



**CITY OF BOULDER
CITY COUNCIL AGENDA ITEM**

MEETING DATE: November 2, 2023

AGENDA TITLE

Consideration of the following items related to the transfer of the Boulder Public Library:

1. Consideration of a motion to approve and authorize the city manager to enter into, execute, and negotiate minor amendments in line with council direction prior to or during the term of two separate Intergovernmental Agreements (IGA) between the City of Boulder and the Boulder Public Library District, in substantially the same form as in **Attachment A**, and between the City of Boulder, County of Boulder, and the Boulder Public Library District, in substantially the same form as in **Attachment B**, relating to the transfer and operation of the Boulder Public Library District;

AND

2. Consideration of a motion to approve and authorize the city manager to enter into, execute, and negotiate administrative amendments prior to or during the term of 20-year leases of the Boulder Public Library located at 1001 Arapahoe Ave., in substantially the same form as in **Attachment C**, the Carnegie Library located at 1125 Pine St., in substantially the same form as in **Attachment D**, the George Reynolds Branch Library located at 3595 Table Mesa Dr., in substantially the same form as in **Attachment E**, and the new North Boulder Branch Library located at 4500 13th St., in substantially the same form as in **Attachment F**, to the Boulder Public Library District in conformance with the terms of the IGA between the city and the Library District for the benefit of the Boulder public library system;

AND

3. Consideration of a motion to approve and authorize the city manager to Assign the lease, and execute any documents to effectuate such assignment, for the Meadows Branch Library located at 4800 Baseline Rd., in substantially the same form as

in **Attachment G**, to the Boulder Public Library District in conformance with the terms of the IGA between the city and the Library District for the benefit of the Boulder public library system;

AND

4. Consideration of a motion to approve and authorize the city manager's determination to donate or otherwise dispose of items of city property with an estimated accumulative value in excess of \$25,000 to the Boulder Public Library District in conformance with the terms of the IGA between the city and the Library District for the benefit of the Boulder public library system.

PRESENTERS

Nuria Rivera-Vandermyde, City Manager
Chris Meschuk, Deputy City Manager
Teresa Taylor Tate, City Attorney
David Gehr, Senior Counsel
Janet Michels, Senior Counsel

EXECUTIVE SUMMARY

The purpose of this agenda item is for the City Council to consider the several documents related to the final transfer and transition of the Boulder Public Library from the City of Boulder to the newly formed Boulder Public Library District (District), and address required procedures between Boulder County, the Boulder Library District, and the city. This work is the culmination of several years of work and is implementing the voter-approved direction to transition library services to a library district. This item includes:

1. Intergovernmental Agreements (IGA): one between the city and District and another between the city, county and the District.
2. Twenty-year leases of city property: Boulder Public Library located at 1001 Arapahoe Ave., the Carnegie Library for Local History located at 1125 Pine St., the George Reynolds Branch Library located at 3595 Table Mesa Dr., and the new North Boulder Branch Library located at 4500 13th St.
3. Assignment of lease: an assignment of the lease for the Meadows Branch Library located at 4800 Baseline Rd.
4. Acceptance of the city manager's determination to donate or otherwise dispose of items of city property with an estimated accumulative value in excess of \$25,000 to the District.

These documents also reflect the direction from City Council on two issues discussed at the September 14, 2023, study session. City Council considered and discussed options regarding appointment process to fill vacancies on the Boulder Public Library District Board of Trustees and the disposition of the city's real property assets (Main Library, Carnegie Library for Local History, the George Reynolds Branch Library, and the new North Boulder Branch Library). A majority of the council supported a hybrid approach in appointing trustees to the Library District Board of Trustees and favored leasing the city-owned library buildings to the District.

STAFF RECOMMENDATION

Suggested Motion Language:

Staff requests council consideration of this matter and action in the form of the following motion:

1. Motion to approve and authorize the city manager to enter into, execute, and negotiate minor amendments in line with council direction prior to or during the term of two separate Intergovernmental Agreements (IGA) between the City of Boulder and the Boulder Public Library District, in substantially the same form as in **Attachment A**, and between the City of Boulder, County of Boulder, and the Boulder Public Library District, in substantially the same form as in **Attachment B**, relating to the transfer and operation of the Boulder Public Library District;

AND

2. Motion to approve and authorize the city manager to enter into, execute, and negotiate administrative amendments prior to or during the term of 20-year leases of the Boulder Public Library located at 1001 Arapahoe Ave., in substantially the same form as in **Attachment C**, the Carnegie Library located at 1125 Pine St., in substantially the same form as in **Attachment D**, the George Reynolds Branch Library located at 3595 Table Mesa Dr., in substantially the same form as in **Attachment E**, and the new North Boulder Branch Library located at 4500 13th St., in substantially the same form as in **Attachment F**, to the Boulder Public Library District in conformance with the terms of the IGA between the city and the Library District for the benefit of the Boulder public library system;

AND

3. Motion to approve and authorize the city manager to Assign the lease, and execute any documents to effectuate such assignment, for the Meadows Branch Library located at 4800 Baseline Rd., in substantially the same form as in **Attachment G**, to the Boulder Public Library District in conformance with the terms of the IGA between the city and the Library District for the benefit of the Boulder public library system;

AND

4. Motion to approve and authorize the city manager's determination to donate or otherwise dispose of items of city property with an estimated accumulative value in excess of \$25,000 to the Boulder Public Library District in conformance with the terms of the IGA between the city and the District for the benefit of the Boulder public library system.

COMMUNITY SUSTAINABILITY ASSESSMENTS AND IMPACTS

- **Economic** – Libraries are one of the top contributors to economic and community health. Public libraries provide support services and online resources for all community members. The cost of library services will be shared by more taxpayers because, in addition to the city, Boulder County properties outside of the city limits are included in the District.
- **Environmental** – The environmental impact of forming a library district is negligible. Expanding library services into unincorporated Boulder County may have a slight impact by reducing community members' car trips into the city of Boulder to get library services if the District is funded to level so it can establish new library facilities.
- **Social** – The public library system plays an important role in education, countless resources and programs that fuel economic, social, and cultural development. Public libraries connect people to others and to all types of information.

OTHER IMPACTS

- **Staff Time** – The work required to negotiate the IGAs, leases, assignment, and support the separation of the library from the city has required hiring additional staff and reallocating time from other items on council's work plan.
- **Fiscal** – Ultimately, the formation of the District with voter-approved funding through property tax revenues will eliminate the need for the city to provide library services. Specific to the transition, all staff time for this transition is considered part of the city workplan, any direct costs of equipment or services necessary for the transition will be paid for by the District.

BACKGROUND

On November 8, 2022, ballot measure 6C was passed by electors within the service area of the District, creating the Boulder Public Library District. The voters also approved a new property tax to support the District.

Collectively, the Board of County Commissioners of Boulder County (BOCC), on May 2, and the City Council, on May 4, ratified members to the Library Board of Trustees. Pursuant to state law, an IGA between the establishing entities (the city and the county) and the District must be executed within 90 days of the trustee ratification. An IGA will

determine the rights, obligations, and responsibilities, financial and otherwise, of the parties to the agreement.

The parties have put in place an Interim IGA in order to negotiate mutually acceptable terms for a final IGA, with a goal of transferring management and operation of the Boulder Public Library from the city to the District on January 1, 2024.

The city continues to operate the library during the transition.

ANALYSIS

Per state Library Law, the parties must enter into an IGA to determine how the transfer of the city's assets and liabilities for the library will occur to the District, including all real and personal property in a manner that serves the best interests of the community members of the city and the District. The city, county and the District entered into an Interim IGA in June 2023 that is scheduled to expire on December 31, 2023. Prior to expiration, the Interim IGA will be replaced by two final IGAs that the council will be considering under this agenda item.

IGA between the City and District (Attachment A)

City staff have been meeting with representatives of the District regarding the terms and conditions of a final IGA separating the municipal library from city systems and services and the disposition of city property. The final transfer, or "closing date" is proposed as January 1, 2024. The key topics of this IGA are technical in nature, such as:

- Information technology software and hardware separation – The District will provide its own IT network, with the city supporting internet service until such time the District can procure its own internet service.
- Human resources policies and practices for the hiring of city employees by the District – The District will offer employment to existing city library staff, and city employment will conclude on December 31, 2024.
- Revenue and funds transfer from dedicated revenue sources – All remaining audited and unspent balances of dedicated library funds will be transferred to the District before July 1, 2024.
- Reimbursement to the city for 2023 expenses associated with the municipal library – This includes all personnel and operating costs, including cost allocated services.
- Retention of space and assets for on-going city operations – Areas where the city continues to need the use of some of the library buildings for information technology infrastructure, the space in the Main Library that is used for the offices of the Communication and Engagement Department, and the studio for Channel 8 will be retained by the city at no charge.

The parties have been able to come to an agreement in principle regarding the terms of separation of city systems, services, assets, including city buildings, and city employees.

The substance of the final IGA between the city and the District can found in **Attachment A**.

IGA between the City, County and District (Attachment B)

The city has also been meeting with representatives of the District and the county regarding a separate IGA with terms that include the appointment of future board of trustee members and to provide for the District's annual reporting and meeting requirements.

Per City Council direction, the parties have agreed to use a hybrid approach when appointing new trustees to the board. The city and county have both expressed an interest in the state law option to continue the joint committee (Selection Committee) to interview and appoint new trustees. However, a hybrid option for up to two trustees appointed by the District Board of Trustees, as non-voting members, to join the Selection Committee, was supported. This approach will still require ratification of new trustees by the two legislative bodies, the city and the county, as defined in state law.

The IGA describes the role the District will play in notifying the city and county of a vacancy and providing the support needed to administer the selection process.

The IGA also proposes that the interview process leverage the American Libraries Association Bill of Rights and Trustee Ethics Statement as threshold values criteria for future trustee selection process.

The hybrid approach allows the elected officials to have maximum oversight in the early years of the District. It also provides an opportunity for the Board of Trustees to participate in the selection and appointment process. The approach to selection may be reevaluated at a future time after all parties have had the opportunity to experience the hybrid approach.

These terms have been agreed upon in principle between the city, county, and District staff. The substance of the IGA between the city, county and the District can be found in **Attachment B**.

Twenty-year Leases of City Owned Property

At the September 14, 2023, study session, City Council directed staff to proceed with leasing the city's library buildings to the District. Staff has drafted form lease agreements which outline the terms under which the city will grant the District use of city owed properties for library purposes.

The first is for the Main Library located at 1001 Arapahoe Ave., see **Attachment C**. This lease agreement has a term of 20 years but per council direction includes an option allowing the District to terminate the lease at will in three-year increments. Key items within this lease include:

- Allowance for the city to retain usage for the Communications & Engagement department and Channel 8 studios until the western city campus is completed, as well as IT network equipment housed in the building.
- This lease is unique due to the setting of the library being within the Civic Center area. As an appendix to the lease, the city and the District have drafted a license and management agreement for the Civic Area, outlining the terms of use for the land beneath the building, the parking lots, and surrounding park. This agreement also articulates the maintenance responsibilities of each party for this licensed area.
- This lease also outlines that the District is responsible for all maintenance and capital costs for the building, as well as adequate insurance coverage.

The second is a form lease agreement entered into for each of the three city-owned branch libraries: Carnegie Library for Local History located at 1125 Pine St., **Attachment D**, the George Reynolds Branch Library located at 3595 Table Mesa Dr., **Attachment E**, and the new North Boulder Branch Library located at 4500 13th St., **Attachment F**.

The branch lease agreements also have a lease term of 20 years and also include an option allowing the District to terminate the lease at will in three-year increments. These leases also outline that the District is responsible for all maintenance and capital costs for the buildings and lands within the parcel the buildings sit upon, as well as adequate insurance coverage. The new North Boulder Branch Library has additional language for the lease commencing after the building is completed and a certificate of occupancy is issued, with the lease end date matching all other library building leases.

All leases have a requirement for insurance coverage that is approved by the city manager, city attorney, and city risk manager. The city's goal regarding insurance coverage is two-fold. First, the city seeks to ensure that it has no fiscal obligations for library operations. Second, the city seeks to ensure that the District carries adequate coverage for the buildings, including a range of potential risks from vandalism to catastrophic loss and destruction.

Assignment of Meadows Lease (Attachment G)

The Meadows Library Branch is a leased space within the Meadows on the Parkway shopping center. The library has been a tenant within the center since its construction in the 1980s. The current lease ends in 2029. Lessor has agreed to allow the city to assign the lease to the District and release the city from any obligation or liability under the lease. The Assignment of Lease can be found in **Attachment G**.

North Boulder Corner Branch Library

The only outstanding leased premises is the North Boulder Corner Branch Library. The city is operating on a month-to-month basis as a holdover tenant until the new North

Boulder Branch Library is built. It is the city's understanding that the District and the lessor will execute a new lease, and that the city will terminate its month-to-month lease.

Disposition of City Personal Property

The IGA between the city and the District calls for the personal property in the libraries to be conveyed to the District. This personal property includes collections, bookshelves and other furniture, and similar items that are necessary for the operation of and programming for the libraries. Section 2-8-3(b), "When Formal Competitive Bidding is Required," B.R.C. 1981, requires the city manager to dispose of obsolete, surplus, or unusable city property, the cumulative value of which exceeds \$25,000, via a competitive bid or auction unless the city manager determines that it is not practical and advantageous to do so. If the city manager determines it is not practical and advantageous to sell or auction this property, the city manager must notify the council of this determination. As authorized in this code section, the city manager has determined that it is not practical or advantageous to sell or auction the libraries' personal property to a third party or the District, because doing so would require taxpayers to "pay twice" for this personal property, and because council directed staff to convey the personal property within the libraries to the District. This Memorandum constitutes notice to council of the city manager's determination. The council may call this determination up for review within 14 days of receiving this notice. In this item staff is requesting council to approve and authorize the city manager's determination to convey the personal property to the District.

NEXT STEPS

If the City Council approves the motions to direct the city manager to execute these documents, the city will finalize the documents and execute them with the parties. The work to be ready to transfer management and operation of the library to the District by January 1, 2024 is underway and on-schedule. If the City Council wishes to call up the manager's determination to donate the personal property in the libraries to the District, it would be best to do so before the IGA between the city and the District is executed, and staff will modify that IGA accordingly.

ATTACHMENTS

- A – Intergovernmental Agreement between the City of Boulder and the Boulder Public Library District
- B – Intergovernmental Agreement between the City of Boulder, Boulder County, and the Boulder Public Library District
- C – Form lease for the Main Boulder Public Library located at 1001 Arapahoe Ave
- D – Form lease for the Carnegie Library for Local History located at 1125 Pine St.
- E – Form lease for the George Reynolds Branch Library located at 3595 Table Mesa Dr.
- F – Form lease for the new North Boulder Branch Library located at 4500 13th St.
- G – Assignment of Lease for the Meadows Branch Library

**INTERGOVERNMENTAL AGREEMENT
BETWEEN THE CITY OF BOULDER,
COLORADO AND
THE BOULDER PUBLIC LIBRARY DISTRICT**

The Boulder City Council (“**City**”), and the Board of Trustees of the Boulder Public Library District (“**Board of Trustees**” and/or “**Library District**”) (collectively the “**Parties**”) enter into this Intergovernmental Agreement pursuant to § 24-90-107(2)(e), C.R.S. (“**Final IGA**”).

RECITALS

- A. The voters within the Library District’s proposed boundaries approved its formation and a levy of not more than 3.5 mills on all property within the Library District pursuant to § 24-90-107(2), C.R.S., at the general election on November 8, 2022.
- B. The “legal service area” of the Library District as defined in § 24-90-103(4.5), C.R.S., is depicted in **Exhibit A** (“**Service Area**”).
- C. The City and the Board of County Commissioners of Boulder County (the “**County**”) appointed a seven-member board of trustees to manage and control the Library District pursuant to § 24-90-108(1), C.R.S. A list of the appointed trustees and their elected officers is attached as **Exhibit B** (“**Board of Trustees**”).
- D. The legislative bodies of the County, the City, and the Library District are required to enter into intergovernmental agreements within 90 days of the appointment of the board of trustees, or within such time as otherwise agreed, pursuant to § 24-90-107(2)(e), C.R.S., to establish the rights and responsibilities of each regarding the Library District.
- E. The Parties entered into an Interim Intergovernmental Agreement effective June 16, 2023, (the “**Interim IGA**”) to extend the deadline for a final intergovernmental agreement, set forth their respective obligations and responsibilities during the interim period, and express their mutual desires to complete this Final IGA by December 31, 2023. A copy of the Interim IGA is attached as **Exhibit C**.
- F. The Parties now enter into this Final IGA between the City and the Library District to ensure that the transfer to the Library District of assets and liabilities held by the City for the benefit of the former City of Boulder Public Library (“**BPL**”), including all real and personal property, is effectuated in a manner that serves the best interests of the community, the City, and the Library District effective midnight, December 31, 2023, (“**Closing**”) and to ensure the inclusion of the Library District and its staff and programs in City sponsored community events in a manner consistent with other community partners.

- G. The County, City and Library District are entering into a separate intergovernmental agreement regarding the limited matters that affect the County and the Library District.

NOW, THEREFORE, the Parties enter this Final IGA, as follows:

AGREEMENT

ARTICLE I.

PRE-CLOSING OBLIGATIONS AND RESPONSIBILITIES

Section 1.1 Pre-Closing Operations. The City will continue to operate BPL until the Closing date pursuant to the terms of the Interim IGA.

Section 1.1.1 Cost Reimbursements.

- a. The Library District will reimburse the City for (i) the actual direct costs to operate the library system in 2023, and (ii) the cost allocation for 2023 in the amount of Three Million One Hundred Eighty-Four Thousand Two Hundred Ninety-Nine Dollars (\$3,184,299) as set forth in the City's cost allocation plan, attached hereto as **Exhibit D**. The costs to operate the library include the funds appropriated and spent by the City to construct, maintain, and operate BPL ("**Reimbursement Amount**").
- b. The Library District will reimburse the City for any and all actual costs necessary to effect the separation of BPL from the City, paid by the City, including by way of example but not limitation, the cost of outside consultants also identified on **Exhibit D**.

Section 1.1.2 Reimbursement Schedule. The reimbursement amount will be paid to the City, subject to annual appropriation:

One-half no later than July 1, 2024; and,

One-half no later than December 1, 2024

ARTICLE II.

CLOSING OBLIGATIONS AND RESPONSIBILITIES

Section 2.1 General Obligations. The City and the Library District pledge to cooperate to timely convey or transfer all rights and responsibilities of the City for BPL employees and personnel, real property, personal property, electronic and other information, necessary or convenient for the Library District to continue the operations of the former BPL library system. The Parties further pledge to collaborate on Cross-Department Partnership programs previously developed by the City and library staff.

Section 2.2 Employment and Personnel. City employees and personnel responsible for

the operations of BPL will submit a letter of resignation from their positions to the City on or before November 30, 2023, and be offered employment by the Library District to commence at Closing.

Section 2.2.1 BPL Employees. The City and Library District established a list of employment positions deemed to be BPL employees. A copy of the list as of the date of this Final IGA, is attached as **Exhibit E (“BPL Employees Position List”)**.

Section 2.2.2 Hiring of BPL Employees by the Library District. The Library District will make written offers of employment to all individuals then filling a position on the BPL Employees Position List to be effective January 1, 2024, at 12:00 a.m.

- a. The Library District will strive to offer salaries, pay grades and benefits generally comparable to those provided by the City, and will take into account the high cost of living in Boulder County, subject to appropriation by the Board of Trustees.
- b. After Closing, the Library District will be responsible for the payment of employee salary and wages; its share of any retirement benefits; medical, dental, vision, and voluntary benefits; state and/or federal taxes; workers’ compensation insurance; and unemployment insurance; and shall be responsible for the defense and indemnification of such employees pursuant to the Colorado Governmental Immunity Act, § 24-10-101, *et seq.*, C.R.S., as amended.
- c. The Library District will be responsible for payment of annual vacation leave and sick leave for employees after Closing for its eligible employees and pursuant to its approved employment benefits packages.

Section 2.2.3 Elimination of City BPL Employment Positions. At the time of Closing, the City will eliminate all BPL employment positions, and:

- a. The City will remit BPL employees’ accrued vacation leave to employees in accordance with the City policies and Boulder Municipal Employee Association (“BMEA”) contract in effect at the time of Closing. The Library District may give employees the option to pay to the Library District all or a portion of the amount received from the City for accrued vacation leave in exchange for equivalent Library District leave. The Library District will advise the employees that receipt of vacation pay may have tax consequences even if an equal payment is made to the Library District.
- b. The Library District acknowledges that pursuant to City and BMEA policies, no BPL employees are paid sick leave accrual at the time of their separation from the City.
- c. The Library District acknowledges that Well-Being@Work dollars earned

through the City’s Cigna™ policy expires on December 31, 2023, and are not carried forward into the next year.

- d. All salaries and wages, and the City’s share of retirement benefits, state and/or federal taxes, workers’ compensation insurance, and unemployment insurance for BPL employees accrued, earned, or accumulated during fiscal year 2023 through Closing will be repaid by the Library District in the Cost Reimbursement pursuant to Section 1.1.1, above.
- e. The City will be responsible for the defense and indemnification of BPL employees pursuant to the Colorado Governmental Immunity Act, § 24-10-101, *et seq.*, C.R.S., as amended, through Closing.

Section 2.3 Real Property Rights. The City owns and/or leases real property for public library purposes, as more specifically described in **Exhibit F (“City Library Facilities”)**.

Section 2.3.1 Carnegie Library for Local History, George Reynolds Branch Library. On or before Closing, the City will enter into a lease of the Carnegie Library for Local History substantially in the form attached hereto as **Exhibit G** and the George Reynolds Branch Library substantially in the form attached hereto as **Exhibit H** to the Library District (**“Library Lease – Branches”**).

Section 2.3.2 New North Boulder Library Branch. The City will complete the construction, tenant finish, furnishing (including equipping with Information Technology infrastructure) and the purchase of a materials collection for the new North Boulder Library Branch with funds that have been appropriated for the project. The City anticipates completion of the North Boulder Library Branch around June 1, 2024. The City will lease to the Library District the branch library, library grounds, parking and playground area in substantially the same form attached as **Exhibit I (“New North Boulder Branch Lease”)**.

Section 2.3.3 Downtown Main Library. The Main Library is in the Civic Center Area and is an integral part of downtown Boulder. The Library District will continue providing services out of the downtown Main Library.

- a. **Building Lease.** The City will lease the Main Library building to the Library District on or before Closing on terms and conditions substantially the same or similar to those set forth in **Exhibit J (“Main Branch Lease”)**.
- b. **Ownership of Land.** The City will retain ownership of the land in, under, and around the Main Library building in the Civic Center Area.
- c. **License Agreement.** On or before Closing, the City will grant the Library District a license in substantially the same form attached as **Exhibit K** (the **“Civic Area License”**) to establish the rights and responsibilities of the

Parties to access and use the land under and around the Main Library, including entry plazas, gardens, building “underbelly” areas, and shared use parking lots identified in the Civic Area License.

- d. Master Plan. The Library District will manage the downtown Main Library and utilize the Civic Area License consistent with the seven guiding principles enumerated in the 2015 Civic Area Master Plan which are: the civic heart of Boulder, life and property safety; outdoor culture and nature; celebration of history and assets, enhanced access and connections, place for community activity and arts; and, sustainable and viable future.
- e. Policy 8.13. The Civic Area License and any amendments thereto will be consistent with Policy 8.13 of the Boulder Valley Comprehensive Plan: Support for Community Facilities.
- f. Redevelopment. The downtown Main Library and Civic Center Area are part of a previous development site review approval pursuant to the City of Boulder Land Use Code, Title 9, B.R.C. 1981. Amendments to the site review approval require written consent of the owners of all property to be included in the development. The City agrees to coordinate and cooperate with the Library District on any redevelopment efforts in the Civic Area License area as depicted in the attachment to **Exhibit K**.
- g. Right of First Refusal/Offer. The City will not sell or convey the Civic Center Areas as defined in the Civic Area License, or any part thereof, without first offering the same to the Library District for purchase. The right will be recorded against the property in the Civic Area License.

Section 2.3.4 Assignment of Leases.

- a. The Meadows Branch Library is subject to a 20-year lease in effect through 2029. On or before Closing, the Library District will assume the lease and the City’s rights and obligations under that lease.
- b. The North Boulder Corner Library is currently subject to a month-to-month lease in effect through 2023. On or before Closing, the City will terminate the lease and the Library District will enter into a lease agreement with the owners of the property. If the Owners will not lease the North Boulder Corner Library to the District, the Library District will assume the lease and all City rights and obligations under that lease, subject to approval by the owner. The Library District may close the North Boulder Corner Library once the new North Boulder Library Branch is open.
- c. Indemnification. If the lessors of the Meadows Branch Library or North

Boulder Corner Library will not release the City from the leases, the Library District shall indemnify and hold harmless the City to the extent permitted by law against any and all damages to property or injuries to or death of any person or persons arising from the Library District's use or operation of these properties, and shall indemnify and hold harmless the City from any and all claims, demands, suits, actions or proceedings of any kind or nature, of or by anyone whomsoever in any way resulting from or arising out of the Library District's operations of the properties in connection with the leases to the extent permitted by law.

Section 2.3.5 Rights of First Refusal/Offer. The City will not sell Carnegie Library for Local History, George Reynolds Branch Library, the new North Boulder Library or the downtown Main Library, or any part thereof, without first offering the same to Library District.

Section 2.3.6 Insurance. During the term of this Final IGA, the Library District, at its sole cost and expense, shall continuously maintain the types of insurance coverages as approved by the City Manager, the City Attorney, and the City Risk Manager.

Section 2.4 Personal Property. On or before Closing, the City will convey and/or transfer ownership of all personal property to the Library District including:

- a. All books, current periodicals, and collections of other materials;
- b. All furniture, shelving, office equipment and supplies;
- c. All art purchased by or donated to the City specifically for library use. Art in the City Library Facilities, in storage, or in other City owned or operated facilities purchased by the City, for other than library use., or where provenance is unknown, will remain the property of the City; and,
- d. All other items of personal property otherwise used or housed exclusively in City Library Facilities.

Section 2.4.1 Any items of personal property located in the City Library Facilities stored for other City departments will remain the property of the City.

Section 2.4.2 Following conveyance of personal property as set forth above, the Library District agrees to consult with the City before it disposes of any materials related to City of Boulder government archived or donated to Carnegie Library for Local History.

Section 2.4.3 The City and Library District agree to cooperate to develop an intergovernmental agreement regarding retention of historic materials at Carnegie Library for Local History.

Section 2.5 Data and Electronic Information Systems and Technology Services. The City and the Library District believe it is in the best interest of the people of Boulder and the Library District to establish and retain their distinct technological systems where feasible. Technological systems are a cornerstone to the operation of the library; accordingly, the major network, hardware, software, and licensing transitions must be completed on or before the Closing date.

Section 2.5.1 Meeting Technology. Meeting room technology in all branches of BPL will remain at the branches and become the property of the Library District.

Section 2.5.2 Separation of Systems. The Library District has engaged consultants to determine a process for separating information systems. On or before the Closing date, the Library District and City will endeavor to complete the following:

- a. Library District will design, build, and be prepared to operate a stand-alone network for operations, without any inter-connection to the City networks.
- b. The City will serve as the Library District's ISP until the Library District has procured its own ISP. Library District agrees to pay its pro-rata share of the ISP cost to the City.
- c. City will support the technology transition in partnership with the Library District's consultants hired to implement the District's new technology platform.
- d. City will provide at no cost to the Library District the current library domain name, current in-use telephone numbers, hotspots, cell phones, and library-specific computer hardware including, by way of example and not limitation, book-sorting and check-out hardware.

Section 2.5.3 Access to Information and Data. The City will grant access permissions to the Library District Director and his/her designees to utilize data and information systems relevant to Library District operations, facilities and employees until such time as the separation of systems is completed.

Section 2.5.4 Fiber Network.

- a. The City will provide to the Library District two strands of the City's fiber network, unless otherwise agreed to by the Parties, for the sole use of the Library District for network connections between library branches at no cost to the District. In return, the Library District will provide the City secured access to the existing City and City-partner fiber network hubs located within the Main Library and George Reynolds Branch Library at no cost to the City.
- b. The City may maintain exterior public Wi-Fi and cameras on the library

buildings indefinitely, at no cost to the City as identified in the Main Branch Lease.

- c. The City will retain and operate the ConnectBoulder Wi-Fi system surrounding the City Library Facilities where they currently exist.

Section 2.6 **Public Library Funds, Accounts and Restricted Revenue Sources.** The City maintains public library funds and accounts required by law and revenue sources designated for library purposes only.

Section 2.6.1 **City Library Fund.** The City maintains a library fund pursuant to its Charter for the deposit of funds to be expended for BPL and various other funds described below. These funds are in lieu of the fund described in Section 24-90-112(2)(a), C.R.S. Except as otherwise provided herein, the City will transfer the audited fund balances, if any, to the Library District by July 1, 2024.

Section 2.6.2 **Library Revenue Sources.** The City has revenue sources that are restricted to library services only. Except as otherwise provided herein, the City will provide historic schedules for and transfer the audited fund balances, if any, to the Library District by July 1, 2024. The revenue sources and funds are described below.

- a. The Boulder Library Foundation, a Colorado nonprofit organization (“**Foundation**”), provides supplemental funding for BPL events, activities, and programs through private donations. Funding from the Foundation is deposited into the Library Fund. The City will transfer balances, if any, according to this Section 2.6.
- b. The City currently collects a Capital Facility Impact Fee for City Library Facilities and collection materials pursuant to section 8-9-5, “Capital Facility Impact Fee to be Earmarked,” B.R.C. 1981 (“**Capital Facility Impact Fee**”). Starting January 1, 2024, the City will discontinue assessment of Capital Facility Impact Fees. The City intends to use the remaining funds to support the construction of the new North Boulder Library Branch. The City will transfer balances, if any, according to this Section 2.6.
- c. BPL has funds remaining from the proceeds from the sale of the Blystat-Laesar House at 1117 Pine St., which was purchased in late 1986 to supplement the archival storage needs of the Carnegie Library for Local History. After the purchase, the house was determined to be inadequate for the intended use, and when it was sold in 2002, the City’s intention was to use sale proceeds to fund other archival storage options. The City will transfer balances, if any, according to this Section 2.6.
- d. Facilities Renovation & Replacement (FR&R) Fund. The FR&R accounts for major maintenance, renovation, and replacement projects for city-

owned buildings, structures, and property. The City will transfer balances, if any, according to this Section 2.6.

- e. Old Library Fund Restricted Reserve. The balance in the Library Fund prior to the 2015 City of Boulder Charter change is held in a restricted reserve for BPL’s use for one-time expenditures. The City will transfer balances, if any, according to this Section 2.6.

ARTICLE III.
POST-CLOSING OBLIGATIONS AND RESONSIBILITIES

Section 3.1 Library District Obligations. After the Closing date, The Library District will operate, provide, and maintain public library services for community members residing within its Service Area at the “Service Expansion Level” identified in the 2018 Boulder Public Library Master Plan as adopted and amended by the Board of Trustees, and in a manner consistent with the Colorado Library Law, § 24-90-101, *et seq.*, C.R.S., as amended, this Final IGA, and the bylaws and policies of its Board of Trustees.

Section 3.1.1 Statutory Obligations. The Board of Trustees shall have all powers and duties delegated to it under § 24-90-109, C.R.S., as amended from time to time.

Section 3.2 Obligations and Responsibilities of the City.

Section 3.2.1 Transition Support Services – North Boulder Library Branch. After January 1, 2024, the City will diligently complete the construction and equipping of the North Boulder Library Branch, complete the subdivision of the property and the lease to the Library District and provide copies of all warranties, claims, and operating manuals for building systems. The City will continue to insure the North Boulder Library Branch until the Library District takes possession of the North Boulder Library Branch.

Section 3.2.2 Library Contracts. To the extent legally possible, the City will terminate all contractual rights and obligations of the City entered into solely for library purposes, as more particularly described in **Exhibit L (“Third-Party Contracts to be Re-written as Assigned”)**, effective January 1, 2024. In the event a contract cannot be terminated the City will seek to assign and delegate such contract to the Library District, and the Library District shall indemnify and hold harmless the City from any and all claims, demands, suits, actions or proceedings of any kind or nature, of or by anyone whomsoever in any way resulting from or arising out of any contract so assigned and delegated to the extent permitted by law. Following the execution of this Final IGA and until Closing, the City will continue to enter into contracts for the benefit of BPL, whether for supplies, services, capital improvements or any other purpose, that are within the ordinary course of library business. The City will not enter into any contract outside of the ordinary course of business without consent of the Board of Trustees.

ARTICLE IV.
MUTUAL UNDERSTANDINGS

Section 4.1 Jurisdiction and Venue. The laws of the State of Colorado shall govern the interpretation, validity, and effect of this Final IGA. The City and the Library District agree that the venue for any disputes arising under this Final IGA shall be in Boulder County, Colorado.

Section 4.2 Compliance with Laws. In connection with the negotiation and performance of this Final IGA, the Parties state that they are familiar with § 18-8-301, *et seq.*, C.R.S. (Bribery and Corrupt Influences), as amended, and § 18-8-401, *et seq.*, C.R.S. (Abuse of Public Office), as amended, and that no violations of such provisions are present. The Parties agree to comply with the privacy and security requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) when exposed to or provided with any data or records considered to be “Protected Health Information.” The Parties agree to comply with § 24-73-101, *et seq.*, C.R.S., and any other federal or state laws concerning the confidentiality or privacy of any information contained in the records accessed under or in association with this Agreement.

Section 4.3 Assignability. Neither this Final IGA nor any rights hereunder, in whole or in part, shall be assignable or otherwise transferable without the prior written consent of all Parties.

Section 4.4 Waiver. Waiver of strict performance or the breach of any provision of this Final IGA shall not be deemed a waiver of any other provision, unless such waiver has rendered future performance impossible.

Section 4.5 Force Majeure. Except as otherwise provided by Colorado law, neither party shall be liable for any delay or failure to perform its obligations hereunder to the extent that such delay or failure is caused by a force or event beyond the control of such party including, without limitation, war, embargoes, strikes, riots, fires, floods, earthquakes, or other acts of God.

Section 4.6 Notice. Any notices given under this Final IGA are deemed to have been received and to be effective: (1) three days after the same shall have been mailed via Federal Express; (2) immediately upon hand delivery; or (3) immediately upon receipt of confirmation that an electronic mail transmission was received. For the purposes of this Final IGA, any and all notices shall be addressed to the contacts listed below:

For the Library District:

Board of Trustees
Boulder Public Library District
1001 Arapahoe Avenue
Boulder, Colorado 80302
Attn: David Farnan
Phone: 303-441-3110
dfarnan@boulderlibrary.org

Library District Attorney
Seter & VanderWall, PC
7400 E. Orchard Road, Suite 3300
Greenwood Village, CO 80111
Attn: Kim J. Seter & Beth Dauer
Phone: 303-770-2700
kseter@svwpc.com and edauer@svwpc.com

For the City:

City Manager
City of Boulder
1777 Broadway
Boulder, CO 80302
303-441-3090
CMOAdmin@bouldercolorado.gov

City Attorney
City of Boulder
1777 Broadway
Boulder, CO 80302
303-441-3020
CAOAdmin@bouldercolorado.gov

Section 4.7 Integration. This Final IGA contains the entire understanding of the Parties and neither it, nor the rights and obligations hereunder, may be changed, modified, or waived except by an instrument in writing that is signed by the Parties or their authorized representatives.

Section 4.8 Section Headings. Section headings are inserted for the convenience of reference only.

Section 4.9 Intended Beneficiaries. Nothing expressed or implied in this Final IGA is intended or shall be construed to confer upon or to give to, any person other than the Parties, any right, remedy or claim under or by reason of this Final IGA or any covenant, terms, conditions, or provisions hereof. All covenants, terms, conditions, and provisions in this Final IGA are for the sole and exclusive benefit of the City and the Library District.

Section 4.10 Severability. If any provision of this Final IGA is determined to be unenforceable or invalid for any reason, the remainder of the Final IGA shall remain in effect, unless otherwise terminated in accordance with the terms contained herein.

Section 4.11 Authorization. Each party represents and warrants that it has the power and ability to enter into this Final IGA, to grant the rights granted herein, and to perform the duties and obligations herein described.

Section 4.12 Conflict with Laws. Any provision of this Final IGA that conflicts with or violates any provision of the *Constitution of the State of Colorado*, TABOR, the Colorado Library Law or the provisions of any statutes governing the operations and/or powers of the District shall be deemed excised and the remaining provisions of this Final IGA shall be interpreted in a manner that implements the manifest intent of the Parties in entering into this Final IGA.

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IN WITNESS WHEREOF, the City and the Library District have signed this Final IGA to be effective on the date last signed below.

**BOULDER PUBLIC LIBRARY
DISTRICT BOARD OF TRUSTEES**

President

Date

ATTEST:

Approved as to Form:

Secretary

Library District Attorney

**CITY OF BOULDER,
a COLORADO home rule municipality**

Nuria Rivera-Vandermyde, City Manager

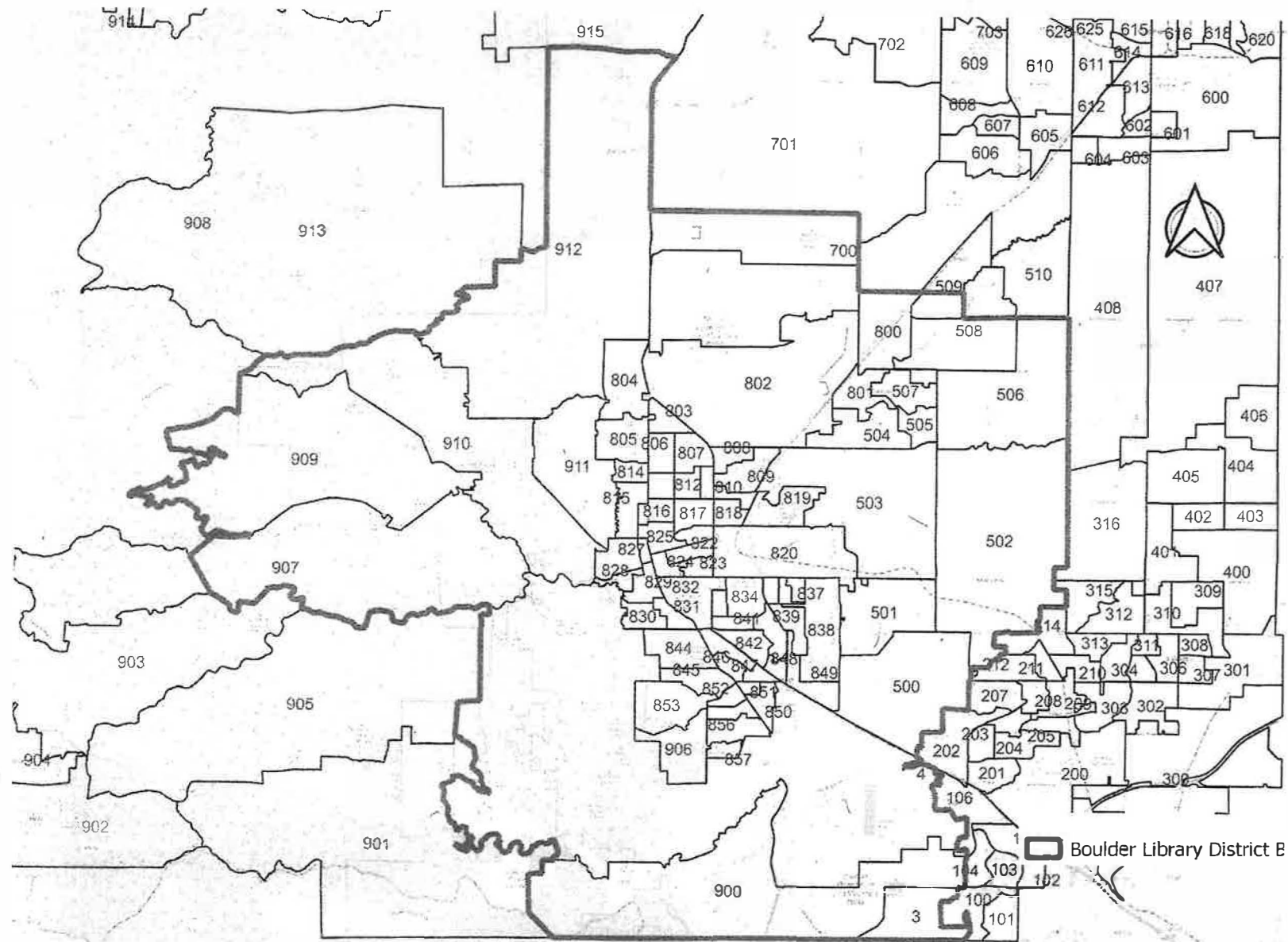
ATTEST:

APPROVED AS TO FORM:

City Clerk

City Attorney's Office

Attachment A – Intergovernmental Agreement between the
Exhibit A City of Boulder and the Boulder Public Library District
Service Area



Attachment A – Intergovernmental Agreement between the
City of Boulder and the Boulder Public Library District
Exhibit B
Board of Trustees

<u>Seat</u>	<u>Term Length</u>	<u>Appointee</u>	<u>Jurisdiction</u>
1	5 years	Benita Duran	Boulder – Vice President
2	5 years	Jennifer Yee	Unincorporated Boulder County
3	4 years	Sylvia Wirba	Boulder – Secretary/Treasurer
4	4 years	Doug Hamilton	Boulder
5	3 years	Cara O’Brien	Unincorporated Boulder County
6	2 years	Sam Fuqua	Boulder
7	1 year	Joni Teter	Boulder – President

**INTERIM INTERGOVERNMENTAL AGREEMENT
AMONG
BOULDER PUBLIC LIBRARY DISTRICT
AND
CITY OF BOULDER, COLORADO
AND
BOULDER COUNTY, COLORADO
(Pursuant to § 24-90-107(3)(h), C.R.S.)**

RECITALS

A. The voters approved the formation of the Boulder Public Library District and a mill levy of 3.5 mills at the general election in November, 2022 (the “**District**”).

B. The City of Boulder (“**City**”) and the Board of County Commissioners of Boulder County (the “**County**”) ratified the appointment of a seven-member board of trustees of the District on May 2, 2023 (the “**Board of Trustees**”).

C. Pursuant to § 24-90-107(3)(h), C.R.S., the City, County and District must enter into an intergovernmental agreement within ninety days of the appointment of the Board of Trustees that “shall set forth fully the rights, obligations, and responsibilities, financial and otherwise,” of the City, County and District (the “**IGA**”).

D. The parties intend the operation and management of the Boulder Public Library system (“**City Library**”) be transferred to the District in a manner that serves the best interests of the District residents, the City and the County.

E. The parties require more than the ninety-day period allowed by law to responsibly consider, deliberately negotiate and reach agreement on all necessary terms of a long-term IGA.

F. In the interim, the City will continue to operate the City Library as the District’s contractor under its existing budget while the parties work together to provide quality library services to the District residents and to consummate the permanent and final long-term IGA required by statute (the “**Final IGA**”).

NOW, THEREFORE, the City, County and the District enter into this Interim Intergovernmental Agreement (this “**Interim IGA**”) to set forth fully their rights, obligations, and responsibilities, financial and otherwise, through December 31, 2023 or the execution of the Final IGA, whichever comes first.

AGREEMENT

1. Term of Agreement. This Interim IGA is effective on the date last signed below and shall remain in effect until midnight, December 31, 2023 or as otherwise provided in the Final IGA.

{00668802 2}

Interim Intergovernmental Agreement
Boulder Public Library District, City of Boulder and Boulder County
Pursuant to § 24-90-107(3)(h), C.R.S.
Page 2 of 7

2. Obligations and Responsibilities of the City.

2.1 *Library Operations.* The City will continue to operate, maintain and provide the library services currently provided by the City Library in the same manner and at the same level as provided for in the City's 2023 fiscal year budget, on a contractual basis to the District until termination of this Interim IGA. The City will consult with the District on any major decisions affecting the City Library, but will be responsible for any final decisions regarding operations. The City will not postpone payment of any expenses or fulfillment of any obligations to a later date and shall satisfy all obligations in the ordinary course of business from previously appropriated funds.

2.2 *Library Finances.* The City shall continue to collect, account for and use for library purposes, in the manner required by law, the City's policies or library rules, all revenues historically collected and used for library purposes.

2.3 *Fines and fees.* The City shall continue to set, collect and account for overdue and lost book fines, fees and other fees for library services to be delivered to the Library District at the expiration of this Interim IGA.

2.4 *Library Director/District Director.* The City and the District believe the assistance of the existing City Library Director, David Farnan, is necessary for each to operate during the Interim IGA period, reasonably negotiate the Final IGA and complete the transition of the City Library and its services to the ownership and operating control of the Library District at the least cost and in the most effective manner.

2.4.1 *Services as Director of the City Library and Library District Director.* The City and the Board of Trustees and Mr. Farnan believe both roles can be accomplished by Mr. Farnan alone.

2.4.1.1 *Services to the City.* Mr. Farnan will continue as the City Library Director ensuring the continued operations of the City Library system until the operations are transitioned to the District or midnight, December 31, 2023, whichever occurs first.

2.4.1.2 *Services to the District.* Mr. Farnan may serve as the Director of the Boulder Public Library District under contract to convey information and knowledge to the District and begin the work of developing programs, policies, budget and employees transitions for the District. Farnan shall not share or convey any information the City deems confidential or subject to attorney-client privilege or otherwise unrelated to the library transition.

2.4.1.3 *Compensation.* The City will continue to compensate and provide benefits to Mr. Farnan as budgeted by the City subject to any reimbursement obligations approved in the Final IGA.

Interim Intergovernmental Agreement
Boulder Public Library District, City of Boulder and Boulder County
Pursuant to § 24-90-107(3)(h), C.R.S.
Page 3 of 7

2.4.2 *Avoidance of Conflicts.* During the term of this Interim IGA Mr. Farnan will participate in public sessions of the City Council and the Board of Trustees. Mr. Farnan will not participate in executive sessions of the City Council and/or the Board of Trustees until the Final IGA has been approved by both entities.

2.4.3. *Approval of Employment Outside the City.* In recognition of the benefits to the taxpayers, the City, and the District to be realized from utilizing Mr. Farnan in the transition of City Library services to the District, the City Manager has affixed her signature approving Mr. Farnan's employment outside the City as Director of the District simultaneously with his employment as the City Library Director as required by Boulder Municipal Code § 2-7-5 (b).

2.4.4 *Waiver of Code of Conduct § 2-7-5 (e) and § 2-7-5-(d).* In recognition of the fact that it is in the best interest of the City and its citizens and also the Library District and its citizens to complete the transition of library services to the District in the most cost effective and efficient manner possible, which includes the City and the District utilizing Mr. Farnan's expertise and experience with the City Library system in the transition, the City Council waives the prohibition against public officials and public employees appearing before or participating in any board, commission, task force or similar body or concerning any matter on which he may have taken any official action to allow Mr. Farnan to work with and for the City and the Library District during the term of this Interim IGA.

2.4.5 *Director of the Boulder Public Library District.* The District will propose a contract to Farnan to serve as the Director of the Boulder Public Library District effective upon authorization by the City under section 2.4.3 and 2.4.4.

