARGUMENT IN SUPPORT OF
THE TAX AND ADVISORY MEASURES; AND DIRECTING THE TOWN ATTORNEY TO PREPARE
AN IMPARTIAL ANALYSIS OF THE MEASURES**

WHEREAS, on March 10, 2015, the Director of Placer County Library Services informed the Town Council that Placer County intended to close the Loomis branch of the County library system (the "Loomis Library") in June, 2015, in response to which the Town Council adopted Resolution 15-01 in support of keeping the Loomis Library open; and

WHEREAS, in further response to the proposed closure of the Loomis Library, the Mayor appointed an ad hoc committee of Town residents (the "Committee") to explore options for keeping the Loomis Library in operation beyond the end of the fiscal year; and

WHEREAS, at the Town Council's meeting of October 24, 2015, the Committee recommended that the Council place a one-quarter cent general transaction and use tax on the next available regular election date to provide the Town with a source of funding for community services, including the Loomis Library; and

WHEREAS, on December 8, 2015, the Placer County Board of Supervisors agreed to keep the Loomis Library open until July 1, 2016; and

WHEREAS, Town general fund revenues are inadequate to provide for the continued operation of the Loomis Library and other community services desired by the residents of the Town of Loomis, and additional long-term revenues are necessary to keep the Loomis Library open after July 1, 2016; and

WHEREAS, the Loomis Library has been operated and maintained for the use, benefit, and enjoyment of all residents of the Town, and the Loomis Library is a critical asset to the community by providing books and reading rooms, as well as gathering spaces that foster community and civic engagement for Town residents.

NOW, THEREFORE, BE IT RESOLVED, that the Town Council of the Town of Loomis hereby resolves, declares, determines and orders as follows:

Section 1. The foregoing recitals are true and correct, and hereby incorporated by reference.

Section 2. Pursuant to California Constitution Article XIII C, section 2 and Elections Code section 9222, the Town Council of the Town of Loomis

submits to the qualified voters of the Town, the Loomis Library and General Services Tax Measure (the "Tax Measure"), which if approved, would adopt a general transactions and use tax, as authorized by revenue and Taxation Code section 7285.9. This Tax Measure shall be designated by letter by the Placer County Elections Department. Pursuant to Election Code section 10400, et seq., the election for this Tax Measure is hereby called and shall be considered with the regular election to be conducted on November 8, 2016.

Section 3. The Tax Measure to be presented to the voters shall be as set forth below. This question requires the approval of a majority of qualified electors' casting votes:

<p>PROPOSITION "___": To support the continued operation of the Loomis library, and for other general fund purposes, shall a quarter percent transactions and use tax ("sales tax") be adopted for a period of ten years, subject to annual audits?</p>	<p>Yes</p> <p>No</p>
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Section 4. The ordinance authorizing the general tax to be approved by the voters pursuant to Sections 2 and 3 of this resolution is set forth in full in **Exhibit A**, attached hereto.

Section 5. Pursuant to California Constitution Article XIII C, section 2; and Elections Code section 9222, the Town Council of the Town of Loomis also submits to the qualified voters of the Town, the Loomis Library and General Services Advisory Measure (the "Advisory Measure"). This Advisory Measure shall be designated by letter by the Placer County Elections Department. Pursuant to Election Code section 10400, et seq., the election for this Advisory Measure is hereby called and shall be considered with the regular election to be conducted on November 8, 2016.

Section 6. The Advisory Measure to be presented to the voters shall be as set forth below. This question requires the approval of a majority of qualified electors' casting votes:

<p>PROPOSITION "___": ADVISORY VOTE ONLY: If a local transactions and use tax is enacted in the Town of Loomis, should its revenue be used predominantly to support the continued operation of the Loomis library?</p>	<p>Yes</p> <p>No</p>
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Section 7. The Town Clerk is authorized, instructed and directed to work with the Placer County Registrar of Voters, as needed, in order to properly and lawfully conduct the election. The ballots to be used in the

election shall be in the form and content as required by law. The Placer County Registrar of Voters is authorized to canvass the return of the municipal election. In all Particulars not recited in this resolution, the election shall be held and conducted as provided by law for holding municipal elections.

Section 8.

The Board of Supervisors is requested to instruct its Registrar of Voters to provide such services as may be necessary for the holding of the consolidated election. The election shall be held in all respects as if there were only one election. The Town of Loomis recognizes that the county will incur additional costs because of this consolidation and agrees to reimburse the county for those costs. The Town Manager is hereby authorized and directed to expend the necessary funds to pay for the Town's cost of placing the Tax Measure and the Advisory Measure on the election ballot. Such services provided by the county may include, but are not limited to, the following:

- Publication of notices calling the election
- Publications of notices calling for ballot arguments
- Provision of voter lists
- Obtaining and staffing polling places
- Provision and delivery of precinct supplies
- Counting of ballots and certification of election
- Other election activities authorized by law
- All aspects of election not specified above may be agreed upon by the County Clerks and the Town Manager

Section 9.