2.5 *Facilitation.* Farnan will serve as a communications facilitator between the District and City during the transition period. The City and the District shall be given full access to all information held or accessible to either that is relevant to the transition matters. The City will provide the Board of Trustees access to City and City Library staff "subject matter experts" through coordination with Farnan.

3. Obligations and Responsibilities of the District.

3.1 *Powers of Trustees.* The Board of Trustees will exercise all powers and duties delegated to it under § 24-90-109, C.R.S.; as amended.

3.2 *General Obligations.* The District shall work with the City to provide library services through this Interim IGA in a manner consistent with the City Charter and Ordinances, the Colorado Library Law, § 24-90-101, *et seq.*, C.R.S. and the bylaws and policies to be adopted by the Board of Trustees.

Interim Intergovernmental Agreement
Boulder Public Library District, City of Boulder and Boulder County
Pursuant to § 24-90-107(3)(h), C.R.S.
Page 4 of 7

3.3 *Reimbursement for County Services.* The District will pay to the County the cost of the 2022 election attributable to the District as required by § 24-90-107(3)(i), C.R.S.. The District intends to pay to the County the allocated cost of the District formation and funding election questions in the amount of \$43,768.00 as required by § 24-90-107(3)(i), C.R.S. at or before the execution of the Final IGA.

3.4 *Payment for City Services.* The District will reimburse to the City, the costs to operate the library system in 2023. The costs to operate the library include the funds appropriated by the city council and spent to construct, maintain, and operate the municipal library. The amount and method of payment of any reimbursements will be determined in the Final IGA.

4. Completion of Final IGA. The parties will make best efforts to negotiate mutually acceptable terms for, approve and execute the Final IGA by October 31, 2023, with the goal of transferring management and operation of the City Library system on January 1, 2024.

5. Additional Terms.

5.1 *Compliance with Laws.* In connection with the negotiation and performance of this Interim IGA and the Final IGA the parties state that they are familiar with § 18-8-301, *et seq.*, C.R.S. (Bribery and Corrupt Influences) and § 18-8-401, *et seq.*, C.R.S. (Abuse of Public Office) and that no violations of such provisions are present.

5.2 *Waiver.* Waiver of strict performance of the breach of any provision of this Interim IGA shall not be deemed a waiver of any other provision, unless such waiver has rendered future performance impossible.

5.3 *Notice.* Any notices allowed or required by this Interim IGA shall be deemed given when delivered to:

For the Library District:

Boulder Public Library District
1001 Arapahoe Avenue
Boulder, CO 80302

With a copy to:

Seter & Vander Wall, PC
7400 E. Orchard Road, Suite 3300
Greenwood Village, CO 80111

For the City:

City of Boulder
City Manager's Office
P.O. Box 791
Boulder, Colorado 80306

Interim Intergovernmental Agreement
Boulder Public Library District, City of Boulder and Boulder County
Pursuant to § 24-90-107(3)(h), C.R.S.
Page 5 of 7

5.4 *Severability.* If any provision of this Interim IGA is determined to be unenforceable or invalid for any reason, the remainder of the Interim IGA shall remain in effect and be interpreted in the manner most consistent with the parties' intent manifest herein.

5.5 *Authorization.* Each party represents and warrants that it has the power and ability to enter into this Interim IGA, to grant the rights granted herein, and to perform the duties and obligation imposed on it.

IN WITNESS WHEREOF, the City and the District have signed this Interim IGA to be effective on the date last written below.

Boulder Public Library District

Katherine J. Teter, President

Date: _____

Attest:

Approved as to form:

Seter & Vander Wall, PC

Kim J. Seter, CO Atty: 14294

Interim Intergovernmental Agreement
Boulder Public Library District, City of Boulder and Boulder County
Pursuant to § 24-90-107(3)(h), C.R.S.
Page 6 of 7

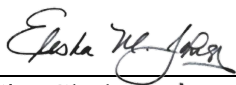
**City of Boulder,
a Colorado home rule city**



Nuria Rivera-Vandermyde, City Manager

Date: 6/16/2023

ATTEST:



City Clerk

APPROVED AS TO FORM:



City Attorney's Office

Interim Intergovernmental Agreement
Boulder Public Library District, City of Boulder and Boulder County
Pursuant to § 24-90-107(3)(h), C.R.S.
Page 7 of 7

For purposes of acknowledging the extension of the period in which to enter into the
Final IGA under § 24-90-107(3)(h), C.R.S. and the District’s obligation in § 3.3 to reimburse
County election costs:

BOULDER COUNTY



Claire Levy, Chair
Board of Boulder County Commissioners

Attest: Cecilia Lacey
Clerk to the Board

Exhibit D Attachment A – Intergovernmental Agreement between the Reimbursement Amount City of Boulder and the Boulder Public Library District

Notes

Original Library Budget - Operating Only

Original Sources

General Fund	\$ 9,225,580	This is the original General Fund budget for Library.
Library Fund		
		This was the original projected amount for the 0.33 mill levy. That mill levy was cancelled with voter approval of the district and is no longer a revenue source in 2023.
0.33 Mill Levy	\$ 1,399,088	
Other Sources	\$ 289,397	This includes interest, grants, and third-party revenues.
		The approved 2023 Budget anticipated a draw from fund balance to cover expenses in 2023.
Anticipated Draw From Fund Balance	\$ 926,891	

Original Uses

General Fund	\$ 9,225,580
Library Fund	\$ 1,841,775

Revised Sources

0.33 Mill Levy	\$ -	The mill levy is no longer in effect.
		Grant revenues were revised down based on Foundation support. These are revenues for the purposes of providing library services and expenses covered by these funds will not be charged back to the district.
Other Sources	\$ 170,063	The first source of funding to cover the gap is a draw from fund balance. This fund balance is from revenues collected for library purposes (mill levy, grants, etc.) and expenses that are covered by this fund balance draw will not be charged back to the district.
Draw from Fund Balance	\$ 1,241,334	
		There is a remaining gap after zeroing out Library Fund resources. This gap is covered by the General Fund and necessary to sustain normal operations. Since this is covered by general revenues, it will be charged back to the district.
Gap Funding from General Fund	\$ 350,000	
Supplemental Funding for Enhanced Security Services	\$ 238,456	As requested by library staff and Council, supplemental funding for security was provided by the General Fund. Since this is covered by general revenues, it will be charged back to the district.

Exhibit D Attachment A – Intergovernmental Agreement between the **Reimbursement Amount** City of Boulder and the Boulder Public Library District

Other General Fund	\$ 9,225,580
<i>Total Cost Allocation</i>	<i>\$3,184,299</i>
<u>Total Repayment</u>	<u>\$12,998,335</u>

This amount is the original library budget in the General Fund. These are covered by general revenues and will be charged back to the district.

Job Profile Name
Accounting Specialist
Archivist
Archivist (Hourly)
Bilingual Library Coordinator
Board Specialist
Branch Services Manager
Community Scholars Intern
Creative Technologist
Creative Technologist (Hourly)
Custodian
Graphic Design Specialist
IT Applications Administrator I
IT Applications Administrator Senior
IT Senior Manager
Librarian
Librarian (Hourly)
Librarian Senior
Library Acquisitions Specialist
Library Coordinator
Library Coordinator (TSI)
Library Deputy Director
Library Director
Library Materials Handler
Library Program Assistant
Library Programs Specialist
Library Resource Services Coordinator
Library Resources Manager
Library Senior Manager
Library Senior Program Manager
Literacy and Outreach Program Manager
Literacy Manager
Literacy Senior Program Manager
Materials Handling Manager
Oral History Program Manager (Hourly)
Patron Services Manager
Theater Administrator
Volunteer Program Manager
Volunteer Services Manager
Youth Services Manager

City Library Facilities

1. BPL Main Library - owned and operated by the City (1001 Arapahoe Ave., Boulder, CO)
2. Carnegie Library for Local History (“Carnegie Branch”) – owned and operated by the City (1125 Pine St., Boulder, CO)
3. George Reynolds Branch Library – owned and operated by the City (3595 Table Mesa Drive, Boulder, CO)
4. Meadows Branch Library – leased and operated by the City (4800 Baseline Road, Boulder, CO)
5. NoBo Corner Library, leased and operated by the City (4600 Broadway, Boulder, CO)
6. North Boulder Branch Library – construction will begin mid-2021. Project construction is estimated to take 15 months, and the library is expected to open by the end of 2022, to be owned and operated by the City (4500 13th St., Boulder, CO)

LIBRARY LEASE

CITY OF BOULDER

“LANDLORD”

WITH

BOULDER PUBLIC LIBRARY DISTRICT

“TENANT”

BUILDING: CARNEGIE LIBRARY FOR LOCAL HISTORY

DATED: _____

LIBRARY LEASE

THIS LIBRARY LEASE (“**Lease**”) is made and entered into as of this ____ day of _____, 2023, (“**Effective Date**”) by and between the City of Boulder, a Colorado home rule municipality, (“**Landlord**”), and the Boulder Public Library District (“**Tenant**”). In consideration of the payment of Rent (as defined below); all costs, charges, and expenses which Tenant assumes, agrees, or is obligated to pay to Landlord pursuant to this Lease (“**Additional Rent**”); and the performance of the promises by Tenant set forth below, Landlord hereby leases to Tenant, and Tenant hereby accepts, the Premises (as defined below), subject to the terms and provisions set forth in this Lease. Landlord and Tenant covenant and agree as follows:

1. Premises. Landlord is the owner of certain real estate legally described as set forth in **Exhibit A**, Boulder County, Colorado (“**Real Estate**”). The Real Estate is improved with a building (“**Premises**”). Landlord hereby leases and demises to Tenant the Premises located at 1125 Pine St., Boulder, Colorado as of the date first provided under Paragraph 2., Term and Termination.
 - a. Landlord retains access to and excludes from the Premises that portion that is necessary and currently utilized for the City of Boulder-owned fiber optic cable and equipment identified on **Exhibit B** if any, free of charge.
 - b. Tenant will provide access cards or keys necessary for the 24-hour access to and operation of the fiber optic cable and equipment identified in Paragraph 1.a., above, free of charge.
2. Term and Termination. Landlord Leases the Premises to Tenant for a term of twenty (20) years, commencing at one minute after midnight on the ____ day of _____, 2024, and terminating one minute after midnight on the ____ day of _____, 2045 (the “**Term**”), unless sooner terminated in accordance with the provisions of this Lease.
 - a. Landlord and Tenant agree to meet in no less than five-year intervals to determine whether this Lease should be terminated by mutual agreement.
 - b. Tenant has the absolute right to terminate this Lease on its anniversary date every third year without consequences upon ninety (90) days written notice to Landlord.
3. Rent. Tenant shall pay to Landlord for the use and occupancy of the Premises during the Term a fixed annual rental rate of One Dollar (\$1.00) (“**Rent**”), payable by Tenant in a lump sum payment of Twenty Dollars (\$20.00) on the Effective Date hereof the receipt and sufficiency of which is hereby acknowledged.
4. Use. The Premises shall be used for the sole purpose of a public library and associated activities (which may include subleases to nonprofit entities).

5. Utility Charges. Tenant shall establish accounts for all heat, light, power, telephone, water, sewerage, janitorial services, garbage disposal, and other utilities and services it deems necessary for the operation of a public library ("**Utilities and Services**") in its own name, and shall pay directly to the appropriate supplier, the cost of all Utilities and Services as the same become due and payable.
6. Condition of Premises. Tenant is familiar with the physical condition of the Premises. Tenant is leasing the Premises "as is," in its current condition, and hereby expressly disclaims all warranties.
7. Maintenance and Repairs. Landlord will provide routine maintenance and repair services and on-call services for a period not to exceed four (4) months and work with and assist Tenant's facilities maintenance personnel. Tenant shall reimburse Landlord for all such services at cost. Thereafter, Tenant shall have sole maintenance and repair responsibility for the interior and exterior of the Premises, including all costs and expenses relative thereto. Tenant shall promptly and diligently repair, restore, replace, or remedy all damage to or destruction of all or any part of the Premises. Landlord shall not be required to furnish any services or facilities or to make any repairs or alterations of any kind in or on the Premises, all such matters being the sole duty and responsibility of Tenant. Tenant may also demolish, rebuild, reconfigure and/or remodel any interior spaces of the Premises without consultation with Landlord so long as Tenant deems it necessary or useful for its purposes. Exterior demolition, reconstruction or remodeling must be approved by Landlord. Tenant shall require any contractor performing work on the Premises to procure and maintain at its own cost the insurance coverage and other contract requirements set forth in **Exhibit C**.
8. Injury or Damage. Landlord shall not be responsible to the Tenant for loss of property in or from the Premises, or for any damage done to furniture, fixtures, equipment, collections, or other effects in the Premises, nor shall the Landlord be liable for any injury or damage, either proximate or remote, occurring through or caused by any repairs, alterations, or accident occurring in or to the Premises, nor shall Landlord be liable for any injury or damage occasioned by defective electrical wiring or the breakage or stoppage of the plumbing or sewerage upon the Premises, whether such breakage or stoppage results from freezing, flood, or other casualty.
9. Insurance. During the Term of this Lease, Tenant, at its sole cost and expense, shall continuously maintain the types and amounts of insurance coverages as approved by the city manager, the city attorney, and the City of Boulder's risk manager.
10. Default. Tenant shall be in default of this Lease if at any time the Premises cease to be used for public library purposes. Together with the foregoing, if either party defaults in the performance of any of its respective covenants, conditions, agreements, or undertakings contained in this Lease (each, an "**Event of Default**") and such Event of Default continues for thirty (30) days (subject to a reasonable extension if a cure is not practical during such period and if the defaulting party has commenced cure and is diligently pursuing same) after written notice of such default from the non-defaulting party, then the non-defaulting

party may cause such default to be remedied in such manner and by such means as the non-defaulting party may deem proper, and the cost and expense thereof paid or incurred, including reasonable attorney fees and costs, shall be due and payable within thirty (30) days of presentment of an invoice for such services. Notwithstanding the foregoing, the parties shall have the option to seek all and any remedy available at law or in equity.

11. Environmental Compliance.

- a. Tenant's Responsibility. Tenant covenants and agrees that the Premises will, at all times during its use or occupancy thereof, be kept and maintained so as to comply with all now existing or hereafter enacted or issued statutes, laws, rules, ordinances, orders, permits, and regulations of all state, federal, local, and other governmental and regulatory authorities, agencies, and bodies applicable to the Premises, pertaining to environmental matters, or regulating, prohibiting, or otherwise having to do with asbestos and all other toxic, radioactive, or hazardous wastes or materials including, but not limited to, the Federal Clean Air Act, the Federal Water Pollution Control Act, and the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as from time to time amended (all hereafter collectively called "**Laws**"). Tenant shall not cause or permit any hazardous material to be brought upon, kept, or used in, or about the Premises by Tenant, its agents, employees, contractors, or invitees, except any hazardous material which is necessary for the usual and customary operation of a public library.
- b. Tenant's Liability. If Tenant breaches the obligations stated in the preceding paragraph, or if the presence of hazardous materials otherwise arises out of Tenant's use of the Premises, Tenant shall be solely responsible for all costs incurred in connection with any investigation of site conditions and any clean-up, remedial, removal, or restoration work required by any federal, state, or local governmental agency. Without limiting the foregoing, any hazardous material is released on the Premises, Tenant shall promptly take all actions at its sole cost and expense which are necessary to return the Premises to the condition existing prior to the introduction of such hazardous material. Except to any extent prohibited by law, Tenant shall hold Landlord free, harmless, and indemnified from any penalty, fine, claim, demand, liability, cost, or charge whatsoever which Landlord shall incur, or which Landlord would otherwise incur, by reason of Tenant's failure to comply with this Section; including, but not limited to: (i) the cost of bringing the Premises into compliance with all laws; (ii) the reasonable cost of all appropriate tests and examinations of the Premises to confirm that the Premises have been brought into compliance with all Laws; and, (iii) the reasonable fees and expenses of Landlord's attorneys, engineers, and consultants incurred by Landlord in enforcing and confirming compliance with this Section.
- c. Covered Property. For the purposes of this Section, the Premises shall include the Real Estate covered by this Lease, all improvements placed on the Premises by Tenant, and all personal property and fixtures located on or used in connection with the Premises.

- d. Liability After Termination or Expiration of Lease. Landlord and its engineers, technicians, and consultants (collectively, “**Auditors**”) may, from time to time as Landlord deems appropriate, during Tenant’s usual business hours and after reasonable notice to Tenant, conduct periodic tests and examinations (“**Audits**”) of the Premises to confirm and monitor Tenant’s compliance with this Section. Such Audits shall be conducted in such manner as to minimize the interference with Tenant’s permitted use; however, in all cases, the Audits shall be of such nature and scope as shall be reasonably required by then existing technology to confirm Tenant’s compliance with this Section. Tenant shall fully cooperate with Landlord and its Auditors in the conduct of such Audits. The cost of such Audits shall be paid by Landlord unless an Audit shall disclose a material failure of Tenant to comply with this Section, in which case the cost of such Audit, and the cost of all subsequent Audits made during the Term and within thirty (30) days thereafter (not to exceed two (2) such Audits per Lease year), shall be paid for by Tenant within fifteen (15) days of receipt of invoices from Landlord.
 - e. Liability After Termination of Lease. The covenants contained in this Section shall survive the expiration or termination of this Lease and shall continue for so long as the parties hereto and their successors and assigns may be subject to any expense, liability, charge, penalty, or obligation against which the Tenant has agreed to indemnify the Landlord under this Section.
12. Relationship. The parties’ relationship is not that of joint venturers or partners but is a relationship of landlord and tenant as defined in this Lease.
13. CGIA. Each party to this Lease is a “public entity” under the Colorado Governmental Immunity Act, §§ 24-10-101, *et seq.*, C.R.S., as amended (“**CGIA**”). The parties acknowledge and agree that the Landlord and the Tenant, their respective elected and appointed officials, officers, directors, agents, and employees, are relying on, and do not waive or intend to waive by any provision of this Lease, the monetary limitations or any other rights, immunities and protections provided by the CGIA.
14. Liens. The Tenant will not permit or allow any mechanic’s, materialman’s, or other lien to be placed against any of the Premises in connection with work or services claimed to have been performed for, or materials claimed to have been furnished to the Tenant. If any such lien is recorded, the Tenant will cause the same to be released of record.
15. Responsibility. Tenant will be responsible for the acts, omissions, or conduct of its own respective officers, employees, agents, contractors, and consultants to the extent arising out of the performance of its obligations under this Lease or with respect to its respective use of the Premises.
16. Compliance with Laws. Tenant shall cause all activities within the Premises to be performed in compliance with all applicable laws, rules, regulations, orders and other requirements of any public jurisdiction.

17. Appropriations. Pursuant to § 29-1-110, C.R.S., any financial obligations of the parties express or implied by this Lease are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available on an annual basis by each party's respective governing body.
18. Notice of Communications. Any notice pursuant to the terms and conditions of this Lease shall be in writing and shall be hand-delivered or sent by registered or certified mail, return receipt requested, postage prepaid, to the addresses of the parties herein set forth. All notices so given shall be considered effective seventy-two (72) hours after deposit in the United States Postal Service mail with the proper address as set forth below. Either party by notice so given may change the address to which future notices shall be sent.

To the District:

Boulder Public Library District
Attn: Board President and District Manager
1001 Arapahoe Ave
Boulder, CO 80302

With a copy to:

Kim J. Seter, Esq.
Seter & Vander Wall, PC
7400 E. Orchard Road, Suite 3300
Greenwood Village, CO 80111
and: kseter@svwpc.com

To the City:

City of Boulder
Attn: City Manager
P. O. Box 791
Boulder, CO 80306
(303) 441-3090
and: CMOAdmin@bouldercolorado.gov

With a copy to:

City of Boulder
Attn: City Attorney
P. O. Box 791
Boulder, CO 80306
(303) 441-3020
and: CAOAdmin@bouldercolorado.gov

19. Integration and Entire Agreement. This Lease represents the entire agreement between the parties with respect to this Lease and supersedes all prior discussions, negotiations, understandings, or agreements relating to this Lease, all of which are merged herein.
20. Counterparts. This Lease may be executed in several counterparts, or electronic PDF, each of which shall be deemed an original and all of which taken together shall constitute one and the same instrument.
21. Recording. Landlord and Tenant agree that this Lease will be recorded in the Public Records of Boulder County, Colorado. All of the provisions of this Lease shall be deemed to run with the land and shall be construed to be “conditions” as well as “covenants” as though the words specifically expressing or imparting conditions and covenants were used in each separate provision.

IN WITNESS WHEREOF, the parties have executed this Lease on the date set forth above.

[Signature pages follow]

TENANT:

BOULDER PUBLIC LIBRARY DISTRICT

By: _____
Katharine (Joni) Teter, President
Board of Trustees

Attest: _____
Sylvia T. Wirba, Secretary

Approved as to Form:

Kim J. Seter, CO Atty No. 14294

STATE OF COLORADO)
) ss.
COUNTY OF BOULDER)

The foregoing instrument was acknowledged before me this _____ day of _____, 20__, by Katharine (Joni) Teter as President of the Boulder Public Library District Board of Trustees.

Witness my hand and official seal.

My commission expires: _____

[SEAL]

Notary Public

[The remainder of this page is intentionally blank.]

LANDLORD:

**CITY OF BOULDER,
a Colorado home rule municipality**

By: _____
Nuria Rivera-Vandermyde, City Manager

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney's Office

LIBRARY LEASE

CITY OF BOULDER

“LANDLORD”

WITH

BOULDER PUBLIC LIBRARY DISTRICT

“TENANT”

BUILDING: GEORGE REYNOLDS BRANCH LIBRARY

DATED: _____

LIBRARY LEASE

THIS LIBRARY LEASE (“**Lease**”) is made and entered into as of this _____ day of _____, 2023, (“**Effective Date**”) by and between the City of Boulder, a Colorado home rule municipality, (“**Landlord**”), and the Boulder Public Library District (“**Tenant**”). In consideration of the payment of Rent (as defined below); all costs, charges, and expenses which Tenant assumes, agrees, or is obligated to pay to Landlord pursuant to this Lease (“**Additional Rent**”); and the performance of the promises by Tenant set forth below, Landlord hereby leases to Tenant, and Tenant hereby accepts, the Premises (as defined below), subject to the terms and provisions set forth in this Lease. Landlord and Tenant covenant and agree as follows:

1. Premises. Landlord is the owner of certain real estate legally described as set forth in **Exhibit A**, Boulder County, Colorado (“**Real Estate**”). The Real Estate is improved with a building (“**Premises**”). Landlord hereby leases and demises to Tenant the Premises located at 3595 Table Mesa Dr., Boulder, Colorado as of the date first provided under Paragraph 2., Term and Termination.
 - a. Landlord retains access to and excludes from the Premises that portion that is necessary and currently utilized for the City of Boulder-owned roof-mounted traffic control communication antenna; and City of Boulder-owned fiber optic cable and the IT BRAN fiber optic cable and equipment identified on **Exhibit B** if any, free of charge.
 - b. Tenant will provide access cards or keys necessary for the 24-hour access to and operation of the communications antenna and fiber optic cable and equipment identified in paragraph 1.a, above, free of charge.
2. Term and Termination. Landlord Leases the Premises to Tenant for a term of twenty (20) years, commencing at one minute after midnight on the _____ day of _____, 2024, and terminating one minute after midnight on the _____ day of _____, 2045 (the “**Term**”), unless sooner terminated in accordance with the provisions of this Lease.
 - a. Landlord and Tenant agree to meet in no less than five-year intervals to determine whether this Lease should be terminated by mutual agreement.
 - b. Tenant has the absolute right to terminate this Lease on its anniversary date every third year without consequences upon ninety (90) days written notice to Landlord.
3. Rent. Tenant shall pay to Landlord for the use and occupancy of the Premises during the Term a fixed annual rental rate of One Dollar (\$1.00) (“**Rent**”), payable by Tenant in a lump sum payment of Twenty Dollars (\$20.00) on the Effective Date hereof the receipt and sufficiency of which is hereby acknowledged.
4. Use. The Premises shall be used for the sole purpose of a public library and associated activities (which may include subleases to nonprofit entities).

5. Utility Charges. Tenant shall establish accounts for all heat, light, power, telephone, water, sewerage, janitorial services, garbage disposal, and other utilities and services it deems necessary for the operation of a public library (“**Utilities and Services**”) in its own name, and shall pay directly to the appropriate supplier, the cost of all Utilities and Services as the same become due and payable.
6. Condition of Premises. Tenant is familiar with the physical condition of the Premises. Tenant is leasing the Premises “as is,” in its current condition, and hereby expressly disclaims all warranties.
7. Maintenance and Repairs. Landlord will provide routine maintenance and repair services and on-call services for a period not to exceed 4 months and work with and assist Tenant’s facilities maintenance personnel. Tenant shall reimburse Landlord for all such services at cost. Thereafter, Tenant shall have sole maintenance and repair responsibility for the interior and exterior of the Premises, including all costs and expenses relative thereto. Tenant shall promptly and diligently repair, restore, replace, or remedy all damage to or destruction of all or any part of the Premises. Landlord shall not be required to furnish any services or facilities or to make any repairs or alterations of any kind in or on the Premises, all such matters being the sole duty and responsibility of Tenant. Tenant may also demolish, rebuild, reconfigure and/or remodel any interior spaces of the Premises without consultation with Landlord so long as Tenant deems it necessary or useful for its purposes. Exterior demolition, reconstruction or remodeling must be approved by Landlord. Unless otherwise agreed to by the Landlord, Tenant shall require any contractor performing work on the Premises to procure and maintain at its own cost the insurance coverage and other contract requirements set forth in **Exhibit C**.
8. Injury or Damage. Landlord shall not be responsible to the Tenant for loss of property in or from the Premises, or for any damage done to furniture, fixtures, equipment, collections, or other effects in the Premises, nor shall the Landlord be liable for any injury or damage, either proximate or remote, occurring through or caused by any repairs, alterations, or accident occurring in or to the Premises, nor shall Landlord be liable for any injury or damage occasioned by defective electrical wiring or the breakage or stoppage of the plumbing or sewerage upon the Premises, whether such breakage or stoppage results from freezing, flood, or other casualty.
9. Insurance. During the Term of this Lease, Tenant, at its sole cost and expense, shall continuously maintain the types and amounts of insurance coverages as approved by the city manager, the city attorney, and City of Boulder’s risk manager.
10. Default. Tenant shall be in default of this Lease if at any time the Premises cease to be used for public library purposes. Together with the foregoing, if either party defaults in the performance of any of its respective covenants, conditions, agreements, or undertakings contained in this Lease (each, an “**Event of Default**”) and such Event of Default continues for thirty (30) days (subject to a reasonable extension if a cure is not practical during such period and if the defaulting party has commenced cure and is diligently pursuing same) after written notice of such default from the non-defaulting party, then the non-defaulting

party may cause such default to be remedied in such manner and by such means as the non-defaulting party may deem proper, and the cost and expense thereof paid or incurred, including reasonable attorney fees and costs, shall be due and payable within thirty (30) days of presentment of an invoice for such services. Notwithstanding the foregoing, the parties shall have the option to seek all and any remedy available at law or in equity.

11. Environmental Compliance.

- a. Tenant's Responsibility. Tenant covenants and agrees that the Premises will, at all times during its use or occupancy thereof, be kept and maintained so as to comply with all now existing or hereafter enacted or issued statutes, laws, rules, ordinances, orders, permits, and regulations of all state, federal, local, and other governmental and regulatory authorities, agencies, and bodies applicable to the Premises, pertaining to environmental matters, or regulating, prohibiting, or otherwise having to do with asbestos and all other toxic, radioactive, or hazardous wastes or materials including, but not limited to, the Federal Clean Air Act, the Federal Water Pollution Control Act, and the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as from time to time amended (all hereafter collectively called "**Laws**"). Tenant shall not cause or permit any hazardous material to be brought upon, kept, or used in, or about the Premises by Tenant, its agents, employees, contractors, or invitees, except any hazardous material which is necessary for the usual and customary operation of a public library.
- b. Tenant's Liability. If Tenant breaches the obligations stated in the preceding paragraph, or if the presence of hazardous materials otherwise arises out of Tenant's use of the Premises, Tenant shall be solely responsible for all costs incurred in connection with any investigation of site conditions and any clean-up, remedial, removal, or restoration work required by any federal, state, or local governmental agency. Without limiting the foregoing, any hazardous material is released on the Premises, Tenant shall promptly take all actions at its sole cost and expense which are necessary to return the Premises to the condition existing prior to the introduction of such hazardous material. Except to any extent prohibited by law, Tenant shall hold Landlord free, harmless, and indemnified from any penalty, fine, claim, demand, liability, cost, or charge whatsoever which Landlord shall incur, or which Landlord would otherwise incur, by reason of Tenant's failure to comply with this section; including, but not limited to: (i) the cost of bringing the Premises into compliance with all laws; (ii) the reasonable cost of all appropriate tests and examinations of the Premises to confirm that the Premises have been brought into compliance with all Laws; and (iii) the reasonable fees and expenses of Landlord's attorneys, engineers, and consultants incurred by Landlord in enforcing and confirming compliance with this Section.
- c. Covered Property. For the purposes of this Section, the Premises shall include the Real Estate covered by this Lease, all improvements placed on the Premises by Tenant, and all personal property and fixtures located on or used in connection with the Premises.

- d. Liability After Termination or Expiration of Lease. Landlord and its engineers, technicians, and consultants (collectively, “**Auditors**”) may, from time to time as Landlord deems appropriate, during Tenant’s usual business hours and after reasonable notice to Tenant, conduct periodic tests and examinations (“**Audits**”) of the Premises to confirm and monitor Tenant’s compliance with this Section. Such Audits shall be conducted in such manner as to minimize the interference with Tenant’s permitted use; however, in all cases, the Audits shall be of such nature and scope as shall be reasonably required by then existing technology to confirm Tenant’s compliance with this Section. Tenant shall fully cooperate with Landlord and its Auditors in the conduct of such Audits. The cost of such Audits shall be paid by Landlord unless an Audit shall disclose a material failure of Tenant to comply with this Section, in which case the cost of such Audit, and the cost of all subsequent Audits made during the Term and within thirty (30) days thereafter (not to exceed two (2) such Audits per Lease year), shall be paid for by Tenant within fifteen (15) days of receipt of invoices from Landlord.
 - e. Liability After Termination of Lease. The covenants contained in this Section shall survive the expiration or termination of this Lease and shall continue for so long as the parties hereto and their successors and assigns may be subject to any expense, liability, charge, penalty, or obligation against which the Tenant has agreed to indemnify the Landlord under this Section.
12. Relationship. The parties’ relationship is not that of joint venturers or partners but is a relationship of landlord and tenant as defined in this Lease.
13. CGIA. Each party to this Lease is a “public entity” under the Colorado Governmental Immunity Act, §§ 24-10-101, *et seq.*, C.R.S., as amended (“**CGIA**”). The parties acknowledge and agree that the Landlord and the Tenant, their respective elected and appointed officials, officers, directors, agents, and employees, are relying on, and do not waive or intend to waive by any provision of this Lease, the monetary limitations or any other rights, immunities and protections provided by the CGIA.
14. Liens. The Tenant will not permit or allow any mechanic’s, materialman’s, or other lien to be placed against any of the Premises in connection with work or services claimed to have been performed for, or materials claimed to have been furnished to the Tenant. If any such lien is recorded, the Tenant will cause the same to be released of record.
15. Responsibility. Tenant will be responsible for the acts, omissions, or conduct of its own respective officers, employees, agents, contractors, and consultants to the extent arising out of the performance of its obligations under this Lease or with respect to its respective use of the Premises.
16. Compliance with Laws. Tenant shall cause all activities within the Premises to be performed in compliance with all applicable laws, rules, regulations, orders and other requirements of any public jurisdiction.

17. Appropriations. Pursuant to § 29-1-110, C.R.S., any financial obligations of the parties express or implied by this Lease are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available on an annual basis by each party's respective governing body.
18. Notice of Communications. Any notice pursuant to the terms and conditions of this Lease shall be in writing and shall be hand-delivered or sent by registered or certified mail, return receipt requested, postage prepaid, to the addresses of the parties herein set forth. All notices so given shall be considered effective seventy-two (72) hours after deposit in the United States Postal Service mail with the proper address as set forth below. Either party by notice so given may change the address to which future notices shall be sent.

To the District:

Boulder Public Library District
Attn: Board President and District Manager
1001 Arapahoe Ave
Boulder, CO 80302

With a copy to:

Kim J. Seter, Esq.
Seter & Vander Wall, PC
7400 E. Orchard Road, Suite 3300
Greenwood Village, CO 80111
and: kseter@svwpc.com

To the City:

City of Boulder
Attn: City Manager
P. O. Box 791
Boulder, CO 80306
(303) 441-3090
and: CMOAdmin@bouldercolorado.gov

With a copy to:

City of Boulder
Attn: City Attorney
P. O. Box 791
Boulder, CO 80306
(303) 441-3020
and: CAOAdmin@bouldercolorado.gov

19. Integration and Entire Agreement. This Lease represents the entire agreement between the parties with respect to this Lease and supersedes all prior discussions, negotiations, understandings, or agreements relating to this Lease, all of which are merged herein.
20. Counterparts. This Lease may be executed in several counterparts, or electronic PDF, each of which shall be deemed an original and all of which taken together shall constitute one and the same instrument.
21. Recording. Landlord and Tenant agree that this Lease will be recorded in the Public Records of Boulder County, Colorado. All of the provisions of this Lease shall be deemed to run with the land and shall be construed to be “conditions” as well as “covenants” as though the words specifically expressing or imparting conditions and covenants were used in each separate provision.

IN WITNESS WHEREOF, the parties have executed this Lease on the date set forth above.

[Signature pages follow]

TENANT:

BOULDER PUBLIC LIBRARY DISTRICT

By: _____
Katharine (Joni) Teter, President
Board of Trustees

Attest: _____
Sylvia T. Wirba, Secretary

Approved as to Form:

Kim J. Seter, CO Atty No. 14294

STATE OF COLORADO)
) ss.
COUNTY OF BOULDER)

The foregoing instrument was acknowledged before me this _____ day of _____, 20__, by Katharine (Joni) Teter as President of the Boulder Public Library District Board of Trustees.

Witness my hand and official seal.

My commission expires: _____

[SEAL]

Notary Public

[The remainder of this page is intentionally blank.]

LANDLORD:

**CITY OF BOULDER,
a Colorado home rule municipality**

By: _____
Nuria Rivera-Vandermyde, City Manager

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney’s Office

LIBRARY LEASE

CITY OF BOULDER

“LANDLORD”

WITH

BOULDER PUBLIC LIBRARY DISTRICT

“TENANT”

BUILDING: NORTH BOULDER BRANCH LIBRARY

DATED: _____

LIBRARY LEASE

THIS LIBRARY LEASE (“**Lease**”) is made and entered into as of this _____ day of _____ 2023, (“**Effective Date**”) by and between the City of Boulder, a Colorado home rule municipality, (“**Landlord**”), and the Boulder Public Library District (“**Tenant**”). In consideration of the payment of Rent (as defined below); all costs, charges, and expenses which Tenant assumes, agrees, or is obligated to pay to Landlord pursuant to this Lease (“**Additional Rent**”); and the performance of the promises by Tenant set forth below, Landlord hereby leases to Tenant, and Tenant hereby accepts, the Premises (as defined below), subject to the terms and provisions set forth in this Lease. Landlord and Tenant covenant and agree as follows:

1. Premises. Landlord is the owner of certain real estate legally described as set forth in **Exhibit A**, Boulder County, Colorado (“**Real Estate**”). The Real Estate is under construction and will be subdivided with an area including the library building, parking lot and play area (“**Premises**”), generally as depicted on **Exhibit B**. Landlord hereby leases and demises to Tenant the Premises located at 4500 13th St., Boulder, Colorado as of the date first provided under Paragraph 2., Term and Termination.
 - a. Landlord retains access to and excludes from the Premises that portion that is necessary and currently utilized for City of Boulder-owned fiber optic cable and equipment identified on **Exhibit C** (“**City Technology Assets**”).
 - b. Tenant will provide access cards or keys necessary for the 24-hour access to and operation of the City of Boulder-owned fiber optic network and equipment, free of charge.
2. Term and Termination. Landlord will release possession of the Premises to Tenant by notice in writing within ten (10) days of receipt of a certificate of occupancy for the library building and installation of all fixtures, personal property, and other installations described in the Final Intergovernmental Agreement between the parties dated _____. Landlord leases the Premises to Tenant for a term of approximately twenty (20) years, commencing upon release of possession, and terminating one minute after midnight on the 1st day of January 2045 (“**Term**”), unless sooner terminated in accordance with the provisions of this Lease.
 - a. Landlord and Tenant agree to meet in no less than five-year intervals to determine whether this Lease should be terminated by mutual agreement.
 - b. Tenant has the absolute right to terminate this Lease on its anniversary date every third year without consequences upon ninety (90) days written notice to Landlord.
3. Rent. Tenant shall pay to Landlord for the use and occupancy of the Premises during the Term a fixed annual rental rate of One Dollar (\$1.00) (“**Rent**”), payable by Tenant in a lump sum payment of Twenty Dollars (\$20.00) on the Effective Date hereof the receipt and sufficiency of which is hereby acknowledged.

4. Use. The Premises shall be used for the sole purpose of a public library and associated activities (which may include subleases to nonprofit entities).
5. Utility Charges. Tenant shall establish accounts for all heat, light, power, telephone, water, sewerage, janitorial services, garbage disposal, and other utilities and services it deems necessary for the operation of a public library ("**Utilities and Services**") in its own name, and shall pay directly to the appropriate supplier, the cost of all Utilities and Services as the same become due and payable.
6. Condition of Premises. Tenant will review the physical condition of the Premises prior to taking possession. All contractor, manufacturers, materialman's and laborer's warranties, guarantees, and continuing contract rights will be assigned to Tenant at the commencement of the Term, to the extent lawfully permitted in such warranties, guarantees, and continuing contract rights.
7. Maintenance and Repairs. Landlord will provide routine maintenance and repair services and on-call services for a period not to exceed four (4) months and work with and assist Tenant's facilities maintenance personnel to enforce any warranties or guarantees assigned or to be assigned under the preceding paragraph. Tenant shall reimburse Landlord for all such services at cost. Thereafter, Tenant shall have sole maintenance and repair responsibility for the interior and exterior of the Premises, including all costs and expenses relative thereto. Tenant shall promptly and diligently repair, restore, replace, or remedy all damage to or destruction of all or any part of the Premises. Landlord shall not be required to furnish any services or facilities or to make any repairs or alterations of any kind in or on the Premises, all such matters being the sole duty and responsibility of Tenant. Tenant may also demolish, rebuild, reconfigure and/or remodel any interior spaces of the Premises without consultation with Landlord so long as Tenant deems it necessary or useful for its purposes. Exterior demolition, reconstruction or remodeling must be approved by Landlord. Tenant shall require any contractor performing work on the Premises to procure and maintain at its own cost the insurance coverages and other contract requirements set forth in **Exhibit D**.
8. Injury or Damage. Landlord shall not be responsible to the Tenant for loss of property in or from the Premises, or for any damage done to furniture, fixtures, equipment, collections, or other effects in the Premises, nor shall the Landlord be liable for any injury or damage, either proximate or remote, occurring through or caused by any repairs, alterations, or accident occurring in or to the Premises, nor shall Landlord be liable for any injury or damage occasioned by defective electrical wiring or the breakage or stoppage of the plumbing or sewerage upon the Premises, whether such breakage or stoppage results from freezing, flood, or other casualty.
9. Insurance. During the Term of this Lease, Tenant, at its sole cost and expense, shall continuously maintain the types and amounts of insurance coverages as approved by the city manager, the city attorney, and the City of Boulder's risk manager.

10. Default. Tenant shall be in default of this Lease if at any time the Premises cease to be used for public library purposes. Together with the foregoing, if either party defaults in the performance of any of its respective covenants, conditions, agreements, or undertakings contained in this Lease (each, an “**Event of Default**”) and such Event of Default continues for thirty (30) days (subject to a reasonable extension if a cure is not practical during such period and if the defaulting party has commenced cure and is diligently pursuing same) after written notice of such default from the non-defaulting party, then the non-defaulting party may cause such default to be remedied in such manner and by such means as the non-defaulting party may deem proper, and the cost and expense thereof paid or incurred, including reasonable attorney fees and costs, shall be due and payable within thirty (30) days of presentment of an invoice for such services. Notwithstanding the foregoing, the parties shall have the option to seek all and any remedy available at law or in equity.

11. Environmental Compliance.

- a. Tenant’s Responsibility. Tenant covenants and agrees that the Premises will, at all times during its use or occupancy thereof, be kept and maintained so as to comply with all now existing or hereafter enacted or issued statutes, laws, rules, ordinances, orders, permits, and regulations of all state, federal, local, and other governmental and regulatory authorities, agencies, and bodies applicable to the Premises, pertaining to environmental matters, or regulating, prohibiting, or otherwise having to do with asbestos and all other toxic, radioactive, or hazardous wastes or materials including, but not limited to, the Federal Clean Air Act, the Federal Water Pollution Control Act, and the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as from time to time amended (all hereafter collectively called “**Laws**”). Tenant shall not cause or permit any hazardous material to be brought upon, kept, or used in, or about the Premises by Tenant, its agents, employees, contractors, or invitees, except any hazardous material which is necessary for the usual and customary operation of a public library.
- b. Tenant’s Liability. If Tenant breaches the obligations stated in the preceding paragraph, or if the presence of hazardous materials otherwise arises out of Tenant’s use of the Premises, Tenant shall be solely responsible for all costs incurred in connection with any investigation of site conditions and any clean-up, remedial, removal, or restoration work required by any federal, state, or local governmental agency. Without limiting the foregoing, any hazardous material is released on the Premises, Tenant shall promptly take all actions at its sole cost and expense which are necessary to return the Premises to the condition existing prior to the introduction of such hazardous material. Except to any extent prohibited by law, Tenant shall hold Landlord free, harmless, and indemnified from any penalty, fine, claim, demand, liability, cost, or charge whatsoever which Landlord shall incur, or which Landlord would otherwise incur, by reason of Tenant’s failure to comply with this Section; including, but not limited to: (i) the cost of bringing the Premises into compliance with all laws; (ii) the reasonable cost of all appropriate tests and examinations of the Premises to confirm that the Premises have been brought into compliance with all Laws; and, (iii) the reasonable fees and expenses of Landlord’s

attorneys, engineers, and consultants incurred by Landlord in enforcing and confirming compliance with this Section.

- c. Covered Property. For the purposes of this Section, the Premises include the Real Estate covered by this Lease, all improvements placed on the Premises by Tenant, and all personal property and fixtures located on or used in connection with the Premises.
 - d. Liability After Termination or Expiration of Lease. Landlord and its engineers, technicians, and consultants (collectively, “**Auditors**”) may, from time to time as Landlord deems appropriate, during Tenant’s usual business hours and after reasonable notice to Tenant, conduct periodic tests and examinations (“**Audits**”) of the Premises to confirm and monitor Tenant’s compliance with this Section. Such Audits shall be conducted in such manner as to minimize the interference with Tenant’s permitted use; however, in all cases, the Audits shall be of such nature and scope as shall be reasonably required by then existing technology to confirm Tenant’s compliance with this Section. Tenant shall fully cooperate with Landlord and its Auditors in the conduct of such Audits. The cost of such Audits shall be paid by Landlord unless an Audit shall disclose a material failure of Tenant to comply with this Section, in which case the cost of such Audit, and the cost of all subsequent Audits made during the Term and within thirty (30) days thereafter (not to exceed two (2) such Audits per Lease year), shall be paid for by Tenant within fifteen (15) days of receipt of invoices from Landlord.
 - e. Liability After Termination of Lease. The covenants contained in this Section shall survive the expiration or termination of this Lease and shall continue for so long as the parties hereto and their successors and assigns may be subject to any expense, liability, charge, penalty, or obligation against which the Tenant has agreed to indemnify the Landlord under this Section.
12. Relationship. The parties’ relationship is not that of joint venturers or partners but is a relationship of landlord and tenant as defined in this Lease.
13. CGIA. Each party to this Lease is a “public entity” under the Colorado Governmental Immunity Act, §§ 24-10-101, *et seq.*, C.R.S., as amended (“**CGIA**”). The parties acknowledge and agree that the Landlord and the Tenant, their respective elected and appointed officials, officers, directors, agents, and employees, are relying on, and do not waive or intend to waive by any provision of this Lease, the monetary limitations or any other rights, immunities and protections provided by the CGIA.
14. Liens. The Tenant will not permit or allow any mechanic’s, materialman’s, or other lien to be placed against any of the Premises in connection with work or services claimed to have been performed for, or materials claimed to have been furnished to the Tenant. If any such lien is recorded, the Tenant will cause the same to be released of record.

15. Responsibility. Tenant will be responsible for the acts, omissions, or conduct of its own respective officers, employees, agents, contractors, and consultants to the extent arising out of the performance of its obligations under this Lease or with respect to its respective use of the Premises.
16. Compliance with Laws. Tenant shall cause all activities within the Premises to be performed in compliance with all applicable laws, rules, regulations, orders and other requirements of any public jurisdiction.
17. Appropriations. Pursuant to § 29-1-110, C.R.S., any financial obligations of the parties express or implied by this Lease are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available on an annual basis by each party's respective governing body.
18. Notice of Communications. Any notice pursuant to the terms and conditions of this Lease shall be in writing and shall be hand-delivered or sent by registered or certified mail, return receipt requested, postage prepaid, to the addresses of the parties herein set forth. All notices so given shall be considered effective seventy-two (72) hours after deposit in the United States Postal Service mail with the proper address as set forth below. Either party by notice so given may change the address to which future notices shall be sent.

To the District:

Boulder Public Library District
Attn: Board President and District Manager
1001 Arapahoe Ave
Boulder, CO 80302

With a copy to:

Kim J. Seter, Esq.
Seter & Vander Wall, PC
7400 E. Orchard Road, Suite 3300
Greenwood Village, CO 80111
and: kseter@svwpc.com

To the City:

City of Boulder
Attn: City Manager
P. O. Box 791
Boulder, CO 80306
(303) 441-3090
and: CMOAdmin@bouldercolorado.gov

With a copy to:

City of Boulder
Attn: City Attorney
P. O. Box 791
Boulder, CO 80306
(303) 441-3020
and: CAOAdmin@bouldercolorado.gov

19. Integration and Entire Agreement. This Lease represents the entire agreement between the parties with respect to this Lease and supersedes all prior discussions, negotiations, understandings, or agreements relating to this Lease, all of which are merged herein.
20. Counterparts. This Lease may be executed in several counterparts, or electronic PDF, each of which shall be deemed an original and all of which taken together shall constitute one and the same instrument.
21. Recording. Landlord and Tenant agree that this Lease will be recorded in the Public Records of Boulder County, Colorado. All of the provisions of this Lease shall be deemed to run with the land and shall be construed to be “conditions” as well as “covenants” as though the words specifically expressing or imparting conditions and covenants were used in each separate provision.

IN WITNESS WHEREOF, the parties have executed this Lease on the date set forth above.

[Signature pages follow]

TENANT:

BOULDER PUBLIC LIBRARY DISTRICT

By: _____
Katharine (Joni) Teter, President
Board of Trustees

Attest: _____
Sylvia T. Wirba, Secretary

Approved as to Form:

Kim J. Seter, CO Atty No. 14294

STATE OF COLORADO)
) ss.
COUNTY OF BOULDER)

The foregoing instrument was acknowledged before me this _____ day of _____, 20__, by Katharine (Joni) Teter as President of the Boulder Public Library District Board of Trustees.

Witness my hand and official seal.

My commission expires: _____

[SEAL] _____
Notary Public

[The remainder of this page is intentionally blank.]

LANDLORD:

**CITY OF BOULDER,
a Colorado home rule municipality**

By: _____
Nuria Rivera-Vandermyde, City Manager

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney's Office

LIBRARY LEASE

CITY OF BOULDER

“LANDLORD”

WITH

BOULDER PUBLIC LIBRARY DISTRICT

“TENANT”

BUILDING: MAIN LIBRARY

DATED: _____

LIBRARY LEASE

THIS LIBRARY LEASE (“**Lease**”) is made and entered into as of this ____ day of _____ 2023, (“**Effective Date**”) by and between the City of Boulder, a Colorado home rule municipality, (“**Landlord**”), and the Boulder Public Library District (“**Tenant**”). In consideration of the payment of Rent (as defined below); all costs, charges, and expenses which Tenant assumes, agrees, or is obligated to pay to Landlord pursuant to this Lease (“**Additional Rent**”); and the performance of the promises by Tenant set forth below, Landlord hereby leases to Tenant, and Tenant hereby accepts, the Premises (as defined below), subject to the terms and provisions set forth in this Lease. Landlord and Tenant covenant and agree as follows:

1. Premises. Landlord is the owner of certain real estate legally described as set forth in **Exhibit A**, Boulder County, Colorado (“**Real Estate**”). The Real Estate is improved with a building (“**Premises**”). Landlord hereby leases and demises to Tenant the Premises located at 1001 Arapahoe Avenue, Boulder, Colorado as of the date first provided under Paragraph 2., Term and Termination.
 - a. Landlord retains access to and excludes from the Premises that portion that is necessary and currently utilized for the operation of Boulder 8TV described below which is identified on **Exhibit B** as the “Communications and Engagement Department Space.”
 - b. Landlord retains access to and excludes from the Premises that portion that is necessary and currently utilized for the and City of Boulder-owned fiber optic cable and equipment identified on **Exhibit B** as the “South Side 1st Floor Network Closet.”
 - d. Tenant will provide access cards or keys necessary for the 24-hour access to and operation of the Boulder 8TV facilities and equipment, the City of Boulder-owned fiber optic network and equipment, and related facilities free of charge.
2. Term and Termination. Landlord leases the Premises to Tenant for a term of twenty (20) years, commencing one minute after midnight on the ____ day of _____, 2024, and terminating one minute after midnight on the ____ day of _____, 2045 (the “**Term**”), unless sooner terminated in accordance with the provisions of this Lease.
 - a. Landlord and Tenant agree to meet in no less than five-year intervals to determine whether this Lease should be terminated by mutual agreement.
 - b. Tenant has the absolute right to terminate this Lease on its anniversary date every third anniversary without consequences upon ninety (90) days written notice to Landlord.
3. Rent. Tenant shall pay to Landlord for the use and occupancy of the Premises during the Term a fixed annual rental rate of One Dollar (\$1.00) (“**Rent**”), payable by Tenant in a

lump sum payment of Twenty Dollars (\$20.00) on the Effective Date hereof the receipt and sufficiency of which is hereby acknowledged.

4. Use. The Premises shall be used for the sole purpose of a public library and associated activities (which may include operation of the library café and maker space, and subleases to nonprofit entities).
 - a. Boulder 8TV. Boulder 8TV, a television broadcasting station and multimedia video production facility, operates out of the Main Library. Landlord and Tenant agree that Boulder 8TV will continue to operate free of charge in the Main Library location where it exists at the execution of this Lease, until it moves to a different location, anticipated in 2028. All costs and expenses associated with operating Boulder 8TV, excluding the cost of Utilities and Services, defined below, shall be the responsibility of the Landlord.
5. License and Management Agreement. Landlord and Tenant agree to enter into a Civic Area License and Management Agreement in substantially the same form set forth in **Exhibit C** concerning maintenance and operation of the Civic Center Area outside of the Premises, including the space under the bridge between the north and south buildings on the Premises, sidewalks, public parking lots, and parks.
6. Utility Charges. Tenant shall establish accounts for all heat, light, power, telephone, water, sewerage, janitorial services, garbage disposal, and other utilities and services it deems necessary for the operation of a public library ("**Utilities and Services**") in its own name, and shall pay directly to the appropriate supplier, the cost of all Utilities and Services as the same become due and payable.
7. Condition of Premises. Tenant is familiar with the physical condition of the Premises and the Civic Center Area. Tenant is leasing the Premises "as is," in its current condition, and hereby expressly disclaims all warranties.
8. Maintenance and Repairs. Landlord will provide routine maintenance and repair services and on-call services for a period not to exceed four (4) months and work with and assist Tenant's facilities maintenance personnel. Tenant shall reimburse Landlord for all such services at cost. Thereafter, Tenant shall have sole maintenance and repair responsibility for the interior and exterior of the Premises, including all costs and expenses relative thereto. Tenant shall promptly and diligently repair, restore, replace, or remedy all damage to or destruction of all or any part of the Premises. Landlord shall not be required to furnish any services or facilities or to make any repairs or alterations of any kind in or on the Premises, all such matters being the sole duty and responsibility of Tenant. Tenant may also demolish, rebuild, reconfigure and/or remodel any interior spaces of the Premises without consultation with Landlord so long as Tenant deems it necessary or useful for its purposes. Exterior demolition, reconstruction or remodeling must be approved by Landlord. Tenant shall require any contractor performing work on the Premises to procure and maintain at its own cost the insurance coverages and other contract requirements set forth in **Exhibit D**.

9. Injury or Damage. Landlord shall not be responsible to the Tenant for loss of property in or from the Premises, or for any damage done to furniture, fixtures, equipment, collections, or other effects in the Premises, nor shall the Landlord be liable for any injury or damage, either proximate or remote, occurring through or caused by any repairs, alterations, or accident occurring in or to the Premises, nor shall Landlord be liable for any injury or damage occasioned by defective electrical wiring or the breakage or stoppage of the plumbing or sewerage upon the Premises, whether such breakage or stoppage results from freezing, flood, or other casualty.
10. Insurance. During the Term of this Lease, Tenant, at its sole cost and expense, shall continuously maintain the types and amounts of insurance coverages as approved by the city manager, the city attorney, and the City of Boulder's risk manager.
11. Default. The following will constitute a default of this Lease: (i) Tenant's failure to comply with the terms of the Civic Area License and Management Agreement; or, (ii) if at any time the Premises cease to be used for public library purposes. Together with the foregoing, if either party defaults in the performance of any of its respective covenants, conditions, agreements, or undertakings contained in this Lease (each, an "**Event of Default**") and such Event of Default continues for thirty (30) days (subject to a reasonable extension if a cure is not practical during such period and if the defaulting party has commenced cure and is diligently pursuing same) after written notice of such default from the non-defaulting party, then the non-defaulting party may cause such default to be remedied in such manner and by such means as the non-defaulting party may deem proper, and the cost and expense thereof paid or incurred, including reasonable attorney fees and costs, shall be due and payable within thirty (30) days of presentment of an invoice for such services. Notwithstanding the foregoing, the parties shall have the option to seek all and any remedy available at law or in equity.
12. Environmental Compliance.
 - a. Tenant's Responsibility. Tenant covenants and agrees that the Premises will, at all times during its use or occupancy thereof, be kept and maintained so as to comply with all now existing or hereafter enacted or issued statutes, laws, rules, ordinances, orders, permits, and regulations of all state, federal, local, and other governmental and regulatory authorities, agencies, and bodies applicable to the Premises, pertaining to environmental matters, or regulating, prohibiting, or otherwise having to do with asbestos and all other toxic, radioactive, or hazardous wastes or materials including, but not limited to, the Federal Clean Air Act, the Federal Water Pollution Control Act, and the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as from time to time amended (all hereafter collectively called "**Laws**"). Tenant shall not cause or permit any hazardous material to be brought upon, kept, or used in, or about the Premises by Tenant, its agents, employees, contractors, or invitees, except any hazardous material which is necessary for the usual and customary operation of a public library.

- b. Tenant's Liability. If Tenant breaches the obligations stated in the preceding paragraph, or if the presence of hazardous materials otherwise arises out of Tenant's use of the Premises, Tenant shall be solely responsible for all costs incurred in connection with any investigation of site conditions and any clean-up, remedial, removal, or restoration work required by any federal, state, or local governmental agency. Without limiting the foregoing, any hazardous material is released on the Premises, Tenant shall promptly take all actions at its sole cost and expense which are necessary to return the Premises to the condition existing prior to the introduction of such hazardous material. Except to any extent prohibited by law, Tenant shall hold Landlord free, harmless, and indemnified from any penalty, fine, claim, demand, liability, cost, or charge whatsoever which Landlord shall incur, or which Landlord would otherwise incur, by reason of Tenant's failure to comply with this Section; including, but not limited to: (i) the cost of bringing the Premises into compliance with all laws; (ii) the reasonable cost of all appropriate tests and examinations of the Premises to confirm that the Premises have been brought into compliance with all Laws; and, (iii) the reasonable fees and expenses of Landlord's attorneys, engineers, and consultants incurred by Landlord in enforcing and confirming compliance with this Section.
- c. Covered Property. For the purposes of this Section, the Premises shall include the Real Estate covered by this Lease, all improvements placed on the Premises by Tenant, and all personal property and fixtures located on or used in connection with the Premises.
- d. Liability After Termination or Expiration of Lease. Landlord and its engineers, technicians, and consultants (collectively, "**Auditors**") may, from time to time as Landlord deems appropriate, during Tenant's usual business hours and after reasonable notice to Tenant, conduct periodic tests and examinations ("**Audits**") of the Premises to confirm and monitor Tenant's compliance with this Section. Such Audits shall be conducted in such manner as to minimize the interference with Tenant's permitted use; however, in all cases, the Audits shall be of such nature and scope as shall be reasonably required by then existing technology to confirm Tenant's compliance with this Section. Tenant shall fully cooperate with Landlord and its Auditors in the conduct of such Audits. The cost of such Audits shall be paid by Landlord unless an Audit shall disclose a material failure of Tenant to comply with this Section, in which case the cost of such Audit, and the cost of all subsequent Audits made during the Term and within thirty (30) days thereafter (not to exceed two (2) such Audits per Lease Year), shall be paid for by Tenant within fifteen (15) days of receipt of invoices from Landlord.
- e. Liability After Termination of Lease. The covenants contained in this section shall survive the expiration or termination of this Lease and shall continue for so long as the parties hereto and their successors and assigns may be subject to any expense, liability, charge, penalty, or obligation against which the Tenant has agreed to indemnify the Landlord under this Section.

13. Relationship. The parties' relationship is not that of joint venturers or partners but is a relationship of landlord and tenant as defined in this Lease.
14. CGIA. Each party to this Lease is a "public entity" under the Colorado Governmental Immunity Act, §§ 24-10-101, *et seq.*, C.R.S., as amended ("CGIA"). The parties acknowledge and agree that the Landlord and the Tenant, their respective elected and appointed officials, officers, directors, agents, and employees, are relying on, and do not waive or intend to waive by any provision of this Lease, the monetary limitations or any other rights, immunities and protections provided by the CGIA.
15. Liens. The Tenant will not permit or allow any mechanic's, materialman's, or other lien to be placed against any of the Premises in connection with work or services claimed to have been performed for, or materials claimed to have been furnished to the Tenant. If any such lien is recorded, the Tenant will cause the same to be released of record.
16. Responsibility. Tenant will be responsible for the acts, omissions, or conduct of its own respective officers, employees, agents, contractors, and consultants to the extent arising out of the performance of its obligations under this Lease or with respect to its respective use of the Premises.
17. Compliance with Laws. Tenant shall cause all activities within the Premises to be performed in compliance with all applicable laws, rules, regulations, orders and other requirements of any public jurisdiction.
18. Appropriations. Pursuant to § 29-1-110, C.R.S., any financial obligations of the parties express or implied by this Lease are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available on an annual basis by each party's respective governing body.
19. Notice of Communications. Any notice pursuant to the terms and conditions of this Lease shall be in writing and shall be hand-delivered or sent by registered or certified mail, return receipt requested, postage prepaid, to the addresses of the parties herein set forth. All notices so given shall be considered effective seventy-two (72) hours after deposit in the United States Postal Service mail with the proper address as set forth below. Either party by notice so given may change the address to which future notices shall be sent.

To the District:

Boulder Public Library District
Attn: Board President and District Manager
1001 Arapahoe Ave
Boulder, CO 80302

With a copy to:

Kim J. Seter, Esq.

Seter & Vander Wall, PC
7400 E. Orchard Road, Suite 3300
Greenwood Village, CO 80111
and: kseter@svwpc.com

To the City:

City of Boulder
Attn: City Manager
P. O. Box 791
Boulder, CO 80306
(303) 441-3090
And: CMOAdmin@bouldercolorado.gov

With a copy to:

City of Boulder
City Attorney's Office
P. O. Box 791
Boulder, CO 80306
(303) 441-3020
And: CAOAdmin@bouldercolorado.gov

20. Integration and Entire Agreement. This Lease, read in conjunction with the Civic Area License and Management Agreement, represents the entire agreement between the parties with respect to this Lease and supersedes all prior discussions, negotiations, understandings, or agreements relating to this Lease, all of which are merged herein.
21. Counterparts. This Lease may be executed in several counterparts, or electronic PDF, each of which shall be deemed an original and all of which taken together shall constitute one and the same instrument.
22. Recording. Landlord and Tenant agree that this Lease will be recorded in the Public Records of Boulder County, Colorado. All of the provisions of this Lease shall be deemed to run with the land and shall be construed to be "conditions" as well as "covenants" as though the words specifically expressing or imparting conditions and covenants were used in each separate provision.

IN WITNESS WHEREOF, the parties have executed this Lease on the date set forth above.

[Signature pages follow]

TENANT:

BOULDER PUBLIC LIBRARY DISTRICT

By: _____
Katharine (Joni) Teter, President
Board of Trustees

Attest: _____
Sylvia T. Wirba, Secretary

Approved as to Form:

Kim J. Seter, CO Atty No. 14294

STATE OF COLORADO)
) ss.
COUNTY OF BOULDER)

The foregoing instrument was acknowledged before me this _____ day of _____, 20__, by Katharine (Joni) Teter as President of the Boulder Public Library District Board of Trustees.

Witness my hand and official seal.

My commission expires: _____

[SEAL]

Notary Public

[The remainder of this page is intentionally blank.]

LANDLORD:

CITY OF BOULDER,
a Colorado home rule municipality

By: _____
Nuria Rivera-Vandermyde, City Manager

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney's Office

CIVIC AREA LICENSE AND MANAGEMENT AGREEMENT

THIS CIVIC AREA LICENSE AND MANAGEMENT AGREEMENT (“**Agreement**”) is made and entered into this _____ day of _____ 2023 (“**Effective Date**”), by and between the CITY OF BOULDER, a Colorado home rule municipality, (“**City**” and/or “**Licensor**”), and the BOULDER PUBLIC LIBRARY DISTRICT (“**District**” and/or “**Licensee**”). Licensor and Licensee may be referred to collectively herein as the “**Parties**,” and individually as a “**Party**.”

RECITALS

- A. The City is a Colorado home rule municipality incorporated on November 4, 1871.
- B. The District was formed and exists as a library district pursuant to Section 24-90-101, *et seq.*, C.R.S., for the purpose of providing certain public improvements, facilities and services, to and for the use and benefit of the District, its residents, users, property owners, and the public.
- C. The District’s boundaries are located partially within the corporate limits of the city of Boulder.
- D. The City and the District have agreed to lease portions of the library buildings and surrounding land to the District and transfer ownership and operations of the City’s assets and liabilities held for the benefit of the former City of Boulder Public Library to the District subject to the terms, conditions and obligations set forth in the Final Intergovernmental Agreement dated _____, 2023, (“**IGA**”).
- E. The Boulder Public Library Main Branch building located at 1001 Arapahoe Ave., Boulder, Colorado 80302 (“**Main Library**”) will be leased from the City to the District, subject to the terms and conditions set forth in the Main Library Lease dated _____, 2023, (the “**Library Lease**”). The City will retain ownership of the land in, under, and around the Main Library building depicted on **Exhibit A** as the licensed area (the “**Licensed Area**”). The Licensed Area is outlined in yellow on **Exhibit A**. This Agreement is intended to govern the use and maintenance of the Licensed Area and is to be read together with the Library Lease.
- F. The Licensed Area is publicly owned property and subject to laws and provisions of the state and federal constitutions regarding public access, public use, and the exercise of individual First Amendment rights.
- G. In order to ensure the ability of the District and its patrons to use the Licensed Area without interference with other public users’ rights, the City and the District have entered into this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises and undertakings herein set forth, the Parties have established the following terms:

1. License. The City hereby grants the District a non-exclusive license (“**License**”) for access and use as a public entity, and for the use of its invitees and licensees (“**Library Users**”), to access and use, the Licensed Area subject to the terms and conditions described herein relating to each of the areas outlined in yellow and described in **Exhibit A**.

2. Licensee’s Use. The District and Library Users may access, use, and occupy the Licensed Area in a manner consistent with the terms of the IGA, the Library Lease, and this Agreement. The District will be responsible for all of the upkeep and maintenance within the leased area, as described in the Library Lease, including, but not limited to, the following:

- a. Main Library Building and 9th St. Loading Dock as Indicated in Red in **Exhibit A**.
 - i. The Main Library building may remain on the civic center property in its current configuration and as modified and expanded in the future with the City’s approval so long as the District is a tenant and the Main Library building remains in use for District purposes. All utility lines, service lines, underground and above ground facilities, utilities, rooms, and utility connections are included in the License and may be relocated within the Licensed Area or added by the District from time to time without amendment to the License. The District will be responsible for obtaining approvals for such work, and such work will be completed in a manner that does not adversely affect any of the areas, uses, or functions in the Licensed Area.
 - ii. The Licensee is responsible for the developed area underneath the Main Library building, except the City will maintain Boulder Creek flood control and stormwater management improvements.
 - iii. The 9th St. loading dock is available to the District for any Main Library purposes including parking, loading and unloading vehicles, and building and vehicle maintenance.
- b. Entry Plaza No. 1 and No. 2 (collectively “Entry Plaza Areas”) as Indicated in Green in **Exhibit A**. Entry Plaza Areas are available to Library Users and the District for any public owned property uses and any use approved by the District including the exercise of First Amendment rights to gather, seek redress, protest, and engage in free speech activities.
 - i. As the Licensee of all surface uses of the Entry Plaza Areas, the District shall always maintain rules and regulations to ensure individual and group First Amendment rights are properly protected and controlled as provided

by law on public spaces and, to the fullest extent of the law, will defend and indemnify the City against all claims, causes of action, fines, penalties or damages related to violations of rights on the Entry Plaza Areas.

- ii. The District will be responsible for maintenance of all sidewalks and walkways that connect Entry Plaza No. 2 to multi-use paths and the parking areas to the east of the Main Library. The District will also be responsible for maintenance of the sidewalk along Arapahoe Ave. from the eastern side of Entry Plaza No. 1 to the western property line. Further, the District will be responsible for all of the upkeep and maintenance of trash cans, flowerpots, bicycle racks, benches, and any other improvement located in the Entry Plaza Areas.
 - iii. The Licensee will provide concrete repair and replacement in the Entry Plaza Areas consistent with the City's design standards. The Licensee may contract with the City to provide these services in conjunction with the City's regular maintenance by separate agreement.
 - iv. The City will provide snow removal in the Entry Plaza Areas once per day in the morning hours. The Licensee shall be responsible for all other snow removal.
- c. Public Parking Lots No. 1 and No. 2 as Indicated in Blue in **Exhibit A**. Public Parking Lots No. 1 and No. 2 are available to the District and Library Users on the same basis as they are available to the general public.
- i. The City agrees to provide the District with an employee parking pass program for use within Public Parking Lots No. 1 and No. 2, consistent with the terms and conditions of the City of Boulder employee parking pass program.
 - ii. Main Library identification and direction signs that comply with Sections 5-4-15, "Posting Signs on Property of Another Prohibited," and 9-9-21, "Signs," B.R.C. 1981, may be erected permanently or temporarily along the perimeter or on islands providing direction to Main Library buildings or Main Library events.
 - iii. The District will utilize the City's special events permit process for use of Public Parking Lot No. 1 or No. 2 for outdoor events and/or programming for a period not to exceed 72 hours. The Library District will be added as a referral entity for special event applications by third parties in order for the District to recoup its costs incurred because of the event.
 - iv. Upon 15 days written notice and written agreement as to the terms of use, the District may purchase parking passes for attendees and users of specifically identified library events or programs for a period not to exceed 10 hours.

- v. The City will notify the District at least 15 days before any closure of either Public Parking Lot No. 1 or No. 2 and will provide alternate parking locations and/or rights for the District's employees and patrons and direction signage to assist patrons to locate appropriate parking within a reasonable walking distance of the Main Library.
 - vi. The City accepts responsibility for the management and maintenance of Public Parking Lot No. 1 and No. 2. The Licensed Area encompasses multiple users and missions, the needs and interests of many must be balanced in a manner that protects the site in keeping with the Master Plan for Boulder Civic Area (2015), as may be amended. Management decisions about surrounding uses should be made with sensitivity to potential impacts on the Main Library's leasehold area. It is anticipated that Public Parking Lots No. 1 and No. 2 will change and evolve over time. The Master Plan for Boulder's Civic Area plans for the removal of Public Parking Lot No. 1 and No. 2 and replaced by structured parking at some point in the future. Parking management decisions evolve over time. The City and the District will work cooperatively in the future to ensure realization of the vision, how the licensed Public Parking Lots No. 1 and No. 2 will be used and the guiding principles of the Master Plan for Boulder's Civic Area and that the needs of all users and functions of the Main Library and the Civic Area are met. The City will treat District employees in the same or similar manner as city employees with respect to parking. The City will also treat all visitors to the Licensed Area that need parking in the same or similar manner, except as modified by this Agreement.
- d. Additional Licensee Obligations. In accordance with the terms and conditions set forth in the IGA, the District shall manage its use of the Licensed Area and utilize the License consistent with the seven guiding principles enumerated in the Master Plan for Boulder's Civic Area (2015), which are: (1) the civic heart of Boulder; (2) life and property safety; (3) outdoor culture, and nature; (4) celebration of history and assets; (5) enhanced access and connections; (6) place for community activity and arts; and, (7) sustainable and viable future. Additionally, the District shall utilize the License in a manner that is consistent with the terms of Section 8.13 of the Boulder Valley Comprehensive Plan: Support for Community Facilities (2021).
- e. City Maintenance Responsibilities. The City will be responsible for all the upkeep and maintenance, to a City standard, within the Licensed Area (except for areas that are the responsibility of the District), including, without limitation, the children's park area, the landscaped areas around the Main Library that are not part of the Entry Plaza Areas, both Public Parking Lots, Boulder Creek flood control and stormwater management improvements, and multi-use paths. The City will also be responsible for the upkeep and maintenance of the restrooms, to a City standard, located on the northwest portion of the Licensed Area near 9th St. and Canyon Blvd.; however, the District will supply electricity to the building until such time the City can obtain a separate metered electrical supply to the restroom building.

- f. The Licensed Area is available to the Licensee for reservations, use, programming, and the like on the same basis as it is available to the general public.

3. Licensor's Retained Use. This Agreement shall not restrict or interfere with the City's access or use of the Licensed Area for the purpose of providing, operating, utilizing, managing, and maintaining the Licensed Area; however, the City shall attempt to accommodate and minimize any interference with the Licensee's use as described herein.

4. Right of First Refusal/Offer. The City will not sell or convey the land beneath the Main Library, the Entry Plaza Areas, or the Public Parking Lot No. 1 or No. 2, or any part thereof, without first offering same to the District for purchase. This right will be recorded against the property subject to the License.

5. No Additional Uses. The Licensee's use described herein shall be its sole use of the Licensed Area unless it obtains additional permissions from the City.

6. License Fee and Cost Share. Licensee's use of the License shall be of no cost to the District unless otherwise provided herein.

7. Term and Termination. The term of this Agreement commences January 1, 2024, and shall expire upon expiration or termination of the Library Lease.

8. Termination for Default. If either Party should fail to perform its obligations under this Agreement, the other Party may provide a written notice of the failure to the non-performing Party. If after 30 days from the receipt of such notice, the non-performing Party has not cured the default, or if cure is not possible within 30 days, the Party has not commenced curative measures in a timely and commercially reasonable manner, the Party that provided such notice may terminate the Library Lease and this Agreement effective upon written notice to the non-performing Party. However, under no circumstances may the License terminate as long as the Library Lease is in effect, or if the City conveys fee title in the Main Library building to the Licensee.

9. CGIA. Each Party to this Agreement is a "public entity" under the Colorado Governmental Immunity Act, Sections 24-10-101, *et seq.*, C.R.S. ("CGIA"). The Parties acknowledge and agree that the City and the District, and each Party's respective elected and appointed officials, officers, directors, agents, and employees, are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities and protections provided by the CGIA, § 24-10-101 to 120, C.R.S., as amended.

10. Liens. The District will not permit or allow any mechanic's, materialman's, or other lien to be placed against any of the Licensed Area in connection with work or services claimed to have been performed for, or materials claimed to have been furnished to the District. If any such lien is recorded, the District will cause the same to be released of record.

11. Insurance. During the Term of this Lease, Tenant, at its sole cost and expense, shall continuously maintain the types and amounts of insurance coverages as approved by the City Manager, the City Attorney, and the City Risk Manager.

12. Responsibility. Each Party will be responsible for the acts, omissions, or conduct of that Party's own respective officers, employees, agents, contractors, and consultants to the extent arising out of the performance of each Party's obligations under this Agreement or with respect to each Party's respective use of the Licensed Area.

13. Compliance with Laws. The Parties shall cause all activities within the Licensed Area to be performed in compliance with all applicable laws, rules, regulations, orders, and other requirements of any public jurisdiction.

14. Appropriations. Pursuant to Section 29-1-110, C.R.S., and City of Boulder Charter Sec. 103 any financial obligations of the Parties express or implied by this Agreement are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available on an annual basis by each Party's respective governing body.

15. Conflict Resolution. If any conflict arises in connection with either Party's obligations under this Agreement, the city manager or his or her designated representative and the library director or his or her designated representative shall meet and attempt to resolve the issue. If the city manager and the library director are unable to resolve the issue, two representatives of the Boulder City Council and two representatives of the Library District Board of Trustees shall meet and attempt to resolve the issue. If these steps fail to resolve any issue under this Agreement, either Party may exercise all remedies available at law or in equity.

16. Notice of Communications. Any notice pursuant to the terms and conditions of this Agreement shall be in writing and shall be hand-delivered or sent by registered or certified mail, return receipt requested, postage prepaid, to the addresses of the Parties herein set forth. All notices so given shall be considered effective 72 hours after deposit in the United States mail with the proper address as set forth below. Either Party by notice so given may change the address to which future notices shall be sent.

To the District:

Boulder Public Library District
Attn: Board President and Library Director
1001 Arapahoe Ave
Boulder, CO 80302

With a copy to:

Kim J. Seter, Esq.
Seter & Vander Wall, PC
7400 E. Orchard Road, Suite 3300
Greenwood Village, CO 80111
and: kseter@svwpc.com

To the City:

City of Boulder
Nuria Rivera-Vandermyde
City Manager
City Manager's Office
1777 Broadway
Boulder, CO 80302
and: CMOadmin@bouldercolorado.gov

With a copy to:

City of Boulder
City Attorney
City Attorney's Office
1777 Broadway
Boulder, CO 80302
and: CAOadmin@bouldercolorado.gov

17. Integration and Entire Agreement. This Agreement, read in conjunction with the IGA and Library Lease, represents the entire agreement between the Parties with respect to the License and supersedes all prior discussions, negotiations, understandings, or agreements relating to this Agreement, all of which are merged herein.

18. Binding Effect. This Agreement shall inure to the benefit of, and be binding upon, the Parties, each Party's respective legal representatives, successors, and heirs; provided, however, that nothing in this Paragraph 18 shall be construed to permit the assignment of this Agreement except as agreed to, in writing, by the Parties.

19. Underlying Intent and Scope. This Agreement does not confer upon the Licensee any other right, permit, license, approval, or consent other than that expressly provided for herein and this Agreement shall not be construed to waive, modify, amend, or alter the application of any other federal, state, or local laws, including laws governing zoning, land use, property maintenance, or nuisance.

20. Governing Law and Venue. This Agreement shall be governed by the laws of the State of Colorado and venue for any action arising under this Agreement shall be in the district court of the County of Boulder, State of Colorado.

21. Severability/Waiver. In the event any of the provisions of this Agreement are held to be unenforceable or invalid by any court of competent jurisdiction, the validity of the remaining provisions shall not be affected. Should either Party fail to enforce a specific term of this Agreement, it shall not be a waiver of a subsequent right of enforcement, nor shall it be deemed a modification or alteration of the terms and conditions contained herein.

22. Amendment. Any amendment to this Agreement shall be in writing and signed by both Parties.

23. No Third-Party Beneficiaries. This Agreement is entered into by and between the Licensor and the Licensee, and is solely for the benefit of the Licensor and the Licensee for the purposes set forth herein. Except as otherwise provided herein, this Agreement does not create rights or responsibilities in any third parties beyond the Licensor and the Licensee.

24. Recitals. The Recitals set forth at the beginning of this Agreement are deemed incorporated herein, and the Parties hereto represent they are true, accurate, and correct.

25. Authority. The signatories below have been duly authorized to execute this Agreement and bind that Party to the terms and conditions herein.

26. Counterparts and Electronic Signatures. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, all of which together shall constitute one and the same instrument. In addition, the Parties specifically acknowledge and agree that electronic signatures shall be effective for all purposes, in accordance with the provisions of the Uniform Electronic Transactions Act, Title 24, Article 71.3 of the Colorado Revised Statutes.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

LICENSEE:

BOULDER PUBLIC LIBRARY DISTRICT

By: _____
Katharine (Joni) Teter, President
Board of Trustees

Attest: _____
Sylvia T. Wirba, Secretary

Approved as to Form:

Kim J. Seter, CO Atty No. 14294

LICENSOR:

CITY OF BOULDER,
a Colorado home rule municipality

Nuria Rivera-Vandermyde, City Manager

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney's Office

Exhibit L Attachment A – Intergovernmental Agreement between the
Third-Party Contracts to be Re-written or Assigned the Boulder Public Library District

<i>Entity</i>		<i>Agreement Type</i>	<i>amount of money incoming or outgoing</i>	<i>termination/r enewal date/lease term if applicable</i>	<i>description/notes</i>	<i>start date</i>
Tonantzin Casa de Café/Cynthia Diaz	Library	contract	\$500/month to City, waived for first 12 months and will be due upon renewal net profits shared equally for joint events, 80%/20% in favor of the coordinator for individual events	9/27/2023	lease agreement	9/19/2022
Tonantzin Casa de Café/Cynthia Diaz	Library	agreement		9/27/2023	liquor license / management agreement collection services. Tim will get updated agreement to submit when renewed in	9/20/2022
Unique Management Services	Library	MOU	\$8.95 per electronic submission \$420/year (at \$35/month equipment lease) - are they changing the filters?	None		11/24/2003
Pure Water Dynamics, Inc. /Jim McKee	Facilities	contract	45% distribution of net sales	automatic yearly renewal	water filter - paid by FAM	
Dream Books	Library	agreement		1-Apr-22	selling/recycling used books	4/28/2021
NeoPost	Library	contract	\$13,633.80 (monthly lease of 227.23)	5-year renewal. 2024.	postage meter	11/18/2019

Exhibit L Attachment A – Intergovernmental Agreement between the
Third-Party Contracts to be Re-written or Assigned to the Boulder Public Library District

			\$180 for the services of one security guard for a total of 4.5 hours of work outside library operating	term of election date	Voter Service and Polling Center Use Agreement	1/29/2018
Boulder County Clerk and Recorder	CMO	MOU				
Colorado Library Consortium (CLiC)	Library	Annual service PO	\$12,323.68	Oct. 2023	courier service	10/1/2019
Prairie Mountain Publishing Company	Library	MOU	n/a		permanent loan of Daily Camera materials to the Carnegie Library	2/26/2019
Safe Systems	Facilities	Facilities Dept.	\$10/month		Carnegie Library alarm system	6/5/2012
MOTUS Space Solutions / Luke Bennett	Library	Annual maintenance PO	\$648/year	6/30/2024	Carnegie Library movable shelves	1/1/2021
All Copy	Library	agreement - possibly under PO	\$239.26/month	month to month	maintenance for 7 printer scanners	1/5/2016
Growing Up Boulder, LLC.	CMO	in-kind lease	n/a	2 years, 364 days	cost for use of space "in- kind" with services provided by GUB to City	9/1/2021
Museum of Boulder	Library	MOU	n/a	5 years	updated agreement regarding stewardship of the BHS photograph collection held by the Carnegie Library	9/3/2021
Today's Business Solutions	Library	Software service agreement	\$34,542 implementation / \$4,834 ongoing, annual maintenance	Jan-24	patron reservation and print release software services	1/28/2020

Exhibit L Attachment A – Intergovernmental Agreement between the
Third-Party Contracts to be Re-written or Assigned the Boulder Public Library District

Boulder Genealogical Society	Library	partnership agreement	n/a	12/31/2025	partnership w/ BGS to collect/preserve/disseminate genealogical info	3/2/2016
Discovery Garden	Library	contract	\$17,799	12/31/2023	hosting, support,	1/1/2022
Boulder Housing Partners	Library	contract	\$1 annually	2/28/2019	lease agreement with BHP for the NoBo building space	3/1/2014
JLF Colorado	Library	mou	n/a	Expired in 2020	non disclosure agreement	1/12/2017
Colorado Education Initiative	Library	contract	\$34,500	8/31/2023.	Vendor has not completed scope.	12/15/2022
Boulder Valley School District	Library	MOU	n/a	8/1/2023	Student One program	8/1/2022
Overdrive Cost sharing agreements	Library	cost share agreement x6	\$ 12,000 platform fee split btween 6 libraries.	1/1/2024	FRDL cost share of platform and pledge for buying Electronic information resources	2004
Clarivate Proquest	Library	Agreement Use	\$ 20,604.81	3/1/2024	Electronic information resources	
Newsbank	Library	Agreement Use	\$ 13,956.00	1/1/2024	Electronic information resources	
Gale Cengage	Library	Agreement Use	\$ 33,593.99	1/1/2024	Electronic information resources	
Gale-Udemy	Library	Agreement		12/20/2024	resources	
Phillips Edison & Co. / Ashley Janszen	Facilities	Lease	\$1,397.87	8/31/2029 per 2015 sale of the property to Phillips Edison	Meadows Branch - Common Interest Area Charges for Plaza Space	1/1/2022 (May 1989 for original lease agreement)

Exhibit L Attachment A – Intergovernmental Agreement between the
Third-Party Contracts to be Re-written or Assigned the Boulder Public Library District

				12/31/2027 after 4 renewal terms of one year each		
Marmot	Library	contract	\$151,379.27 for first year	Integrated Library System	Jan-23	
LiteracyPro Systems	Library	account	\$1332.50 for first year	BoulderReads literacy software	12/17/2013	
Lyngsoe Systems	Library	contract	\$30,600 annual	expires end of 2023	Automated Material Handling machines (3) service agreements We will need to sign a new purchasing agreement if we replace AWE machines (we have 4)	12/31/2017, amendment made 2/28/21
AWE Learning Computers	Library	agreement	\$13,000	Expired in 2022	self-Check machines, RFID tags maintenance, replacements, software upgrades and maintenance agreement	2017
bibliotheca	Library	contract	\$166,442.50	5-year maintenance agreement renewed expires 2024		3/12/2019
Boulder Library Foundation (BLF)	Library	lease	\$3,000 annually (in kind)	2 years, 364 days	lease office space at Main	9/1/2021
Faronics (Deep Freeze)	IT	contract	889.35 annually		Cybersecurity software	
Google	Library	GAC Agreement	n/a varies annually	term up 30 day written notice	Google Arts & Culture Project	2/1/2023
Warner Charitable Trust	Library	Trust Agreement	approx. \$1300-2500 dividends	n/a	Donations for the physical library collection-lh	
When To Work	Library	Account	\$350/year	12/31/2023	Scheduling software online	
Page Proof	Library	Account		Jul-24	Pay in arears. Change billing.	

Exhibit L Attachment A – Intergovernmental Agreement between the
Third-Party Contracts to be Re-written or Assigned the Boulder Public Library District

		Facilities		
		Dept. Service		
KleenTech - Custodial	Facilities	contract		Daily building cleaning
		Facilities		
Safe Systems - Building		Dept. Service		
security	Facilities	contract		Burglar alarm system
		Service		
Pontem Security	Library	contract	2024	Security services
Amazon	Library	Account		Purchasing
Officemax	Library	Account		Purchasing
City of Boulder Liquor				
Licens	Library	License		Liquor license
State of Colorado				
Liquor License	Library	License		Liquor license
		Service		
		agreement -		
Door Mat Cleaning		possibly under		
Service	Facilities	PO		Building cleaning
		Service		
		agreement -		
		possibly under		
Carpet cleaning	Facilities	PO		Building cleaning
		Service		
		agreement -		
		possibly under		
Window cleaning	Facilities	PO		Building cleaning
		Software		
Call Center software -		license		
Nimbus	IT	agreement		Telephone system
		Service		
		agreement -		
		possibly under		
Lewan Service Only	IT	PO	month to	
CDWG - IT equipment	IT	Account	month	Copier/Printer maintenance
				Purchasing

Exhibit L Attachment A – Intergovernmental Agreement between the
Third-Party Contracts to be Re-written or Assigned the Boulder Public Library District

Best buy	IT	Account Software license	Purchasing
Adobe	IT	agreement Softwares	Software
Security Cameras - Convergent	IT	license agreement Service	Security camera software
Verizon - cell phones/ hotspots	IT	agreement - possibly under PO	Telephone Internet equipm
Zoom	IT	Accounts online software	Online software
Airtable	Library	license Electronic Resource	Statistics tool for BoulderReads
Sky River	Library	Subscription Electronic Resource	Bibliographic record tool.
Ebsco	Library	Subscription Electronic Resource	Summer - Used state grant State of Colorado
Brainfuse	Library	Subscription Electronic Resource	Expiring Oct. Nov. 2023 Learning eresource
Proquest Digital NYT	Library	Subscription Electronic Resource	2024 Marmot
Dow Jones Digital WSJ	Library	Subscription	Electronic information 2024 resources
DEMCO	Library	Account	Electronic information resources

Exhibit L Attachment A – Intergovernmental Agreement between the
Third-Party Contracts to be Re-written or Assigned the Boulder Public Library District

		Electronic Resource		
Hoopla	Library	Subscription - Media Agreement		Downloadable and streaming electronic resource
Niche Academy	Library	Account	Mar-24	Learning eresource
Morningstar	Library	Electronic Resource Subscription		Electronic information resources
Valueline	Library	Electronic Resource Subscription		Electronic information resources
Creative Bug	Library	Electronic Resource Subscription	Dec. 31. 23	Learning eresource
Buterfly Pavilion	Library	Cultural Pass MOU	July 6 2024	Cultural pass program partner
Dinosaur Ridge	Library	Cultural Pass MOU		Cultural pass program partner
DMNS	Library	Cultural Pass MOU	Dec. 31. 2024	Cultural pass program partner
MOB	Library	Cultural Pass MOU		Cultural pass program partner
Museum de las Americas	Library	Cultural Pass MOU		Cultural pass program partner
WowChildren's Museum	Library	Cultural Pass MOU		Cultural pass program partner
Centrui Link for NoBo VIT	IT	Service Plan		
Lewan	IT	Service Plan		
ChromeOS	Library	account		Operating system for Chromebooks
Colorado Grants Guide	Library	account		Colorado Grants research
LibAnswers -Springshar	Library	account		Ticketing system to manage user questions

Exhibit L Attachment A – Intergovernmental Agreement between the
Third-Party Contracts to be Re-written or Assigned the Boulder Public Library District

LibCal -Springshare	Library	account	Manages library event calendar, meeting room reservations, location hours, resource management. easy linking to database resources, book review blog and other webpages Domain??-boulderlibrary.org Online reading tracking in app & website for reading programs book recommendations; different platform from other Ebscohost datbases
LibGuides - Springshare	Library	account	
Wordpress	Library	account	
Beanstack	Library	account Electronic Resource	
Novelist (by Ebscohost)	Library	Subscription Electronic Resource	
Overdrive	Library	Subscription Electronic Resource	ebooks, magazines, audiobooks research (business, healthcare and residential directory)
Reference Solutions	Library	Subscription	Website PDF embedding tool for program booklets.
Issuu	Library	Software	digital sign management
Rise Vision Digital Signs	Library	account	reporting on data from connector between google looker & social media resources
Google Looker Studio	Library	account	sound editing for oral history projects
Google -Power My Anal	Library	account	
Wavepad Sound Editor	Library	software	

Exhibit L Attachment A – Intergovernmental Agreement between the
Third-Party Contracts to be Re-written or Assigned the Boulder Public Library District



INTERGOVERNMENTAL AGREEMENT AMONG
THE COUNTY OF BOULDER, COLORADO
THE CITY OF BOULDER, COLORADO AND
THE BOULDER PUBLIC LIBRARY DISTRICT
REGARDING JOINT OBLIGATIONS

The Board of County Commissioners of Boulder County (“**BOCC**” and/or “**County**”), the Boulder City Council (“**City**”), and the Board of Trustees of the Boulder Public Library District (“**Board of Trustees**” and/or “**Library District**”) (collectively the “**Parties**”) enter into this Intergovernmental Agreement Regarding Joint Obligations pursuant to § 24-90-107(2)(e), C.R.S. (this “**Joint Obligations IGA**”).

RECITALS

- A. The voters within the Library District’s proposed boundaries approved its formation pursuant to § 24-90-107(2), C.R.S., at the general election on November 8, 2022.
- B. The “legal service area” of the Library District as defined in § 24-90-103(4.5), C.R.S., is depicted in **Exhibit A** (“**Service Area**”).
- C. The City and the County formed a selection committee that appointed a seven-member board of trustees to manage and control the Library District pursuant to §§ 24-90-108(1) and (2)(c), C.R.S. A list of the appointed trustees and their terms is attached as **Exhibit B** (“**Board of Trustees**”).
- D. The legislative bodies of the County, the City, and the Library District are required to enter into an intergovernmental agreement within 90 days of the appointment of the board of trustees, or within such time as otherwise agreed, pursuant to § 24-90-107(2)(e), C.R.S., to establish provisions regarding: “(I) The transition from the library to a library district, such as ownership of the library’s real and personal property, personnel, and the provision of administrative services during the transition; (II) The method of trustee selection; and (III) Such other necessary terms and conditions as may be determined by the parties” § 24-90-107(2)(e), C.R.S.
- E. The Parties entered into an Interim Intergovernmental Agreement dated June 16, 2023, (the “**Interim IGA**”) to extend the deadline for the final intergovernmental agreements to December 31, 2023.
- F. The City and the Library District are entering into an Intergovernmental Agreement to establish provisions regarding the transition to the Library District of property, personnel and services previously provided by the City.

Attachment B – Intergovernmental Agreement between the
City of Boulder, Boulder County, and the Boulder Public Library District

- G. The right and responsibility to appoint library district trustees is delegated by state law to the City and the County as the “**Establishing Entities**” and may be further delegated to the Board of Trustees. § 24-90-108(2)(c), C.R.S.; and, the City and County have requested annual reports and meetings with the Board of Trustees (collectively, the “**Joint Obligations**”).
- H. The Parties now enter this Joint Obligation IGA as their final intergovernmental agreement to address their Joint Obligations and responsibility to ensure that Board of Trustee appointments and removals are timely and efficiently handled in accordance with § 24-90-108, C.R.S., and to provide for the annual reporting requirements.

NOW, THEREFORE, the Parties enter this Joint Obligation IGA, as follows:

AGREEMENT

Section 1 **Library District Obligations.**

Section 1.1 **Annual Report.** No later than July 31 of each year, beginning in 2025, the Library District will provide a written annual report to the City and the County (“**Annual Report**”). The contents of the Annual Report will include, but not be limited to, the current state of the library system, goals and projections for the coming year, a summary of the current adopted budget, status of reserve accounts, and such other statistics and information as the Board of Trustees deems to be of public interest or other topics related to the Library District that may be requested by the City and/or the County. The information in the Annual Report will also be presented publicly to the City and to the BOCC at such times as each body and the Library District may agree. The Library District shall also provide to the City and the County a copy of its audited financial statements for the previous fiscal year when available and submitted to the Office of the State Auditor in compliance with § 29-1-606(3), C.R.S.

Section 1.2 **Annual Meeting.** The City and Board of Trustees, or subcommittees thereof, shall meet annually (or as otherwise agreed between them) to discuss issues of common interest and concern, upon the request of either party. The annual verbal report to the City in a public meeting, as required by Section 1.1, may, upon mutual agreement, be sufficient to meet this requirement. This requirement shall remain in effect until December 31, 2029, and shall be thereafter renewable, by mutual agreement, in three-year increments. The Library District shall provide notice of this meeting to the BOCC and invite the BOCC to participate.

Section 1.3 **Policy and Plan.** The Library District will establish an emergency reserve as required by Article X, Section 20(5) of the Colorado Constitution and may establish other financial reserves consistent with Board of Trustee-adopted policy. The Library District will report to the City and the County on the status of the reserves on an annual basis, pursuant to the annual report required below.

Section 2 City, County and Board of Trustees Obligations.

Section 2.1 Appointment of Trustees.

- a. The City and the County have appointed initial trustees to the initial Library District Board of Trustees through a committee of up to two members of each legislative body (“**Selection Committee**”) pursuant to § 24-90-108(2)(c), C.R.S. and both legislative bodies have ratified these appointments. The Selection Committee will continue to fill vacancies to the Board of Trustees, subject to ratification by the County and the City pursuant to § 24-90-108, C.R.S., as amended. The Library District may appoint up to two members of its Board of Trustees to participate in the Selection Committee process as non-voting, *ex officio* members of the Selection Committee.
- b. The Board of Trustees will assist in the appointment process by:
 - i. Advising the City and County of an existing or impending vacancy and requesting a schedule for the Selection Committee work; and,
 - ii. Including with the request, a draft application package and proposed application and interview questions for review and approval by the Selection Committee; and,
 - iii. Suggesting a proposed schedule and plan for advertising, public outreach and notice of the opportunity; and,
 - iv. Collecting applications, compiling information and submitting it to the Selection Committee in preparation for interviews.
- c. The Selection Committee will build an application and search process which will seek to be inclusive of people of color in the Service Area.
 - i. Applicants will be required to acknowledge and pledge to support and promote the principals set forth in the American Library Association Library Bill of Rights and Trustee Statement of Ethics copies of which are attached as **Exhibit C**.
- d. The Selection Committee will recommend one nominee for each open seat on the Board of Trustees for ratification by the County and City. In the event a nominee is rejected, the Selection Committee will review existing applications or begin the search process again to recommend another nominee for ratification.
- e. This process will remain in effect unless otherwise agree to by the Parties pursuant to Section 1.2.