- a. Pursuant to California Elections Code section 9282, on behalf of the Town Council, the Mayor is hereby authorized to prepare a written argument in favor of the proposed Tax Measure and the proposed Advisory Measure, not to exceed three hundred (300) words each. At the Mayor's discretion, the arguments may also be signed by members of the Town Council or a bona fide association of citizens, or by individual voters who are eligible to vote on the Tax Measure and the Advisory Measure. In the event that an argument is filed against the Tax Measure and/or Advisory Measure, the Mayor is also authorized to prepare rebuttal argument(s) on behalf of the Town Council, which may also be signed by members of the Town Council or bona fide association of citizens, or by individual voters who are eligible to vote on the Measures.

- b. Pursuant to California Elections Code section 9280, the Town Council hereby directs the Town Clerk to transmit a certified copy of the Tax Measure and the Advisory Measure to the Town Attorney. The Town Attorney shall prepare an impartial analysis of the Tax Measure and of the Advisory Measure, each not to exceed five hundred (500) words in length, showing the effect of the Tax Measure and the Advisory Measure on the existing law and the operation of the Tax Measure, and transmit the impartial analyses to the Placer County Registrar of Voters.

- c. Pursuant to California Election Code section 9285, when the Town Clerk has selected the arguments for and against the Tax Measure and the Advisory Measure, which will be printed and distributed to the voters, the Town Clerk is directed to send copies of the arguments in favor of the Tax Measure and the Advisory Measure to the authors of the arguments against, and copies of the arguments against to the authors of the arguments in favor.

Section 10. The Town Clerk is directed to file certified copies of this resolution with the Board of Supervisors and the Registrar of Voters of the County of Placer, together with the attached ballot measures.

Section 11. The jurisdictional boundaries of the Town of Loomis have not changed since the last General Municipal Election.

Section 12. This resolution shall become effective immediately upon its passage and adoption.

PASSED AND ADOPTED, this ____ day of _____, 2016 by the following vote:

AYES: Council Members:
NOES: Council Members:
ABSENT: Council Members:
ABSTAIN: Council Members:

Brian Baker, Mayor

ATTEST:

Crickett Stroock, Town Clerk

EXHIBIT A

Ordinance Authorizing General Transaction and Use Tax

**LEASE AGREEMENT
LOOMIS LIBRARY**

This Lease ("Agreement") is made and entered into on the last date shown on the signature page, in Auburn, California, by and between The Town of Loomis a California general law city ("Town"), and the County of Placer, a political subdivision of the State of California ("County"). Town and the County are sometimes hereinafter referred to individually as "Party" and collectively as the "Parties."

WHEREAS, County is the owner of approximately 1.3 acres of land located in the Town of Loomis, CA, described as a portion of Assessor's Parcel Number 043-100-029 (hereinafter the "County Property").

WHEREAS, said County Property is improved with an approximately 4,608 square feet building which is located at 6050 Library Drive, Loomis, CA, as depicted in Exhibit A, which has been operated by the County as the Loomis Library (hereinafter the "Library Building").

WHEREAS, Town desires to lease from the County the Library Building for the purposes of operating a community learning center and a municipal library, for the Town of Loomis.

WHEREAS, subject to the limitations and reservations set forth herein, the County is willing to lease to Town pursuant to this Agreement for the Term specified for the purposes stated above.

NOW, THEREFORE, in consideration of the mutual covenants and promises herein, County and Town hereby enter into this Agreement on the following terms and conditions.

1. **Premises:** Said Premises contains the Library Building, accessible parking spaces serving the building and its landscaped grounds as depicted in Exhibit A (hereinafter "Premises"), together with the appurtenant rights, and the Common Area, as set forth in Section 8. The Parties acknowledge that Town can receive partial occupancy of particular rooms or spaces within the Premises as such areas are available following receipt of a letter from County providing authorization to the Town to occupy a space or area of the Premises.
2. **Lease Term:** This Agreement shall become effective upon the Parties' execution of this Agreement (the "Effective Date"). The initial term of this Agreement shall be for a term of ten (10) years commencing on the first day of the calendar month following Town's full occupancy of the Library Building (the "Term"). The date of occupancy will be communicated by letter from the Town to County.
 - 2.1 **Early Termination:** Town may terminate this Agreement within one hundred twenty (120) days after the November 2016 election in the event the November Ballot measure providing funding towards the operation of a municipal library fails.

- 2.2 **Extension of Lease:** Town shall have the right to negotiate an extension of the Term. In the event Town determines that it desires to extend the term, Town shall notify the County within ninety (90) days of the term expiration and request that negotiations commence relative to the extension of the Term.
3. **Rent and Additional Rent:** The rent for the Term of this Agreement shall be One and no/100 Dollars (\$1.00) per year (the "Rent"), with the entire Initial Term's Rent in the amount of Ten and no/Dollars (\$10.00) due and payable prior to the commencement of the Term.
- 3.1 **Additional Rent:** Additional Rent constitutes any and all additional fees, charges, expenses or payment obligations, other than the Rent (the "Additional Rent"). Additional Rent shall be charged to Town when Town is liable for the payment of charges, fees, expenses, and costs incurred by County in the event that County has paid any sum or incurred an obligation or expense for which Town has agreed to pay or reimburse the County or for which Town is otherwise responsible under this Agreement. Such obligation or expense may include but is not limited to: utility hookup fees or utility meter installation costs.
4. **Use of Premises:** During the Term of this Agreement, Town is authorized to use Premises for a community/public use as a Community Learning Center and/or a municipal library (hereinafter "Use"). No commercial use is permitted. Any fees collected by the Town must go towards maintenance, upkeep and operation of the Premises. Town shall not use, or permit said Premises or any part thereof, to be used for any purpose other than the purposes which said Premises are hereby permitted. Said Premises shall also include the attached shelving in the interior of the Premises. Town agrees not to use or permit the use of the Premises in any illegal manner or conduct any business in or around the Premises in violation of state and federal laws, rules, or regulations.
- 4.1 **Non-Profit Operator:** The Town may allow a non-profit organization to operate the Premises, subject to said non-profit's compliance with the terms of this Agreement, including said operator's compliance with the Insurance Requirements as specified in Section 22.
5. **Use of County's Personal Property:** Throughout the Term, County agrees to allow Town to use of the following: attached shelving and other library furnishings that County agrees are no longer needed for County purposes; outdoor seating located at the east side of the Premises; storage shed located at the southwest side on the Premises, subject to Town obtaining the necessary approvals from the Friends of the Loomis Library.
6. **Permits and Approvals:** Town shall acquire all necessary and applicable building and/or zoning permits and agency approvals and licenses necessary to conduct

Town's Use of the Premises. Town shall have sole responsibility for the payment of fees as required for such permits or approvals. Town agrees to comply with all conditions of permits or licenses issued to Town for Town's use of the Premises.

7. **Utilities:** Town shall pay for all public utility costs in connection with the Use of the Premises including, but not limited to, water, electricity, gas, trash removal, and telephone service. Where the Premises shares a common utility source or metering device, Town shall pay to County its proportionate share of the total utility cost.
8. **Appurtenant Rights:** The appurtenant rights referred to in this Agreement are as follows:
 - 8.1 **Ingress and Egress.** Town shall have full and unimpaired access to the Premises.
 - 8.2 **Common Area:** The term "Common Area" means all areas and facilities outside the Premises and designated by County from time to time for the general use and convenience of County and other tenants and their respective authorized representatives and invites. Common Area includes, without limitation, sidewalks, landscaped areas, loading areas, shared parking Lot and roads adjacent to the County Property of which the Premises are a part, as depicted in Exhibit A of this Agreement.
 - 8.3 **Common Area Use:** Town acknowledges that the Common Area serving the Premises are shared with the County's Veterans Memorial Hall and agrees that County shall maintain exclusive control and management at all times of all Common Areas including all vehicle parking areas, driveways, entrances and exits thereto and other facilities furnished by County on County Property. There will be no assigned parking. Vehicles not in regular use and commercial trucks may not be kept or stored on County Property. County and Town shall work cooperatively to ensure sufficient parking for both Town and County patrons. Town agrees to coordinate with the County to schedule dates and times for special events/non-business hours or weekend events being planned at the Library in an effort to avoid duplication of events and to ensure sufficient parking for the Veterans Memorial Hall users, patrons and members. Additionally, the Town shall work with the County in a cooperative manner to address and/or remedy disputes that arise between the County and Town as it relates to such shared use of the Common Area.
9. **Maintenance and Repairs:** County makes no representation, express or implied, as to the structural, mechanical or operational quality or suitability of the Premises: compliance with any applicable building code or other regulations; or to the quality, dependability or quantity of utility services. Town agrees to use the Premises in an "as-is" condition.
 - 9.1 Town shall maintain, service and repair, at Town's sole expense, all portions of the Premises as well as maintenance to any Improvement

installed by Town for its sole and exclusive use and all maintenance repairs caused by Town's Use of the Premises. All such repairs and maintenance shall be made in a professional and workmanlike manner and shall include, but not be limited to the following facilities and/or obligations: custodial services; flooring; interior walls; painting; interior and exterior doors including security and locksets and keyways systems; plumbing fixtures and systems including drains, toilets and fixtures; interior and exterior lighting; irrigation and fire protection systems including backflow prevention devices, timers and distribution pipes, and fire panel, fire detection, alarm system and alarms; exterior areas including grounds, landscaping, walkways; building structure including roof systems; architectural features (outriggers), and windows and screens; exterior walls and surfaces; electrical systems, sewer lines and pumps; and heating/air conditioning.