Section 2.2 **Removal of Trustees.**

- a. A Trustee may be removed only by majority vote of the Board of Trustees and in accordance with Colorado Library Law; and by a majority vote of the appointing legislative bodies upon a showing of good cause as defined in the Trustee's Bylaws and Colorado law. Under the Board of Trustee's Bylaws, good cause includes but is not limited to, a deliberate breach of the Bylaws or rules and regulations adopted by the Board of Trustees; criminal or fraudulent activity; causing significant harm to the Library District, either materially or to its reputation; failure to perform duties outlined in the Bylaws; or failure to attend three consecutive regular monthly meetings of the Board without an excused absence. The Board may waive or authorize any unexcused absence from the attendance requirement under extenuating circumstances.
- b. If a member of the Board of Trustees is removed as provided in Section 2.2.a., the vacancy will be filled for the remainder of the term in the manner set forth in Section 2.1.a. and 2.1.b.

Section 2.3 **Obligations of the County.** The County will, in cooperation with the City, be responsible for timely ratification of appointment of trustees recommended by the Board of Trustees from the residents within the Service Area pursuant to § 24-90-108, C.R.S.

Section 3 **Mutual Understandings.**

Section 3.1 **Boulder Valley Comprehensive Plan (BVCP).** The BVCP guides decisions about growth, development, preservation, environmental protection, economic development, affordable housing, culture and arts, urban design, neighborhood character and transportation. BVCP policies and sustainability principles inform decisions about the way urban services are to be provided, including library services. The Library District agrees to embrace the BVCP Sustainability Principles and commit to continuing its important role in social sustainability. The Boulder Public Library has been a leader in social sustainability by providing free library services that allow community members of all incomes, ages, and backgrounds to stand on equal footing regarding information access. The Library District should continue this legacy.

- a. To ensure social equity is addressed and improved for community members, the City, the County, and the Library District will adhere to the BVCP social equity policy section 8.03. The Library District will uphold the [American Library Association Bill of Rights](#) and the [American Library Association Code of Ethics](#).
- b. The City and the County agree to actively engage with and consult with the Library District during updates to the BVCP.
- c. The Library District agrees to periodically update its Strategic Plan in

Attachment B – Intergovernmental Agreement between the
City of Boulder, Boulder County, and the Boulder Public Library District

collaboration with the City and the County. This includes expanding the geographic purview of the 2018 Boulder Public Library Master Plan to include the Library District's areas of influence; the use of relevant economic and demographic data and projections developed by the City and the County; robust community engagement as defined in BVCP policy 10.02; referral of drafts for comment to appropriate City and County departments and boards; and review and comment by the City and the County.

Section 3.2 **Notice.** Any notices given under this Joint Obligation IGA are deemed to have been received and to be effective: (1) three days after the same shall have been mailed via Federal Express; (2) immediately upon hand delivery; or (3) immediately upon receipt of confirmation that an electronic mail transmission was received. For the purposes of this IGA, any and all notices shall be addressed to the contacts listed below:

For the County:

Board of County Commissioners
Office Boulder County Courthouse
Third Floor
1325 Pearl Street
Boulder, CO 80302
303-441-3500

Boulder County Attorney's
Boulder County Courthouse
Fifth Floor
1325 Pearl Street
Boulder, CO 80302
303-441-3190

For the Library District:

Board of Trustees
Boulder Public Library District
1001 Arapahoe Avenue
Boulder, Colorado 80302
Attn: David Farnan
Phone: 303-441-3110
dfarnan@boulderlibrary.org

Library District Attorney
Seter & VanderWall, PC
7400 E. Orchard Road, Suite 3300
Greenwood Village, CO 80111
Attn: Kim J. Seter & Beth Dauer
Phone: 303-770-2700
kseter@svwpc.com and edauer@svwpc.com

For the City:

City Manager
City of Boulder
1777 Broadway
Boulder, CO 80302
303-441-3090
CMOAdmin@bouldercolorado.gov

City Attorney
City of Boulder
1777 Broadway
Boulder, CO 80302
303-441-3020
CAOAdmin@bouldercolorado.gov

Section 3.3 **Intended Beneficiaries.** Nothing expressed or implied in this Joint Obligation IGA is intended or shall be construed to confer upon or to give to, any person other than the Parties, any right, remedy or claim under or by reason of this Joint Obligation IGA or any covenant, terms, conditions, or provisions hereof. All covenants,

Attachment B – Intergovernmental Agreement between the
City of Boulder, Boulder County, and the Boulder Public Library District

terms, conditions, and provisions in this Joint Obligation IGA are for the sole and exclusive benefit of the City, the County and the Library District.

Section 3.4 **Severability.** If any provision of this Joint Obligation IGA is determined to be unenforceable or invalid for any reason, the remainder of this Joint Obligation IGA shall remain in effect, unless otherwise terminated in accordance with the terms contained herein.

Section 3.5 **Authorization.** Each party represents and warrants that it has the power and ability to enter into this Joint Obligation IGA, to grant the rights granted herein, and to perform the duties and obligations herein described.

Section 3.6 **Conflict with Laws.** Any provision of this Joint Obligation IGA that conflicts with or violates any provision of the *Constitution of the State of Colorado*, TABOR, the Colorado Library Law or the provisions of any statutes governing the operations and/or powers of the Library District shall be deemed excised, and the remaining provisions of this Joint Obligation IGA shall be interpreted in a manner that implements the manifest intent of the Parties in entering into this Joint Obligation IGA.

IN WITNESS WHEREOF, the City, the County and the Library District have signed this Joint Obligation IGA to be effective on the date last signed below.

[The Remainder of this Page is Intentionally Blank]

**BOARD OF COUNTY COMMISSIONERS
BOULDER COUNTY, COLORADO**

Chair

Date

ATTEST:

Approved as to form:

Boulder County Attorney

**BOULDER LIBRARY DISTRICT
BOARD OF TRUSTEES**

President

Date

ATTEST:

Approved as to Form:

Secretary

Library District Attorney

**CITY OF BOULDER,
a COLORADO home rule municipality**

Nuria Rivera-Vandermyde, City Manager

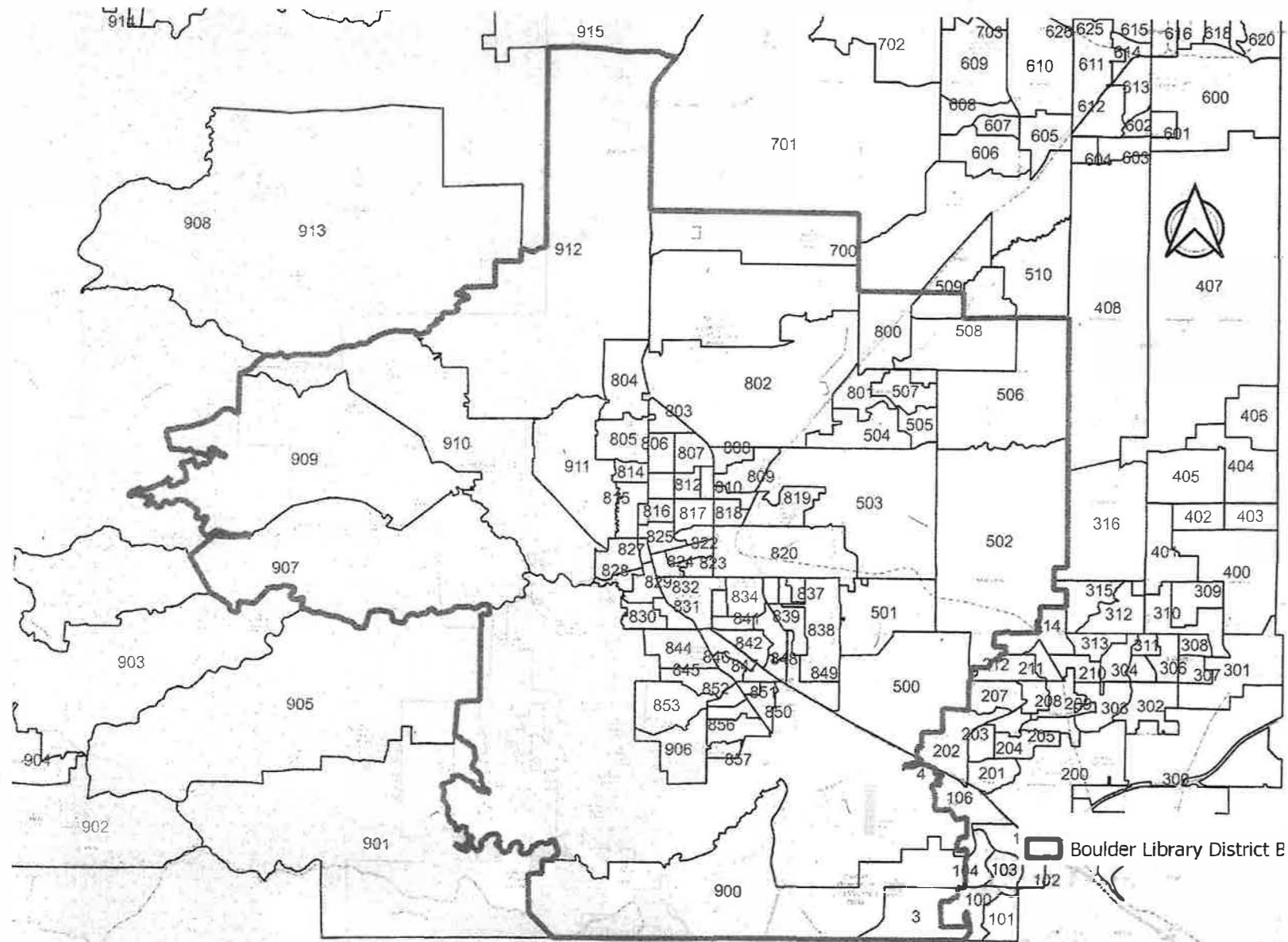
ATTEST:

APPROVED AS TO FORM:

City Clerk

City Attorney's Office

Exhibit A Attachment B – Intergovernmental Agreement between the
Service Area City of Boulder, Boulder County, and the Boulder Public Library District



Attachment B – Intergovernmental Agreement between the
Exhibit B
City of Boulder, Boulder County, and the Boulder Public Library District
Board of Trustees

<u>Seat</u>	<u>Term Length</u>	<u>Appointee</u>	<u>Jurisdiction</u>
1	5 years	Benita Duran	Boulder
2	5 years	Jennifer Yee	Unincorporated Boulder County
3	4 years	Sylvia Wirba	Boulder
4	4 years	Doug Hamilton	Boulder
5	3 years	Cara O'Brien	Unincorporated Boulder County
6	2 years	Sam Fuqua	Boulder
7	1 year	Joni Teter	Boulder

Library Bill of Rights

The American Library Association affirms that all libraries are forums for information and ideas, and that the following basic policies should guide their services.

- I. Books and other library resources should be provided for the interest, information, and enlightenment of all people of the community the library serves. Materials should not be excluded because of the origin, background, or views of those contributing to their creation.
- II. Libraries should provide materials and information presenting all points of view on current and historical issues. Materials should not be proscribed or removed because of partisan or doctrinal disapproval.
- III. Libraries should challenge censorship in the fulfillment of their responsibility to provide information and enlightenment.
- IV. Libraries should cooperate with all persons and groups concerned with resisting abridgment of free expression and free access to ideas.
- V. A person's right to use a library should not be denied or abridged because of origin, age, background, or views.
- VI. Libraries which make exhibit spaces and meeting rooms available to the public they serve should make such facilities available on an equitable basis, regardless of the beliefs or affiliations of individuals or groups requesting their use.
- VII. All people, regardless of origin, age, background, or views, possess a right to privacy and confidentiality in their library use. Libraries should advocate for, educate about, and protect people's privacy, safeguarding all library use data, including personally identifiable information.

Adopted June 19, 1939, by the ALA Council; amended October 14, 1944; June 18, 1948; February 2, 1961; June 27, 1967; January 23, 1980; January 29, 2019.

Inclusion of "age" reaffirmed January 23, 1996.

Although the Articles of the *Library Bill of Rights* are unambiguous statements of basic principles that should govern the service of all libraries, questions do arise concerning application of these principles to specific library practices. See the documents designated by the Intellectual Freedom Committee as Interpretations of the Library Bill of Rights (<http://www.ala.org/advocacy/intfreedom/librarybill/interpretations>).

TRUSTEE STATEMENT OF ETHICS

1. We provide the highest level of service to all library users through appropriate and usefully organized resources; equitable service policies; equitable access; and accurate, unbiased, and courteous responses to all requests.
2. We uphold the principles of intellectual freedom and resist all efforts to censor library resources.
3. We protect each library user's right to privacy and confidentiality with respect to information sought or received and resources consulted, borrowed, acquired or transmitted.
4. We respect intellectual property rights and advocate balance between the interests of information users and rights holders.
5. We treat co-workers and other colleagues with respect, fairness, and good faith, and advocate conditions of employment that safeguard the rights and welfare of all employees of our institutions.
6. We do not advance private interests at the expense of library users, colleagues, or our employing institutions.
7. We distinguish between our personal convictions and professional duties and do not allow our personal beliefs to interfere with fair representation of the aims of our institutions or the provision of access to their information resources.
8. We strive for excellence in the profession by maintaining and enhancing our own knowledge and skills, by encouraging the professional development of co-workers, and by fostering the aspirations of potential members of the profession.
9. We affirm the inherent dignity and rights of every person. We work to recognize and dismantle systemic and individual biases; to confront inequity and oppression; to enhance diversity and inclusion; and to advance racial and social justice in our libraries, communities, profession, and associations through awareness, advocacy, education, collaboration, services, and allocation of resources and spaces.

LIBRARY LEASE

CITY OF BOULDER

“LANDLORD”

WITH

BOULDER PUBLIC LIBRARY DISTRICT

“TENANT”

BUILDING: MAIN LIBRARY

DATED: _____

LIBRARY LEASE

THIS LIBRARY LEASE (“**Lease**”) is made and entered into as of this ____ day of _____ 2023, (“**Effective Date**”) by and between the City of Boulder, a Colorado home rule municipality, (“**Landlord**”), and the Boulder Public Library District (“**Tenant**”). In consideration of the payment of Rent (as defined below); all costs, charges, and expenses which Tenant assumes, agrees, or is obligated to pay to Landlord pursuant to this Lease (“**Additional Rent**”); and the performance of the promises by Tenant set forth below, Landlord hereby leases to Tenant, and Tenant hereby accepts, the Premises (as defined below), subject to the terms and provisions set forth in this Lease. Landlord and Tenant covenant and agree as follows:

1. Premises. Landlord is the owner of certain real estate legally described as set forth in **Exhibit A**, Boulder County, Colorado (“**Real Estate**”). The Real Estate is improved with a building (“**Premises**”). Landlord hereby leases and demises to Tenant the Premises located at 1001 Arapahoe Avenue, Boulder, Colorado as of the date first provided under Paragraph 2., Term and Termination.
 - a. Landlord retains access to and excludes from the Premises that portion that is necessary and currently utilized for the operation of Boulder 8TV described below which is identified on **Exhibit B** as the “Communications and Engagement Department Space.”
 - b. Landlord retains access to and excludes from the Premises that portion that is necessary and currently utilized for the and City of Boulder-owned fiber optic cable and equipment identified on **Exhibit B** as the “South Side 1st Floor Network Closet.”
 - d. Tenant will provide access cards or keys necessary for the 24-hour access to and operation of the Boulder 8TV facilities and equipment, the City of Boulder-owned fiber optic network and equipment, and related facilities free of charge.
2. Term and Termination. Landlord leases the Premises to Tenant for a term of twenty (20) years, commencing one minute after midnight on the ____ day of _____, 2024, and terminating one minute after midnight on the ____ day of _____, 2045 (the “**Term**”), unless sooner terminated in accordance with the provisions of this Lease.
 - a. Landlord and Tenant agree to meet in no less than five-year intervals to determine whether this Lease should be terminated by mutual agreement.
 - b. Tenant has the absolute right to terminate this Lease on its anniversary date every third anniversary without consequences upon ninety (90) days written notice to Landlord.
3. Rent. Tenant shall pay to Landlord for the use and occupancy of the Premises during the Term a fixed annual rental rate of One Dollar (\$1.00) (“**Rent**”), payable by Tenant in a

lump sum payment of Twenty Dollars (\$20.00) on the Effective Date hereof the receipt and sufficiency of which is hereby acknowledged.

4. Use. The Premises shall be used for the sole purpose of a public library and associated activities (which may include operation of the library café and maker space, and subleases to nonprofit entities).
 - a. Boulder 8TV. Boulder 8TV, a television broadcasting station and multimedia video production facility, operates out of the Main Library. Landlord and Tenant agree that Boulder 8TV will continue to operate free of charge in the Main Library location where it exists at the execution of this Lease, until it moves to a different location, anticipated in 2028. All costs and expenses associated with operating Boulder 8TV, excluding the cost of Utilities and Services, defined below, shall be the responsibility of the Landlord.
5. License and Management Agreement. Landlord and Tenant agree to enter into a Civic Area License and Management Agreement in substantially the same form set forth in **Exhibit C** concerning maintenance and operation of the Civic Center Area outside of the Premises, including the space under the bridge between the north and south buildings on the Premises, sidewalks, public parking lots, and parks.
6. Utility Charges. Tenant shall establish accounts for all heat, light, power, telephone, water, sewerage, janitorial services, garbage disposal, and other utilities and services it deems necessary for the operation of a public library (“**Utilities and Services**”) in its own name, and shall pay directly to the appropriate supplier, the cost of all Utilities and Services as the same become due and payable.
7. Condition of Premises. Tenant is familiar with the physical condition of the Premises and the Civic Center Area. Tenant is leasing the Premises “as is,” in its current condition, and hereby expressly disclaims all warranties.
8. Maintenance and Repairs. Landlord will provide routine maintenance and repair services and on-call services for a period not to exceed four (4) months and work with and assist Tenant’s facilities maintenance personnel. Tenant shall reimburse Landlord for all such services at cost. Thereafter, Tenant shall have sole maintenance and repair responsibility for the interior and exterior of the Premises, including all costs and expenses relative thereto. Tenant shall promptly and diligently repair, restore, replace, or remedy all damage to or destruction of all or any part of the Premises. Landlord shall not be required to furnish any services or facilities or to make any repairs or alterations of any kind in or on the Premises, all such matters being the sole duty and responsibility of Tenant. Tenant may also demolish, rebuild, reconfigure and/or remodel any interior spaces of the Premises without consultation with Landlord so long as Tenant deems it necessary or useful for its purposes. Exterior demolition, reconstruction or remodeling must be approved by Landlord. Tenant shall require any contractor performing work on the Premises to procure and maintain at its own cost the insurance coverages and other contract requirements set forth in **Exhibit D**.

9. Injury or Damage. Landlord shall not be responsible to the Tenant for loss of property in or from the Premises, or for any damage done to furniture, fixtures, equipment, collections, or other effects in the Premises, nor shall the Landlord be liable for any injury or damage, either proximate or remote, occurring through or caused by any repairs, alterations, or accident occurring in or to the Premises, nor shall Landlord be liable for any injury or damage occasioned by defective electrical wiring or the breakage or stoppage of the plumbing or sewerage upon the Premises, whether such breakage or stoppage results from freezing, flood, or other casualty.
10. Insurance. During the Term of this Lease, Tenant, at its sole cost and expense, shall continuously maintain the types and amounts of insurance coverages as approved by the city manager, the city attorney, and the City of Boulder's risk manager.
11. Default. The following will constitute a default of this Lease: (i) Tenant's failure to comply with the terms of the Civic Area License and Management Agreement; or, (ii) if at any time the Premises cease to be used for public library purposes. Together with the foregoing, if either party defaults in the performance of any of its respective covenants, conditions, agreements, or undertakings contained in this Lease (each, an "**Event of Default**") and such Event of Default continues for thirty (30) days (subject to a reasonable extension if a cure is not practical during such period and if the defaulting party has commenced cure and is diligently pursuing same) after written notice of such default from the non-defaulting party, then the non-defaulting party may cause such default to be remedied in such manner and by such means as the non-defaulting party may deem proper, and the cost and expense thereof paid or incurred, including reasonable attorney fees and costs, shall be due and payable within thirty (30) days of presentment of an invoice for such services. Notwithstanding the foregoing, the parties shall have the option to seek all and any remedy available at law or in equity.
12. Environmental Compliance.
 - a. Tenant's Responsibility. Tenant covenants and agrees that the Premises will, at all times during its use or occupancy thereof, be kept and maintained so as to comply with all now existing or hereafter enacted or issued statutes, laws, rules, ordinances, orders, permits, and regulations of all state, federal, local, and other governmental and regulatory authorities, agencies, and bodies applicable to the Premises, pertaining to environmental matters, or regulating, prohibiting, or otherwise having to do with asbestos and all other toxic, radioactive, or hazardous wastes or materials including, but not limited to, the Federal Clean Air Act, the Federal Water Pollution Control Act, and the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as from time to time amended (all hereafter collectively called "**Laws**"). Tenant shall not cause or permit any hazardous material to be brought upon, kept, or used in, or about the Premises by Tenant, its agents, employees, contractors, or invitees, except any hazardous material which is necessary for the usual and customary operation of a public library.

- b. Tenant's Liability. If Tenant breaches the obligations stated in the preceding paragraph, or if the presence of hazardous materials otherwise arises out of Tenant's use of the Premises, Tenant shall be solely responsible for all costs incurred in connection with any investigation of site conditions and any clean-up, remedial, removal, or restoration work required by any federal, state, or local governmental agency. Without limiting the foregoing, any hazardous material is released on the Premises, Tenant shall promptly take all actions at its sole cost and expense which are necessary to return the Premises to the condition existing prior to the introduction of such hazardous material. Except to any extent prohibited by law, Tenant shall hold Landlord free, harmless, and indemnified from any penalty, fine, claim, demand, liability, cost, or charge whatsoever which Landlord shall incur, or which Landlord would otherwise incur, by reason of Tenant's failure to comply with this Section; including, but not limited to: (i) the cost of bringing the Premises into compliance with all laws; (ii) the reasonable cost of all appropriate tests and examinations of the Premises to confirm that the Premises have been brought into compliance with all Laws; and, (iii) the reasonable fees and expenses of Landlord's attorneys, engineers, and consultants incurred by Landlord in enforcing and confirming compliance with this Section.
- c. Covered Property. For the purposes of this Section, the Premises shall include the Real Estate covered by this Lease, all improvements placed on the Premises by Tenant, and all personal property and fixtures located on or used in connection with the Premises.
- d. Liability After Termination or Expiration of Lease. Landlord and its engineers, technicians, and consultants (collectively, "**Auditors**") may, from time to time as Landlord deems appropriate, during Tenant's usual business hours and after reasonable notice to Tenant, conduct periodic tests and examinations ("**Audits**") of the Premises to confirm and monitor Tenant's compliance with this Section. Such Audits shall be conducted in such manner as to minimize the interference with Tenant's permitted use; however, in all cases, the Audits shall be of such nature and scope as shall be reasonably required by then existing technology to confirm Tenant's compliance with this Section. Tenant shall fully cooperate with Landlord and its Auditors in the conduct of such Audits. The cost of such Audits shall be paid by Landlord unless an Audit shall disclose a material failure of Tenant to comply with this Section, in which case the cost of such Audit, and the cost of all subsequent Audits made during the Term and within thirty (30) days thereafter (not to exceed two (2) such Audits per Lease Year), shall be paid for by Tenant within fifteen (15) days of receipt of invoices from Landlord.
- e. Liability After Termination of Lease. The covenants contained in this section shall survive the expiration or termination of this Lease and shall continue for so long as the parties hereto and their successors and assigns may be subject to any expense, liability, charge, penalty, or obligation against which the Tenant has agreed to indemnify the Landlord under this Section.

13. Relationship. The parties' relationship is not that of joint venturers or partners but is a relationship of landlord and tenant as defined in this Lease.
14. CGIA. Each party to this Lease is a "public entity" under the Colorado Governmental Immunity Act, §§ 24-10-101, *et seq.*, C.R.S., as amended ("CGIA"). The parties acknowledge and agree that the Landlord and the Tenant, their respective elected and appointed officials, officers, directors, agents, and employees, are relying on, and do not waive or intend to waive by any provision of this Lease, the monetary limitations or any other rights, immunities and protections provided by the CGIA.
15. Liens. The Tenant will not permit or allow any mechanic's, materialman's, or other lien to be placed against any of the Premises in connection with work or services claimed to have been performed for, or materials claimed to have been furnished to the Tenant. If any such lien is recorded, the Tenant will cause the same to be released of record.
16. Responsibility. Tenant will be responsible for the acts, omissions, or conduct of its own respective officers, employees, agents, contractors, and consultants to the extent arising out of the performance of its obligations under this Lease or with respect to its respective use of the Premises.
17. Compliance with Laws. Tenant shall cause all activities within the Premises to be performed in compliance with all applicable laws, rules, regulations, orders and other requirements of any public jurisdiction.
18. Appropriations. Pursuant to § 29-1-110, C.R.S., any financial obligations of the parties express or implied by this Lease are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available on an annual basis by each party's respective governing body.
19. Notice of Communications. Any notice pursuant to the terms and conditions of this Lease shall be in writing and shall be hand-delivered or sent by registered or certified mail, return receipt requested, postage prepaid, to the addresses of the parties herein set forth. All notices so given shall be considered effective seventy-two (72) hours after deposit in the United States Postal Service mail with the proper address as set forth below. Either party by notice so given may change the address to which future notices shall be sent.

To the District:

Boulder Public Library District
Attn: Board President and District Manager
1001 Arapahoe Ave
Boulder, CO 80302

With a copy to:

Kim J. Seter, Esq.

Seter & Vander Wall, PC
7400 E. Orchard Road, Suite 3300
Greenwood Village, CO 80111
and: kseter@svwpc.com

To the City:

City of Boulder
Attn: City Manager
P. O. Box 791
Boulder, CO 80306
(303) 441-3090
And: CMOAdmin@bouldercolorado.gov

With a copy to:

City of Boulder
City Attorney's Office
P. O. Box 791
Boulder, CO 80306
(303) 441-3020
And: CAOAdmin@bouldercolorado.gov

20. Integration and Entire Agreement. This Lease, read in conjunction with the Civic Area License and Management Agreement, represents the entire agreement between the parties with respect to this Lease and supersedes all prior discussions, negotiations, understandings, or agreements relating to this Lease, all of which are merged herein.
21. Counterparts. This Lease may be executed in several counterparts, or electronic PDF, each of which shall be deemed an original and all of which taken together shall constitute one and the same instrument.
22. Recording. Landlord and Tenant agree that this Lease will be recorded in the Public Records of Boulder County, Colorado. All of the provisions of this Lease shall be deemed to run with the land and shall be construed to be “conditions” as well as “covenants” as though the words specifically expressing or imparting conditions and covenants were used in each separate provision.

IN WITNESS WHEREOF, the parties have executed this Lease on the date set forth above.

[Signature pages follow]

LANDLORD:

**CITY OF BOULDER,
a Colorado home rule municipality**

By: _____
Nuria Rivera-Vandermyde, City Manager

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney’s Office

EXHIBIT A
Legal Description

TRACTS 57 57A 58 58A 59 & 60 31-1N-70 & SUBLLOT J LOT 10
SMITHS & PT VACATED 10TH ST & RIVERSIDE ST PER ORDINANCE

Exhibit B
Portions of the Premises Retained by
Landlord For Specific Purposes

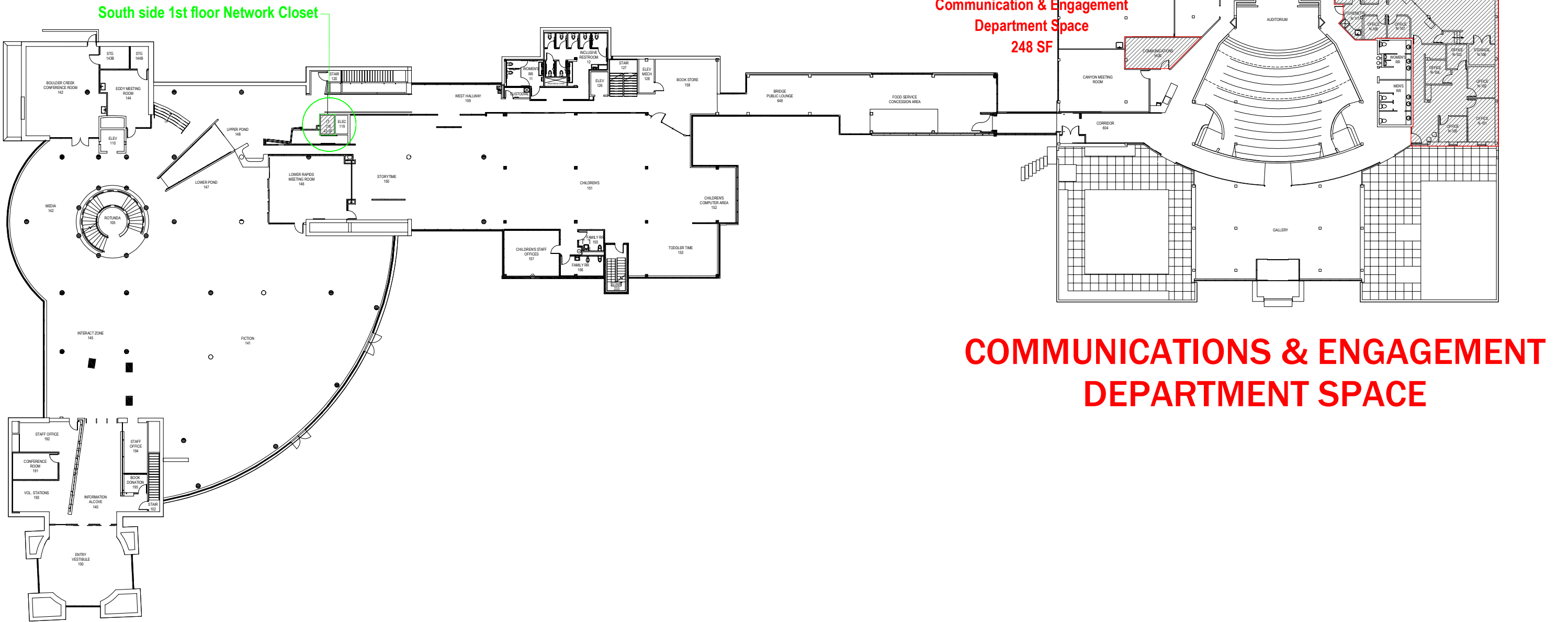


Exhibit B
Portions of the Premises Retained by
Landlord For Specific Purposes

-
- 1st floor Network Closet
- COB assets
 - COB multimode fiber cable to West Age Well Center
from wall-mounted BPLD fiber termination panel
 - Fiber patch cables
- BPLD infrastructure
- 2 strands in BPLD multimode fiber cable to north side
2nd floor network/server room for West Age Well Center

STAIR
120

IT
118
43 SF

ELEC
119

UPPER POND
148



MAIN LIBRARY • 1ST FLOOR NETWORK CLOSET

1001 ARAPAHOE

SCALED TO FIT

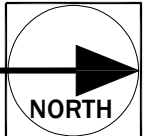
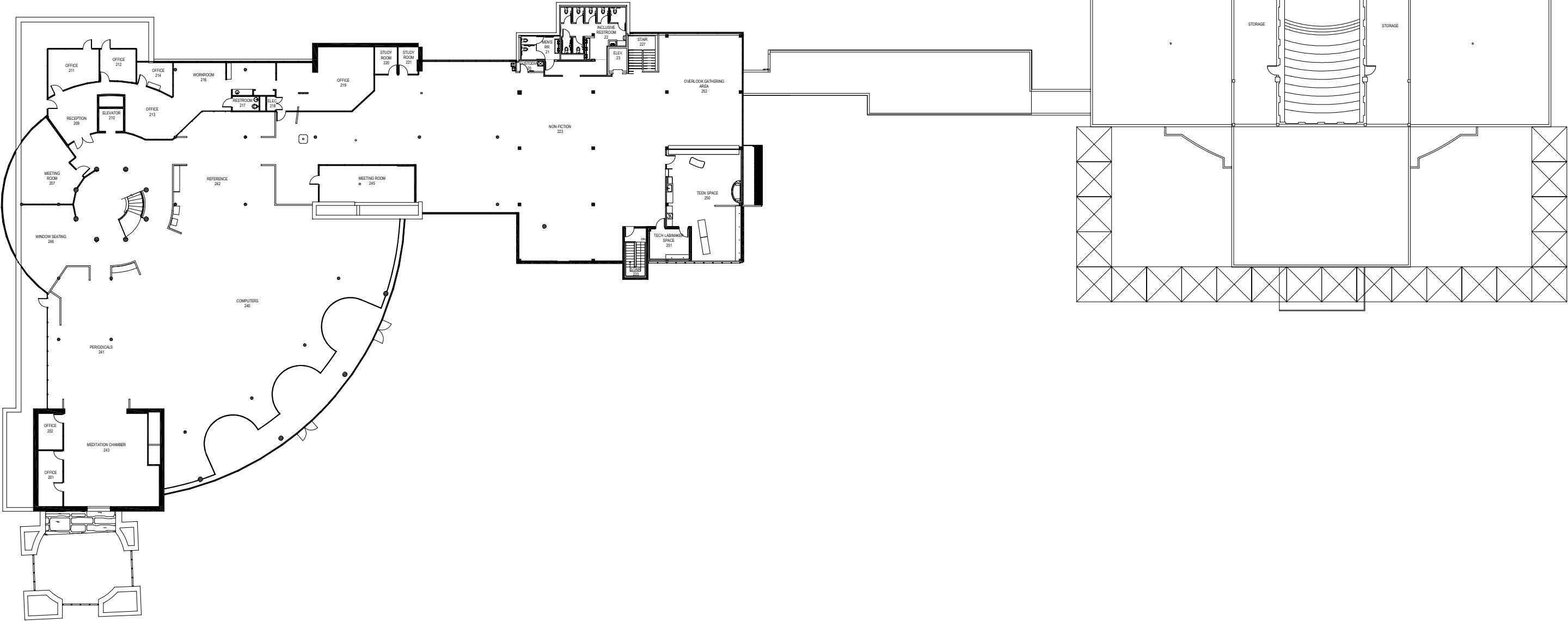
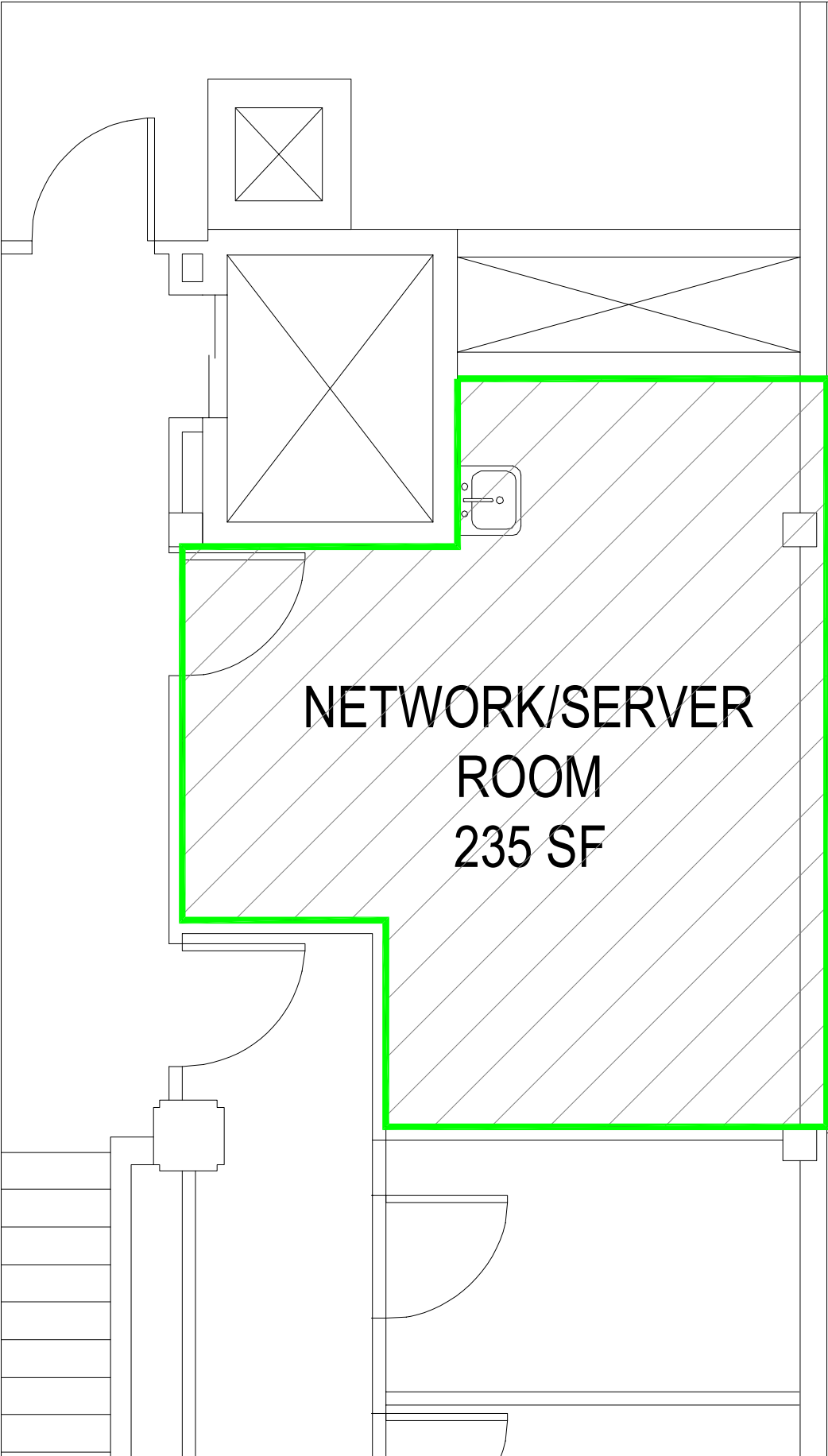


Exhibit B
Portions of the Premises Retained by
Landlord For Specific Purposes



MAIN LIBRARY • SECOND FLOOR NETWORK/SERVER ROOM
1001 ARAPAHOE

Exhibit B
Portions of the Premises Retained by
Landlord For Specific Purposes



- 2nd floor Network/Server Room
- COB assets
- Rack-mounted Ethernet switch, UPS, and fiber termination panels
 - COB singlemode fiber cable to Channel 8 offices
 - COB singlemode fiber cable to Municipal Building Fiber patch cables
- BPLD infrastructure
- 8 RU in existing 2-post 19-inch equipment rack for COB Ethernet switch, UPS, and fiber termination panels
 - 120V, 20A electrical outlet for COB UPS
 - 2 strands in BPLD multimode fiber cable to south side 1st floor network closet for West Age Well Center



CIVIC AREA LICENSE AND MANAGEMENT AGREEMENT

THIS CIVIC AREA LICENSE AND MANAGEMENT AGREEMENT (“**Agreement**”) is made and entered into this _____ day of _____ 2023 (“**Effective Date**”), by and between the CITY OF BOULDER, a Colorado home rule municipality, (“**City**” and/or “**Licensor**”), and the BOULDER PUBLIC LIBRARY DISTRICT (“**District**” and/or “**Licensee**”). Licensor and Licensee may be referred to collectively herein as the “**Parties**,” and individually as a “**Party**.”

RECITALS

- A. The City is a Colorado home rule municipality incorporated on November 4, 1871.
- B. The District was formed and exists as a library district pursuant to Section 24-90-101, *et seq.*, C.R.S., for the purpose of providing certain public improvements, facilities and services, to and for the use and benefit of the District, its residents, users, property owners, and the public.
- C. The District’s boundaries are located partially within the corporate limits of the city of Boulder.
- D. The City and the District have agreed to lease portions of the library buildings and surrounding land to the District and transfer ownership and operations of the City’s assets and liabilities held for the benefit of the former City of Boulder Public Library to the District subject to the terms, conditions and obligations set forth in the Final Intergovernmental Agreement dated _____, 2023, (“**IGA**”).
- E. The Boulder Public Library Main Branch building located at 1001 Arapahoe Ave., Boulder, Colorado 80302 (“**Main Library**”) will be leased from the City to the District, subject to the terms and conditions set forth in the Main Library Lease dated _____, 2023, (the “**Library Lease**”). The City will retain ownership of the land in, under, and around the Main Library building depicted on **Exhibit A** as the licensed area (the “**Licensed Area**”). The Licensed Area is outlined in yellow on **Exhibit A**. This Agreement is intended to govern the use and maintenance of the Licensed Area and is to be read together with the Library Lease.
- F. The Licensed Area is publicly owned property and subject to laws and provisions of the state and federal constitutions regarding public access, public use, and the exercise of individual First Amendment rights.
- G. In order to ensure the ability of the District and its patrons to use the Licensed Area without interference with other public users’ rights, the City and the District have entered into this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises and undertakings herein set forth, the Parties have established the following terms:

1. License. The City hereby grants the District a non-exclusive license (“**License**”) for access and use as a public entity, and for the use of its invitees and licensees (“**Library Users**”), to access and use, the Licensed Area subject to the terms and conditions described herein relating to each of the areas outlined in yellow and described in **Exhibit A**.

2. Licensee’s Use. The District and Library Users may access, use, and occupy the Licensed Area in a manner consistent with the terms of the IGA, the Library Lease, and this Agreement. The District will be responsible for all of the upkeep and maintenance within the leased area, as described in the Library Lease, including, but not limited to, the following:

a. Main Library Building and 9th St. Loading Dock as Indicated in Red in **Exhibit A**.

- i. The Main Library building may remain on the civic center property in its current configuration and as modified and expanded in the future with the City’s approval so long as the District is a tenant and the Main Library building remains in use for District purposes. All utility lines, service lines, underground and above ground facilities, utilities, rooms, and utility connections are included in the License and may be relocated within the Licensed Area or added by the District from time to time without amendment to the License. The District will be responsible for obtaining approvals for such work, and such work will be completed in a manner that does not adversely affect any of the areas, uses, or functions in the Licensed Area.
- ii. The Licensee is responsible for the developed area underneath the Main Library building, except the City will maintain Boulder Creek flood control and stormwater management improvements.
- iii. The 9th St. loading dock is available to the District for any Main Library purposes including parking, loading and unloading vehicles, and building and vehicle maintenance.

b. Entry Plaza No. 1 and No. 2 (collectively “Entry Plaza Areas”) as Indicated in Green in **Exhibit A**. Entry Plaza Areas are available to Library Users and the District for any public owned property uses and any use approved by the District including the exercise of First Amendment rights to gather, seek redress, protest, and engage in free speech activities.

- i. As the Licensee of all surface uses of the Entry Plaza Areas, the District shall always maintain rules and regulations to ensure individual and group First Amendment rights are properly protected and controlled as provided

by law on public spaces and, to the fullest extent of the law, will defend and indemnify the City against all claims, causes of action, fines, penalties or damages related to violations of rights on the Entry Plaza Areas.

- ii. The District will be responsible for maintenance of all sidewalks and walkways that connect Entry Plaza No. 2 to multi-use paths and the parking areas to the east of the Main Library. The District will also be responsible for maintenance of the sidewalk along Arapahoe Ave. from the eastern side of Entry Plaza No. 1 to the western property line. Further, the District will be responsible for all of the upkeep and maintenance of trash cans, flowerpots, bicycle racks, benches, and any other improvement located in the Entry Plaza Areas.
 - iii. The Licensee will provide concrete repair and replacement in the Entry Plaza Areas consistent with the City's design standards. The Licensee may contract with the City to provide these services in conjunction with the City's regular maintenance by separate agreement.
 - iv. The City will provide snow removal in the Entry Plaza Areas once per day in the morning hours. The Licensee shall be responsible for all other snow removal.
- c. Public Parking Lots No. 1 and No. 2 as Indicated in Blue in **Exhibit A**. Public Parking Lots No. 1 and No. 2 are available to the District and Library Users on the same basis as they are available to the general public.
- i. The City agrees to provide the District with an employee parking pass program for use within Public Parking Lots No. 1 and No. 2, consistent with the terms and conditions of the City of Boulder employee parking pass program.
 - ii. Main Library identification and direction signs that comply with Sections 5-4-15, "Posting Signs on Property of Another Prohibited," and 9-9-21, "Signs," B.R.C. 1981, may be erected permanently or temporarily along the perimeter or on islands providing direction to Main Library buildings or Main Library events.
 - iii. The District will utilize the City's special events permit process for use of Public Parking Lot No. 1 or No. 2 for outdoor events and/or programming for a period not to exceed 72 hours. The Library District will be added as a referral entity for special event applications by third parties in order for the District to recoup its costs incurred because of the event.
 - iv. Upon 15 days written notice and written agreement as to the terms of use, the District may purchase parking passes for attendees and users of specifically identified library events or programs for a period not to exceed 10 hours.

- v. The City will notify the District at least 15 days before any closure of either Public Parking Lot No. 1 or No. 2 and will provide alternate parking locations and/or rights for the District's employees and patrons and direction signage to assist patrons to locate appropriate parking within a reasonable walking distance of the Main Library.
 - vi. The City accepts responsibility for the management and maintenance of Public Parking Lot No. 1 and No. 2. The Licensed Area encompasses multiple users and missions, the needs and interests of many must be balanced in a manner that protects the site in keeping with the Master Plan for Boulder Civic Area (2015), as may be amended. Management decisions about surrounding uses should be made with sensitivity to potential impacts on the Main Library's leasehold area. It is anticipated that Public Parking Lots No. 1 and No. 2 will change and evolve over time. The Master Plan for Boulder's Civic Area plans for the removal of Public Parking Lot No. 1 and No. 2 and replaced by structured parking at some point in the future. Parking management decisions evolve over time. The City and the District will work cooperatively in the future to ensure realization of the vision, how the licensed Public Parking Lots No. 1 and No. 2 will be used and the guiding principles of the Master Plan for Boulder's Civic Area and that the needs of all users and functions of the Main Library and the Civic Area are met. The City will treat District employees in the same or similar manner as city employees with respect to parking. The City will also treat all visitors to the Licensed Area that need parking in the same or similar manner, except as modified by this Agreement.
- d. Additional Licensee Obligations. In accordance with the terms and conditions set forth in the IGA, the District shall manage its use of the Licensed Area and utilize the License consistent with the seven guiding principles enumerated in the Master Plan for Boulder's Civic Area (2015), which are: (1) the civic heart of Boulder; (2) life and property safety; (3) outdoor culture, and nature; (4) celebration of history and assets; (5) enhanced access and connections; (6) place for community activity and arts; and, (7) sustainable and viable future. Additionally, the District shall utilize the License in a manner that is consistent with the terms of Section 8.13 of the Boulder Valley Comprehensive Plan: Support for Community Facilities (2021).
- e. City Maintenance Responsibilities. The City will be responsible for all the upkeep and maintenance, to a City standard, within the Licensed Area (except for areas that are the responsibility of the District), including, without limitation, the children's park area, the landscaped areas around the Main Library that are not part of the Entry Plaza Areas, both Public Parking Lots, Boulder Creek flood control and stormwater management improvements, and multi-use paths. The City will also be responsible for the upkeep and maintenance of the restrooms, to a City standard, located on the northwest portion of the Licensed Area near 9th St. and Canyon Blvd.; however, the District will supply electricity to the building until such time the City can obtain a separate metered electrical supply to the restroom building.