If Town has not performed its maintenance obligations, County shall not be required to notify Town to perform any of Town's maintenance responsibilities hereunder. However if County gives such notice, and Town fails to commence and, thereafter, diligently prosecute completion of the maintenance which is called for by such notice within (10) days following receipt thereof, County may, at its option, itself perform, or cause to perform, such work at Town's sole cost and expense. In such event, Town shall, upon demand, reimburse County for all costs and expense of any kind or character incurred by County in connection therewith. Such option shall be in addition to any exercise thereof and shall not be deemed to create or imply any obligation or duty whatsoever to County or to any other person.

9.2 Town shall at its own cost and expense, keep the Premises and improvements in at least as good condition and repair throughout the Term of the Agreement as existed at the Effective Date. The Town shall at its own cost and expense repair or replace any damage done to the Premises or improvements or any part thereof, or neighboring properties or improvements thereon, caused by Town or Town's agents, contractors, employees, invitees, or visitors.

10. Town's Contribution to Common Area and Shared Infrastructure Costs: The Parties will share the costs of, normal, day-to-day operation, repair, maintenance, and management of the Common Area and/or serving the Premises, including shared parking areas, utilities infrastructure, the sewer system, landscaping, fencing, signage, sidewalks and hardscape. For costs associated with projects, maintenance and repairs, and other costs to manage the Common Area, County shall invoice Town fifty percent (50%) of the actual costs. Costs shall include County project management fees and overhead costs in the maximum amount of five (5) percent of the actual costs. Town shall remit such fees within thirty (30) days following receipt of such invoice. Such costs shall not include any costs

associated with the provision of accessible parking spaces to serve the Veterans Memorial Hall. County has historically maintained the pavement and light poles on a periodic basis. It is anticipated that the pavement will be sealed and striped one time during the Agreement term and the light poles will be maintained two times during the term. Should other unscheduled or unanticipated repairs or maintenance items become necessary or other operational costs be incurred by County, then County will provide reasonable advance notice to the Town of such repair, maintenance, and/or operational requirement and its associated estimated cost.

11. Improvements, Modifications and/or Alterations: Any improvements, modifications, and/or alterations to the Premises will require prior review and approval from County, which shall not be unreasonably delayed or withheld. Town shall comply with all local, State and Federal laws, rules and regulation including, but not limited to, the acquisition of appropriate permits and agency approvals, and shall have sole responsibility for the payment of fees as required for such permits or approvals. Any improvements modifications and/or alterations by Town shall be in compliance with the requirements of the Americans and Disabilities Act pursuant to Paragraph 16.
12. Ownership of Improvements: Title to current improvements located on the Premises (hereinafter, "County Improvements") and future improvements and alterations on the Premises made by Town (hereinafter "Town Improvements") shall at all times during the Term hereof remain in Town. Upon expiration or sooner termination of this Agreement, title to Town Improvements shall, at the written election of County, vest in the County without payment of any further consideration to Town. If County has not elected to accept these Town Improvements, then Town shall remove from the Premises, such improvements and personal property upon expiration or sooner termination of this Agreement, at Town's sole cost and expense including costs to restore areas affected by removed Town Improvements. Town shall surrender the Premises in satisfactory condition as determined solely by the County in the reasonable exercise of its discretion. Town shall leave the Premises in such condition that it shall not be in violation of any land use, building, health, and safety code, and shall not be subject to undue erosion or degradation of environmental conditions; and, upon vacating the Premises, Town shall not be responsible for remedying conditions that existed as of the Effective Date. Any personal property that is not removed from the Premises within thirty (30) days after the date of any termination of this Agreement to be removed from the Premises and stored at Town's expense.
13. Trash, Garbage, Storage: Town shall, at its sole cost and expense, provide a complete and proper arrangement for the adequate sanitary handling and disposal away from the Premises of all trash, waste, garbage, and other refuse resulting from, or in any way associated with, Town's operations or Use hereunder. Town shall not store or permit to be stored any materials, parts or vehicles in, or on the Premises which are not incidental to Town's operation or

Use of the Premises. All trash, garbage or any other materials may only be stored in the proper receptacles. Town shall have forty-eight (48) hours to remove and properly dispose of any trash, garbage, materials or other items from the Premises, as identified in the County written notification.

14. Signs: Town shall be permitted to place a sign on the Premises for identification in accordance with the Town's Sign Ordinance. Any additional signs shall be permitted with advance permission of the County. No signs or advertisements shall be placed outside the Premises, on County Property. County reserves the right to remove any unauthorized signs without notice at Town's expense. Town shall not erect any signs that are offensive in nature. Town shall be required to provide and install all signage required by the American with Disabilities Act at Town's sole expense. Town shall at its sole expense maintain and repair the event bulletin sign located at the entrance to the Premises. Town shall not remove any existing monuments or markers located on the Premises grounds without advance permission from the County and shall also be responsible for the maintenance and repair thereof.

15. Asbestos-Containing Materials and Lead: Asbestos-Containing Materials (ACM) and lead based paint may be present in the Library Building or other improvements associated with the Premises. Town acknowledges the potential presence of ACMs or lead and agrees to adhere to any restrictions imposed, and to assume any additional liability caused by leasing the Premises. Town also acknowledges the requirement to inform any employees or invitees of Town of the presence of ACM and/or lead.
 - 15.1 In the case of any action or proceeding is brought against Town or County in regard to an abatement of ACM and/or lead or injury or damage from ACM and/or lead which is caused by Town's use or occupancy of the Premises, County reserves the right, at its sole discretion, to give Town a thirty (30) day written Notice of Termination. Town shall indemnify County for all damages and actual costs incurred by County including, but not limited to, staff time, expenses, attorney fees, litigation costs, or any expense sustained by County as a result of such action or proceeding.
 - 15.2 The Parties agree that Town shall perform, at its sole expense, any and all further inspections and testing necessary to determine the suitability of the Premises for Town's use. Town shall also be solely responsible for work and costs associated with the removal and abatement of asbestos and/or lead as necessary for any Improvements, Modifications and/or Alterations pursuant to Section 11. Town shall ensure that contractors used to perform inspections, testing and resultant work is certified pursuant to Section 6501.8 of the Business and Professions Code. Tenant shall also submit to County copies of all such certifications prior to performance of work and provide results or reports from such inspections and/or testing.

- 16. American with Disabilities Act:** Town acknowledges that it is aware of the provisions and requirements of the Americans with Disabilities Act (ADA) and is hereby notified that the Premises and Common Area may not comply with the provisions of ADA. By execution of this Agreement, Town expressly acknowledges and agrees that it is Town's sole responsibility to determine at Town's sole and absolute discretion, the suitability of the Premises for its intended use.
- 16.1** Town's compliance with ADA shall apply to Town's Use of the Premises, to any signage associated with Town's use of the Premises, and to any improvements, modifications and/or alterations to the Premises made by Town.
- 16.2** In case any action or proceeding is brought against Town or County in regard to compliance with ADA which is caused by Town's use, improvements, or occupancy of the Premises, Town shall indemnify and hold County harmless and shall reimburse County for all actual costs incurred by County including, but not limited to, staff time, expenses, attorney fees, litigation costs, or any expense sustained by County as a result of such action or proceeding.
- 16.3** In case any action or proceeding is brought against Town or County in regards to compliance with ADA which is caused by Town's use, improvements, or occupancy of the Premises, County reserves the right, at its sole discretion, to give Town a thirty (30) day written Notice of Termination. Town shall indemnify County for all damages and actual costs incurred by County including, but not limited to, staff time, expenses, attorney fees, litigation costs, or any expenses sustained by County as a result of such action or proceedings.
- 17. Net Lease:** Except as otherwise expressly provided herein, it is the intent and purpose of County and Town that all rent payable to County herein shall be absolutely net to County so that this Agreement shall yield to County the entire Rent and, when applicable, the entire Additional Rent, free of any charges, assessments, impositions or deductions of any kind or character which may be charged, assessed, or imposed on or against the Town or the Premises and without abatement, deduction, hold-back or set-off by Town.
- 17.1** Unless otherwise provided herein, all costs, expenses, charges, assessments or obligations of any kind relating to the maintenance and operation of the Premises, including but not limited to payment of construction of facilities, buildings and other improvements thereupon; payment of alterations, repairs, reconstruction and replacements as hereinafter provided which may arise or become due during the term hereof, shall be paid by Town. Town shall indemnify, defend, and hold harmless County, its officers, agents, and employees, from any and all liens, collections, or court judgments relating to Town's payment obligations as described herein.