- f. The Licensed Area is available to the Licensee for reservations, use, programming, and the like on the same basis as it is available to the general public.

3. Licensor's Retained Use. This Agreement shall not restrict or interfere with the City's access or use of the Licensed Area for the purpose of providing, operating, utilizing, managing, and maintaining the Licensed Area; however, the City shall attempt to accommodate and minimize any interference with the Licensee's use as described herein.

4. Right of First Refusal/Offer. The City will not sell or convey the land beneath the Main Library, the Entry Plaza Areas, or the Public Parking Lot No. 1 or No. 2, or any part thereof, without first offering same to the District for purchase. This right will be recorded against the property subject to the License.

5. No Additional Uses. The Licensee's use described herein shall be its sole use of the Licensed Area unless it obtains additional permissions from the City.

6. License Fee and Cost Share. Licensee's use of the License shall be of no cost to the District unless otherwise provided herein.

7. Term and Termination. The term of this Agreement commences January 1, 2024, and shall expire upon expiration or termination of the Library Lease.

8. Termination for Default. If either Party should fail to perform its obligations under this Agreement, the other Party may provide a written notice of the failure to the non-performing Party. If after 30 days from the receipt of such notice, the non-performing Party has not cured the default, or if cure is not possible within 30 days, the Party has not commenced curative measures in a timely and commercially reasonable manner, the Party that provided such notice may terminate the Library Lease and this Agreement effective upon written notice to the non-performing Party. However, under no circumstances may the License terminate as long as the Library Lease is in effect, or if the City conveys fee title in the Main Library building to the Licensee.

9. CGIA. Each Party to this Agreement is a "public entity" under the Colorado Governmental Immunity Act, Sections 24-10-101, *et seq.*, C.R.S. ("CGIA"). The Parties acknowledge and agree that the City and the District, and each Party's respective elected and appointed officials, officers, directors, agents, and employees, are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities and protections provided by the CGIA, § 24-10-101 to 120, C.R.S., as amended.

10. Liens. The District will not permit or allow any mechanic's, materialman's, or other lien to be placed against any of the Licensed Area in connection with work or services claimed to have been performed for, or materials claimed to have been furnished to the District. If any such lien is recorded, the District will cause the same to be released of record.

11. Insurance. During the Term of this Lease, Tenant, at its sole cost and expense, shall continuously maintain the types and amounts of insurance coverages as approved by the City Manager, the City Attorney, and the City Risk Manager.

12. Responsibility. Each Party will be responsible for the acts, omissions, or conduct of that Party's own respective officers, employees, agents, contractors, and consultants to the extent arising out of the performance of each Party's obligations under this Agreement or with respect to each Party's respective use of the Licensed Area.

13. Compliance with Laws. The Parties shall cause all activities within the Licensed Area to be performed in compliance with all applicable laws, rules, regulations, orders, and other requirements of any public jurisdiction.

14. Appropriations. Pursuant to Section 29-1-110, C.R.S., and City of Boulder Charter Sec. 103 any financial obligations of the Parties express or implied by this Agreement are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available on an annual basis by each Party's respective governing body.

15. Conflict Resolution. If any conflict arises in connection with either Party's obligations under this Agreement, the city manager or his or her designated representative and the library director or his or her designated representative shall meet and attempt to resolve the issue. If the city manager and the library director are unable to resolve the issue, two representatives of the Boulder City Council and two representatives of the Library District Board of Trustees shall meet and attempt to resolve the issue. If these steps fail to resolve any issue under this Agreement, either Party may exercise all remedies available at law or in equity.

16. Notice of Communications. Any notice pursuant to the terms and conditions of this Agreement shall be in writing and shall be hand-delivered or sent by registered or certified mail, return receipt requested, postage prepaid, to the addresses of the Parties herein set forth. All notices so given shall be considered effective 72 hours after deposit in the United States mail with the proper address as set forth below. Either Party by notice so given may change the address to which future notices shall be sent.

To the District:

Boulder Public Library District
Attn: Board President and Library Director
1001 Arapahoe Ave
Boulder, CO 80302

With a copy to:

Kim J. Seter, Esq.
Seter & Vander Wall, PC
7400 E. Orchard Road, Suite 3300
Greenwood Village, CO 80111
and: kseter@svwpc.com

To the City:

City of Boulder
Nuria Rivera-Vandermyde
City Manager
City Manager's Office
1777 Broadway
Boulder, CO 80302
and: CMOadmin@bouldercolorado.gov

With a copy to:

City of Boulder
City Attorney
City Attorney's Office
1777 Broadway
Boulder, CO 80302
and: CAOadmin@bouldercolorado.gov

17. Integration and Entire Agreement. This Agreement, read in conjunction with the IGA and Library Lease, represents the entire agreement between the Parties with respect to the License and supersedes all prior discussions, negotiations, understandings, or agreements relating to this Agreement, all of which are merged herein.

18. Binding Effect. This Agreement shall inure to the benefit of, and be binding upon, the Parties, each Party's respective legal representatives, successors, and heirs; provided, however, that nothing in this Paragraph 18 shall be construed to permit the assignment of this Agreement except as agreed to, in writing, by the Parties.

19. Underlying Intent and Scope. This Agreement does not confer upon the Licensee any other right, permit, license, approval, or consent other than that expressly provided for herein and this Agreement shall not be construed to waive, modify, amend, or alter the application of any other federal, state, or local laws, including laws governing zoning, land use, property maintenance, or nuisance.

20. Governing Law and Venue. This Agreement shall be governed by the laws of the State of Colorado and venue for any action arising under this Agreement shall be in the district court of the County of Boulder, State of Colorado.

21. Severability/Waiver. In the event any of the provisions of this Agreement are held to be unenforceable or invalid by any court of competent jurisdiction, the validity of the remaining provisions shall not be affected. Should either Party fail to enforce a specific term of this Agreement, it shall not be a waiver of a subsequent right of enforcement, nor shall it be deemed a modification or alteration of the terms and conditions contained herein.

22. Amendment. Any amendment to this Agreement shall be in writing and signed by both Parties.

23. No Third-Party Beneficiaries. This Agreement is entered into by and between the Licensor and the Licensee, and is solely for the benefit of the Licensor and the Licensee for the purposes set forth herein. Except as otherwise provided herein, this Agreement does not create rights or responsibilities in any third parties beyond the Licensor and the Licensee.

24. Recitals. The Recitals set forth at the beginning of this Agreement are deemed incorporated herein, and the Parties hereto represent they are true, accurate, and correct.

25. Authority. The signatories below have been duly authorized to execute this Agreement and bind that Party to the terms and conditions herein.

26. Counterparts and Electronic Signatures. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, all of which together shall constitute one and the same instrument. In addition, the Parties specifically acknowledge and agree that electronic signatures shall be effective for all purposes, in accordance with the provisions of the Uniform Electronic Transactions Act, Title 24, Article 71.3 of the Colorado Revised Statutes.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

LICENSEE:

BOULDER PUBLIC LIBRARY DISTRICT

By: _____
Katharine (Joni) Teter, President
Board of Trustees

Attest: _____
Sylvia T. Wirba, Secretary

Approved as to Form:

Kim J. Seter, CO Atty No. 14294

LICENSOR:

**CITY OF BOULDER,
a Colorado home rule municipality**

Nuria Rivera-Vandermyde, City Manager

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney's Office

Requirements for Contractors Performing Any Improvements to the Premises

I. INSURANCE POLICIES

Contractor shall procure and maintain, at its own cost, a policy or policies of insurance sufficient to insure against all liability, claims, demands, and other obligations assumed by Contractor pursuant to this Section A. Contractor shall not be relieved of any liability, claims, demands, or other obligations assumed pursuant to this Section I by reason of its failure to procure or maintain insurance, or by reason of its failure to procure or maintain insurance in sufficient amounts, durations, or types.

Contractor shall procure and maintain and, if applicable, shall cause any subcontractor of Contractor to procure and maintain the insurance coverage listed below. Such coverage shall be procured and maintained with forms and insurers acceptable to the City of Boulder, Colorado (“City”). All coverage shall be continuously maintained to cover all liability, claims, demands and other obligations assumed by Contractor pursuant to this Section I for the statutes of limitation and repose. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage.

Contractor shall obtain and maintain the minimum insurance coverages set forth below. By requiring such minimum insurance, the City shall not be deemed or construed to have assessed the risk that may be applicable to Contractor. Contractor shall assess its own risks and if it deems appropriate and / or prudent, maintain higher limits and / or broader coverages.

A. Insurance Coverages

1. *Commercial General Liability – ISO CG 00001 or equivalent.*

Coverage to include:

- Premises and Operations
- Explosions, Collapse and Underground Hazards
- Personal / Advertising Injury
- Products / Completed Operations
- Liability assumed under an Insured Contract (including defense costs assumed under contract)
- Broad Form Property Damage
- Independent Contractors
- Designated Construction Projects(s) General Aggregate Limit, ISO CG 2503 (1997 Edition)
- Additional Insured—Owners, Lessees or Contractors Endorsement, ISO Form 2010 (2004 Edition or equivalent)
- Additional Insured—Owners, Lessees or Contractors Endorsement, Completed Operations, ISO CG 2037 (7/2004 Edition or equivalent)

Exhibit D
Attachment C – Form lease for the Main Boulder
Requirements for Contractors Performing Any Improvements to the
Premises

- The following exclusions are absolutely prohibited and shall not be included in Contractor's policy if applicable to the work:
 - No exclusion for "third-party action over suits" or any similar restriction of coverage applicable to claims brought against others by an employee of Contractor or its Subcontractors
 - No damage to Work performed by Contractor exclusion (CG 22 94 or similar)
 - No residential or habitation exclusion or coverage limitation
 - No exclusion for EIFS (Exterior Insulation Finish System) or any similar exclusion applicable to the Work
 - No exclusion for subsidence, which is specifically prohibited for any work involving excavation, soil stabilization, earth retention, concrete, structural steel, landscaping, waterproofing, fire protection and plumbing.
 - No exclusion for low-level radioactive isotopes

2. ***Automobile Liability including all:***

- Owned Vehicles
- Non-Owned Vehicles
- Hired Vehicles

Automobile Liability Coverage endorsements CA9948 and MCS-90 are required if Contractor is transporting any type of hazardous materials.

3. ***Excess/Umbrella Liability***

- Excess of Commercial General Liability, Automobile Liability, and Employers' Liability.
- Coverages should be as broad as primary.
- The City reserves the right to require higher limits.

4. ***Workers' Compensation***

- Statutory Benefits (Coverage A)
- Employers Liability (Coverage B)

5. ***Installation Floater***

- "All Risk"
- Faulty workmanship
- Labor costs to repair damaged work

6. ***Contractors Pollution Liability/Environmental Impairment Liability***

The City requires this coverage whenever work at issue under this contract involves potential pollution risk to the environment or losses caused by pollution conditions including but not limited to asbestos, building enclosure systems, plumbing, roofing, heating, ventilation, air conditioning, drywall, insulation, building foundations, or any work which includes Microbial Matter, Mold, Fungi, or Bacteria and any work which will involve the use of hazardous materials that may arise from the operations of Contractor (and its subcontractors) described in Contractor's bid and

Exhibit D
Attachment C – Form lease for the Main Boulder
Requirements for Contractors Performing Any Improvements to the Premises

specifications. Policy shall cover Contractor's completed operations. Such coverage shall be on an occurrence basis and include:

- Bodily Injury, sickness, disease, mental anguish or shock sustained by any person, including death.
- Property Damage including natural resource damages, physical injury to or destruction of tangible property including resulting loss of use, cleanup costs, and the loss of use of tangible property that has not been physically injured or destroyed.
- Defense, including costs, charges and expenses incurred in the investigation, adjustment or defense of claims for such compensatory damages.
- Cleanup costs, removal, storage, disposal, and or use of the pollutant; and defense, including costs and expenses incurred in the investigation, defense, or settlement of claims.
- Coverage shall apply to sudden and gradual pollution conditions resulting from the escape or release of smoke, vapors, fumes, acids, alkalis, toxic chemicals, liquids, or gases, natural gas, waste materials, or other irritants, contaminants, or pollutants (including asbestos).

7. (If applicable) Professional Liability Policy

For Contractor and any subcontractor of any tier that is providing any professional services, including but not limited to: design, architecture, engineering, testing, surveying, or design/build services, temporary engineering, engineered excavations and shoring systems, post-tension supply, structured steel, specialized millwork that is performance specified, roofing or waterproofing systems, curtainwall, mechanical, fire protection systems, electrical, fire alarm systems.

Contractor and/or all subcontractors providing professional services shall provide and maintain Professional Liability Insurance coverage. Coverage shall include coverage for contractual liability. Contractor and subcontractors shall maintain for the statute of repose, following completion of the project. Any erosion of insurance limits required will be reinstated to the required amounts prior to commencing the contracted work and if during the contracted period claims are made against the design professional's policy the necessary reduction of available limits will be repurchased to the contractually required amounts.

B. Limits Required

Contractor shall carry the following limits of liability as required below:

1. Commercial General Liability

General Aggregate	\$5,000,000
Products/Completed Operations	\$5,000,000
Aggregate	
Each Occurrence Limit	\$2,000,000
Personal/Advertising Injury	\$1,000,000
Fire Damage (Any One Fire)	\$ 50,000

Exhibit D
Requirements for Contractors Performing Any Improvements to the Premises

Medical Payments (Any One Person)	\$ 5,000
2. <i>Excess/Umbrella Liability (as needed)</i>	
General Aggregate Limit	\$5,000,000
Products/Completed Operations Aggregate	\$5,000,000
3. <i>Automobile Liability</i>	
Bodily Injury/Property Damage (Each Accident)	\$3,000,000
4. <i>Workers' Compensation</i>	
Coverage A (Workers' Compensation)	Statutory
Coverage B (Employers Liability)	
Each Accident \$	2,000,000
Disease Ea. Employee \$	2,000,000
Disease-Policy Limit \$	2,000,000

NOTE: Independent contractors that do not carry Workers' Compensation are required to complete an independent contractor's form provided by the City.

5. <i>Installation Floater/Builder's Risk</i>	
For materials and equipment to be installed:	
Shall be written for 100% of the completed value (replacement cost basis)	
Deductible maximum is \$10,000.00	
Waiver of Subrogation applies on Installation Floater/Builder's Risk	
6. <i>Contractors Pollution Liability/Environmental Impairment Liability (as needed)</i>	
Per Loss	\$1,000,000
Aggregate	\$1,000,000

If Contractor's work includes remediation of asbestos or mold, then the minimum limits required shall be:

Each Occurrence	\$ 5,000,000
Aggregate	\$ 5,000,000
Maximum allowable deductible, to be paid by Contractor	\$ 25,000
7. <i>Professional Liability</i>	
Each Claim	\$ 1,000,000
Aggregate	\$ 1,000,000
Maximum allowable deductible, to be paid by Contractor	\$ 25,000

II. ADDITIONAL INSURANCE REQUIREMENTS

Exhibit D
Attachment C – Form lease for the Main Boulder
Requirements for Contractors Performing Any Improvements to the
Premises

Failure of Contractor to fully comply with these requirements during the term of this Contract may be considered a material breach of contract and may be cause for immediate termination of this Contract at the option of the City.

- A. All insurers must be licensed or approved to do business within the State of Colorado, and unless otherwise specified, all policies must be written on a per occurrence basis (excepting Professional Liability).
- B. Contractor shall name **“The City of Boulder, its elected and appointed officials, directors, officers, employees, agents and volunteers” as additional insured** (“Additional Insured”) where commercially available.
- C. All policies of insurance shall be written on a primary basis, non-contributory with any other insurance coverages and/or self-insurance carried by the City.
- D. A Separation of Insureds Clause must be included in general liability policies.
- E. Contractor shall advise the City in the event any general aggregate or other aggregate limits are reduced below the required per occurrence limit. At its own expense, Contractor will reinstate the aggregate limits to comply with the minimum requirements and shall furnish to the City a new certificate of insurance showing such coverage is in force.
- F. Contractor’s insurance carrier shall possess a minimum A.M. Best’s Insurance Guide rating of A- VI.
- G. Commercial General Liability Completed Operations policies must be kept in effect for the statute of repose.
- H. Contractor’s Pollution Liability policies must be kept in effect for the statute of repose.
- I. Contractor, or Contractor’s insurance broker, shall notify the City of any cancellation or reduction in coverage or limits of any insurance within seven (7) days of receipt of insurer’s notification to that effect. Contractor shall forthwith obtain and submit proof of substitute insurance in the event of expiration or cancellation of coverage.
- J. **The Certificate Holder shall be identified as: City of Boulder, P.O. Box 791, Boulder, CO 80306.**
- K. Contractor is responsible for any damage or loss to its own vehicles or equipment.
- L. The City and Contractor shall cooperate with each other in the collection of any insurance proceeds which may be payable in the event of any loss, including the execution and delivery of any proof of loss or other actions required to effect recovery.
- M. Contractor and its insurers shall waive subrogation in favor of Additional Insured parties.
- N. Contractor shall not be relieved of any liability, claims, demands, or other obligations assumed pursuant to this contract by reason of its failure to procure or maintain insurance or by reason of its failure to procure or maintain insurance in sufficient amounts, durations or types.

Exhibit D
Attachment C – Form lease for the Main Boulder
Requirements for Contractors Performing Any Improvements to the
Premises

C. INSURANCE TERM

All required insurance in this Exhibit D, except builder's risk, shall remain in effect for the statute of repose.

D. INDEMNIFICATION

Contractor shall defend, indemnify and hold harmless the City, its directors, officers, employees, elected and appointed officials and agents from and against all claims, damages, losses, obligations, demands, assessments, fines, penalties (whether civil or criminal), liabilities, costs, expenses, bodily and other personal injuries, damage to tangible property, of any kind or nature suffered or incurred by the City directly or indirectly arising from or related to: (i) any act or omission by contractor its employees, agents, subcontractors or its representatives or other parties for which contractor may be legally responsible in the performance of contractor's obligations under this contract, or (ii) any material breach in a representation, warranty, covenant or obligation of contractor contained in this contract. . These shall include without limitation reasonable attorneys' fees and costs of defense. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this Section D.

E. CITY SALES AND USE TAX

Contractor is deemed to be the consumer of the materials used in all construction projects in Boulder. Therefore, all tangible personal property used in the construction project is subject to the current City sales or use tax pursuant to Section 3-2-2, B.R.C. 1981. The City sales tax is imposed on all sales, rentals, leases and taxable services used in the construction project. The City's construction use tax is imposed upon tangible personal property and taxable services purchased for construction use in the City whether purchased inside or outside of the City. Both non-residents and residents of the City engaged in a construction project in the City are liable to pay the City construction use tax. No credit will be given for taxes paid to another municipality. The general contractor is liable for the payment of the City's sales and use tax for the total project including tax due by its subcontractors.

LIBRARY LEASE

CITY OF BOULDER

“LANDLORD”

WITH

BOULDER PUBLIC LIBRARY DISTRICT

“TENANT”

BUILDING: CARNEGIE LIBRARY FOR LOCAL HISTORY

DATED: _____

LIBRARY LEASE

THIS LIBRARY LEASE (“**Lease**”) is made and entered into as of this ____ day of _____, 2023, (“**Effective Date**”) by and between the City of Boulder, a Colorado home rule municipality, (“**Landlord**”), and the Boulder Public Library District (“**Tenant**”). In consideration of the payment of Rent (as defined below); all costs, charges, and expenses which Tenant assumes, agrees, or is obligated to pay to Landlord pursuant to this Lease (“**Additional Rent**”); and the performance of the promises by Tenant set forth below, Landlord hereby leases to Tenant, and Tenant hereby accepts, the Premises (as defined below), subject to the terms and provisions set forth in this Lease. Landlord and Tenant covenant and agree as follows:

1. Premises. Landlord is the owner of certain real estate legally described as set forth in **Exhibit A**, Boulder County, Colorado (“**Real Estate**”). The Real Estate is improved with a building (“**Premises**”). Landlord hereby leases and demises to Tenant the Premises located at 1125 Pine St., Boulder, Colorado as of the date first provided under Paragraph 2., Term and Termination.
 - a. Landlord retains access to and excludes from the Premises that portion that is necessary and currently utilized for the City of Boulder-owned fiber optic cable and equipment identified on **Exhibit B** if any, free of charge.
 - b. Tenant will provide access cards or keys necessary for the 24-hour access to and operation of the fiber optic cable and equipment identified in Paragraph 1.a., above, free of charge.
2. Term and Termination. Landlord Leases the Premises to Tenant for a term of twenty (20) years, commencing at one minute after midnight on the ____ day of _____, 2024, and terminating one minute after midnight on the ____ day of _____, 2045 (the “**Term**”), unless sooner terminated in accordance with the provisions of this Lease.
 - a. Landlord and Tenant agree to meet in no less than five-year intervals to determine whether this Lease should be terminated by mutual agreement.
 - b. Tenant has the absolute right to terminate this Lease on its anniversary date every third year without consequences upon ninety (90) days written notice to Landlord.
3. Rent. Tenant shall pay to Landlord for the use and occupancy of the Premises during the Term a fixed annual rental rate of One Dollar (\$1.00) (“**Rent**”), payable by Tenant in a lump sum payment of Twenty Dollars (\$20.00) on the Effective Date hereof the receipt and sufficiency of which is hereby acknowledged.
4. Use. The Premises shall be used for the sole purpose of a public library and associated activities (which may include subleases to nonprofit entities).

5. Utility Charges. Tenant shall establish accounts for all heat, light, power, telephone, water, sewerage, janitorial services, garbage disposal, and other utilities and services it deems necessary for the operation of a public library (“**Utilities and Services**”) in its own name, and shall pay directly to the appropriate supplier, the cost of all Utilities and Services as the same become due and payable.
6. Condition of Premises. Tenant is familiar with the physical condition of the Premises. Tenant is leasing the Premises “as is,” in its current condition, and hereby expressly disclaims all warranties.
7. Maintenance and Repairs. Landlord will provide routine maintenance and repair services and on-call services for a period not to exceed four (4) months and work with and assist Tenant’s facilities maintenance personnel. Tenant shall reimburse Landlord for all such services at cost. Thereafter, Tenant shall have sole maintenance and repair responsibility for the interior and exterior of the Premises, including all costs and expenses relative thereto. Tenant shall promptly and diligently repair, restore, replace, or remedy all damage to or destruction of all or any part of the Premises. Landlord shall not be required to furnish any services or facilities or to make any repairs or alterations of any kind in or on the Premises, all such matters being the sole duty and responsibility of Tenant. Tenant may also demolish, rebuild, reconfigure and/or remodel any interior spaces of the Premises without consultation with Landlord so long as Tenant deems it necessary or useful for its purposes. Exterior demolition, reconstruction or remodeling must be approved by Landlord. Tenant shall require any contractor performing work on the Premises to procure and maintain at its own cost the insurance coverage and other contract requirements set forth in **Exhibit C**.
8. Injury or Damage. Landlord shall not be responsible to the Tenant for loss of property in or from the Premises, or for any damage done to furniture, fixtures, equipment, collections, or other effects in the Premises, nor shall the Landlord be liable for any injury or damage, either proximate or remote, occurring through or caused by any repairs, alterations, or accident occurring in or to the Premises, nor shall Landlord be liable for any injury or damage occasioned by defective electrical wiring or the breakage or stoppage of the plumbing or sewerage upon the Premises, whether such breakage or stoppage results from freezing, flood, or other casualty.
9. Insurance. During the Term of this Lease, Tenant, at its sole cost and expense, shall continuously maintain the types and amounts of insurance coverages as approved by the city manager, the city attorney, and the City of Boulder’s risk manager.
10. Default. Tenant shall be in default of this Lease if at any time the Premises cease to be used for public library purposes. Together with the foregoing, if either party defaults in the performance of any of its respective covenants, conditions, agreements, or undertakings contained in this Lease (each, an “**Event of Default**”) and such Event of Default continues for thirty (30) days (subject to a reasonable extension if a cure is not practical during such period and if the defaulting party has commenced cure and is diligently pursuing same) after written notice of such default from the non-defaulting party, then the non-defaulting

party may cause such default to be remedied in such manner and by such means as the non-defaulting party may deem proper, and the cost and expense thereof paid or incurred, including reasonable attorney fees and costs, shall be due and payable within thirty (30) days of presentment of an invoice for such services. Notwithstanding the foregoing, the parties shall have the option to seek all and any remedy available at law or in equity.

11. Environmental Compliance.

- a. Tenant's Responsibility. Tenant covenants and agrees that the Premises will, at all times during its use or occupancy thereof, be kept and maintained so as to comply with all now existing or hereafter enacted or issued statutes, laws, rules, ordinances, orders, permits, and regulations of all state, federal, local, and other governmental and regulatory authorities, agencies, and bodies applicable to the Premises, pertaining to environmental matters, or regulating, prohibiting, or otherwise having to do with asbestos and all other toxic, radioactive, or hazardous wastes or materials including, but not limited to, the Federal Clean Air Act, the Federal Water Pollution Control Act, and the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as from time to time amended (all hereafter collectively called "**Laws**"). Tenant shall not cause or permit any hazardous material to be brought upon, kept, or used in, or about the Premises by Tenant, its agents, employees, contractors, or invitees, except any hazardous material which is necessary for the usual and customary operation of a public library.
- b. Tenant's Liability. If Tenant breaches the obligations stated in the preceding paragraph, or if the presence of hazardous materials otherwise arises out of Tenant's use of the Premises, Tenant shall be solely responsible for all costs incurred in connection with any investigation of site conditions and any clean-up, remedial, removal, or restoration work required by any federal, state, or local governmental agency. Without limiting the foregoing, any hazardous material is released on the Premises, Tenant shall promptly take all actions at its sole cost and expense which are necessary to return the Premises to the condition existing prior to the introduction of such hazardous material. Except to any extent prohibited by law, Tenant shall hold Landlord free, harmless, and indemnified from any penalty, fine, claim, demand, liability, cost, or charge whatsoever which Landlord shall incur, or which Landlord would otherwise incur, by reason of Tenant's failure to comply with this Section; including, but not limited to: (i) the cost of bringing the Premises into compliance with all laws; (ii) the reasonable cost of all appropriate tests and examinations of the Premises to confirm that the Premises have been brought into compliance with all Laws; and, (iii) the reasonable fees and expenses of Landlord's attorneys, engineers, and consultants incurred by Landlord in enforcing and confirming compliance with this Section.
- c. Covered Property. For the purposes of this Section, the Premises shall include the Real Estate covered by this Lease, all improvements placed on the Premises by Tenant, and all personal property and fixtures located on or used in connection with the Premises.

- d. Liability After Termination or Expiration of Lease. Landlord and its engineers, technicians, and consultants (collectively, “**Auditors**”) may, from time to time as Landlord deems appropriate, during Tenant’s usual business hours and after reasonable notice to Tenant, conduct periodic tests and examinations (“**Audits**”) of the Premises to confirm and monitor Tenant’s compliance with this Section. Such Audits shall be conducted in such manner as to minimize the interference with Tenant’s permitted use; however, in all cases, the Audits shall be of such nature and scope as shall be reasonably required by then existing technology to confirm Tenant’s compliance with this Section. Tenant shall fully cooperate with Landlord and its Auditors in the conduct of such Audits. The cost of such Audits shall be paid by Landlord unless an Audit shall disclose a material failure of Tenant to comply with this Section, in which case the cost of such Audit, and the cost of all subsequent Audits made during the Term and within thirty (30) days thereafter (not to exceed two (2) such Audits per Lease year), shall be paid for by Tenant within fifteen (15) days of receipt of invoices from Landlord.
 - e. Liability After Termination of Lease. The covenants contained in this Section shall survive the expiration or termination of this Lease and shall continue for so long as the parties hereto and their successors and assigns may be subject to any expense, liability, charge, penalty, or obligation against which the Tenant has agreed to indemnify the Landlord under this Section.
12. Relationship. The parties’ relationship is not that of joint venturers or partners but is a relationship of landlord and tenant as defined in this Lease.
13. CGIA. Each party to this Lease is a “public entity” under the Colorado Governmental Immunity Act, §§ 24-10-101, *et seq.*, C.R.S., as amended (“**CGIA**”). The parties acknowledge and agree that the Landlord and the Tenant, their respective elected and appointed officials, officers, directors, agents, and employees, are relying on, and do not waive or intend to waive by any provision of this Lease, the monetary limitations or any other rights, immunities and protections provided by the CGIA.
14. Liens. The Tenant will not permit or allow any mechanic’s, materialman’s, or other lien to be placed against any of the Premises in connection with work or services claimed to have been performed for, or materials claimed to have been furnished to the Tenant. If any such lien is recorded, the Tenant will cause the same to be released of record.
15. Responsibility. Tenant will be responsible for the acts, omissions, or conduct of its own respective officers, employees, agents, contractors, and consultants to the extent arising out of the performance of its obligations under this Lease or with respect to its respective use of the Premises.
16. Compliance with Laws. Tenant shall cause all activities within the Premises to be performed in compliance with all applicable laws, rules, regulations, orders and other requirements of any public jurisdiction.

17. Appropriations. Pursuant to § 29-1-110, C.R.S., any financial obligations of the parties express or implied by this Lease are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available on an annual basis by each party's respective governing body.
18. Notice of Communications. Any notice pursuant to the terms and conditions of this Lease shall be in writing and shall be hand-delivered or sent by registered or certified mail, return receipt requested, postage prepaid, to the addresses of the parties herein set forth. All notices so given shall be considered effective seventy-two (72) hours after deposit in the United States Postal Service mail with the proper address as set forth below. Either party by notice so given may change the address to which future notices shall be sent.

To the District:

Boulder Public Library District
Attn: Board President and District Manager
1001 Arapahoe Ave
Boulder, CO 80302

With a copy to:

Kim J. Seter, Esq.
Seter & Vander Wall, PC
7400 E. Orchard Road, Suite 3300
Greenwood Village, CO 80111
and: kseter@svwpc.com

To the City:

City of Boulder
Attn: City Manager
P. O. Box 791
Boulder, CO 80306
(303) 441-3090
and: CMOAdmin@bouldercolorado.gov

With a copy to:

City of Boulder
Attn: City Attorney
P. O. Box 791
Boulder, CO 80306
(303) 441-3020
and: CAOAdmin@bouldercolorado.gov

19. Integration and Entire Agreement. This Lease represents the entire agreement between the parties with respect to this Lease and supersedes all prior discussions, negotiations, understandings, or agreements relating to this Lease, all of which are merged herein.
20. Counterparts. This Lease may be executed in several counterparts, or electronic PDF, each of which shall be deemed an original and all of which taken together shall constitute one and the same instrument.
21. Recording. Landlord and Tenant agree that this Lease will be recorded in the Public Records of Boulder County, Colorado. All of the provisions of this Lease shall be deemed to run with the land and shall be construed to be “conditions” as well as “covenants” as though the words specifically expressing or imparting conditions and covenants were used in each separate provision.

IN WITNESS WHEREOF, the parties have executed this Lease on the date set forth above.

[Signature pages follow]

TENANT:

BOULDER PUBLIC LIBRARY DISTRICT

By: _____
Katharine (Joni) Teter, President
Board of Trustees

Attest: _____
Sylvia T. Wirba, Secretary

Approved as to Form:

Kim J. Seter, CO Atty No. 14294

STATE OF COLORADO)
) ss.
COUNTY OF BOULDER)

The foregoing instrument was acknowledged before me this _____ day of _____, 20__, by Katharine (Joni) Teter as President of the Boulder Public Library District Board of Trustees.

Witness my hand and official seal.

My commission expires: _____

[SEAL]

Notary Public

[The remainder of this page is intentionally blank.]

LANDLORD:

**CITY OF BOULDER,
a Colorado home rule municipality**

By: _____
Nuria Rivera-Vandermyde, City Manager

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney's Office

Exhibit A
Legal Description

East 40 feet of Lot 9, Block 150, in the City of Boulder, according to the recorded plat thereof.

City Owned Fiber Optic Cable and Equipment

DOWN

RAMP
DOWN

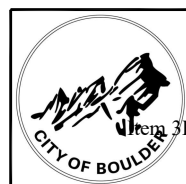
Network Equipment Room

COB Assets

-Fiber termination panel

-COB singlemode fiber cable to Pine St

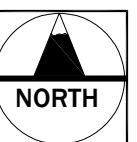
**NETWORK
EQUIPMENT
104 SF**



CARNEGIE LIBRARY • NETWORK EQUIPMENT ROOM

1125 PINE STREET

SCALED TO FIT



Attachment D – Form lease for the Carnegie
Library for Local History located at 1125 Pine St.

Exhibit C

**Requirements for Contractors Performing Any Improvements to the
Premises**

I. INSURANCE POLICIES

Contractor shall procure and maintain, at its own cost, a policy or policies of insurance sufficient to insure against all liability, claims, demands, and other obligations assumed by Contractor pursuant to this Section A. Contractor shall not be relieved of any liability, claims, demands, or other obligations assumed pursuant to this Section I by reason of its failure to procure or maintain insurance, or by reason of its failure to procure or maintain insurance in sufficient amounts, durations, or types.

Contractor shall procure and maintain and, if applicable, shall cause any subcontractor of Contractor to procure and maintain the insurance coverage listed below. Such coverage shall be procured and maintained with forms and insurers acceptable to the City of Boulder, Colorado (“City”). All coverage shall be continuously maintained to cover all liability, claims, demands and other obligations assumed by Contractor pursuant to this Section I for the statutes of limitation and repose. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage.

Contractor shall obtain and maintain the minimum insurance coverages set forth below. By requiring such minimum insurance, the City shall not be deemed or construed to have assessed the risk that may be applicable to Contractor. Contractor shall assess its own risks and if it deems appropriate and / or prudent, maintain higher limits and / or broader coverages.

A. Insurance Coverages

1. *Commercial General Liability – ISO CG 00001 or equivalent.*

Coverage to include:

- Premises and Operations
- Explosions, Collapse and Underground Hazards
- Personal / Advertising Injury
- Products / Completed Operations
- Liability assumed under an Insured Contract (including defense costs assumed under contract)
- Broad Form Property Damage
- Independent Contractors
- Designated Construction Projects(s) General Aggregate Limit, ISO CG 2503 (1997 Edition)
- Additional Insured—Owners, Lessees or Contractors Endorsement, ISO Form 2010 (2004 Edition or equivalent)
- Additional Insured—Owners, Lessees or Contractors Endorsement, Completed Operations, ISO CG 2037 (7/2004 Edition or equivalent)

Exhibit C Attachment D – Form lease for the Carnegie
Requirements for Contractors Performing Any Improvements to the
Premises Library for Local History located at 1125 Pine St.

- The following exclusions are absolutely prohibited and shall not be included in Contractor's policy if applicable to the work:
 - No exclusion for "third-party action over suits" or any similar restriction of coverage applicable to claims brought against others by an employee of Contractor or its Subcontractors
 - No damage to Work performed by Contractor exclusion (CG 22 94 or similar)
 - No residential or habitation exclusion or coverage limitation
 - No exclusion for EIFS (Exterior Insulation Finish System) or any similar exclusion applicable to the Work
 - No exclusion for subsidence, which is specifically prohibited for any work involving excavation, soil stabilization, earth retention, concrete, structural steel, landscaping, waterproofing, fire protection and plumbing.
 - No exclusion for low-level radioactive isotopes

2. ***Automobile Liability including all:***

- Owned Vehicles
- Non-Owned Vehicles
- Hired Vehicles

Automobile Liability Coverage endorsements CA9948 and MCS-90 are required if Contractor is transporting any type of hazardous materials.

3. ***Excess/Umbrella Liability***

- Excess of Commercial General Liability, Automobile Liability, and Employers' Liability.
- Coverages should be as broad as primary.
- The City reserves the right to require higher limits.

4. ***Workers' Compensation***

- Statutory Benefits (Coverage A)
- Employers Liability (Coverage B)

5. ***Installation Floater***

- "All Risk"
- Faulty workmanship
- Labor costs to repair damaged work

6. ***Contractors Pollution Liability/Environmental Impairment Liability***

The City requires this coverage whenever work at issue under this contract involves potential pollution risk to the environment or losses caused by pollution conditions including but not limited to asbestos, building enclosure systems, plumbing, roofing, heating, ventilation, air conditioning, drywall, insulation, building foundations, or any work which includes Microbial Matter, Mold, Fungi, or Bacteria and any work which will involve the use of hazardous materials that may arise from the operations of Contractor (and its subcontractors) described in Contractor's bid and

Exhibit C Attachment D – Form lease for the Carnegie
Requirements for Contractors Performing Any Improvements to the
Premises Library for Local History located at 1125 Pine St.

specifications. Policy shall cover Contractor's completed operations. Such coverage shall be on an occurrence basis and include:

- Bodily Injury, sickness, disease, mental anguish or shock sustained by any person, including death.
- Property Damage including natural resource damages, physical injury to or destruction of tangible property including resulting loss of use, cleanup costs, and the loss of use of tangible property that has not been physically injured or destroyed.
- Defense, including costs, charges and expenses incurred in the investigation, adjustment or defense of claims for such compensatory damages.
- Cleanup costs, removal, storage, disposal, and or use of the pollutant; and defense, including costs and expenses incurred in the investigation, defense, or settlement of claims.
- Coverage shall apply to sudden and gradual pollution conditions resulting from the escape of release of smoke, vapors, fumes, acids, alkalis, toxic chemicals, liquids, or gases, natural gas, waste materials, or other irritants, contaminants, or pollutants (including asbestos).

7. (If applicable) Professional Liability Policy

For Contractor and any subcontractor of any tier that is providing any professional services, including but not limited to: design, architecture, engineering, testing, surveying, or design/build services, temporary engineering, engineered excavations and shoring systems, post-tension supply, structured steel, specialized millwork that is performance specified, roofing or waterproofing systems, curtainwall, mechanical, fire protection systems, electrical, fire alarm systems.

Contractor and/or all subcontractors providing professional services shall provide and maintain Professional Liability Insurance coverage. Coverage shall include coverage for contractual liability. Contractor and subcontractors shall maintain for the statute of repose, following completion of the project. Any erosion of insurance limits required will be reinstated to the required amounts prior to commencing the contracted work and if during the contracted period claims are made against the design professional's policy the necessary reduction of available limits will be repurchased to the contractually required amounts.

B. Limits Required

Contractor shall carry the following limits of liability as required below:

1. Commercial General Liability

General Aggregate	\$5,000,000
Products/Completed Operations	\$5,000,000
Aggregate	
Each Occurrence Limit	\$2,000,000
Personal/Advertising Injury	\$1,000,000
Fire Damage (Any One Fire)	\$ 50,000

Exhibit C Attachment D – Form lease for the Carnegie
Requirements for Contractors Performing Any Improvements to the
Premises Library for Local History located at 1125 Pine St.

Medical Payments (Any One Person) \$ 5,000

2. *Excess/Umbrella Liability (as needed)*

General Aggregate \$5,000,000
Limit

Products/Completed Operations \$5,000,000
Aggregate

3. *Automobile Liability*

Bodily Injury/Property Damage (Each Accident) \$3,000,000

4. *Workers' Compensation*

Coverage A (Workers' Compensation) Statutory

Coverage B (Employers Liability)

Each Accident \$ 2,000,000

Disease Ea. Employee \$ 2,000,000

Disease-Policy Limit \$ 2,000,000

NOTE: Independent contractors that do not carry Workers' Compensation are required to complete an independent contractor's form provided by the City.

5. *Installation Floater/Builder's Risk*

For materials and equipment to be installed:

Shall be written for 100% of the completed value (replacement cost basis)

Deductible maximum is \$10,000.00

Waiver of Subrogation applies on Installation Floater/Builder's Risk

6. *Contractors Pollution Liability/Environmental Impairment Liability (as needed)*

Per Loss \$1,000,000

Aggregate \$1,000,000

If Contractor's work includes remediation of asbestos or mold, then the minimum limits required shall be:

Each Occurrence \$ 5,000,000

Aggregate \$ 5,000,000

Maximum allowable deductible, to be paid by Contractor \$ 25,000

7. *Professional Liability*

Each Claim \$ 1,000,000

Aggregate \$ 1,000,000

Maximum allowable deductible, to be paid by Contractor \$ 25,000

II. ADDITIONAL INSURANCE REQUIREMENTS

Exhibit C Attachment D – Form lease for the Carnegie
Requirements for Contractors Performing Any Improvements to the
Premises Library for Local History located at 1125 Pine St.

Failure of Contractor to fully comply with these requirements during the term of this Contract may be considered a material breach of contract and may be cause for immediate termination of this Contract at the option of the City.

- A. All insurers must be licensed or approved to do business within the State of Colorado, and unless otherwise specified, all policies must be written on a per occurrence basis (excepting Professional Liability).
- B. Contractor shall name **“The City of Boulder, its elected and appointed officials, directors, officers, employees, agents and volunteers” as additional insured** (“Additional Insured”) where commercially available.
- C. All policies of insurance shall be written on a primary basis, non-contributory with any other insurance coverages and/or self-insurance carried by the City.
- D. A Separation of Insureds Clause must be included in general liability policies.
- E. Contractor shall advise the City in the event any general aggregate or other aggregate limits are reduced below the required per occurrence limit. At its own expense, Contractor will reinstate the aggregate limits to comply with the minimum requirements and shall furnish to the City a new certificate of insurance showing such coverage is in force.
- F. Contractor’s insurance carrier shall possess a minimum A.M. Best’s Insurance Guide rating of A- VI.
- G. Commercial General Liability Completed Operations policies must be kept in effect for the statute of repose.
- H. Contractor’s Pollution Liability policies must be kept in effect for the statute of repose.
- I. Contractor, or Contractor’s insurance broker, shall notify the City of any cancellation or reduction in coverage or limits of any insurance within seven (7) days of receipt of insurer’s notification to that effect. Contractor shall forthwith obtain and submit proof of substitute insurance in the event of expiration or cancellation of coverage.
- J. **The Certificate Holder shall be identified as: City of Boulder, P.O. Box 791, Boulder, CO 80306.**
- K. Contractor is responsible for any damage or loss to its own vehicles or equipment.
- L. The City and Contractor shall cooperate with each other in the collection of any insurance proceeds which may be payable in the event of any loss, including the execution and delivery of any proof of loss or other actions required to effect recovery.
- M. Contractor and its insurers shall waive subrogation in favor of Additional Insured parties.
- N. Contractor shall not be relieved of any liability, claims, demands, or other obligations assumed pursuant to this contract by reason of its failure to procure or maintain insurance or by reason of its failure to procure or maintain insurance in sufficient amounts, durations or types.

Exhibit C Attachment D – Form lease for the Carnegie
Requirements for Contractors Performing Any Improvements to the
Premises Library for Local History located at 1125 Pine St.

C. INSURANCE TERM

All required insurance in this Exhibit C, except builder's risk, shall remain in effect for the statute of repose.

D. INDEMNIFICATION

Contractor shall defend, indemnify and hold harmless the City, its directors, officers, employees, elected and appointed officials and agents from and against all claims, damages, losses, obligations, demands, assessments, fines, penalties (whether civil or criminal), liabilities, costs, expenses, bodily and other personal injuries, damage to tangible property, of any kind or nature suffered or incurred by the City directly or indirectly arising from or related to: (i) any act or omission by contractor its employees, agents, subcontractors or its representatives or other parties for which contractor may be legally responsible in the performance of contractor's obligations under this contract, or (ii) any material breach in a representation, warranty, covenant or obligation of contractor contained in this contract. . These shall include without limitation reasonable attorneys' fees and costs of defense. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this Section D.

E. CITY SALES AND USE TAX

Contractor is deemed to be the consumer of the materials used in all construction projects in Boulder. Therefore, all tangible personal property used in the construction project is subject to the current City sales or use tax pursuant to Section 3-2-2, B.R.C. 1981. The City sales tax is imposed on all sales, rentals, leases and taxable services used in the construction project. The City's construction use tax is imposed upon tangible personal property and taxable services purchased for construction use in the City whether purchased inside or outside of the City. Both non-residents and residents of the City engaged in a construction project in the City are liable to pay the City construction use tax. No credit will be given for taxes paid to another municipality. The general contractor is liable for the payment of the City's sales and use tax for the total project including tax due by its subcontractors.

LIBRARY LEASE

CITY OF BOULDER

“LANDLORD”

WITH

BOULDER PUBLIC LIBRARY DISTRICT

“TENANT”

BUILDING: GEORGE REYNOLDS BRANCH LIBRARY

DATED: _____

LIBRARY LEASE

THIS LIBRARY LEASE (“**Lease**”) is made and entered into as of this _____ day of _____, 2023, (“**Effective Date**”) by and between the City of Boulder, a Colorado home rule municipality, (“**Landlord**”), and the Boulder Public Library District (“**Tenant**”). In consideration of the payment of Rent (as defined below); all costs, charges, and expenses which Tenant assumes, agrees, or is obligated to pay to Landlord pursuant to this Lease (“**Additional Rent**”); and the performance of the promises by Tenant set forth below, Landlord hereby leases to Tenant, and Tenant hereby accepts, the Premises (as defined below), subject to the terms and provisions set forth in this Lease. Landlord and Tenant covenant and agree as follows:

1. Premises. Landlord is the owner of certain real estate legally described as set forth in **Exhibit A**, Boulder County, Colorado (“**Real Estate**”). The Real Estate is improved with a building (“**Premises**”). Landlord hereby leases and demises to Tenant the Premises located at 3595 Table Mesa Dr., Boulder, Colorado as of the date first provided under Paragraph 2., Term and Termination.
 - a. Landlord retains access to and excludes from the Premises that portion that is necessary and currently utilized for the City of Boulder-owned roof-mounted traffic control communication antenna; and City of Boulder-owned fiber optic cable and the IT BRAN fiber optic cable and equipment identified on **Exhibit B** if any, free of charge.
 - b. Tenant will provide access cards or keys necessary for the 24-hour access to and operation of the communications antenna and fiber optic cable and equipment identified in paragraph 1.a, above, free of charge.
2. Term and Termination. Landlord Leases the Premises to Tenant for a term of twenty (20) years, commencing at one minute after midnight on the _____ day of _____, 2024, and terminating one minute after midnight on the _____ day of _____, 2045 (the “**Term**”), unless sooner terminated in accordance with the provisions of this Lease.
 - a. Landlord and Tenant agree to meet in no less than five-year intervals to determine whether this Lease should be terminated by mutual agreement.
 - b. Tenant has the absolute right to terminate this Lease on its anniversary date every third year without consequences upon ninety (90) days written notice to Landlord.
3. Rent. Tenant shall pay to Landlord for the use and occupancy of the Premises during the Term a fixed annual rental rate of One Dollar (\$1.00) (“**Rent**”), payable by Tenant in a lump sum payment of Twenty Dollars (\$20.00) on the Effective Date hereof the receipt and sufficiency of which is hereby acknowledged.
4. Use. The Premises shall be used for the sole purpose of a public library and associated activities (which may include subleases to nonprofit entities).