18. **Damage and Destruction:** If all or a portion of the Library Building on the Premises and or the Common Area serving the Library Building is damaged by fire, earthquake, act of God, or the elements of other casualty to the extent that the Town's operations cannot continue (as determined by the Town in its sole discretion), the use authorized under this Agreement shall cease and the Agreement shall terminate upon written notice from the County. In such event, County shall have no obligation to restore the Library Building or the Common Area.
19. **Default:** Either Party 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 the defaulting Party were to proceed with diligence to remedy the breach. Upon lapse of the aforesaid cure periods, the non-defaulting Party 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.
20. **Hazardous Materials:**
- 20.1 "Hazardous Materials" shall mean any quantity of hazardous, toxic or otherwise dangerous substances, materials, or wastes, whether solid, liquid or gas, including but not limited to asbestos in any form, urea formaldehyde, PCB's, radon gas, crude oil or any fraction thereof, all forms of natural gas, petroleum products or by-products, any radioactive substance, asbestos or asbestos containing materials, any infectious, reactive, corrosive, ignitable or flammable chemical or chemical compound, or any other substance or material regulated by local, state or federal laws.
- 20.2 Town, its agents, employees, contractors or invitees shall not cause or permit any Hazardous Materials to be brought upon, stored, used, generated or released into the environment or disposed of in, on, under or about the Premises without prior written consent of County. Failure to comply with this provision shall constitute a breach of this Agreement.
- 20.3 Town shall not store any quantity of explosives, corrosives, flammables and/or gases under pressure (except household aerosol products), including, but not limited to, those materials listed in the California Code of Regulations, Title 22, subsections 66680 and 66685 without prior written authorization from County.
- 20.4 Town shall use, keep, store and/or dispose of such Hazardous Materials in a manner that complies with all laws regulating any such Hazardous Materials and with good business practices.

- 20.5** Town shall be responsible for all costs incurred in complying with any order, ruling or other requirement of any court or governmental body or agency having jurisdiction, which requires Town to comply with any local, State, and/or Federal laws, regulations, guidelines, codes or ordinances which relate to Hazardous Materials stored, used, generated or released by Town. The costs shall include, without limitation, the cost of any required or necessary repair and/or cleanup or detoxification in the preparation of any closure or other required plan.
- 20.6** Upon the expiration or sooner termination of this Agreement, Town shall remove from the Premises at its sole cost and expense, any and all Hazardous Materials, including any equipment or systems containing Hazardous Materials, which were brought upon, stored, used, generated or released into the environment by Town, its agents, employees, contractors or invitees.
- 20.7** To the fullest extent permitted by law, Town shall indemnify, defend and hold County, its directors, officers, employees and agents free and harmless from and against any and all claims, judgments, damages, penalties, fines, costs, liabilities or losses (including, without limitation, diminution in the value of use of rentable or useable space or of any amenity of the Premises and sums paid in settlement of claims, attorney's fees, consultant fees and expert fees) caused by, arising out of, or related to (1) the breach of any representation, warranty or covenant of Town contained in this Section; or (2) the existence of Hazardous Materials which were created, handled, placed, stored, used, transported or disposed of by Town, which County did not approve prior to presence, in or about the Premises; or (3) the existence of Hazardous Materials which were created, handled, placed, stored, used, transported or disposed of by Town without prior approval of County; or (4) Town's use, creation, placement, storage, generation and/or transportation that is not in compliance with all Federal, State and County statutes and regulations; or (5) any such Hazardous Materials, with respect to which any court or governmental body or agency having jurisdiction, requires Town to undertake any repair, cleanup, detoxification or other remedial action, excluding any Hazardous Materials in the Premises that a governmental body or agency has established is the direct cause of County's or other prior owner's use of the Premises.
- 20.8** Town is subject to stormwater quality requirements under the National Pollution Discharge Elimination System, MS4 Phase II permit issued by the State Water Resources Control Board. Additionally, the County has a Stormwater Quality Ordinance which prohibits any direct or indirect non-stormwater discharge to the county's municipal storm drain system.
- 21.** Possessory Interest Taxes: Town's interest in this Agreement may be subject to taxation as a possessory interest in publicly owned property as described in California Revenue and Taxation Code Section 107.6, a copy of which is

attached as Exhibit C. For every year that this Agreement is in effect on January 1 Town will be required to pay possessory interest taxes on or before August 31 of that same year, if applicable. Failure of Town to pay any such taxes shall constitute a material breach of this Agreement.

22. Insurance.

- 22.1** Town shall for itself and any of its contractors or operators as described in Section 4.1, 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.
- 22.2** Should the County determination that additional insurance is necessary to provide adequate coverage, County may, at any time, require Town to replace their current policy with a policy consistent with the requirements provided to Town pursuant to written notification. Such notice shall be provided to Town not less than sixty (60) days prior to the date of such required changes to coverage.
- 22.3** Both parties agree to waive any rights of subrogation which they or their insurer may have against the other, provided such waiver of subrogation can be accomplished without prejudice to the insured's rights and without extra expense, unless any such extra expense is paid by the other party.
- 22.4** Failure to comply with this Section shall be considered a material default of this Agreement.

23. Indemnification.

- 23.1** Town shall indemnify and hold PLACER COUNTY harmless from and defend PLACER COUNTY against any and all claims of liability for any injury, death, or damage to any person or property occurring in, on or about the Premises when such injury, death or damage is caused in part or in whole by the act, neglect, fault or omission of any duty with respect to the same by Town, its agents, contractors, employees or invitees, except to the extent such claim results from the negligent acts or omissions of County.
- 23.2** Town shall further indemnify and hold PLACER COUNTY harmless from and against any and all claims arising from any act or negligence of Town or any of its agents, contractors, employees and from and against all costs, attorney's fees, expenses and liabilities incurred in the defense of any such tort claim or any action or proceeding brought thereon. Town shall be required to provide notice to the PLACER COUNTY within thirty (30) working days of the date when Town is made aware of the occurrence of any such tort claim.

- 23.3** In case any action or proceeding is brought against PLACER COUNTY by reason of any such claim, Town, upon notice from PLACER COUNTY, shall defend the same at Town's expense provided, however, that Town shall not be liable for damage or injury occasioned by the negligent or intentional acts of PLACER COUNTY and its designated agents or employees. PLACER COUNTY shall be required to provide notice to Town within thirty (30) working days of the date when PLACER COUNTY is made aware of the occurrence of any such government tort claim.
- 24.** Rights Not Granted: The Parties understand that this Agreement does not grant to Town any real property interest in the Premises, or portion(s) of County Property, except as set forth herein.
- 25.** Termination: The Parties shall have the right to immediately terminate this Agreement upon written notice to the other Party as follows:
- 25.1** Subject to Town not being in default of any term of this Agreement, Town may terminate this Agreement earlier than the term identified above by providing thirty (30) days advance written notification to County no less than sixty (60) days before the Term's expiration.
- 25.2** If either Party has failed to perform pursuant to the requirements set forth in the Agreement, if such failure to perform continues for thirty (30) calendar days following a Party's written notice specifying such failure, each Party shall have the right to provide the other Party a notice of termination.
- 26.** Assignment: Town may not assign this Agreement, or any of its rights and duties hereunder, to any third party without the prior written consent of the County, which consent may be withheld in the sole discretion of the County.
- 27.** Notices: All notices, demands, requests, or other writings (each a "Notice") provided by the terms of this Agreement to be given or made or sent, or which may be given or made or sent, by either party hereto to the other, shall be in writing, shall be given by (a) personal delivery, (b) delivery by a nationally recognized overnight delivery service, (c) mailing or depositing same in the United States mail, registered or certified, return receipt requested, postage prepaid, or (d) facsimile (if a copy of such notice also is delivered by any other permitted method of delivery along with evidence that the facsimile was transmitted successfully), and in all cases shall be properly addressed to the parties at the following addresses, which addresses and fax numbers may be changed by any Party effective upon written notice to all other Parties:

If to County:

ATTN: Property Manager

Department of Public Works and Facilities

Mailing Address:

11476 C Avenue

Auburn, CA 95603

Fax: (530) 889-6857

Physical Address:

2855 Second Street

Auburn, CA 95603

If to Town:

Town of Loomis

Attn: Rick Angelocci, Town Manager

3665 Taylor Road

Loomis, CA 95650

Fax: (916) 652-1847

28. **Representation:** Town hereby acknowledges that it has had the opportunity to review this Agreement with an attorney and has either done so or knowingly declined the opportunity to do so.
29. **Waiver:** Any waiver of any covenant, obligation or requirement under this Agreement must be in writing and signed by both parties. Waiver by either party of a breach of any covenant or a waiver of any obligation of this Agreement shall not constitute a waiver of any subsequent breach or obligation of this Agreement.
30. **Authority of 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 and, if such Party is a partnership, corporation or trustee, that such partnership, corporation or trustee has full rights and authority to enter into this Agreement and perform all of its obligations hereunder.
31. **Amendments:** No revision or amendment to this Agreement shall be valid unless made in writing and signed by duly authorized representatives of both parties.
32. **Benefit:** This Agreement shall be binding upon and inure to the benefit of the successors and assigns (to the extent assignment is permitted) of each of the parties hereto.
33. **Legal Jurisdiction:** 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. County and Town each waive any federal court removal and/or original jurisdiction rights it may have.
34. **Captions:** 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.