5. Utility Charges. Tenant shall establish accounts for all heat, light, power, telephone, water, sewerage, janitorial services, garbage disposal, and other utilities and services it deems necessary for the operation of a public library (“**Utilities and Services**”) in its own name, and shall pay directly to the appropriate supplier, the cost of all Utilities and Services as the same become due and payable.
6. Condition of Premises. Tenant is familiar with the physical condition of the Premises. Tenant is leasing the Premises “as is,” in its current condition, and hereby expressly disclaims all warranties.
7. Maintenance and Repairs. Landlord will provide routine maintenance and repair services and on-call services for a period not to exceed 4 months and work with and assist Tenant’s facilities maintenance personnel. Tenant shall reimburse Landlord for all such services at cost. Thereafter, Tenant shall have sole maintenance and repair responsibility for the interior and exterior of the Premises, including all costs and expenses relative thereto. Tenant shall promptly and diligently repair, restore, replace, or remedy all damage to or destruction of all or any part of the Premises. Landlord shall not be required to furnish any services or facilities or to make any repairs or alterations of any kind in or on the Premises, all such matters being the sole duty and responsibility of Tenant. Tenant may also demolish, rebuild, reconfigure and/or remodel any interior spaces of the Premises without consultation with Landlord so long as Tenant deems it necessary or useful for its purposes. Exterior demolition, reconstruction or remodeling must be approved by Landlord. Unless otherwise agreed to by the Landlord, Tenant shall require any contractor performing work on the Premises to procure and maintain at its own cost the insurance coverage and other contract requirements set forth in **Exhibit C**.
8. Injury or Damage. Landlord shall not be responsible to the Tenant for loss of property in or from the Premises, or for any damage done to furniture, fixtures, equipment, collections, or other effects in the Premises, nor shall the Landlord be liable for any injury or damage, either proximate or remote, occurring through or caused by any repairs, alterations, or accident occurring in or to the Premises, nor shall Landlord be liable for any injury or damage occasioned by defective electrical wiring or the breakage or stoppage of the plumbing or sewerage upon the Premises, whether such breakage or stoppage results from freezing, flood, or other casualty.
9. Insurance. During the Term of this Lease, Tenant, at its sole cost and expense, shall continuously maintain the types and amounts of insurance coverages as approved by the city manager, the city attorney, and City of Boulder’s risk manager.
10. Default. Tenant shall be in default of this Lease if at any time the Premises cease to be used for public library purposes. Together with the foregoing, if either party defaults in the performance of any of its respective covenants, conditions, agreements, or undertakings contained in this Lease (each, an “**Event of Default**”) and such Event of Default continues for thirty (30) days (subject to a reasonable extension if a cure is not practical during such period and if the defaulting party has commenced cure and is diligently pursuing same) after written notice of such default from the non-defaulting party, then the non-defaulting

party may cause such default to be remedied in such manner and by such means as the non-defaulting party may deem proper, and the cost and expense thereof paid or incurred, including reasonable attorney fees and costs, shall be due and payable within thirty (30) days of presentment of an invoice for such services. Notwithstanding the foregoing, the parties shall have the option to seek all and any remedy available at law or in equity.

11. Environmental Compliance.

- a. Tenant's Responsibility. Tenant covenants and agrees that the Premises will, at all times during its use or occupancy thereof, be kept and maintained so as to comply with all now existing or hereafter enacted or issued statutes, laws, rules, ordinances, orders, permits, and regulations of all state, federal, local, and other governmental and regulatory authorities, agencies, and bodies applicable to the Premises, pertaining to environmental matters, or regulating, prohibiting, or otherwise having to do with asbestos and all other toxic, radioactive, or hazardous wastes or materials including, but not limited to, the Federal Clean Air Act, the Federal Water Pollution Control Act, and the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as from time to time amended (all hereafter collectively called "**Laws**"). Tenant shall not cause or permit any hazardous material to be brought upon, kept, or used in, or about the Premises by Tenant, its agents, employees, contractors, or invitees, except any hazardous material which is necessary for the usual and customary operation of a public library.
- b. Tenant's Liability. If Tenant breaches the obligations stated in the preceding paragraph, or if the presence of hazardous materials otherwise arises out of Tenant's use of the Premises, Tenant shall be solely responsible for all costs incurred in connection with any investigation of site conditions and any clean-up, remedial, removal, or restoration work required by any federal, state, or local governmental agency. Without limiting the foregoing, any hazardous material is released on the Premises, Tenant shall promptly take all actions at its sole cost and expense which are necessary to return the Premises to the condition existing prior to the introduction of such hazardous material. Except to any extent prohibited by law, Tenant shall hold Landlord free, harmless, and indemnified from any penalty, fine, claim, demand, liability, cost, or charge whatsoever which Landlord shall incur, or which Landlord would otherwise incur, by reason of Tenant's failure to comply with this section; including, but not limited to: (i) the cost of bringing the Premises into compliance with all laws; (ii) the reasonable cost of all appropriate tests and examinations of the Premises to confirm that the Premises have been brought into compliance with all Laws; and (iii) the reasonable fees and expenses of Landlord's attorneys, engineers, and consultants incurred by Landlord in enforcing and confirming compliance with this Section.
- c. Covered Property. For the purposes of this Section, the Premises shall include the Real Estate covered by this Lease, all improvements placed on the Premises by Tenant, and all personal property and fixtures located on or used in connection with the Premises.

- d. Liability After Termination or Expiration of Lease. Landlord and its engineers, technicians, and consultants (collectively, “**Auditors**”) may, from time to time as Landlord deems appropriate, during Tenant’s usual business hours and after reasonable notice to Tenant, conduct periodic tests and examinations (“**Audits**”) of the Premises to confirm and monitor Tenant’s compliance with this Section. Such Audits shall be conducted in such manner as to minimize the interference with Tenant’s permitted use; however, in all cases, the Audits shall be of such nature and scope as shall be reasonably required by then existing technology to confirm Tenant’s compliance with this Section. Tenant shall fully cooperate with Landlord and its Auditors in the conduct of such Audits. The cost of such Audits shall be paid by Landlord unless an Audit shall disclose a material failure of Tenant to comply with this Section, in which case the cost of such Audit, and the cost of all subsequent Audits made during the Term and within thirty (30) days thereafter (not to exceed two (2) such Audits per Lease year), shall be paid for by Tenant within fifteen (15) days of receipt of invoices from Landlord.
 - e. Liability After Termination of Lease. The covenants contained in this Section shall survive the expiration or termination of this Lease and shall continue for so long as the parties hereto and their successors and assigns may be subject to any expense, liability, charge, penalty, or obligation against which the Tenant has agreed to indemnify the Landlord under this Section.
12. Relationship. The parties’ relationship is not that of joint venturers or partners but is a relationship of landlord and tenant as defined in this Lease.
13. CGIA. Each party to this Lease is a “public entity” under the Colorado Governmental Immunity Act, §§ 24-10-101, *et seq.*, C.R.S., as amended (“**CGIA**”). The parties acknowledge and agree that the Landlord and the Tenant, their respective elected and appointed officials, officers, directors, agents, and employees, are relying on, and do not waive or intend to waive by any provision of this Lease, the monetary limitations or any other rights, immunities and protections provided by the CGIA.
14. Liens. The Tenant will not permit or allow any mechanic’s, materialman’s, or other lien to be placed against any of the Premises in connection with work or services claimed to have been performed for, or materials claimed to have been furnished to the Tenant. If any such lien is recorded, the Tenant will cause the same to be released of record.
15. Responsibility. Tenant will be responsible for the acts, omissions, or conduct of its own respective officers, employees, agents, contractors, and consultants to the extent arising out of the performance of its obligations under this Lease or with respect to its respective use of the Premises.
16. Compliance with Laws. Tenant shall cause all activities within the Premises to be performed in compliance with all applicable laws, rules, regulations, orders and other requirements of any public jurisdiction.

17. Appropriations. Pursuant to § 29-1-110, C.R.S., any financial obligations of the parties express or implied by this Lease are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available on an annual basis by each party's respective governing body.
18. Notice of Communications. Any notice pursuant to the terms and conditions of this Lease shall be in writing and shall be hand-delivered or sent by registered or certified mail, return receipt requested, postage prepaid, to the addresses of the parties herein set forth. All notices so given shall be considered effective seventy-two (72) hours after deposit in the United States Postal Service mail with the proper address as set forth below. Either party by notice so given may change the address to which future notices shall be sent.

To the District:

Boulder Public Library District
Attn: Board President and District Manager
1001 Arapahoe Ave
Boulder, CO 80302

With a copy to:

Kim J. Seter, Esq.
Seter & Vander Wall, PC
7400 E. Orchard Road, Suite 3300
Greenwood Village, CO 80111
and: kseter@svwpc.com

To the City:

City of Boulder
Attn: City Manager
P. O. Box 791
Boulder, CO 80306
(303) 441-3090
and: CMOAdmin@bouldercolorado.gov

With a copy to:

City of Boulder
Attn: City Attorney
P. O. Box 791
Boulder, CO 80306
(303) 441-3020
and: CAOAdmin@bouldercolorado.gov

19. Integration and Entire Agreement. This Lease represents the entire agreement between the parties with respect to this Lease and supersedes all prior discussions, negotiations, understandings, or agreements relating to this Lease, all of which are merged herein.
20. Counterparts. This Lease may be executed in several counterparts, or electronic PDF, each of which shall be deemed an original and all of which taken together shall constitute one and the same instrument.
21. Recording. Landlord and Tenant agree that this Lease will be recorded in the Public Records of Boulder County, Colorado. All of the provisions of this Lease shall be deemed to run with the land and shall be construed to be “conditions” as well as “covenants” as though the words specifically expressing or imparting conditions and covenants were used in each separate provision.

IN WITNESS WHEREOF, the parties have executed this Lease on the date set forth above.

[Signature pages follow]

TENANT:

BOULDER PUBLIC LIBRARY DISTRICT

By: _____
Katharine (Joni) Teter, President
Board of Trustees

Attest: _____
Sylvia T. Wirba, Secretary

Approved as to Form:

Kim J. Seter, CO Atty No. 14294

STATE OF COLORADO)
) ss.
COUNTY OF BOULDER)

The foregoing instrument was acknowledged before me this _____ day of _____, 20__, by Katharine (Joni) Teter as President of the Boulder Public Library District Board of Trustees.

Witness my hand and official seal.

My commission expires: _____

[SEAL]

Notary Public

[The remainder of this page is intentionally blank.]

LANDLORD:

**CITY OF BOULDER,
a Colorado home rule municipality**

By: _____
Nuria Rivera-Vandermyde, City Manager

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney's Office

Beginning at a point which is the intersection of the Northerly line of Table Mesa Drive and the Westerly line of Stanford Avenue at the most Easterly corner of Outlot "B" Table Mesa Addition, a subdivision of a part of the City of Boulder, County of Boulder, State of Colorado in the NW1/4 Section 8, T.1S, R.70W of the 6th P.M. Thence N 29°13'10" W. 133.43 feet along the Westerly line of said Stanford Avenue: Thence at right angles to said Westerly line of Stanford Avenue S 60°46'50" W 225 feet on a line parallel to the Northerly line of Table Mesa Drive: Thence S 29°13'10" E 133.43 feet on a line parallel to the Westerly line of Stanford Avenue to a point on the Northerly line of Table Mesa Drive: Thence N 60°46'50" E 225 Feet along said Northerly line of Table Mesa Drive to the point of Beginning: except that portion at the most Easterly corner of said Outlot "B" dedicated by a ten foot corner radius.

Exhibit B
Portions of the Premises Retained by Landlord for Specific Purposes

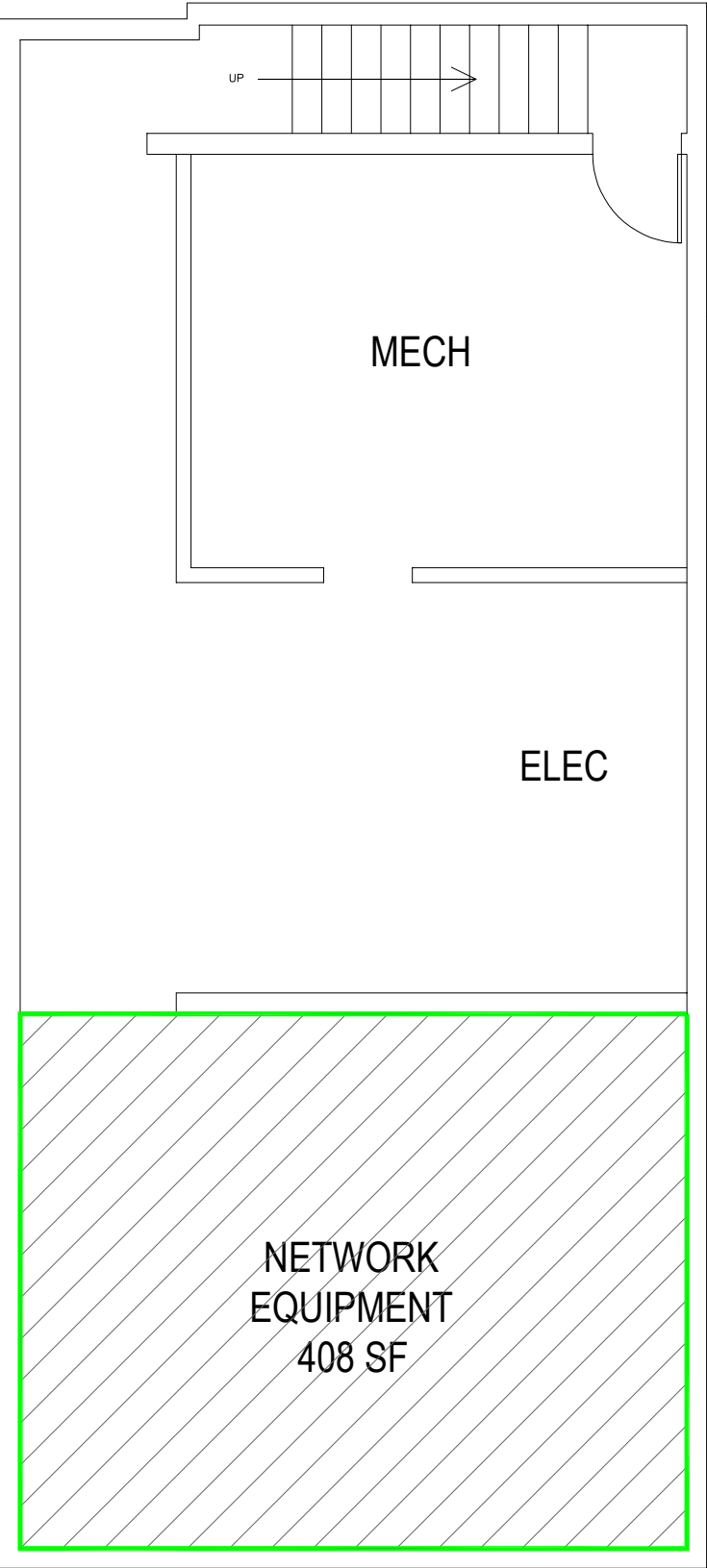
- Basement Network Equipment Room

COB Assets

 - Rack-mounted Ethernet switch, UPS, and fiber termination panels
 - 19-inch wall mounted equipment rack
 - COB singlemode fiber cables to Table Mesa Dr:
 - Lateral cable from BRAN fiber network
 - Lateral cable from BVSD fiber network
 - Lateral cable from COB Community Broadband fiber network
 - Fiber patch cables
 - Copper cabling to roof-mounted COB video camera for Bear Creek
 - Copper cabling to Table Mesa Dr for COB traffic control systems

BPLD infrastructure

 - 8 RU in existing 2-post 19-inch floor-mounted equipment rack for COB Ethernet switch, UPS, and fiber termination panels
 - 120V, 20A electrical outlet for COB UPS



I. INSURANCE POLICIES

Contractor shall procure and maintain, at its own cost, a policy or policies of insurance sufficient to insure against all liability, claims, demands, and other obligations assumed by Contractor pursuant to this Section A. Contractor shall not be relieved of any liability, claims, demands, or other obligations assumed pursuant to this Section I by reason of its failure to procure or maintain insurance, or by reason of its failure to procure or maintain insurance in sufficient amounts, durations, or types.

Contractor shall procure and maintain and, if applicable, shall cause any subcontractor of Contractor to procure and maintain the insurance coverage listed below. Such coverage shall be procured and maintained with forms and insurers acceptable to the City of Boulder, Colorado (“City”). All coverage shall be continuously maintained to cover all liability, claims, demands and other obligations assumed by Contractor pursuant to this Section I for the statutes of limitation and repose. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage.

Contractor shall obtain and maintain the minimum insurance coverages set forth below. By requiring such minimum insurance, the City shall not be deemed or construed to have assessed the risk that may be applicable to Contractor. Contractor shall assess its own risks and if it deems appropriate and / or prudent, maintain higher limits and / or broader coverages.

A. Insurance Coverages

1. ***Commercial General Liability – ISO CG 00001 or equivalent.***

Coverage to include:

- Premises and Operations
- Explosions, Collapse and Underground Hazards
- Personal / Advertising Injury
- Products / Completed Operations
- Liability assumed under an Insured Contract (including defense costs assumed under contract)
- Broad Form Property Damage
- Independent Contractors
- Designated Construction Projects(s) General Aggregate Limit, ISO CG 2503 (1997 Edition)
- Additional Insured—Owners, Lessees or Contractors Endorsement, ISO Form 2010 (2004 Edition or equivalent)
- Additional Insured—Owners, Lessees or Contractors Endorsement, Completed Operations, ISO CG 2037 (7/2004 Edition or equivalent)

- The following exclusions are absolutely prohibited and shall not be included in Contractor's policy if applicable to the work:
 - No exclusion for "third-party action over suits" or any similar restriction of coverage applicable to claims brought against others by an employee of Contractor or its Subcontractors
 - No damage to Work performed by Contractor exclusion (CG 22 94 or similar)
 - No residential or habitation exclusion or coverage limitation
 - No exclusion for EIFS (Exterior Insulation Finish System) or any similar exclusion applicable to the Work
 - No exclusion for subsidence, which is specifically prohibited for any work involving excavation, soil stabilization, earth retention, concrete, structural steel, landscaping, waterproofing, fire protection and plumbing.
 - No exclusion for low-level radioactive isotopes

2. ***Automobile Liability including all:***

- Owned Vehicles
- Non-Owned Vehicles
- Hired Vehicles

Automobile Liability Coverage endorsements CA9948 and MCS-90 are required if Contractor is transporting any type of hazardous materials.

3. ***Excess/Umbrella Liability***

- Excess of Commercial General Liability, Automobile Liability, and Employers' Liability.
- Coverages should be as broad as primary.
- The City reserves the right to require higher limits.

4. ***Workers' Compensation***

- Statutory Benefits (Coverage A)
- Employers Liability (Coverage B)

5. ***Installation Floater***

- "All Risk"
- Faulty workmanship
- Labor costs to repair damaged work

6. ***Contractors Pollution Liability/Environmental Impairment Liability***

The City requires this coverage whenever work at issue under this contract involves potential pollution risk to the environment or losses caused by pollution conditions including but not limited to asbestos, building enclosure systems, plumbing, roofing, heating, ventilation, air conditioning, drywall, insulation, building foundations, or any work which includes Microbial Matter, Mold, Fungi, or Bacteria and any work which will involve the use of hazardous materials that may arise from the operations of Contractor (and its subcontractors) described in Contractor's bid and

specifications. Policy shall cover Contractor's completed operations. Such coverage shall be on an occurrence basis and include:

- Bodily Injury, sickness, disease, mental anguish or shock sustained by any person, including death.
- Property Damage including natural resource damages, physical injury to or destruction of tangible property including resulting loss of use, cleanup costs, and the loss of use of tangible property that has not been physically injured or destroyed.
- Defense, including costs, charges and expenses incurred in the investigation, adjustment or defense of claims for such compensatory damages.
- Cleanup costs, removal, storage, disposal, and or use of the pollutant; and defense, including costs and expenses incurred in the investigation, defense, or settlement of claims.
- Coverage shall apply to sudden and gradual pollution conditions resulting from the escape or release of smoke, vapors, fumes, acids, alkalis, toxic chemicals, liquids, or gases, natural gas, waste materials, or other irritants, contaminants, or pollutants (including asbestos).

7. (If applicable) Professional Liability Policy

For Contractor and any subcontractor of any tier that is providing any professional services, including but not limited to: design, architecture, engineering, testing, surveying, or design/build services, temporary engineering, engineered excavations and shoring systems, post-tension supply, structured steel, specialized millwork that is performance specified, roofing or waterproofing systems, curtainwall, mechanical, fire protection systems, electrical, fire alarm systems.

Contractor and/or all subcontractors providing professional services shall provide and maintain Professional Liability Insurance coverage. Coverage shall include coverage for contractual liability. Contractor and subcontractors shall maintain for the statute of repose, following completion of the project. Any erosion of insurance limits required will be reinstated to the required amounts prior to commencing the contracted work and if during the contracted period claims are made against the design professional's policy the necessary reduction of available limits will be repurchased to the contractually required amounts.

B. Limits Required

Contractor shall carry the following limits of liability as required below:

1. Commercial General Liability

General Aggregate	\$5,000,000
Products/Completed Operations	\$5,000,000
Aggregate	
Each Occurrence Limit	\$2,000,000
Personal/Advertising Injury	\$1,000,000
Fire Damage (Any One Fire)	\$ 50,000

Exhibit C
Attachment E – Form lease for the George Reynolds
Requirements for Contractors Performing Any Improvements to the Premises

Medical Payments (Any One Person)	\$ 5,000
2. <i>Excess/Umbrella Liability (as needed)</i>	
General Aggregate Limit	\$5,000,000
Products/Completed Operations Aggregate	\$5,000,000
3. <i>Automobile Liability</i>	
Bodily Injury/Property Damage (Each Accident)	\$3,000,000
4. <i>Workers' Compensation</i>	
Coverage A (Workers' Compensation)	Statutory
Coverage B (Employers Liability)	
Each Accident \$	2,000,000
Disease Ea. Employee \$	2,000,000
Disease-Policy Limit \$	2,000,000

NOTE: Independent contractors that do not carry Workers' Compensation are required to complete an independent contractor's form provided by the City.

5. <i>Installation Floater/Builder's Risk</i>	
For materials and equipment to be installed:	
Shall be written for 100% of the completed value (replacement cost basis)	
Deductible maximum is \$10,000.00	
Waiver of Subrogation applies on Installation Floater/Builder's Risk	
6. <i>Contractors Pollution Liability/Environmental Impairment Liability (as needed)</i>	
Per Loss	\$1,000,000
Aggregate	\$1,000,000
If Contractor's work includes remediation of asbestos or mold, then the minimum limits required shall be:	
Each Occurrence	\$ 5,000,000
Aggregate	\$ 5,000,000
Maximum allowable deductible, to be paid by Contractor	\$ 25,000
7. <i>Professional Liability</i>	
Each Claim	\$ 1,000,000
Aggregate	\$ 1,000,000
Maximum allowable deductible, to be paid by Contractor	\$ 25,000

II. ADDITIONAL INSURANCE REQUIREMENTS

Failure of Contractor to fully comply with these requirements during the term of this Contract may be considered a material breach of contract and may be cause for immediate termination of this Contract at the option of the City.

- A. All insurers must be licensed or approved to do business within the State of Colorado, and unless otherwise specified, all policies must be written on a per occurrence basis (excepting Professional Liability).
- B. Contractor shall name **“The City of Boulder, its elected and appointed officials, directors, officers, employees, agents and volunteers” as additional insured** (“Additional Insured”) where commercially available.
- C. All policies of insurance shall be written on a primary basis, non-contributory with any other insurance coverages and/or self-insurance carried by the City.
- D. A Separation of Insureds Clause must be included in general liability policies.
- E. Contractor shall advise the City in the event any general aggregate or other aggregate limits are reduced below the required per occurrence limit. At its own expense, Contractor will reinstate the aggregate limits to comply with the minimum requirements and shall furnish to the City a new certificate of insurance showing such coverage is in force.
- F. Contractor’s insurance carrier shall possess a minimum A.M. Best’s Insurance Guide rating of A- VI.
- G. Commercial General Liability Completed Operations policies must be kept in effect for the statute of repose.
- H. Contractor’s Pollution Liability policies must be kept in effect for the statute of repose.
- I. Contractor, or Contractor’s insurance broker, shall notify the City of any cancellation or reduction in coverage or limits of any insurance within seven (7) days of receipt of insurer’s notification to that effect. Contractor shall forthwith obtain and submit proof of substitute insurance in the event of expiration or cancellation of coverage.
- J. **The Certificate Holder shall be identified as: City of Boulder, P.O. Box 791, Boulder, CO 80306.**
- K. Contractor is responsible for any damage or loss to its own vehicles or equipment.
- L. The City and Contractor shall cooperate with each other in the collection of any insurance proceeds which may be payable in the event of any loss, including the execution and delivery of any proof of loss or other actions required to effect recovery.
- M. Contractor and its insurers shall waive subrogation in favor of Additional Insured parties.
- N. Contractor shall not be relieved of any liability, claims, demands, or other obligations assumed pursuant to this contract by reason of its failure to procure or maintain insurance or by reason of its failure to procure or maintain insurance in sufficient amounts, durations or types.

C. INSURANCE TERM

All required insurance in this Exhibit D, except builder's risk, shall remain in effect for the statute of repose.

D. INDEMNIFICATION

Contractor shall defend, indemnify and hold harmless the City, its directors, officers, employees, elected and appointed officials and agents from and against all claims, damages, losses, obligations, demands, assessments, fines, penalties (whether civil or criminal), liabilities, costs, expenses, bodily and other personal injuries, damage to tangible property, of any kind or nature suffered or incurred by the City directly or indirectly arising from or related to: (i) any act or omission by contractor its employees, agents, subcontractors or its representatives or other parties for which contractor may be legally responsible in the performance of contractor's obligations under this contract, or (ii) any material breach in a representation, warranty, covenant or obligation of contractor contained in this contract. . These shall include without limitation reasonable attorneys' fees and costs of defense. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this Section D.

E. CITY SALES AND USE TAX

Contractor is deemed to be the consumer of the materials used in all construction projects in Boulder. Therefore, all tangible personal property used in the construction project is subject to the current City sales or use tax pursuant to Section 3-2-2, B.R.C. 1981. The City sales tax is imposed on all sales, rentals, leases and taxable services used in the construction project. The City's construction use tax is imposed upon tangible personal property and taxable services purchased for construction use in the City whether purchased inside or outside of the City. Both non-residents and residents of the City engaged in a construction project in the City are liable to pay the City construction use tax. No credit will be given for taxes paid to another municipality. The general contractor is liable for the payment of the City's sales and use tax for the total project including tax due by its subcontractors.

LIBRARY LEASE

CITY OF BOULDER

“LANDLORD”

WITH

BOULDER PUBLIC LIBRARY DISTRICT

“TENANT”

BUILDING: NORTH BOULDER BRANCH LIBRARY

DATED: _____

LIBRARY LEASE

THIS LIBRARY LEASE (“**Lease**”) is made and entered into as of this _____ day of _____ 2023, (“**Effective Date**”) by and between the City of Boulder, a Colorado home rule municipality, (“**Landlord**”), and the Boulder Public Library District (“**Tenant**”). In consideration of the payment of Rent (as defined below); all costs, charges, and expenses which Tenant assumes, agrees, or is obligated to pay to Landlord pursuant to this Lease (“**Additional Rent**”); and the performance of the promises by Tenant set forth below, Landlord hereby leases to Tenant, and Tenant hereby accepts, the Premises (as defined below), subject to the terms and provisions set forth in this Lease. Landlord and Tenant covenant and agree as follows:

1. Premises. Landlord is the owner of certain real estate legally described as set forth in **Exhibit A**, Boulder County, Colorado (“**Real Estate**”). The Real Estate is under construction and will be subdivided with an area including the library building, parking lot and play area (“**Premises**”), generally as depicted on **Exhibit B**. Landlord hereby leases and demises to Tenant the Premises located at 4500 13th St., Boulder, Colorado as of the date first provided under Paragraph 2., Term and Termination.
 - a. Landlord retains access to and excludes from the Premises that portion that is necessary and currently utilized for City of Boulder-owned fiber optic cable and equipment identified on **Exhibit C** (“**City Technology Assets**”).
 - b. Tenant will provide access cards or keys necessary for the 24-hour access to and operation of the City of Boulder-owned fiber optic network and equipment, free of charge.
2. Term and Termination. Landlord will release possession of the Premises to Tenant by notice in writing within ten (10) days of receipt of a certificate of occupancy for the library building and installation of all fixtures, personal property, and other installations described in the Final Intergovernmental Agreement between the parties dated _____. Landlord leases the Premises to Tenant for a term of approximately twenty (20) years, commencing upon release of possession, and terminating one minute after midnight on the 1st day of January 2045 (“**Term**”), unless sooner terminated in accordance with the provisions of this Lease.
 - a. Landlord and Tenant agree to meet in no less than five-year intervals to determine whether this Lease should be terminated by mutual agreement.
 - b. Tenant has the absolute right to terminate this Lease on its anniversary date every third year without consequences upon ninety (90) days written notice to Landlord.
3. Rent. Tenant shall pay to Landlord for the use and occupancy of the Premises during the Term a fixed annual rental rate of One Dollar (\$1.00) (“**Rent**”), payable by Tenant in a lump sum payment of Twenty Dollars (\$20.00) on the Effective Date hereof the receipt and sufficiency of which is hereby acknowledged.

4. Use. The Premises shall be used for the sole purpose of a public library and associated activities (which may include subleases to nonprofit entities).
5. Utility Charges. Tenant shall establish accounts for all heat, light, power, telephone, water, sewerage, janitorial services, garbage disposal, and other utilities and services it deems necessary for the operation of a public library (“**Utilities and Services**”) in its own name, and shall pay directly to the appropriate supplier, the cost of all Utilities and Services as the same become due and payable.
6. Condition of Premises. Tenant will review the physical condition of the Premises prior to taking possession. All contractor, manufacturers, materialman’s and laborer’s warranties, guarantees, and continuing contract rights will be assigned to Tenant at the commencement of the Term, to the extent lawfully permitted in such warranties, guarantees, and continuing contract rights.
7. Maintenance and Repairs. Landlord will provide routine maintenance and repair services and on-call services for a period not to exceed four (4) months and work with and assist Tenant’s facilities maintenance personnel to enforce any warranties or guarantees assigned or to be assigned under the preceding paragraph. Tenant shall reimburse Landlord for all such services at cost. Thereafter, Tenant shall have sole maintenance and repair responsibility for the interior and exterior of the Premises, including all costs and expenses relative thereto. Tenant shall promptly and diligently repair, restore, replace, or remedy all damage to or destruction of all or any part of the Premises. Landlord shall not be required to furnish any services or facilities or to make any repairs or alterations of any kind in or on the Premises, all such matters being the sole duty and responsibility of Tenant. Tenant may also demolish, rebuild, reconfigure and/or remodel any interior spaces of the Premises without consultation with Landlord so long as Tenant deems it necessary or useful for its purposes. Exterior demolition, reconstruction or remodeling must be approved by Landlord. Tenant shall require any contractor performing work on the Premises to procure and maintain at its own cost the insurance coverages and other contract requirements set forth in **Exhibit D**.
8. Injury or Damage. Landlord shall not be responsible to the Tenant for loss of property in or from the Premises, or for any damage done to furniture, fixtures, equipment, collections, or other effects in the Premises, nor shall the Landlord be liable for any injury or damage, either proximate or remote, occurring through or caused by any repairs, alterations, or accident occurring in or to the Premises, nor shall Landlord be liable for any injury or damage occasioned by defective electrical wiring or the breakage or stoppage of the plumbing or sewerage upon the Premises, whether such breakage or stoppage results from freezing, flood, or other casualty.
9. Insurance. During the Term of this Lease, Tenant, at its sole cost and expense, shall continuously maintain the types and amounts of insurance coverages as approved by the city manager, the city attorney, and the City of Boulder’s risk manager.

10. Default. Tenant shall be in default of this Lease if at any time the Premises cease to be used for public library purposes. Together with the foregoing, if either party defaults in the performance of any of its respective covenants, conditions, agreements, or undertakings contained in this Lease (each, an “**Event of Default**”) and such Event of Default continues for thirty (30) days (subject to a reasonable extension if a cure is not practical during such period and if the defaulting party has commenced cure and is diligently pursuing same) after written notice of such default from the non-defaulting party, then the non-defaulting party may cause such default to be remedied in such manner and by such means as the non-defaulting party may deem proper, and the cost and expense thereof paid or incurred, including reasonable attorney fees and costs, shall be due and payable within thirty (30) days of presentment of an invoice for such services. Notwithstanding the foregoing, the parties shall have the option to seek all and any remedy available at law or in equity.

11. Environmental Compliance.

- a. Tenant’s Responsibility. Tenant covenants and agrees that the Premises will, at all times during its use or occupancy thereof, be kept and maintained so as to comply with all now existing or hereafter enacted or issued statutes, laws, rules, ordinances, orders, permits, and regulations of all state, federal, local, and other governmental and regulatory authorities, agencies, and bodies applicable to the Premises, pertaining to environmental matters, or regulating, prohibiting, or otherwise having to do with asbestos and all other toxic, radioactive, or hazardous wastes or materials including, but not limited to, the Federal Clean Air Act, the Federal Water Pollution Control Act, and the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as from time to time amended (all hereafter collectively called “**Laws**”). Tenant shall not cause or permit any hazardous material to be brought upon, kept, or used in, or about the Premises by Tenant, its agents, employees, contractors, or invitees, except any hazardous material which is necessary for the usual and customary operation of a public library.
- b. Tenant’s Liability. If Tenant breaches the obligations stated in the preceding paragraph, or if the presence of hazardous materials otherwise arises out of Tenant’s use of the Premises, Tenant shall be solely responsible for all costs incurred in connection with any investigation of site conditions and any clean-up, remedial, removal, or restoration work required by any federal, state, or local governmental agency. Without limiting the foregoing, any hazardous material is released on the Premises, Tenant shall promptly take all actions at its sole cost and expense which are necessary to return the Premises to the condition existing prior to the introduction of such hazardous material. Except to any extent prohibited by law, Tenant shall hold Landlord free, harmless, and indemnified from any penalty, fine, claim, demand, liability, cost, or charge whatsoever which Landlord shall incur, or which Landlord would otherwise incur, by reason of Tenant’s failure to comply with this Section; including, but not limited to: (i) the cost of bringing the Premises into compliance with all laws; (ii) the reasonable cost of all appropriate tests and examinations of the Premises to confirm that the Premises have been brought into compliance with all Laws; and, (iii) the reasonable fees and expenses of Landlord’s

attorneys, engineers, and consultants incurred by Landlord in enforcing and confirming compliance with this Section.

- c. Covered Property. For the purposes of this Section, the Premises include the Real Estate covered by this Lease, all improvements placed on the Premises by Tenant, and all personal property and fixtures located on or used in connection with the Premises.
 - d. Liability After Termination or Expiration of Lease. Landlord and its engineers, technicians, and consultants (collectively, “**Auditors**”) may, from time to time as Landlord deems appropriate, during Tenant’s usual business hours and after reasonable notice to Tenant, conduct periodic tests and examinations (“**Audits**”) of the Premises to confirm and monitor Tenant’s compliance with this Section. Such Audits shall be conducted in such manner as to minimize the interference with Tenant’s permitted use; however, in all cases, the Audits shall be of such nature and scope as shall be reasonably required by then existing technology to confirm Tenant’s compliance with this Section. Tenant shall fully cooperate with Landlord and its Auditors in the conduct of such Audits. The cost of such Audits shall be paid by Landlord unless an Audit shall disclose a material failure of Tenant to comply with this Section, in which case the cost of such Audit, and the cost of all subsequent Audits made during the Term and within thirty (30) days thereafter (not to exceed two (2) such Audits per Lease year), shall be paid for by Tenant within fifteen (15) days of receipt of invoices from Landlord.
 - e. Liability After Termination of Lease. The covenants contained in this Section shall survive the expiration or termination of this Lease and shall continue for so long as the parties hereto and their successors and assigns may be subject to any expense, liability, charge, penalty, or obligation against which the Tenant has agreed to indemnify the Landlord under this Section.
12. Relationship. The parties’ relationship is not that of joint venturers or partners but is a relationship of landlord and tenant as defined in this Lease.
13. CGIA. Each party to this Lease is a “public entity” under the Colorado Governmental Immunity Act, §§ 24-10-101, *et seq.*, C.R.S., as amended (“**CGIA**”). The parties acknowledge and agree that the Landlord and the Tenant, their respective elected and appointed officials, officers, directors, agents, and employees, are relying on, and do not waive or intend to waive by any provision of this Lease, the monetary limitations or any other rights, immunities and protections provided by the CGIA.
14. Liens. The Tenant will not permit or allow any mechanic’s, materialman’s, or other lien to be placed against any of the Premises in connection with work or services claimed to have been performed for, or materials claimed to have been furnished to the Tenant. If any such lien is recorded, the Tenant will cause the same to be released of record.

15. Responsibility. Tenant will be responsible for the acts, omissions, or conduct of its own respective officers, employees, agents, contractors, and consultants to the extent arising out of the performance of its obligations under this Lease or with respect to its respective use of the Premises.
16. Compliance with Laws. Tenant shall cause all activities within the Premises to be performed in compliance with all applicable laws, rules, regulations, orders and other requirements of any public jurisdiction.
17. Appropriations. Pursuant to § 29-1-110, C.R.S., any financial obligations of the parties express or implied by this Lease are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available on an annual basis by each party's respective governing body.
18. Notice of Communications. Any notice pursuant to the terms and conditions of this Lease shall be in writing and shall be hand-delivered or sent by registered or certified mail, return receipt requested, postage prepaid, to the addresses of the parties herein set forth. All notices so given shall be considered effective seventy-two (72) hours after deposit in the United States Postal Service mail with the proper address as set forth below. Either party by notice so given may change the address to which future notices shall be sent.

To the District:

Boulder Public Library District
Attn: Board President and District Manager
1001 Arapahoe Ave
Boulder, CO 80302

With a copy to:

Kim J. Seter, Esq.
Seter & Vander Wall, PC
7400 E. Orchard Road, Suite 3300
Greenwood Village, CO 80111
and: kseter@svwpc.com

To the City:

City of Boulder
Attn: City Manager
P. O. Box 791
Boulder, CO 80306
(303) 441-3090
and: CMOAdmin@bouldercolorado.gov

With a copy to:

City of Boulder
Attn: City Attorney
P. O. Box 791
Boulder, CO 80306
(303) 441-3020
and: CAOAdmin@bouldercolorado.gov

19. Integration and Entire Agreement. This Lease represents the entire agreement between the parties with respect to this Lease and supersedes all prior discussions, negotiations, understandings, or agreements relating to this Lease, all of which are merged herein.
20. Counterparts. This Lease may be executed in several counterparts, or electronic PDF, each of which shall be deemed an original and all of which taken together shall constitute one and the same instrument.
21. Recording. Landlord and Tenant agree that this Lease will be recorded in the Public Records of Boulder County, Colorado. All of the provisions of this Lease shall be deemed to run with the land and shall be construed to be “conditions” as well as “covenants” as though the words specifically expressing or imparting conditions and covenants were used in each separate provision.

IN WITNESS WHEREOF, the parties have executed this Lease on the date set forth above.

[Signature pages follow]

TENANT:

BOULDER PUBLIC LIBRARY DISTRICT

By: _____
Katharine (Joni) Teter, President
Board of Trustees

Attest: _____
Sylvia T. Wirba, Secretary

Approved as to Form:

Kim J. Seter, CO Atty No. 14294

STATE OF COLORADO)
) ss.
COUNTY OF BOULDER)

The foregoing instrument was acknowledged before me this _____ day of _____, 20__, by Katharine (Joni) Teter as President of the Boulder Public Library District Board of Trustees.

Witness my hand and official seal.

My commission expires: _____

[SEAL]

Notary Public

[The remainder of this page is intentionally blank.]

LANDLORD:

**CITY OF BOULDER,
a Colorado home rule municipality**

By: _____
Nuria Rivera-Vandermyde, City Manager

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney's Office

Exhibit A
Legal Description

(To be attached once subdivision is completed and a legal description prepared)

NORTH BOULDER BRANCH LIBRARY

PROJECT
North Boulder Branch Library
4550 13th Street
Boulder, CO 80304

OWNER
City of Boulder
1777 Broadway
Boulder, CO 80306

ARCHITECT
WORK Architecture Company, PLLC
156 Ludlow Street, 3rd Floor
New York, NY 10002
Tel: 212-228-1353 Fax: 212-228-1674
Email: office@work.ac

STRUCTURAL ENGINEERS
Studio NYL
2885 Baseline Road, Suite 314
Boulder, CO 80303
Tel: 303-556-3145 Fax: 303-444-8536
Email: jlineham@studionyl.com

MEP ENGINEERS
Integral Group
427 13th Street
Oakland, CA 94612
Tel: 510-663-2070

CIVIL ENGINEERING CONSULTANT
JVA, Incorporated
1319 Spruce Street
Boulder, CO 80302
Tel: 303-444-1951 Fax: 303-444-1957
Email: SPROCOPI@JVAJVA.COM

LIGHTING CONSULTANT
Tillotson Design Associates
40 Worth Street, Room 703
New York, NY 10013
Tel: 212-676-7760

LANDSCAPE ARCHITECTURE CONSULTANT
JB Fieldworks
2428 20th Street
Boulder, CO 80304
Tel: 734-626-5467



SEAL:

USE LIMITED TO OUTDOOR STORAGE BY OWNERS & TENANTS OF COUNTRYSIDE VILLAGE

REVISIONS:		
NO.	DESCRIPTION:	DATE:
01	SITE PLAN REVIEW	07/08/2019
02	SR RESUBMITTAL #1	10/21/2019
03	SR RESUBMITTAL #2	12/23/2019
04	100% DD	03/31/2020
05	SR RESUBMITTAL #3	05/11/2020
06	SR RESUBMITTAL #4	06/11/2020
07	TEC DOCS REVIEW	09/14/2020
08	TEC DOCS RESUBMITTAL #2	11/02/2020
09	TEC DOCS RESUBMITTAL #3	01/25/2021
10	ISSUED FOR TENDER SET	10/30/2020
11	TEC DOCS CORRECTIONS	02/18/2021
12	PERMIT SUBMISSION #1	02/25/2021
13	100% SD REDESIGN	11/12/2021
14	SR MINOR MOD #1	12/30/2021
15	TEC DOCS CORRECTIONS #2	04/19/2022

TECHNICAL DOCUMENT SUBMITTAL:
TEC2020-00031
APPLICATION NUMBERS:
LUR2019-00043
LUR2019-00048

DRAWING TITLE:
UTILITY PLAN

DRAWN BY: MGR/JIP
CHECKED BY: SBP

SCALE: AS NOTED
DATE: 02/18/2021

DRAWING NUMBER:
C2.0

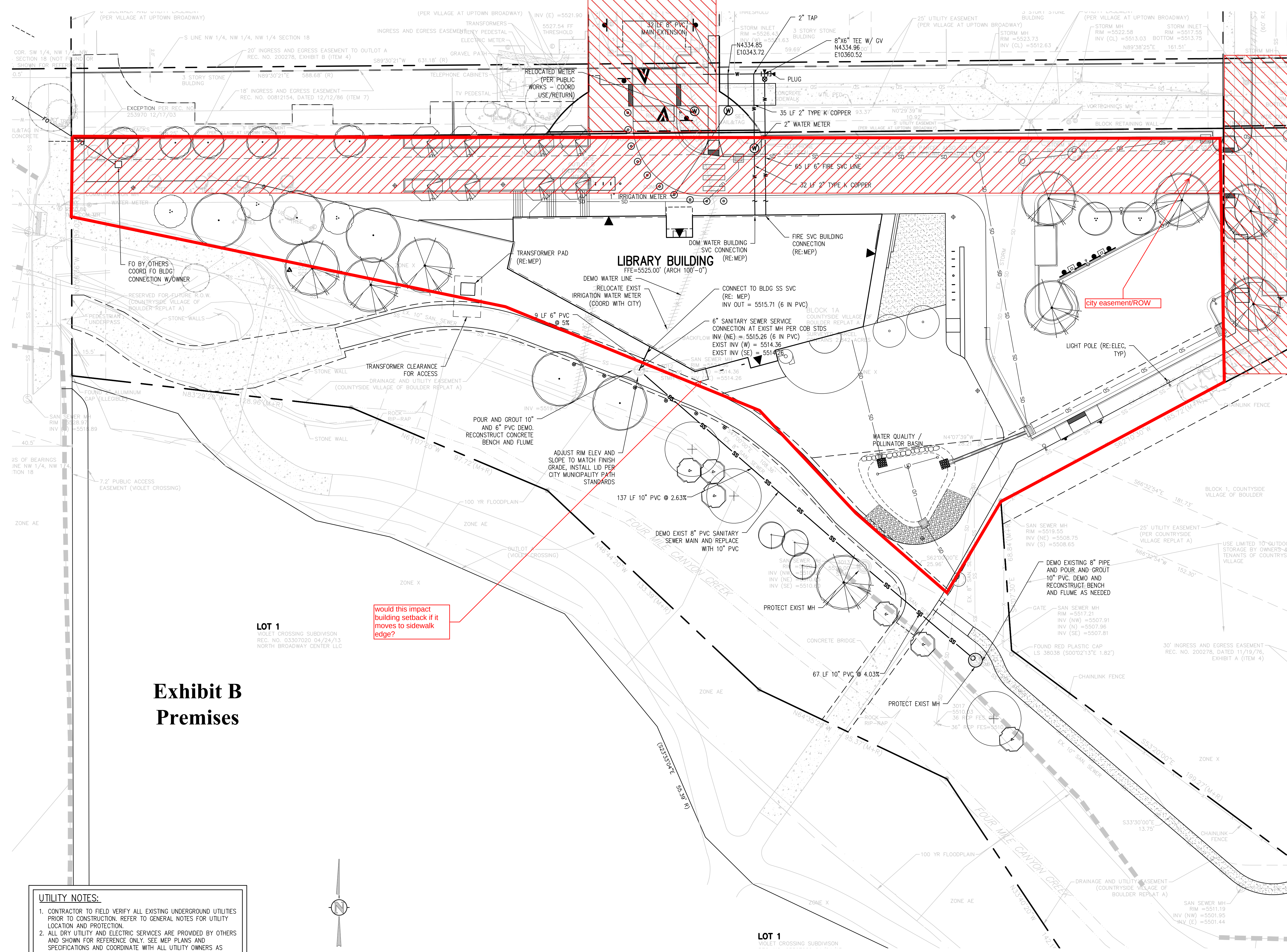
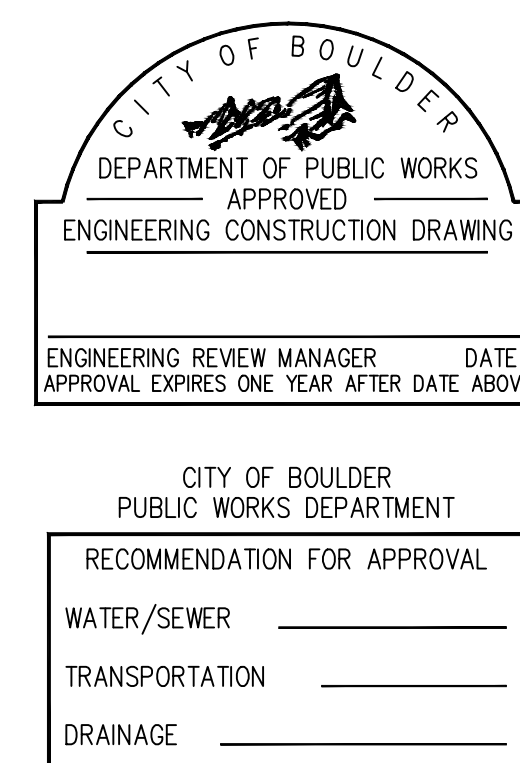
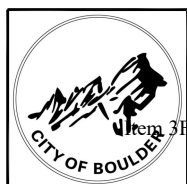
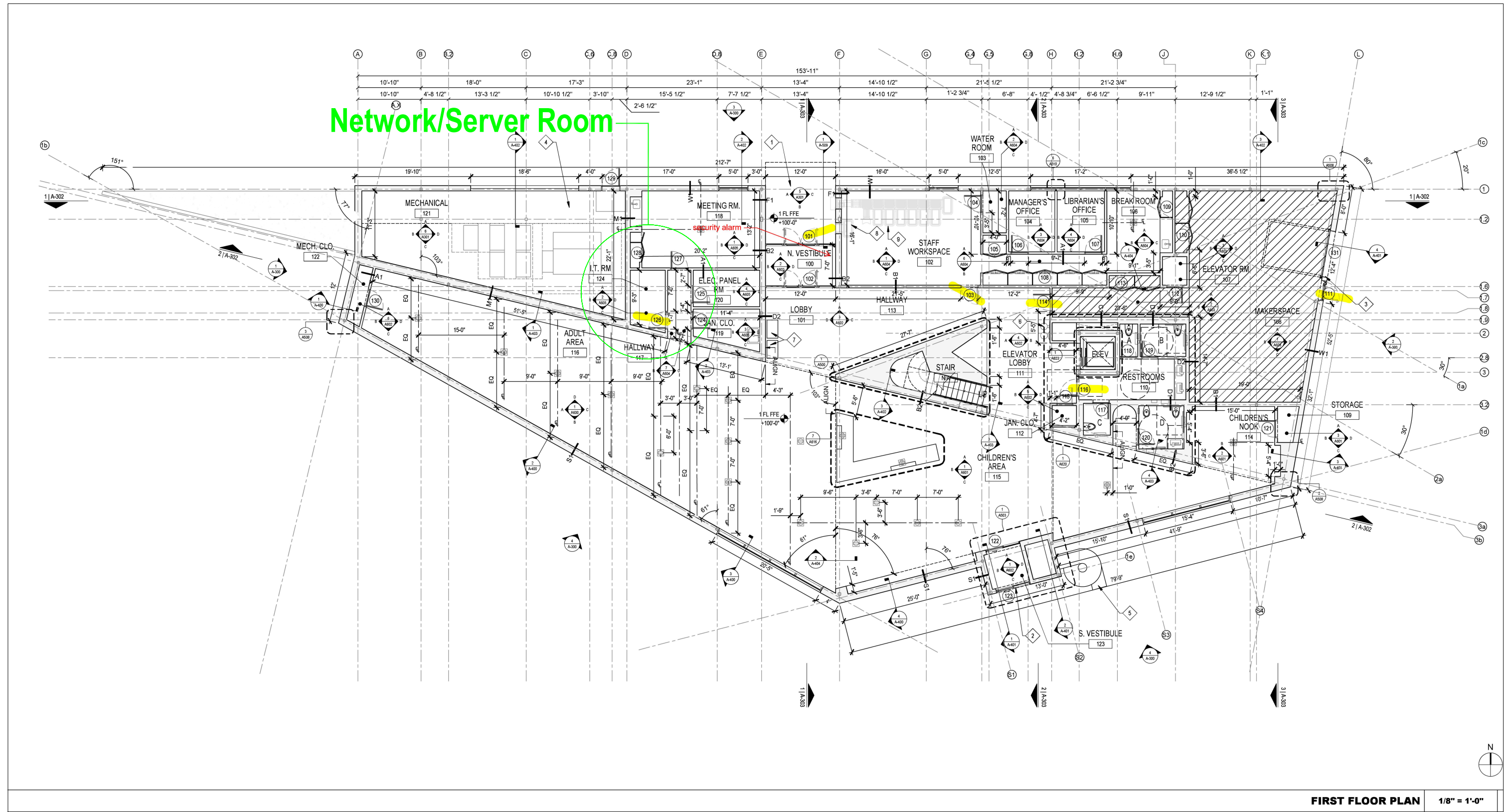


Exhibit B Premises

- UTILITY NOTES:**
1. CONTRACTOR TO FIELD VERIFY ALL EXISTING UNDERGROUND UTILITIES PRIOR TO CONSTRUCTION. REFER TO GENERAL NOTES FOR UTILITY LOCATION AND PROTECTION.
 2. ALL DRY UTILITY AND ELECTRIC SERVICES ARE PROVIDED BY OTHERS AND SHOWN FOR REFERENCE ONLY. SEE MEP PLANS AND SPECIFICATIONS AND COORDINATE WITH ALL UTILITY OWNERS AS NEEDED.
 3. CONTRACTOR TO MARK ALL UTILITY STUBS WITH MARKERS.