35. **Defined Terms:** County and Town agree that all provisions in this Agreement are to be construed as terms, covenants and conditions as though the words imparting such terms, conditions and covenants were used in each separate section or paragraph hereof.
36. **Severability:** The invalidity of any term or provision of this Agreement as determined by a court of competent jurisdiction shall in no way effect the validity of any other provision hereof. Each remaining term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.
37. **Binding Effects:** The Parties consider each and every term, covenant and provision of this Agreement to be material and reasonable.
38. **Force Majeure:** Neither County nor Town shall be required to perform any term, condition or covenant in this Agreement so long as such performance is delayed or prevented by force majeure, which shall mean acts of God, strikes, lockouts, material or labor restrictions by any governmental authority, civil, riot, floods, and any other cause not reasonably within the control of County or Town (excluding financial inability) and which by the exercise of due diligence County or Town is unable, wholly or in part, to prevent or overcome. Once said performance is no longer delayed or prevented by force majeure, County and Town shall be required to perform all covenants and conditions of this Agreement.
39. **Time of Essence:** Time is of the essence in this Agreement and in each and every provision hereof.
40. **Exhibits:** The exhibits listed in this Agreement are hereby incorporated herein as if set forth in full.
41. **Entire Agreement:** This Agreement and any attachments or exhibits hereto constitute the sole, final, complete, exclusive and integrated expression and statement of the terms and conditions of this Agreement among the parties hereto concerning the subject matter addressed herein, and supersedes all prior negotiations, representations or agreements, oral or written, that may be related to the subject matter of this Agreement.
42. **Construction and Interpretation:** It is agreed and acknowledged by the Parties that the provisions of this Agreement have been arrived at through negotiation, and that each of the Parties has had a full and fair opportunity to review the provisions of this Agreement and to have such provisions reviewed by legal counsel. Therefore, the normal rule of construction that any ambiguities are to be resolved against the drafting Party shall not apply in construing or interpreting

this Agreement. The Parties consider each and every term, covenant and provision of this Agreement to be material and reasonable.

43. Counterparts: This Agreement may be executed in multiple counterparts, all of which shall constitute one and the same Agreement.
44. Status of Employees: All persons performing services for Town on or in the Premises shall be solely employees or contractors of Town and not employees of County, except those persons expressly and directly employed by County. Furthermore, Town is not considered an agent of the County.
45. No Oral Agreements: This Agreement covers in full each and every agreement of every kind and nature whatsoever between the parties hereto concerning this Agreement, and all preliminary negotiations and agreements of whatsoever kind of nature are merged herein, and there are no oral agreements or implied covenants.
46. Authority of the Director: The Director of Facility Services, or designee, shall administer this Agreement on behalf of the County. As directed or authorized by the Placer County Board of Supervisors, the Director shall be vested with all rights, powers, and duties of County hereunder.

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date written hereafter.

TOWN: The Town of Loomis a California Corporation

BY: _____
Name Title

DATED: _____

COUNTY: Placer County, a political subdivision of the State of California

BY: _____ DATED: _____
Robert Weygandt, Chairman

APPROVED AS TO FORM:
COUNTY COUNSEL

By: _____ DATED: _____
Brian Wirtz
Deputy County Counsel

Exhibits:

- Exhibit A: Premises
- Exhibit B: Insurance Requirements
- Exhibit C: Copy of Revenue and Taxation Code Section 107

PREMISES



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.

CALIFORNIA REVENUE AND TAXATION CODE

107.6

- (a) The state or any local public entity of government, when entering into a written Agreement with a private party whereby a possessory interest subject to property taxation may be created, shall include, or cause to be included, in that contract, a statement that the property interest may be subject to property taxation if created, and that the party in whom the possessory interest is vested may be subject to the payment of property taxes levied on the interest.
- (b) Failure to comply with the requirements of this Section shall not be construed to invalidate the contract. The private party may recover damages from the contracting state or local public entity, where the private party can show that without the notice, he or she had no actual knowledge of the existence of a possessory interest tax.

The private party is rebuttably presumed to have no actual knowledge of the existence of a possessory interest tax.

In order to show damages, the private party need not show that he or she would not have entered the contract but for the failure of notice.

- (c) For purposes of this Section:
 - (1) "Possessory interest" means any interest described in Section 107.
 - (2) "Local public entity" shall have the same meaning as that set forth in Section 900.4 of the Government Code and shall include school districts and community college districts.
 - (3) "State" means the state and any state agency as defined in Section 11000 of the Government Code and Section 89000 of the Education Code.
 - (4) "Damages" mean the amount of the possessory interest tax for the term of the contract.

Note: This excerpt is provided for reference only and is subject to legislative amendments. It shall be Tenant's sole responsibility to review any updates to this code, which is available at <http://www.leginfo.ca.gov/calaw.html>.