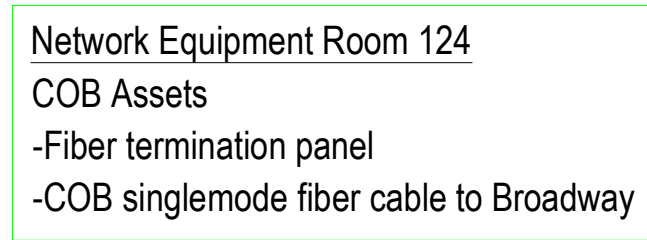




NORTH BOULDER LIBRARY • NETWORK ROOM LOCATION

4500 13th STREET





I. INSURANCE POLICIES

Contractor shall procure and maintain, at its own cost, a policy or policies of insurance sufficient to insure against all liability, claims, demands, and other obligations assumed by Contractor pursuant to this Section A. Contractor shall not be relieved of any liability, claims, demands, or other obligations assumed pursuant to this Section I by reason of its failure to procure or maintain insurance, or by reason of its failure to procure or maintain insurance in sufficient amounts, durations, or types.

Contractor shall procure and maintain and, if applicable, shall cause any subcontractor of Contractor to procure and maintain the insurance coverage listed below. Such coverage shall be procured and maintained with forms and insurers acceptable to the City of Boulder, Colorado (“City”). All coverage shall be continuously maintained to cover all liability, claims, demands and other obligations assumed by Contractor pursuant to this Section I for the statutes of limitation and repose. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage.

Contractor shall obtain and maintain the minimum insurance coverages set forth below. By requiring such minimum insurance, the City shall not be deemed or construed to have assessed the risk that may be applicable to Contractor. Contractor shall assess its own risks and if it deems appropriate and / or prudent, maintain higher limits and / or broader coverages.

A. Insurance Coverages

1. ***Commercial General Liability – ISO CG 00001 or equivalent.*** ***Coverage to include:***

- Premises and Operations
- Explosions, Collapse and Underground Hazards
- Personal / Advertising Injury
- Products / Completed Operations
- Liability assumed under an Insured Contract (including defense costs assumed under contract)
- Broad Form Property Damage
- Independent Contractors
- Designated Construction Projects(s) General Aggregate Limit, ISO CG 2503 (1997 Edition)
- Additional Insured—Owners, Lessees or Contractors Endorsement, ISO Form 2010 (2004 Edition or equivalent)
- Additional Insured—Owners, Lessees or Contractors Endorsement, Completed Operations, ISO CG 2037 (7/2004 Edition or equivalent)

- The following exclusions are absolutely prohibited and shall not be included in Contractor’s policy if applicable to the work:
 - No exclusion for “third-party action over suits” or any similar restriction of coverage applicable to claims brought against others by an employee of Contractor or its Subcontractors
 - No damage to Work performed by Contractor exclusion (CG 22 94 or similar)
 - No residential or habitation exclusion or coverage limitation
 - No exclusion for EIFS (Exterior Insulation Finish System) or any similar exclusion applicable to the Work
 - No exclusion for subsidence, which is specifically prohibited for any work involving excavation, soil stabilization, earth retention, concrete, structural steel, landscaping, waterproofing, fire protection and plumbing.
 - No exclusion for low-level radioactive isotopes

2. ***Automobile Liability including all:***

- Owned Vehicles
- Non-Owned Vehicles
- Hired Vehicles

Automobile Liability Coverage endorsements CA9948 and MCS-90 are required if Contractor is transporting any type of hazardous materials.

3. ***Excess/Umbrella Liability***

- Excess of Commercial General Liability, Automobile Liability, and Employers' Liability.
- Coverages should be as broad as primary.
- The City reserves the right to require higher limits.

4. ***Workers’ Compensation***

- Statutory Benefits (Coverage A)
- Employers Liability (Coverage B)

5. ***Installation Floater***

- “All Risk”
- Faulty workmanship
- Labor costs to repair damaged work

6. ***Contractors Pollution Liability/Environmental Impairment Liability***

The City requires this coverage whenever work at issue under this contract involves potential pollution risk to the environment or losses caused by pollution conditions including but not limited to asbestos, building enclosure systems, plumbing, roofing, heating, ventilation, air conditioning, drywall, insulation, building foundations, or any work which includes Microbial Matter, Mold, Fungi, or Bacteria and any work which will involve the use of hazardous materials that may arise from the operations of Contractor (and its subcontractors) described in Contractor’s bid and

specifications. Policy shall cover Contractor's completed operations. Such coverage shall be on an occurrence basis and include:

- Bodily Injury, sickness, disease, mental anguish or shock sustained by any person, including death.
- Property Damage including natural resource damages, physical injury to or destruction of tangible property including resulting loss of use, cleanup costs, and the loss of use of tangible property that has not been physically injured or destroyed.
- Defense, including costs, charges and expenses incurred in the investigation, adjustment or defense of claims for such compensatory damages.
- Cleanup costs, removal, storage, disposal, and or use of the pollutant; and defense, including costs and expenses incurred in the investigation, defense, or settlement of claims.
- Coverage shall apply to sudden and gradual pollution conditions resulting from the escape or release of smoke, vapors, fumes, acids, alkalis, toxic chemicals, liquids, or gases, natural gas, waste materials, or other irritants, contaminants, or pollutants (including asbestos).

7. (If applicable) Professional Liability Policy

For Contractor and any subcontractor of any tier that is providing any professional services, including but not limited to: design, architecture, engineering, testing, surveying, or design/build services, temporary engineering, engineered excavations and shoring systems, post-tension supply, structured steel, specialized millwork that is performance specified, roofing or waterproofing systems, curtainwall, mechanical, fire protection systems, electrical, fire alarm systems.

Contractor and/or all subcontractors providing professional services shall provide and maintain Professional Liability Insurance coverage. Coverage shall include coverage for contractual liability. Contractor and subcontractors shall maintain for the statute of repose, following completion of the project. Any erosion of insurance limits required will be reinstated to the required amounts prior to commencing the contracted work and if during the contracted period claims are made against the design professional's policy the necessary reduction of available limits will be repurchased to the contractually required amounts.

B. Limits Required

Contractor shall carry the following limits of liability as required below:

1. Commercial General Liability

General Aggregate	\$5,000,000
Products/Completed Operations	\$5,000,000
Aggregate	
Each Occurrence Limit	\$2,000,000
Personal/Advertising Injury	\$1,000,000
Fire Damage (Any One Fire)	\$ 50,000

Exhibit D
Attachment F – Form lease for the new North Boulder
Requirements for Contractors Performing Any Improvements to the Premises

Medical Payments (Any One Person)	\$ 5,000
2. <i>Excess/Umbrella Liability (as needed)</i>	
General Aggregate	\$5,000,000
Limit	
Products/Completed Operations	\$5,000,000
Aggregate	
3. <i>Automobile Liability</i>	
Bodily Injury/Property Damage (Each Accident)	\$3,000,000
4. <i>Workers' Compensation</i>	
Coverage A (Workers' Compensation)	Statutory
Coverage B (Employers Liability)	
Each Accident \$	2,000,000
Disease Ea. Employee	\$ 2,000,000
Disease-Policy Limit \$	2,000,000

NOTE: Independent contractors that do not carry Workers' Compensation are required to complete an independent contractor's form provided by the City.

5. <i>Installation Floater/Builder's Risk</i>	
For materials and equipment to be installed:	
Shall be written for 100% of the completed value (replacement cost basis)	
Deductible maximum is \$10,000.00	
Waiver of Subrogation applies on Installation Floater/Builder's Risk	
6. <i>Contractors Pollution Liability/Environmental Impairment Liability (as needed)</i>	
Per Loss	\$1,000,000
Aggregate	\$1,000,000
If Contractor's work includes remediation of asbestos or mold, then the minimum limits required shall be:	
Each Occurrence	\$ 5,000,000
Aggregate	\$ 5,000,000
Maximum allowable deductible, to be paid by Contractor	\$ 25,000
7. <i>Professional Liability</i>	
Each Claim	\$ 1,000,000
Aggregate	\$ 1,000,000
Maximum allowable deductible, to be paid by Contractor	\$ 25,000

II. ADDITIONAL INSURANCE REQUIREMENTS

Exhibit D
Attachment F – Form lease for the new North Boulder
Requirements for Contractors Performing Any Improvements to the Premises

Failure of Contractor to fully comply with these requirements during the term of this Contract may be considered a material breach of contract and may be cause for immediate termination of this Contract at the option of the City.

- A. All insurers must be licensed or approved to do business within the State of Colorado, and unless otherwise specified, all policies must be written on a per occurrence basis (excepting Professional Liability).
- B. Contractor shall name **“The City of Boulder, its elected and appointed officials, directors, officers, employees, agents and volunteers” as additional insured** (“Additional Insured”) where commercially available.
- C. All policies of insurance shall be written on a primary basis, non-contributory with any other insurance coverages and/or self-insurance carried by the City.
- D. A Separation of Insureds Clause must be included in general liability policies.
- E. Contractor shall advise the City in the event any general aggregate or other aggregate limits are reduced below the required per occurrence limit. At its own expense, Contractor will reinstate the aggregate limits to comply with the minimum requirements and shall furnish to the City a new certificate of insurance showing such coverage is in force.
- F. Contractor’s insurance carrier shall possess a minimum A.M. Best’s Insurance Guide rating of A- VI.
- G. Commercial General Liability Completed Operations policies must be kept in effect for the statute of repose.
- H. Contractor’s Pollution Liability policies must be kept in effect for the statute of repose.
- I. Contractor, or Contractor’s insurance broker, shall notify the City of any cancellation or reduction in coverage or limits of any insurance within seven (7) days of receipt of insurer’s notification to that effect. Contractor shall forthwith obtain and submit proof of substitute insurance in the event of expiration or cancellation of coverage.
- J. **The Certificate Holder shall be identified as: City of Boulder, P.O. Box 791, Boulder, CO 80306.**
- K. Contractor is responsible for any damage or loss to its own vehicles or equipment.
- L. The City and Contractor shall cooperate with each other in the collection of any insurance proceeds which may be payable in the event of any loss, including the execution and delivery of any proof of loss or other actions required to effect recovery.
- M. Contractor and its insurers shall waive subrogation in favor of Additional Insured parties.
- N. Contractor shall not be relieved of any liability, claims, demands, or other obligations assumed pursuant to this contract by reason of its failure to procure or maintain insurance or by reason of its failure to procure or maintain insurance in sufficient amounts, durations or types.

C. INSURANCE TERM

All required insurance in this Exhibit D, except builder's risk, shall remain in effect for the statute of repose.

D. INDEMNIFICATION

Contractor shall defend, indemnify and hold harmless the City, its directors, officers, employees, elected and appointed officials and agents from and against all claims, damages, losses, obligations, demands, assessments, fines, penalties (whether civil or criminal), liabilities, costs, expenses, bodily and other personal injuries, damage to tangible property, of any kind or nature suffered or incurred by the City directly or indirectly arising from or related to: (i) any act or omission by contractor its employees, agents, subcontractors or its representatives or other parties for which contractor may be legally responsible in the performance of contractor's obligations under this contract, or (ii) any material breach in a representation, warranty, covenant or obligation of contractor contained in this contract. . These shall include without limitation reasonable attorneys' fees and costs of defense. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this Section D.

E. CITY SALES AND USE TAX

Contractor is deemed to be the consumer of the materials used in all construction projects in Boulder. Therefore, all tangible personal property used in the construction project is subject to the current City sales or use tax pursuant to Section 3-2-2, B.R.C. 1981. The City sales tax is imposed on all sales, rentals, leases and taxable services used in the construction project. The City's construction use tax is imposed upon tangible personal property and taxable services purchased for construction use in the City whether purchased inside or outside of the City. Both non-residents and residents of the City engaged in a construction project in the City are liable to pay the City construction use tax. No credit will be given for taxes paid to another municipality. The general contractor is liable for the payment of the City's sales and use tax for the total project including tax due by its subcontractors.

ASSIGNMENT OF LEASES

THIS ASSIGNMENT OF LEASES (“**Assignment**”) is made and entered into as of this _____ day of _____ 2023, by and between the City of Boulder, a Colorado home rule municipality (“**Assignor**” or “**City**”), the Boulder Public Library District (“**Assignee**” or “**District**”), and Meadows on the Parkway Station LLC, a Phillips Edison Company (“**Landlord**”) effective 12:01 a.m., January 1, 2024.

WITNESSETH:

- A. Assignor is a Colorado home rule municipality incorporated on November 4, 1871.
- B. Assignee is a library district, formed and existing pursuant to § 24-90-101, *et seq.*, C.R.S., (“Colorado Library Law”), for the purpose of providing certain public improvements, facilities and library services, to and for the use and benefit of the District, its residents, users, property owners and the public.
- C. Assignor entered into a lease entitled Lease Between the City of Boulder and Foothills Associates, Inc., for Public Library Space at The Meadows on the Parkway, Boulder Colorado dated September 21, 1988, (“**September 21, 1988 Lease**”). The September 21, 1988 Lease was extended in 2009 for an additional 20-year term, through August 31, 2029, or until such time as Safeway or a comparable anchor tenant at the Shopping Center is no longer a tenant at the Shopping Center. The September 21, 1988 Lease and 2009 extension are attached hereto as **Exhibits 1** and **2** respectively, and referred to collectively as “**Leases.**” The Leases were assigned to Meadows on the Parkway Station LLC in 2015.
- D. Paragraph 15 of the September 21, 1988 Lease prohibits the City from assigning or subletting all or any part of the Premises.

NOW, THEREFORE, in consideration of the premises and the mutual covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

- 1. Assignment. Assignor hereby assigns, sets over and transfers to Assignee all of Assignor’s right, title and interest in, to and under the Leases, including all extensions thereof, and all rights, liabilities and obligations of Assignor under the Leases to the extent arising or accruing from and after the date hereof. Notwithstanding the foregoing, all past due rent and other tenant payment obligations of any type whatsoever made after the date hereof shall be assigned by Assignor to Assignee. Assignee hereby accepts the foregoing assignment of the Leases.
- 2. Release. Landlord hereby releases and forever discharges the City and its elected officials, affiliates, corporations, successors, administrators, attorneys, employees, agents, servants, and insurers from all manner of debt, dues, liabilities, obligations, accounts, claims, and

demands whatsoever, in law and in equity by virtue of the Leases occurring from and after the date first set forth above.

3. Reservation of Benefits. Notwithstanding anything to the contrary in this Assignment, Assignor reserves and retains all benefits under the Leases to the extent that the same relate to any matter with respect to the premises for which Assignor may continue to have liability from and after the date hereof; provided, however, said benefits reserved and retained by Assignor pursuant to this Paragraph 3. shall exist jointly with Assignee's benefits under the Leases, and such benefits may be enforceable by each of Assignor and Assignee to the extent of each party's respective liability or damages for any matters relating thereto.
4. Landlord's Consent. Paragraph 15 of the September 21, 1988 Lease prohibits the City from assigning the lease or subletting any or all part of the premises. Notwithstanding Paragraph 15, Landlord hereby consents to Assignor's assignment of the Leases to Assignee.
5. Responsibility. Assignee assumes responsibility for its actions and omissions in the performance or failure to perform the obligations set forth in the Leases, as well as the actions and omissions of its officials, affiliates, corporations, successors, administrators, attorneys, employees, agents, servants, and insurers. Neither the Assignor nor the Assignee waives or intends to waive the limitations on liability which are provided to the parties, their officers, employees, and authorized volunteers under the Colorado Governmental Immunity Act, §§ 24-10-101 *et. seq.*, C.R.S., as amended. Assignee shall defend and hold Assignor harmless from any and all claims or damages that may arise from the Assignee's actions in connection with its performance of the obligations and responsibilities set forth in the Leases.
6. Survival. This Assignment and the obligations of the Assignor and Assignee hereunder shall survive the execution of that Intergovernmental Agreement required by Colorado Library Law and shall not be merged therein, shall be binding upon and inure to the benefit of the Assignor and Assignee, their respective legal representatives, successors, and permitted assigns.
7. Severability. If any provision of this Assignment or the application thereof to any entity, person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Assignment and the application of its provisions to other entities, persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.
8. Modification. No variations, modifications or changes herein or hereof shall be binding upon any party hereto, unless set forth in a document duly executed by, or on behalf of each party.

9. Governing Law. The parties agree that the law of the State of Colorado shall govern the performance and enforcement of this Assignment. The venue shall be in the City of Boulder.
10. Counterparts. This Assignment may be executed in counterparts, or electronic PDF, each of which shall be an original and all of which counterparts taken together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this Assignment on the date set forth above.

ASSIGNEE:

BOULDER PUBLIC LIBRARY DISTRICT

By: _____
Katharine (Joni) Teter, President
Board of Trustees

Attest: _____
Sylvia T. Wirba, Secretary

Approved as to Form:

Kim J. Seter, CO Atty No. 14294

[The remainder of this page is intentionally blank.]

ASSIGNOR:

**CITY OF BOULDER,
a Colorado home rule municipality**

By: _____
Nuria Rivera-Vandermyde,
City Manager

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney's Office

[The remainder of this page is intentionally blank.]

Landlord:

MEADOWS ON THE PARKWAY STATION LLC,
A Delaware Limited liability company

By: _____

Name: _____

Title: _____

**LEASE BETWEEN THE CITY OF BOULDER
AND FOOTHILLS ASSOCIATES, INC. FOR PUBLIC LIBRARY SPACE AT
THE MEADOWS ON THE PARKWAY
BOULDER, COLORADO**

1. PARTIES

This Lease, dated this 21st day of September, 1988, is entered into between Foothills Center Limited Partnership, a Colorado limited partnership, as landlord ("Landlord"), whose address is 4700 Walnut Street, Boulder, Colorado 80301, and the City of Boulder, Colorado, a Colorado municipal corporation, as tenant ("Tenant"), whose address is 1000 Canyon Blvd., Boulder, Colorado 80302.

2. PREMISES

Landlord leases to Tenant and Tenant leases from Landlord those certain premises, as shown on the floor plan attached hereto as Exhibit B (the "Premises") consisting of 7,812 useable square feet of space located at 4700 Baseline Road, Suite _____, Boulder, Colorado (the "Shopping Center") as described on Exhibit A attached hereto and incorporated herein by this reference. Tenant shall also have the right to nonexclusive use of all common areas in the Shopping Center designated by Landlord for use by tenants of the Shopping Center, in accordance with and subject to the provisions of this Lease.

3. USE

(a) Permitted Use. Tenant shall use the Premises for a branch of its public library and shall not use or permit the Premises to be used for any other purpose.

(b) Deliveries. Tenant shall use its best efforts to schedule regular deliveries of books to its Premises so that they occur no more than three times a day and so that each delivery will be completed within forty-five minutes.

(c) Hours of Business. Tenant shall keep the Premises open to the public in conformance with the schedule adopted by the Boulder Public Library for its branches. Tenant shall provide Landlord with a copy of that schedule and shall notify Landlord in writing of any changes to the schedule at least fourteen days before the change becomes effective.

(d) Sidewalk. Tenant shall keep the sidewalk in front of the Premises free of trash and litter which may accumulate due to the nature of Tenant's business. Tenant shall not place any cardboard boxes or other containers on the sidewalk. Tenant shall not place any advertising signs on the sidewalk, unless approved in writing by Landlord. Tenant shall not conduct any business on such sidewalk and shall not place any vending machines on such sidewalk. Tenant shall reimburse Landlord on demand for all costs of enforcing this provision.

(e) Rear Alley. Tenant shall not place any trash, litter or other objects in the rear alley behind Tenant's Premises, other than in designated trash receptacles.

(f) Compliance with Law. Tenant shall comply with all laws, statutes, ordinances, and governmental rules, regulations or requirements now in force, or which may hereafter be in force, and with the requirements of any board of fire underwriters or other similar bodies now or hereafter constituted relating to the Premises. The judgment of any court of competent jurisdiction or the admission of Tenant in any action against Tenant, whether Landlord be a party thereto or not, that Tenant has violated any such law, statute, ordinance, rule, regulation, or requirement, shall be conclusive of that fact as between Landlord and Tenant.

4. CONSTRUCTION AND ACCEPTANCE OF PREMISES

(a) Construction of Premises. Landlord shall proceed to complete the Premises in accordance with the work (and certain provisions relating to the construction thereof) shown on Exhibit C hereto ("Landlord's Work"). The Premises shall be deemed to be "Ready for Occupancy" when Landlord certifies in writing to Tenant that Landlord has completed Landlord's Work, except for minor or insubstantial construction, mechanical adjustment or decoration, the non-completion of which will not materially interfere with Tenant's normal use of the Premises. Landlord shall complete Landlord's Work no later than July 31, 1989. Other than for Landlord's Work, Landlord shall have no obligation for the completion of the Premises.

(b) Acceptance of Premises. After Tenant occupies the Premises, Tenant shall be deemed to have fully accepted Landlord's Work, except as to agreed "punch list" items with respect to Landlord's Work. Neither Landlord nor Landlord's agents have made any representations, warranties or promises with respect to the physical condition of the Shopping Center, the land upon which it is erected, or the Premises, or any matter or thing affecting or related to the Premises except as herein expressly set forth.

(c) Commencement Date. The "Commencement Date" of this Lease shall be the date sixty (60) days from completion of Landlord's Work, or the date on which Tenant shall open the Premises to the public, whichever shall occur first. Promptly following the Commencement Date, Landlord and Tenant shall execute an agreement acknowledging that Tenant has accepted possession, and reciting the exact Commencement Date and Termination Date of the Lease. The failure by either party, or both parties, to execute such an agreement shall not affect the rights or obligations of either party hereunder. Such agreement, when so executed and delivered, shall be deemed to be a part of this Lease.

5. TERM

(a) This Lease shall have a term of twenty (20) years commencing on the Commencement Date. It is anticipated that the Commencement Date will be May, 1989, and that the Termination Date of this Lease will be April 30, 2009. Moreover, should Safeway or a comparable anchor tenant at the Shopping Center remain as a tenant of Landlord after twenty years from the Commencement Date, the Tenant shall have the option to extend the Lease upon the same conditions for an additional period of time equal to the total period of time that Safeway or the comparable anchor tenant is a Tenant at the Shopping Center.

(b) If Tenant, prior to December 31, 1988, has not received an opinion from the Boulder County Assessor that the Premises will be exempt from property taxes during the term of the Lease, it may, by giving the Landlord ten (10) days advance written notice, terminate this Lease. Upon termination, both parties shall be released from all obligations hereunder.

(c) If the City Council of the City of Boulder, Colorado has not appropriated sufficient funds to complete the Tenant's Work set forth in Exhibit C prior to February 28, 1989, Tenant may terminate this Lease by giving Landlord ten (10) days advance written notice thereof. Upon termination, both parties shall be released from all obligations hereunder.

(d) If the City Council fails to appropriate sufficient funds for the expenses and fees which the Tenant is required to pay under this Lease for any calendar year subsequent to 1989, then the Tenant may terminate this lease as of the December 31 immediately preceding that calendar year by giving the Landlord written notice thereof at least sixty (60) days before that date. Upon such termination, both parties shall be released from all obligations hereunder.

6. RENT AND COMMON EXPENSES

(a) No Rent. The Tenant shall not pay rent to the Landlord, but shall pay its Pro Rata Share of various common expenses as set forth below. For purposes of any action against Tenant under Colorado's forcible entry and detainer statutes, the Pro Rata Share may be considered as rent.

(b) Taxes and Insurance. Tenant shall pay to Landlord, Tenant's Pro Rata Share of real estate taxes on the Shopping Center; but, the above notwithstanding, Tenant shall only be obligated to pay its Pro Rate Share of real estate taxes if and to the extent that the Premises are not exempt from such taxes. Landlord shall notify Tenant of its receipt of any notice of any tax assessment affecting the Premises in sufficient time so that Tenant, if it chooses, may protest or appeal any assessment which does not recognize the Premises as tax exempt. Real estate taxes shall include all real property taxes and assessments levied against the Shopping Center by any governmental or quasi-governmental authority, including any taxes, assessments, surcharges, or service or other fees of a nature not presently in effect which shall hereafter be levied on the Shopping Center as a result of the use, ownership or operation of the Shopping Center or for any other reason, whether in lieu of or in addition to any current real estate taxes and assessments; provided, however, that any taxes which shall be levied on the rental of the Shopping Center shall be determined as if the Shopping Center were Landlord's only

property and provided further, that in no event shall the terms "Taxes and Assessments," as used herein, include any federal, state or local income taxes levied or assessed on Landlord, unless such taxes are a specific substitute for real property taxes; such term shall, however, include gross taxes on rentals (all of the foregoing are collectively referred to herein as "Taxes"). "Assessments" shall include any and all so-called special assessments, license tax, business license fee, business license tax, commercial rental tax, levy, charge or tax imposed by any authority having the direct power to tax, including any city, county, state or federal government, or any school, agricultural, lighting, water, drainage or other improvement or special district thereof, against the Premises or the Shopping Center, or any part thereof, or against any legal or equitable interest of Landlord therein. For the purposes of this Lease, any special assessment shall be deemed payable in such number of installments as is permitted by law, whether or not actually so paid. If the Shopping Center has not been fully assessed as a completed project, for the purpose of computing any adjustment to Tenant's share required herein, Taxes and Assessments shall be increased by Landlord's Accountants, in accordance with their estimate of what the assessment will be, upon full completion of the Shopping Center, including installation of all tenant finish items. Insurance shall include fire, extended coverage, property damage, liability, and business interruption or rent loss, and any other insurance coverage on the Shopping Center. Any tax or insurance reimbursement for any partial lease year shall be apportioned on a per diem basis. Tenant shall pay prior to delinquency all personal property taxes on Tenant's personal property located on the Premises.

(c) Common Area Maintenance Expenses. Tenant shall pay to Landlord, Tenant's Pro Rata Share of the Common Area Maintenance Expenses. "Common Area Maintenance Expenses" shall mean all expenses of any kind or nature which are necessary, ordinary or customarily incurred with respect to the operation, repair and maintenance of the Shopping Center as determined in accordance with generally accepted accounting principles and shall include, but not be limited to all sums expended in connection with Common Areas for all general operation and maintenance and repairs, resurfacing, or painting, restriping, cleaning, sweeping and janitorial services; maintenance and repair of sidewalks, curbs, and Shopping Center signs, sprinkler systems, planting and landscaping; lighting and other utilities; directional signs and other markers and bumpers; maintenance and repair of any fire protection systems, lighting systems, storm drainage systems, roof patching and any other utility systems; personnel to implement such services including the salary of the manager and all on-site personnel hired by Landlord and, if Landlord deems necessary, the cost of security guards; real and personal property taxes and assessments on the improvements and land comprising said Common Areas; all costs and expense pertaining to a security alarm system for the tenants in the Shopping Center; depreciation on maintenance and operating machinery and equipment (if owned) and rental paid for such machinery and equipment (if rented, adequate public liability and property damage insurance on the Shopping Center and Common Areas under which the Tenant shall be named as an additional insured). In addition, Tenant shall pay a sum to Landlord for the accounting, bookkeeping and collection of the expenses for each calendar year. Landlord may cause any of all of said services to be provided by an independent contractor or contractors. Should Landlord acquire or make available additional land not shown as part of the Shopping Center on Exhibit A and make the same available for parking or other Common Area purposes, then said expenses in connection with Common Areas shall also include all of the aforementioned expenses incurred and paid in connection with said additional land.

Thirty days prior to the Commencement Date and also thirty days prior to the beginning of each calendar year during the term of this Lease, Landlord shall provide Tenant with a written statement specifying the standards at which each of the services included in the Common Area Maintenance Expenses will be performed (for example, how often windows will be cleaned, or how much snow must accumulate before snow is removed). As well, thirty days prior to the Commencement Date and at least thirty days prior to the beginning of each calendar year the Landlord will furnish Tenant with an estimate of the cost of each such service during the coming year.

(d) Calculation of Tenant's Pro Rata Share. Tenant's Pro Rata Share, for the purposes of this Lease, shall be a fraction, the numerator of which is the total usable square footage of the Premises (i.e., 7,812 square feet) and the denominator of which is the total square footage of the Shopping Center (i.e., 173,803 square feet). The above notwithstanding, and subject to the provisions of the following paragraph (e), Tenant's Pro Rata Share of Common Area Maintenance Expenses, Taxes and Insurance shall not in any event exceed \$1.02 per useable square footage of the Premises for the first year after the Commencement Date, and thereafter it shall not increase by more than the

percentage increase, if any, during each succeeding year in the United States Department of Labor Consumer Price Index for all Urban Consumers ("CPI-U") for the Consolidated Metropolitan Statistical Area for Denver.

(e) Expenses Borne by Tenant. The Landlord and Tenant recognize the unique character of the intended use by Tenant and agree that the limitation of the amount payable for the Common Area Maintenance Expenses, Taxes and Insurance is conditioned upon the following:

(i) Landlord and Tenant are able to procure an exemption from real property taxes applicable to the space to be occupied by Tenant.

(ii) Tenant assures that the Premises and public areas designated in Exhibit E will be added to and primarily covered under the Tenant's municipal blanket insurance policy, and that the Landlord's lender and the Landlord, and as property manager, be added as additional named insureds.

(iii) All exterior lights and parking lot lights used in the 113-space parking lot shown on Exhibit E will be separately metered, billed directly to the Tenant, and paid for by the Tenant.

(iv) Tenant shall be solely responsible for removing all trash from the Premises.

(v) Tenant shall provide and be responsible for snow removal and sweeping for the above-mentioned parking lot.

(vi) Landlord shall have the right, notwithstanding the above provisions, to take steps necessary to remedy any unsafe or unsightly situation that may arise in the Shopping Center from failure by the Tenant or Tenant's contractees to provide the above-mentioned services.

(f) Payment of Common Area Charges. Tenant shall pay to the Landlord, Tenant's Pro Rata Share of Common Area Maintenance Expenses, Taxes and Insurance in the following manner:

(i) Beginning with the Commencement Date, but subject to adjustment as provided herein, Tenant shall pay to Landlord on the first day of each calendar month of the term of this lease an amount estimated by Landlord to be Tenant's Pro Rata Share of such charges. Landlord may adjust the estimated monthly charge at the end of any calendar year on the basis of Landlord's experience and reasonably anticipated costs.

(ii) Within one hundred twenty (120) days following the end of each calendar year, Landlord shall furnish Tenant a statement covering the calendar year just expired (the "Statement"), certified as correct by an authorized representative of Landlord, showing the total of such charges, the amount of Tenant's Pro Rata Share thereof for such calendar year, and the payments actually paid by Tenant during such period. If Tenant's Pro Rata Share of such charges exceeds Tenant's payments made, Tenant shall pay Landlord the deficiency within ten (10) business days after receipt of such Statement. If the estimated payments made exceed Tenant's actual Pro Rata Share thereof, Landlord shall credit the excess against any amounts then owing or thereafter becoming due from Tenant to Landlord. In any Lease Year which is not a full calendar year, a proportionate reduction shall be made in Tenant's Pro Rata Share of Common Area Maintenance Expenses.

(iii) Tenant shall have the right at its own expense and at a reasonable time (after written notice to Landlord) within thirty (30) days after receipt of the Statement to audit Landlord's books relevant to the Tenant's Pro Rata Share of the Common Area Maintenance Expenses, Taxes and Insurance due hereunder. In the event Tenant does not audit Landlord's books and deliver the results thereof to Landlord within said thirty-day period, the terms and amounts set forth in the Statement from Landlord to Tenant shall be deemed conclusive and final and Tenant shall have no further right to adjustment. In the event Tenant's examination reveals that an error has been made in Landlord's determination of Tenant's Pro Rata Share of such charges, and Landlord agrees with such determination, then the amount of such adjustment shall be payable by Landlord or Tenant to the other party as the case may be in accordance with subparagraph (ii) hereof. In the event Tenant's examination reveals an error has been

made in Landlord's determination of Tenant's Pro Rata Share, and Landlord disagrees with the results thereof, Landlord shall have thirty (30) days to obtain an audit from an accountant of its choice to determine Tenant's Pro Rata Share of such charges. In the event Landlord's accountant and Tenant's accountant are unable to reconcile their audits, both accountants shall mutually agree upon a third accountant, whose determination of Tenant's Pro Rata Share of the charges shall be conclusive. In the event the amount of error by Landlord is determined to be less than five percent (5%), the reasonable costs of the third audit made pursuant to this subparagraph shall be paid by Tenant.

(iv) Landlord's failure during the Lease term to prepare and deliver any statements or bills, or Landlord's failure to make a demand under this paragraph or under any other provision of this Lease shall not in any way be deemed to be a waiver of, or cause Landlord to forfeit or surrender, its rights to collect any items of Additional Rent which may have become due pursuant to this paragraph during the term of this Lease, except as otherwise specifically set forth in this Lease. Tenant's liability for all Additional Rent due under this Lease shall survive the expiration or earlier termination of this Lease.

(v) Regardless of any rental abatement granted to Tenant as an incentive or concession, or to which Tenant may be entitled hereunder, Tenant's obligation to pay its Pro Rata Share of Common Area Maintenance Expenses, Taxes and Insurance shall not abate, but shall begin on the Commencement Date and shall continue in full force and effect for the entire term of this Lease, including any renewals or extensions hereof.

(g) Late Charge. Tenant hereby acknowledges that late payment by Tenant to Landlord of its Pro Rata Share, or other sums due hereunder will cause Landlord to incur costs the exact amount of which will be difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges, and late charges which may be imposed upon Landlord by terms of any mortgage or trust deed encumbering the Shopping Center. Accordingly, if any installment of Pro Rata Share or any other sum due from Tenant shall not be received by Landlord within ten (10) days after said amount is due, Tenant shall pay to Landlord on demand a late charge of five percent (5%) of such overdue amount, plus any reasonable attorneys' fees incurred by Landlord by reason of Tenant's failure to pay such amount. Any sums due from Tenant which are more than one (1) month delinquent shall bear interest at the rate of eighteen percent (18%) per annum ("Interest Rate") from the due date. Tenant shall pay on demand Twenty-five Dollars (\$25.00) for any check returned for insufficient funds.

7. SERVICES

(a) Separately Metered Services. The Premises shall be separately metered for gas and electric utility services. Tenant shall be responsible for contracting directly with the appropriate utility supplier for all gas and electric service to the Premises. Tenant shall be responsible for payment of all fees and costs for such gas and electric service (including HVAC services) to the Premises directly to the applicable utility supplier prior to delinquency.

(b) Service Interruption. Landlord shall not be liable for failure to provide any required services so long as Landlord uses reasonable diligence to provide or restore such services. Landlord may discontinue services due to accident, repairs, strikes, acts of God, or any other event beyond the reasonable control of Landlord. In such event, Landlord shall not be liable for such failure or discontinuance, nor shall such failure or discontinuance be construed as a constructive eviction of Tenant. Landlord's obligation to furnish electricity and gas is conditioned upon the availability of adequate sources from the utility company servicing the Shopping Center, without liability, to comply with any public energy-saving program.

(c) Payment by Tenant. Tenant shall pay, prior to delinquency and directly to the applicable supplier, for all services and utilities supplied to the Premises and separately metered, together with any taxes thereon. If any services are not separately metered to Tenant, Tenant shall pay Tenant's Pro Rata Share of all charges jointly metered with other space in the Shopping Center. Tenant shall arrange and pay for its own telephone service.

8. TENANT REPAIRS AND ALTERATIONS

(a) Repairs. Tenant shall, at Tenant's sole cost and expense, keep the Premises and every part thereof including but not limited to interior surface of ceilings,

walls and floors; doors, windows, plate glass; and all plumbing pipes and apparatus, electrical fixtures, furnishings and equipment, in good condition and repair. Tenant shall immediately replace all broken glass in the Premises. Tenant shall, upon the expiration or earlier termination of this Lease, surrender the Premises to Landlord in good condition, broom clean, ordinary wear and tear excepted. Tenant shall not be obligated to make repairs necessitated by fire or other casualty unless caused in whole or in part by the act, omission or negligence of Tenant, its agents, employees and invitees. Notwithstanding the foregoing, all damage or injury to the Premises or to any other part of the Shopping Center caused by carelessness, omission, neglect, or improper conduct of Tenant, its employees, agents, subtenants, assignees or invitees shall be repaired promptly by Tenant at its sole cost and expense, to the satisfaction of Landlord reasonably exercised. All decals and signage shall be removed from windows at the termination of the Lease.

(b) Service Contract. Tenant shall enter into a regularly scheduled preventive maintenance and service contract with an experienced maintenance and service contractor for servicing the controls of all heating, ventilation, and air conditioning (HVAC) systems and equipment within the Premises. The contractor and the contract are both subject to Landlord's prior approval, which approval shall not be unreasonably withheld or delayed. The Landlord hereby approves Johnson Controls, Inc. as such a contractor (without implying by such approval disapproval of any other proposed contractor) so long as Johnson Controls maintains and repairs the controls in accordance with its contractual obligations to Tenant. The Tenant may maintain the other parts of the HVAC systems and equipment within the Premises with its own employees, who shall be qualified and experienced in such work. Such maintenance shall include, at a minimum, all services recommended by the equipment manufacturer and must be effective within thirty (30) days of the Commencement Date hereof.

(c) Alterations. Tenant shall not change any plumbing or wiring, without the prior written consent of Landlord. Plans and specifications for such work shall be submitted to Landlord in advance. Landlord shall have the right to approve Tenant's contractors as well as the general manner and method in which such work is to be performed. Tenant shall provide Landlord with insurance certificates evidencing that all contractors and subcontractors have adequate workmen's compensation insurance, and builder's risk insurance satisfactory to Landlord. At least twenty (20) days prior to the commencement of any work on the Premises, Tenant shall notify Landlord of the names and addresses of the persons supplying labor and materials so that Landlord may give notice that it shall not be subject for any lien for Tenant's work in accordance with Colorado's mechanics' lien statutes. Landlord shall have the right to keep posted on the Premises notice to such persons in accordance with such statutes.

(d) Mechanics' Liens. Tenant shall pay or cause to be paid all costs for work done by or on behalf of Tenant or caused to be done by or on behalf of Tenant on the Premises of a character which will or may result in liens against Landlord's interest in the Premises or the Shopping Center, or any part thereof and Tenant will keep the same free and clear of all mechanics' liens and other liens on account of work done for or on behalf of Tenant or persons claiming under Tenant. Should any such liens be filed or recorded against the Premises or the Shopping Center with respect to work done for or materials supplied to or on behalf of Tenant or should any action affecting the title thereto be commenced, Tenant shall cause such liens to be released of record within twenty (20) days after notice thereof. If Tenant desires to contest any such claim of lien, Tenant shall nonetheless cause such lien to be released of record by the posting of adequate security with a court of competent jurisdiction as may be provided by Colorado's mechanics' lien statutes. If Tenant shall be delinquent in paying any charge for which such a mechanics' lien or suit to foreclose such a lien has been recorded or filed and shall not have caused the lien to be released as aforesaid, Landlord may (but without being required to do so) pay such lien or claim and any costs associated therewith, and the amount so paid, together with interest thereon at the Interest Rate and reasonable attorneys' fees incurred in connection therewith, shall be immediately due from Tenant to Landlord as Additional Rent.

9. INDEMNITY

Tenant shall indemnify and hold harmless Landlord against and from any and all claims arising from Tenant's use of the Premises, the conduct of its business or any claim arising from any breach or default on Tenant's part under the terms of this Lease, or from any act, omission, or negligence of Tenant, or any officer, agent, employee, guest or invitee or Tenant, and from all costs, attorneys' fees, and liabilities incurred in or

about the defense of any such claim or any action or proceeding brought thereon. The above notwithstanding, Tenant's indemnification obligation hereunder is subject to and limited by the proceeds, if any, of Tenant's applicable insurance policies and programs. Tenant assumes all risk of damage to property or injury to persons in, upon or about the Premises, from any cause other than Landlord's negligence. Tenant waives all claims with respect thereof against Landlord. Tenant shall give prompt notice to Landlord in case of casualty or accidents in the Premises. Landlord agrees to indemnify and hold Tenant harmless from any and all claims, liabilities, losses, costs and expenses (including reasonable attorneys' fees) arising from or in connection with the condition, use or control of the Common Areas during the Lease Term.

10. INSURANCE

Tenant shall procure and maintain at its own cost at all times during the term of this Lease and any extensions hereof, fire, hazard and extended coverage insurance on Tenant's property and the contents of the Premises in an amount not less than the full replacement value, plate glass insurance, comprehensive general liability insurance, including coverage for bodily injury, property damage, personal injury (employee and contractual liability exclusions deleted), products and completed operations, contractual liability, owner's protective liability, host liquor legal liability and broad form property damage with the following limits of liability: Four Hundred Thousand Dollars (\$400,000.00) for each occurrence combined single limit for bodily injury, property damage and personal injury; Four Hundred Thousand Dollars (\$400,000.00) aggregate for bodily injury and property damage for products and completed operations. All such insurance shall be procured from a responsible insurance company authorized to do business in Colorado, and shall be otherwise satisfactory to Landlord. All such policies shall name Landlord and Landlord's managing agent as an additional insured, and shall provide that the same may not be cancelled or altered except upon thirty (30) days prior written notice to Landlord. All insurance maintained by Tenant shall be primary to any insurance provided by Landlord. If Tenant obtains any general liability insurance policy on a claims-made basis, Tenant shall provide continuous liability coverage for claims arising during the entire term of this Lease, regardless of when such claims are made, either by obtaining an endorsement providing for an unlimited extended reporting period in the event such policy is cancelled or not renewed for any reason whatsoever or by obtaining new coverage with a retroactive date the same as or earlier than the expiration date of the cancelled or expired policy. Tenant shall provide certificate(s) of such insurance to Landlord upon commencement of the Lease term and at least thirty (30) days prior to any annual renewal date thereof and upon request from time to time and such certificate(s) shall disclose that such insurance names Landlord and Landlord's managing agent as an additional insured, in addition to the other requirements set forth herein. The limits of such insurance shall not, under any circumstances, limit the liability of Tenant hereunder.

11. SUBROGATION

As long as their respective insurers so permit, Landlord and Tenant hereby mutually waive their respective rights of recovery against each other for any loss or damage to property insured by fire, extended coverage, or any other property insurance policies existing for the benefit of the respective parties. The foregoing waiver shall be in force only if both parties' insurance policies contain a clause providing that such a waiver shall not invalidate the insurance and such a policy can be obtained without additional premiums.

12. LANDLORD REPAIRS

Landlord shall maintain all portions of the Shopping Center not the obligation of Tenant or any other tenant in good order, condition and repair, and shall proceed to make all needed repairs diligently. There shall be no liability of Landlord by reason of any injury to, or interference with, Tenant's operations arising from the diligent making of any repairs, alterations or improvements.

13. COMMON AREAS AND PARKING

The parking areas in the Shopping Center shall be at all times under Landlord's exclusive control. Landlord reserves the right to change the entrances, exits, traffic lanes and the boundaries and locations of parking areas, as long as Tenant's operations are not materially disrupted. Landlord shall keep parking and common areas in clean and orderly condition. All vehicles of Tenant, its agents, and employees shall be parked in

parking areas designated by Landlord for use by the retail tenants in the Shopping Center. Tenant shall furnish Landlord, upon request, a complete list of license numbers of all automobiles operated by Tenant and its employees.

14. LIMITED LIABILITY

Landlord shall not be liable for any loss or damage resulting from: (a) fire, explosion, falling plaster, steam, gas, electricity, water or rain; (b) the pipes, appliances or plumbing works in the Shopping Center; (c) the roof, street, subsurface; (d) any variation or interruption of utility services; (e) theft or other criminal acts of third parties; or (f) any other cause whatsoever, unless due to the negligence of Landlord. Landlord's liability under this Lease shall be limited to Landlord's estate and interest in the Shopping Center and Tenant shall look solely to the Shopping Center for the recovery of any judgment against Landlord. Landlord and its partners shall not be personally liable for any judgment.

15. ASSIGNMENT AND SUBLETTING

Tenant shall not assign this Lease or sublet all or any part of the Premises.

16. DAMAGE BY CASUALTY

(a) Subject to Section 16(b), (c) and (d), in the event the Premises are damaged by fire or other casualty, Landlord shall repair such damage. This Lease shall remain in full force and effect.

(b) If the Shopping Center is more than fifty percent destroyed and Landlord decides to and proceeds to demolish it and not replace it with another shopping center on the site then the Landlord may elect to terminate the Lease by written notice to Tenant given ninety (90) days following such fire or other casualty.

(c) In case of any damage mentioned in this Section 16, Tenant may cancel this Lease by written notice to Landlord if Landlord has not completed the making of the required repairs within six (6) months from the date of damage, which period shall be extended by the number of days lost in the event of labor strikes, act of God, or any other similar causes beyond the control of Landlord; provided, however, that such notice be given to Landlord within thirty (30) days of the expiration of said six (6) month period and prior to substantial completion of the required repairs.

(d) In case the Shopping Center or the Premises shall be substantially damaged during the last year of the Lease term, then either Landlord or Tenant may cancel the Lease upon written notice to the other party given within forty-five (45) days after such damage.

(e) Landlord shall not be required to make any repairs or replacements of any leasehold improvements, fixtures, or other personal property of Tenant.

17. EMINENT DOMAIN AND CONDEMNATION

(a) Total Condemnation. If the whole of the Premises shall be taken by condemnation or eminent domain, then the term hereof shall cease as of the vesting of title or as of the day possession shall be so taken, whichever is earlier.

(b) Partial Condemnation. If only a portion of the Premises is taken by condemnation or eminent domain, Landlord shall be entitled to terminate this Lease, effective on the day of vesting of title or the day possession is taken, whichever is earlier, upon giving written notice to Tenant within ninety (90) days from the taking. If Landlord does not elect to so terminate this Lease, Landlord shall restore the Premises to the extent practicable, and Tenant's Pro Rata Share shall be abated to the extent there is any diminution in the usable area of the Premises.

(c) Damages. In the event of any taking, Landlord shall be entitled to any and all awards and/or settlements which may be given, and Tenant shall have claim against Landlord for the value of any unexpired term of this Lease. Tenant shall have the right to claim from the condemning authority a separate award for damage to Tenant's business.

18. ENTRY BY LANDLORD

Landlord reserves the right to enter the Premises to inspect the same, to submit the Premises to prospective purchasers, lenders or tenants, to post notices of non-responsibility, to post notices of Tenant's failure to comply with this Lease, or to repair the Premises, without abatement of Rent, and may for that purpose erect scaffolding and other necessary structures where reasonably required; provided that the entrance to the Premises shall not be unreasonably blocked and the business of Tenant shall not be interfered with unreasonably. Tenant hereby waives any claim for damages to Tenant's business, any loss of occupancy or quiet enjoyment of the Premises, and any other loss occasioned thereby. Landlord shall have the right to use any and all means which Landlord may deem proper to open said doors in an emergency, without any liability to Tenant except for failure to exercise due care for Tenant's property. Any entry to the Premises by Landlord shall not be construed to be a forcible or unlawful entry into the Premises, or an eviction of Tenant from the Premises.

19. DEFAULT BY TENANT

(a) Event of Default Defined. The following events (herein referred to as an "Event of default") shall constitute a default by Tenant hereunder:

(i) Tenant shall default in the due and punctual payment of its Pro Rata Share of Common Area Maintenance Expenses, Taxes and Insurance payable hereunder, and such default shall continue for ten (10) days after receipt of written notice from Landlord; or

(ii) Tenant shall neglect or fail to perform or observe any of the covenants herein contained on Tenant's part to be performed or observed and Tenant shall fail to remedy the same within thirty (30) days after Landlord shall have given to Tenant written notice specifying such neglect or failure (or within such additional period, if any, as may be reasonably required to cure such default if it is of such nature that it cannot be cured within said thirty (30) day period); or

(iii) This Lease or the Premises or any part thereof shall be taken upon execution or by other process of law directed against Tenant, or shall be taken upon or subject to any attachment at the instance of any creditor of or claimant against Tenant, and said attachment shall not be discharged or disposed of within fifteen (15) days after the levy thereof; or

(iv) Tenant vacates or abandons the Premises or permits the same to remain vacant or unoccupied for a period of ten (10) continuous business days, then, in any such event, after written notice has been received by Tenant from Landlord, Tenant will have ten (10) days to remedy such default, otherwise Lessor shall have the right at its election, or at any time thereafter, and while such event of default shall continue, to pursue its remedies as set forth in Subsection 19(b).

(b) Remedies. In the event of any such default or breach by Tenant, Landlord may at any time thereafter, in its sole discretion, without limiting Landlord in the exercise of a right or remedy which Landlord may have by reason of such default or breach, terminate this Lease and re-enter and take possession of the Premises or any part thereof and repossess the same as Landlord's former estate without prejudice to any remedies for arrears of Tenant's Pro Rata Share or preceding breach of covenants or conditions.

20. NON-SUBORDINATION

This Lease shall remain in full force and effect regardless of the status of any mortgage or deed of trust now or hereafter placed on the Shopping Center and of any renewal, modification, consolidation, replacement or extension of such mortgage or deed of trust. At the request of Tenant, Landlord shall obtain a non-disturbance agreement from its lender.

21. SIGNS AND ADVERTISING

(a) Signs. Tenant shall not install or display any sign, picture, advertisements, notice, lettering or direction on any part of the Shopping Center outside of the Premises or otherwise visible to the public without the written consent of Landlord. Landlord shall prescribe a uniform identification sign for Tenant to be placed outside of the Premises by Tenant no later than the date Tenant opens for business. Tenant may install or display the maximum amount of signage allowed by the Boulder Revised Code, 1981,

(b) Displays. Tenant may not display or sell merchandise outside of the Premises. Tenant shall not install any exterior lighting, amplifiers or similar devices which may be heard or seen outside the Premises, such as flashing lights, searchlights, loud-speakers, phonographs or radio broadcasts.

22. NOTICE

All notices shall be in writing, delivered personally or mailed, postage prepaid, certified or registered mail, return receipt requested, addressed as set forth below, or to such other place as either party may designate by notice:

To Landlord at: The Colorado Management Group
4700 Walnut Street
Boulder, CO 80301

To Tenant at: City of Boulder Public Library
P. O. Drawer H
Boulder, CO 80306
Attention: Library Director

23. ESTOPPEL STATEMENT

Tenant shall within ten (10) days of request, execute, acknowledge and deliver to Landlord a statement in writing: (a) certifying that this Lease is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this Lease as so modified is in full force and effect); (b) acknowledging that there are not, to Tenant's knowledge, any uncured defaults on the part of the Landlord hereunder, or specifying such defaults, if any are claimed; (c) setting forth the date of commencement and expiration of the term hereof; and (d) such other matters reasonably requested by Landlord. Any such statement may be relied upon by Landlord and any prospective purchaser or encumbrancer of the Shopping Center. In the event that such statement is not so delivered by Tenant as required herein, Landlord shall have the right to deliver such statement on behalf of Tenant, and Tenant designates the Landlord as its Attorney-In-Fact in providing such statement.

24. RULES AND REGULATIONS

Tenant shall comply with such reasonable rules and regulations concerning the Shopping Center and for the general benefit of both Landlord and the Tenants in the Shopping Center that Landlord may establish from time to time.

25. GENERAL PROVISIONS

(a) The waiver by Landlord of any term, covenant or condition herein contained shall not be deemed to be a waiver of any subsequent breach. The acceptance of Tenant's Pro Rata Share shall not be deemed to be a waiver of any default by Tenant.

(b) The headings to the sections of this Lease shall have no effect upon the construction or interpretation of any part hereof.

(c) Time is of the essence.

(d) The covenants and conditions herein contained bind the heirs, successors, executors, administrators, and assigns of the parties hereto.

(e) Neither Landlord nor Tenant shall record this Lease, but a short form memorandum hereof may be recorded at the request of Landlord.

(f) Upon Tenant observing and performing all of the covenants, conditions and provisions on Tenant's part to be observed and performed hereunder, Tenant shall have quiet possession of the Premises for the entire term hereof, subject to all the provisions of this Lease.

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My commission expires: April 12, 1992

(SEAL)

Robert J. Pennington
Notary Public

STATE OF)
COUNTY OF) ss.
)

The foregoing instrument was acknowledged before me this 21st day of September, 1988, by James W. Piper as City Manager of the City of Boulder, a Colorado municipal corporation.

Witness my hand and official seal.

My commission expires: June 6, 1991

(SEAL)

Judith C. Conz
Notary Public

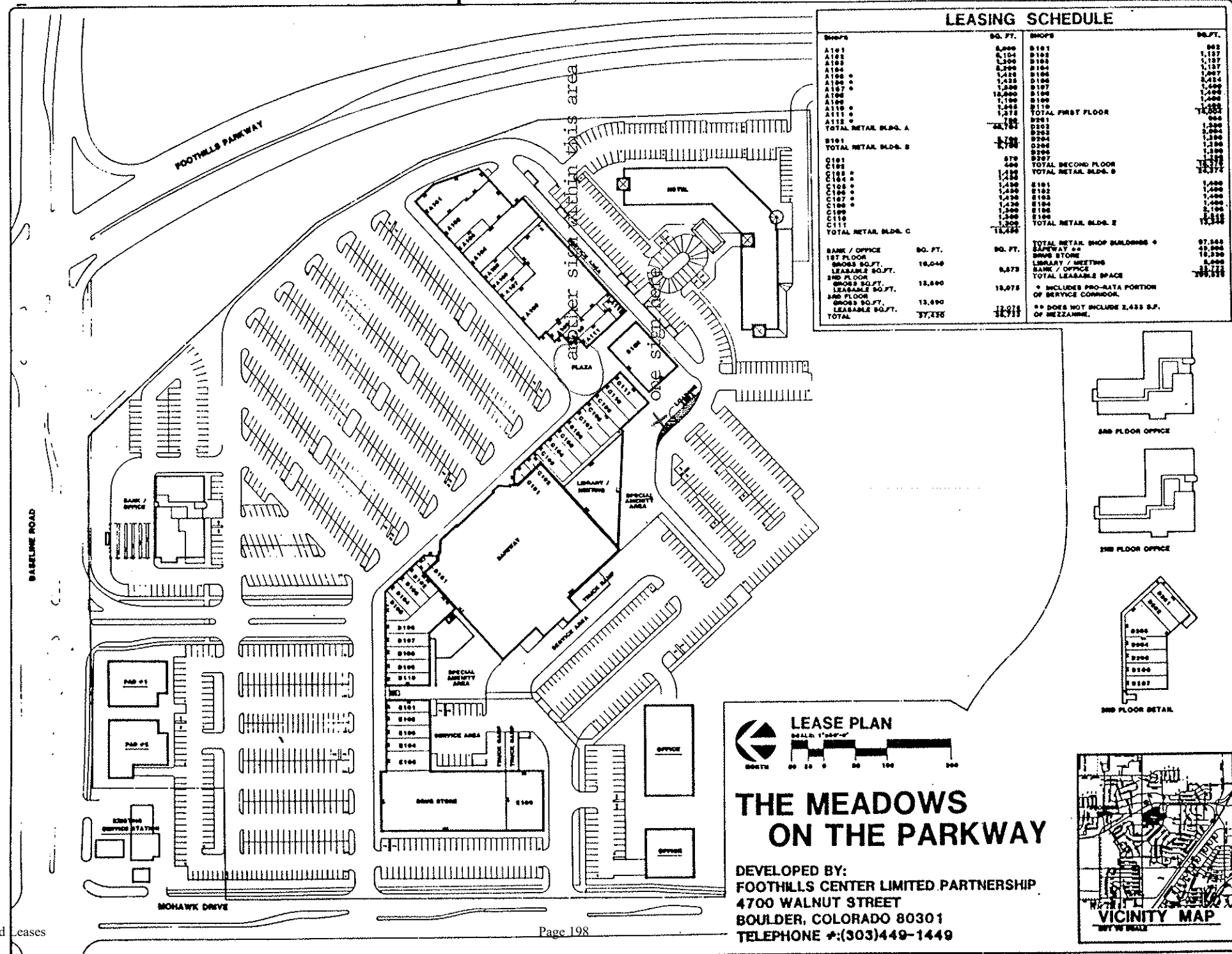
LI AD EOC

CIVA

INITIAL

EXHIBIT A
Site Plan

Item 3F - Library Final IGA and Leases



**THE MEADOWS ON THE PARKWAY
FOOTHILLS CENTER LIMITED PARTNERSHIP**

**Clothier-Weber
& Associates, Inc.**

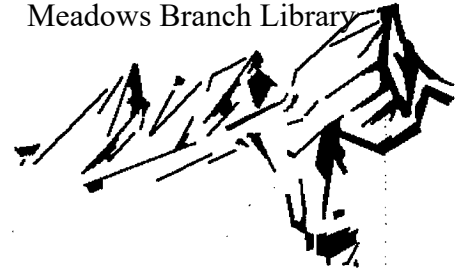
FOOTHILLS CENTER
FOOTHILLS PLAZA WAY & 94th AVE. BOULDER, COLORADO

and Associates, Inc.
 10000 Wilshire Blvd., Suite 1000
 Beverly Hills, CA 90210
 Tel: 310.277.1000
 Fax: 310.277.1001
 E-mail: info@and.com
 Web: www.and.com

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CITY OF BOULDER, COLORADO

Office of the City Attorney
Municipal Building
1777 Broadway
Post Office Box 791
Boulder, Colorado 80306
Telephone (303) 441-3020
Facsimile (303) 441-3859



August 7, 2009

SENT BY CERTIFIED MAIL
COPY SENT BY REGULAR MAIL

Michael Savage
Foothills Center Limited Partnership
4800 Baseline Road
Suite A-112
Boulder, CO. 80303

Re: Lease Renewal Agreement for Meadows Library

Dear Mr. Savage:

My understanding is that you believe our letter dated August 3, 2009 represents a formal exercise of our option to renew the lease and that no other documents are necessary. However, section 25(k) of the lease requires a writing signed by both parties. Furthermore, Colorado law (the Statute of Frauds and section 38-10-106 C.R.S.) requires the same.

I have attached a renewal agreement to this email, please sign it and return via regular mail or drop it off at my office before August 31, 2009.

Once I get your signed copy back, the city manager will sign, and I will provide you with a final copy of the agreement with both signatures.

Sincerely,

Sandra M. Llanes
Assistant City Attorney
City of Boulder

Enclosure

cc: Tony J. Talent, Library/Arts Director
Jim Marshall, Finance & Business Manager
Doug Newcomb, Property Agent

**LEASE RENEWAL BETWEEN THE CITY OF BOULDER
AND FOOTHILLS ASSOCIATES, INC.,
FOR PUBLIC LIBRARY SPACE
AT THE MEADOWS ON THE PARKWAY, BOULDER COLORADO**

This Lease Renewal is made as of the _____ day of _____, 2009, by and between Foothills Center Limited Partnership, a Colorado limited partnership as Landlord ("Landlord") and the City of Boulder, Colorado, a Colorado home rule city, as Tenant ("Tenant"). Hereinafter, Landlord and Tenant may be referred collectively as the Parties ("Parties").

RECITALS

A. The Landlord and Tenant entered into a Lease Agreement dated September 21, 1988 as amended by the Commencement Date Agreement dated June 20, 1990 attached as Exhibit A ("Lease Agreement") for certain premises to be used as a public library space located at 4700 Baseline Road, all as described in the Lease Agreement.

B. Tenant wishes to extend the Lease Agreement pursuant to the term stated in Paragraph 5 of the Lease Agreement.

COVENANTS

NOW THEREFORE, in consideration of the promises and obligations set forth below, the Parties agree as follows:

1. The Parties agree to extend the Lease Agreement pursuant to the term stated in Paragraph 5(a) of the Lease Agreement which states as follows:

(a) This Lease shall have a term of twenty (20) years commencing on the Commencement Date. It is anticipated that the Commencement Date will be May, 1989, and that the Termination Date of this lease will be April 30, 2009. Moreover, should Safeway or a comparable anchor tenant at the Shopping Center remain as a tenant of Landlord after twenty years from the Commencement Date, the Tenant shall have the option to extend the Lease upon the same conditions for an additional period of time equal to the total period of time that Safeway or the comparable anchor tenant is a Tenant at the Shopping Center.

2. It is further clarified that the actual Commencement Date, pursuant to the Commencement Date Agreement between the Parties dated June 20, 1990 sets forth the Commencement Date of the Lease as September 1, 1989 and the Termination date of the Lease as August 31, 2009 subject to Tenant's option to extend the Lease stated in Paragraph 5.

3. The Parties agree to extend the term of the Lease Agreement through August 31, 2029 or until such time as Safeway or a comparable anchor tenant at the Shopping Center is no longer a Tenant at the Shopping Center, with all terms and conditions remaining the same as stated in the Lease Agreement.

IN WITNESS WHEREOF, the Parties have set their hands to this Lease Renewal on the day and year above first written.

[Signature page follows]

LANDLORD:

FOOTHILLS CENTER LIMITED PARTNERSHIP
A Colorado Limited Partnership

By: Michael Savage
Managing General Partner

STATE OF COLORADO)
) ss.
COUNTY OF BOULDER)

Acknowledged before me, a notary public, this _____ day of _____ 2009, by
Michael Savage, as Managing General Partner for Foothills Center Limited Partnership.

Witness my hand and official seal.

My commission expires:

(SEAL)

Notary Public

TENANT:

CITY OF BOULDER, COLORADO

By: Jane S. Brautigam
City Manager

ATTEST:

City Clerk on behalf of the
Director of Finance and Record

APPROVED AS TO FORM:

City Attorney's Office

COMMENCEMENT DATE AGREEMENT

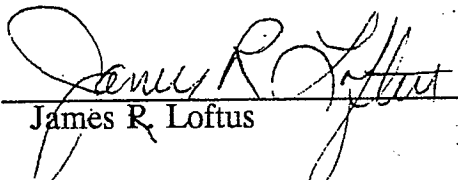
This Commencement Date Agreement pertains to the Lease dated September 21, 1988 (the "Lease") between Foothills Center Limited Partnership, as Landlord, and the City of Boulder, as Tenant, for the Premises located at 4800 Baseline Road, Suite C-112, Boulder, Colorado 80303.

Landlord and Tenant agree and acknowledge as follows:

1. All capitalized terms contained herein are used as defined in the Lease.
2. Tenant has accepted Landlord's Work.
3. The Commencement Date of the Lease is September 1, 1989.
4. The Termination Date of the Lease will be August 31, 2009, subject to the Tenant's option to extend the Lease stated in Section 5.
5. The area of the Premises is 7,812 usable square feet.
6. Tenant's share of expense pass-through items under the Lease is 4.4947%, subject to the per useable square footage limitation in Section 6.

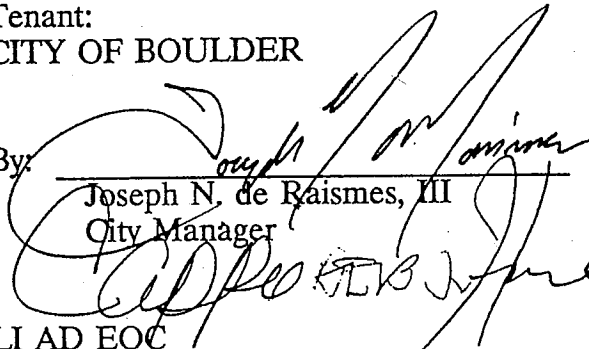
Landlord:

FOOTHILLS CENTER LIMITED PARTNERSHIP

By: 
James R. Loftus

Date: 6/20/90

Tenant:
CITY OF BOULDER

By: 
Joseph N. de Raismes, III
City Manager

Date: 5/17/90

LI AD EOC

**LEASE BETWEEN THE CITY OF BOULDER
AND FOOTHILLS ASSOCIATES, INC. FOR PUBLIC LIBRARY SPACE AT
THE MEADOWS ON THE PARKWAY
BOULDER, COLORADO**

1. PARTIES

This Lease, dated this 21st day of September, 1988, is entered into between Foothills Center Limited Partnership, a Colorado limited partnership, as landlord ("Landlord"), whose address is 4700 Walnut Street, Boulder, Colorado 80301, and the City of Boulder, Colorado, a Colorado municipal corporation, as tenant ("Tenant"), whose address is 1000 Canyon Blvd., Boulder, Colorado 80302.

2. PREMISES

Landlord leases to Tenant and Tenant leases from Landlord those certain premises, as shown on the floor plan attached hereto as Exhibit B (the "Premises") consisting of 7,812 useable square feet of space located at 4700 Baseline Road, Suite _____, Boulder, Colorado (the "Shopping Center") as described on Exhibit A attached hereto and incorporated herein by this reference. Tenant shall also have the right to nonexclusive use of all common areas in the Shopping Center designated by Landlord for use by tenants of the Shopping Center, in accordance with and subject to the provisions of this Lease.

3. USE

(a) Permitted Use. Tenant shall use the Premises for a branch of its public library and shall not use or permit the Premises to be used for any other purpose.

(b) Deliveries. Tenant shall use its best efforts to schedule regular deliveries of books to its Premises so that they occur no more than three times a day and so that each delivery will be completed within forty-five minutes.

(c) Hours of Business. Tenant shall keep the Premises open to the public in conformance with the schedule adopted by the Boulder Public Library for its branches. Tenant shall provide Landlord with a copy of that schedule and shall notify Landlord in writing of any changes to the schedule at least fourteen days before the change becomes effective.

(d) Sidewalk. Tenant shall keep the sidewalk in front of the Premises free of trash and litter which may accumulate due to the nature of Tenant's business. Tenant shall not place any cardboard boxes or other containers on the sidewalk. Tenant shall not place any advertising signs on the sidewalk, unless approved in writing by Landlord. Tenant shall not conduct any business on such sidewalk and shall not place any vending machines on such sidewalk. Tenant shall reimburse Landlord on demand for all costs of enforcing this provision.

(e) Rear Alley. Tenant shall not place any trash, litter or other objects in the rear alley behind Tenant's Premises, other than in designated trash receptacles.

(f) Compliance with Law. Tenant shall comply with all laws, statutes, ordinances, and governmental rules, regulations or requirements now in force, or which may hereafter be in force, and with the requirements of any board of fire underwriters or other similar bodies now or hereafter constituted relating to the Premises. The judgment of any court of competent jurisdiction or the admission of Tenant in any action against Tenant, whether Landlord be a party thereto or not, that Tenant has violated any such law, statute, ordinance, rule, regulation, or requirement, shall be conclusive of that fact as between Landlord and Tenant.

4. CONSTRUCTION AND ACCEPTANCE OF PREMISES

(a) Construction of Premises. Landlord shall proceed to complete the Premises in accordance with the work (and certain provisions relating to the construction thereof) shown on Exhibit C hereto ("Landlord's Work"). The Premises shall be deemed to be "Ready for Occupancy" when Landlord certifies in writing to Tenant that Landlord has completed Landlord's Work, except for minor or insubstantial construction, mechanical adjustment or decoration, the non-completion of which will not materially interfere with Tenant's normal use of the Premises. Landlord shall complete Landlord's Work no later than July 31, 1989. Other than for Landlord's Work, Landlord shall have no obligation for the completion of the Premises.

(b) Acceptance of Premises. After Tenant occupies the Premises, Tenant shall be deemed to have fully accepted Landlord's Work, except as to agreed "punch list" items with respect to Landlord's Work. Neither Landlord nor Landlord's agents have made any representations, warranties or promises with respect to the physical condition of the Shopping Center, the land upon which it is erected, or the Premises, or any matter or thing affecting or related to the Premises except as herein expressly set forth.

(c) Commencement Date. The "Commencement Date" of this Lease shall be the date sixty (60) days from completion of Landlord's Work, or the date on which Tenant shall open the Premises to the public, whichever shall occur first. Promptly following the Commencement Date, Landlord and Tenant shall execute an agreement acknowledging that Tenant has accepted possession, and reciting the exact Commencement Date and Termination Date of the Lease. The failure by either party, or both parties, to execute such an agreement shall not affect the rights or obligations of either party hereunder. Such agreement, when so executed and delivered, shall be deemed to be a part of this Lease.

5. TERM

(a) This Lease shall have a term of twenty (20) years commencing on the Commencement Date. It is anticipated that the Commencement Date will be May, 1989, and that the Termination Date of this Lease will be April 30, 2009. Moreover, should Safeway or a comparable anchor tenant at the Shopping Center remain as a tenant of Landlord after twenty years from the Commencement Date, the Tenant shall have the option to extend the Lease upon the same conditions for an additional period of time equal to the total period of time that Safeway or the comparable anchor tenant is a Tenant at the Shopping Center.

(b) If Tenant, prior to December 31, 1988, has not received an opinion from the Boulder County Assessor that the Premises will be exempt from property taxes during the term of the Lease, it may, by giving the Landlord ten (10) days advance written notice, terminate this Lease. Upon termination, both parties shall be released from all obligations hereunder.

(c) If the City Council of the City of Boulder, Colorado has not appropriated sufficient funds to complete the Tenant's Work set forth in Exhibit C prior to February 28, 1989, Tenant may terminate this Lease by giving Landlord ten (10) days advance written notice thereof. Upon termination, both parties shall be released from all obligations hereunder.

(d) If the City Council fails to appropriate sufficient funds for the expenses and fees which the Tenant is required to pay under this Lease for any calendar year subsequent to 1989, then the Tenant may terminate this lease as of the December 31 immediately preceding that calendar year by giving the Landlord written notice thereof at least sixty (60) days before that date. Upon such termination, both parties shall be released from all obligations hereunder.

6. RENT AND COMMON EXPENSES

(a) No Rent. The Tenant shall not pay rent to the Landlord, but shall pay its Pro Rata Share of various common expenses as set forth below. For purposes of any action against Tenant under Colorado's forcible entry and detainer statutes, the Pro Rata Share may be considered as rent.

(b) Taxes and Insurance. Tenant shall pay to Landlord, Tenant's Pro Rata Share of real estate taxes on the Shopping Center; but, the above notwithstanding, Tenant shall only be obligated to pay its Pro Rate Share of real estate taxes if and to the extent that the Premises are not exempt from such taxes. Landlord shall notify Tenant of its receipt of any notice of any tax assessment affecting the Premises in sufficient time so that Tenant, if it chooses, may protest or appeal any assessment which does not recognize the Premises as tax exempt. Real estate taxes shall include all real property taxes and assessments levied against the Shopping Center by any governmental or quasi-governmental authority, including any taxes, assessments, surcharges, or service or other fees of a nature not presently in effect which shall hereafter be levied on the Shopping Center as a result of the use, ownership or operation of the Shopping Center or for any other reason, whether in lieu of or in addition to any current real estate taxes and assessments; provided, however, that any taxes which shall be levied on the rental of the Shopping Center shall be determined as if the Shopping Center were Landlord's only

property and provided further, that in no event shall the terms "Taxes and Assessments," as used herein, include any federal, state or local income taxes levied or assessed on Landlord, unless such taxes are a specific substitute for real property taxes; such term shall, however, include gross taxes on rentals (all of the foregoing are collectively referred to herein as "Taxes"). "Assessments" shall include any and all so-called special assessments, license tax, business license fee, business license tax, commercial rental tax, levy, charge or tax imposed by any authority having the direct power to tax, including any city, county, state or federal government, or any school, agricultural, lighting, water, drainage or other improvement or special district thereof, against the Premises or the Shopping Center, or any part thereof, or against any legal or equitable interest of Landlord therein. For the purposes of this Lease, any special assessment shall be deemed payable in such number of installments as is permitted by law, whether or not actually so paid. If the Shopping Center has not been fully assessed as a completed project, for the purpose of computing any adjustment to Tenant's share required herein, Taxes and Assessments shall be increased by Landlord's Accountants, in accordance with their estimate of what the assessment will be, upon full completion of the Shopping Center, including installation of all tenant finish items. Insurance shall include fire, extended coverage, property damage, liability, and business interruption or rent loss, and any other insurance coverage on the Shopping Center. Any tax or insurance reimbursement for any partial lease year shall be apportioned on a per diem basis. Tenant shall pay prior to delinquency all personal property taxes on Tenant's personal property located on the Premises.

(c) Common Area Maintenance Expenses. Tenant shall pay to Landlord, Tenant's Pro Rata Share of the Common Area Maintenance Expenses. "Common Area Maintenance Expenses" shall mean all expenses of any kind or nature which are necessary, ordinary or customarily incurred with respect to the operation, repair and maintenance of the Shopping Center as determined in accordance with generally accepted accounting principles and shall include, but not be limited to all sums expended in connection with Common Areas for all general operation and maintenance and repairs, resurfacing, or painting, restriping, cleaning, sweeping and janitorial services; maintenance and repair of sidewalks, curbs, and Shopping Center signs, sprinkler systems, planting and landscaping; lighting and other utilities; directional signs and other markers and bumpers; maintenance and repair of any fire protection systems, lighting systems, storm drainage systems, roof patching and any other utility systems; personnel to implement such services including the salary of the manager and all on-site personnel hired by Landlord and, if Landlord deems necessary, the cost of security guards; real and personal property taxes and assessments on the improvements and land comprising said Common Areas; all costs and expense pertaining to a security alarm system for the tenants in the Shopping Center; depreciation on maintenance and operating machinery and equipment (if owned) and rental paid for such machinery and equipment (if rented, adequate public liability and property damage insurance on the Shopping Center and Common Areas under which the Tenant shall be named as an additional insured). In addition, Tenant shall pay a sum to Landlord for the accounting, bookkeeping and collection of the expenses for each calendar year. Landlord may cause any of all of said services to be provided by an independent contractor or contractors. Should Landlord acquire or make available additional land not shown as part of the Shopping Center on Exhibit A and make the same available for parking or other Common Area purposes, then said expenses in connection with Common Areas shall also include all of the aforementioned expenses incurred and paid in connection with said additional land.

Thirty days prior to the Commencement Date and also thirty days prior to the beginning of each calendar year during the term of this Lease, Landlord shall provide Tenant with a written statement specifying the standards at which each of the services included in the Common Area Maintenance Expenses will be performed (for example, how often windows will be cleaned, or how much snow must accumulate before snow is removed). As well, thirty days prior to the Commencement Date and at least thirty days prior to the beginning of each calendar year the Landlord will furnish Tenant with an estimate of the cost of each such service during the coming year.

(d) Calculation of Tenant's Pro Rata Share. Tenant's Pro Rata Share, for the purposes of this Lease, shall be a fraction, the numerator of which is the total usable square footage of the Premises (i.e., 7,812 square feet) and the denominator of which is the total square footage of the Shopping Center (i.e., 173,803 square feet). The above notwithstanding, and subject to the provisions of the following paragraph (e), Tenant's Pro Rata Share of Common Area Maintenance Expenses, Taxes and Insurance shall not in any event exceed \$1.02 per useable square footage of the Premises for the first year after the Commencement Date, and thereafter it shall not increase by more than the

percentage increase, if any, during each succeeding year in the United States Department of Labor Consumer Price Index for all Urban Consumers ("CPI-U") for the Consolidated Metropolitan Statistical Area for Denver.

(e) Expenses Borne by Tenant. The Landlord and Tenant recognize the unique character of the intended use by Tenant and agree that the limitation of the amount payable for the Common Area Maintenance Expenses, Taxes and Insurance is conditioned upon the following:

(i) Landlord and Tenant are able to procure an exemption from real property taxes applicable to the space to be occupied by Tenant.

(ii) Tenant assures that the Premises and public areas designated in Exhibit E will be added to and primarily covered under the Tenant's municipal blanket insurance policy, and that the Landlord's lender and the Landlord, and as property manager, be added as additional named insureds.

(iii) All exterior lights and parking lot lights used in the 113-space parking lot shown on Exhibit E will be separately metered, billed directly to the Tenant, and paid for by the Tenant.

(iv) Tenant shall be solely responsible for removing all trash from the Premises.

(v) Tenant shall provide and be responsible for snow removal and sweeping for the above-mentioned parking lot.

(vi) Landlord shall have the right, notwithstanding the above provisions, to take steps necessary to remedy any unsafe or unsightly situation that may arise in the Shopping Center from failure by the Tenant or Tenant's contractees to provide the above-mentioned services.

(f) Payment of Common Area Charges. Tenant shall pay to the Landlord, Tenant's Pro Rata Share of Common Area Maintenance Expenses, Taxes and Insurance in the following manner:

(i) Beginning with the Commencement Date, but subject to adjustment as provided herein, Tenant shall pay to Landlord on the first day of each calendar month of the term of this lease an amount estimated by Landlord to be Tenant's Pro Rata Share of such charges. Landlord may adjust the estimated monthly charge at the end of any calendar year on the basis of Landlord's experience and reasonably anticipated costs.

(ii) Within one hundred twenty (120) days following the end of each calendar year, Landlord shall furnish Tenant a statement covering the calendar year just expired (the "Statement"), certified as correct by an authorized representative of Landlord, showing the total of such charges, the amount of Tenant's Pro Rata Share thereof for such calendar year, and the payments actually paid by Tenant during such period. If Tenant's Pro Rata Share of such charges exceeds Tenant's payments made, Tenant shall pay Landlord the deficiency within ten (10) business days after receipt of such Statement. If the estimated payments made exceed Tenant's actual Pro Rata Share thereof, Landlord shall credit the excess against any amounts then owing or thereafter becoming due from Tenant to Landlord. In any Lease Year which is not a full calendar year, a proportionate reduction shall be made in Tenant's Pro Rata Share of Common Area Maintenance Expenses.

(iii) Tenant shall have the right at its own expense and at a reasonable time (after written notice to Landlord) within thirty (30) days after receipt of the Statement to audit Landlord's books relevant to the Tenant's Pro Rata Share of the Common Area Maintenance Expenses, Taxes and Insurance due hereunder. In the event Tenant does not audit Landlord's books and deliver the results thereof to Landlord within said thirty-day period, the terms and amounts set forth in the Statement from Landlord to Tenant shall be deemed conclusive and final and Tenant shall have no further right to adjustment. In the event Tenant's examination reveals that an error has been made in Landlord's determination of Tenant's Pro Rata Share of such charges, and Landlord agrees with such determination, then the amount of such adjustment shall be payable by Landlord or Tenant to the other party as the case may be in accordance with subparagraph (ii) hereof. In the event Tenant's examination reveals an error has been

made in Landlord's determination of Tenant's Pro Rata Share, and Landlord disagrees with the results thereof, Landlord shall have thirty (30) days to obtain an audit from an accountant of its choice to determine Tenant's Pro Rata Share of such charges. In the event Landlord's accountant and Tenant's accountant are unable to reconcile their audits, both accountants shall mutually agree upon a third accountant, whose determination of Tenant's Pro Rata Share of the charges shall be conclusive. In the event the amount of error by Landlord is determined to be less than five percent (5%), the reasonable costs of the third audit made pursuant to this subparagraph shall be paid by Tenant.

(iv) Landlord's failure during the Lease term to prepare and deliver any statements or bills, or Landlord's failure to make a demand under this paragraph or under any other provision of this Lease shall not in any way be deemed to be a waiver of, or cause Landlord to forfeit or surrender, its rights to collect any items of Additional Rent which may have become due pursuant to this paragraph during the term of this Lease, except as otherwise specifically set forth in this Lease. Tenant's liability for all Additional Rent due under this Lease shall survive the expiration or earlier termination of this Lease.

(v) Regardless of any rental abatement granted to Tenant as an incentive or concession, or to which Tenant may be entitled hereunder, Tenant's obligation to pay its Pro Rata Share of Common Area Maintenance Expenses, Taxes and Insurance shall not abate, but shall begin on the Commencement Date and shall continue in full force and effect for the entire term of this Lease, including any renewals or extensions hereof.

(g) Late Charge. Tenant hereby acknowledges that late payment by Tenant to Landlord of its Pro Rata Share, or other sums due hereunder will cause Landlord to incur costs the exact amount of which will be difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges, and late charges which may be imposed upon Landlord by terms of any mortgage or trust deed encumbering the Shopping Center. Accordingly, if any installment of Pro Rata Share or any other sum due from Tenant shall not be received by Landlord within ten (10) days after said amount is due, Tenant shall pay to Landlord on demand a late charge of five percent (5%) of such overdue amount, plus any reasonable attorneys' fees incurred by Landlord by reason of Tenant's failure to pay such amount. Any sums due from Tenant which are more than one (1) month delinquent shall bear interest at the rate of eighteen percent (18%) per annum ("Interest Rate") from the due date. Tenant shall pay on demand Twenty-five Dollars (\$25.00) for any check returned for insufficient funds.

7. SERVICES

(a) Separately Metered Services. The Premises shall be separately metered for gas and electric utility services. Tenant shall be responsible for contracting directly with the appropriate utility supplier for all gas and electric service to the Premises. Tenant shall be responsible for payment of all fees and costs for such gas and electric service (including HVAC services) to the Premises directly to the applicable utility supplier prior to delinquency.

(b) Service Interruption. Landlord shall not be liable for failure to provide any required services so long as Landlord uses reasonable diligence to provide or restore such services. Landlord may discontinue services due to accident, repairs, strikes, acts of God, or any other event beyond the reasonable control of Landlord. In such event, Landlord shall not be liable for such failure or discontinuance, nor shall such failure or discontinuance be construed as a constructive eviction of Tenant. Landlord's obligation to furnish electricity and gas is conditioned upon the availability of adequate sources from the utility company servicing the Shopping Center, without liability, to comply with any public energy-saving program.

(c) Payment by Tenant. Tenant shall pay, prior to delinquency and directly to the applicable supplier, for all services and utilities supplied to the Premises and separately metered, together with any taxes thereon. If any services are not separately metered to Tenant, Tenant shall pay Tenant's Pro Rata Share of all charges jointly metered with other space in the Shopping Center. Tenant shall arrange and pay for its own telephone service.

8. TENANT REPAIRS AND ALTERATIONS

(a) Repairs. Tenant shall, at Tenant's sole cost and expense, keep the Premises and every part thereof including but not limited to interior surface of ceilings,

walls and floors; doors, windows, plate glass; and all plumbing pipes and apparatus, electrical fixtures, furnishings and equipment, in good condition and repair. Tenant shall immediately replace all broken glass in the Premises. Tenant shall, upon the expiration or earlier termination of this Lease, surrender the Premises to Landlord in good condition, broom clean, ordinary wear and tear excepted. Tenant shall not be obligated to make repairs necessitated by fire or other casualty unless caused in whole or in part by the act, omission or negligence of Tenant, its agents, employees and invitees. Notwithstanding the foregoing, all damage or injury to the Premises or to any other part of the Shopping Center caused by carelessness, omission, neglect, or improper conduct of Tenant, its employees, agents, subtenants, assignees or invitees shall be repaired promptly by Tenant at its sole cost and expense, to the satisfaction of Landlord reasonably exercised. All decals and signage shall be removed from windows at the termination of the Lease.

(b) Service Contract. Tenant shall enter into a regularly scheduled preventive maintenance and service contract with an experienced maintenance and service contractor for servicing the controls of all heating, ventilation, and air conditioning (HVAC) systems and equipment within the Premises. The contractor and the contract are both subject to Landlord's prior approval, which approval shall not be unreasonably withheld or delayed. The Landlord hereby approves Johnson Controls, Inc. as such a contractor (without implying by such approval disapproval of any other proposed contractor) so long as Johnson Controls maintains and repairs the controls in accordance with its contractual obligations to Tenant. The Tenant may maintain the other parts of the HVAC systems and equipment within the Premises with its own employees, who shall be qualified and experienced in such work. Such maintenance shall include, at a minimum, all services recommended by the equipment manufacturer and must be effective within thirty (30) days of the Commencement Date hereof.

(c) Alterations. Tenant shall not change any plumbing or wiring, without the prior written consent of Landlord. Plans and specifications for such work shall be submitted to Landlord in advance. Landlord shall have the right to approve Tenant's contractors as well as the general manner and method in which such work is to be performed. Tenant shall provide Landlord with insurance certificates evidencing that all contractors and subcontractors have adequate workmen's compensation insurance, and builder's risk insurance satisfactory to Landlord. At least twenty (20) days prior to the commencement of any work on the Premises, Tenant shall notify Landlord of the names and addresses of the persons supplying labor and materials so that Landlord may give notice that it shall not be subject for any lien for Tenant's work in accordance with Colorado's mechanics' lien statutes. Landlord shall have the right to keep posted on the Premises notice to such persons in accordance with such statutes.

(d) Mechanics' Liens. Tenant shall pay or cause to be paid all costs for work done by or on behalf of Tenant or caused to be done by or on behalf of Tenant on the Premises of a character which will or may result in liens against Landlord's interest in the Premises or the Shopping Center, or any part thereof and Tenant will keep the same free and clear of all mechanics' liens and other liens on account of work done for or on behalf of Tenant or persons claiming under Tenant. Should any such liens be filed or recorded against the Premises or the Shopping Center with respect to work done for or materials supplied to or on behalf of Tenant or should any action affecting the title thereto be commenced, Tenant shall cause such liens to be released of record within twenty (20) days after notice thereof. If Tenant desires to contest any such claim of lien, Tenant shall nonetheless cause such lien to be released of record by the posting of adequate security with a court of competent jurisdiction as may be provided by Colorado's mechanics' lien statutes. If Tenant shall be delinquent in paying any charge for which such a mechanics' lien or suit to foreclose such a lien has been recorded or filed and shall not have caused the lien to be released as aforesaid, Landlord may (but without being required to do so) pay such lien or claim and any costs associated therewith, and the amount so paid, together with interest thereon at the Interest Rate and reasonable attorneys' fees incurred in connection therewith, shall be immediately due from Tenant to Landlord as Additional Rent.

9. INDEMNITY

Tenant shall indemnify and hold harmless Landlord against and from any and all claims arising from Tenant's use of the Premises, the conduct of its business or any claim arising from any breach or default on Tenant's part under the terms of this Lease, or from any act, omission, or negligence of Tenant, or any officer, agent, employee, guest or invitee of Tenant, and from all costs, attorneys' fees, and liabilities incurred in or

about the defense of any such claim or any action or proceeding brought thereon. The above notwithstanding, Tenant's indemnification obligation hereunder is subject to and limited by the proceeds, if any, of Tenant's applicable insurance policies and programs. Tenant assumes all risk of damage to property or injury to persons in, upon or about the Premises, from any cause other than Landlord's negligence. Tenant waives all claims with respect thereof against Landlord. Tenant shall give prompt notice to Landlord in case of casualty or accidents in the Premises. Landlord agrees to indemnify and hold Tenant harmless from any and all claims, liabilities, losses, costs and expenses (including reasonable attorneys' fees) arising from or in connection with the condition, use or control of the Common Areas during the Lease Term.

10. INSURANCE

Tenant shall procure and maintain at its own cost at all times during the term of this Lease and any extensions hereof, fire, hazard and extended coverage insurance on Tenant's property and the contents of the Premises in an amount not less than the full replacement value, plate glass insurance, comprehensive general liability insurance, including coverage for bodily injury, property damage, personal injury (employee and contractual liability exclusions deleted), products and completed operations, contractual liability, owner's protective liability, host liquor legal liability and broad form property damage with the following limits of liability: Four Hundred Thousand Dollars (\$400,000.00) for each occurrence combined single limit for bodily injury, property damage and personal injury; Four Hundred Thousand Dollars (\$400,000.00) aggregate for bodily injury and property damage for products and completed operations. All such insurance shall be procured from a responsible insurance company authorized to do business in Colorado, and shall be otherwise satisfactory to Landlord. All such policies shall name Landlord and Landlord's managing agent as an additional insured, and shall provide that the same may not be cancelled or altered except upon thirty (30) days prior written notice to Landlord. All insurance maintained by Tenant shall be primary to any insurance provided by Landlord. If Tenant obtains any general liability insurance policy on a claims-made basis, Tenant shall provide continuous liability coverage for claims arising during the entire term of this Lease, regardless of when such claims are made, either by obtaining an endorsement providing for an unlimited extended reporting period in the event such policy is cancelled or not renewed for any reason whatsoever or by obtaining new coverage with a retroactive date the same as or earlier than the expiration date of the cancelled or expired policy. Tenant shall provide certificate(s) of such insurance to Landlord upon commencement of the Lease term and at least thirty (30) days prior to any annual renewal date thereof and upon request from time to time and such certificate(s) shall disclose that such insurance names Landlord and Landlord's managing agent as an additional insured, in addition to the other requirements set forth herein. The limits of such insurance shall not, under any circumstances, limit the liability of Tenant hereunder.

11. SUBROGATION

As long as their respective insurers so permit, Landlord and Tenant hereby mutually waive their respective rights of recovery against each other for any loss or damage to property insured by fire, extended coverage, or any other property insurance policies existing for the benefit of the respective parties. The foregoing waiver shall be in force only if both parties' insurance policies contain a clause providing that such a waiver shall not invalidate the insurance and such a policy can be obtained without additional premiums.

12. LANDLORD REPAIRS

Landlord shall maintain all portions of the Shopping Center not the obligation of Tenant or any other tenant in good order, condition and repair, and shall proceed to make all needed repairs diligently. There shall be no liability of Landlord by reason of any injury to, or interference with, Tenant's operations arising from the diligent making of any repairs, alterations or improvements.

13. COMMON AREAS AND PARKING

The parking areas in the Shopping Center shall be at all times under Landlord's exclusive control. Landlord reserves the right to change the entrances, exits, traffic lanes and the boundaries and locations of parking areas, as long as Tenant's operations are not materially disrupted. Landlord shall keep parking and common areas in clean and orderly condition. All vehicles of Tenant, its agents, and employees shall be parked in

parking areas designated by Landlord for use by the retail tenants in the Shopping Center. Tenant shall furnish Landlord, upon request, a complete list of license numbers of all automobiles operated by Tenant and its employees.

14. LIMITED LIABILITY

Landlord shall not be liable for any loss or damage resulting from: (a) fire, explosion, falling plaster, steam, gas, electricity, water or rain; (b) the pipes, appliances or plumbing works in the Shopping Center; (c) the roof, street, subsurface; (d) any variation or interruption of utility services; (e) theft or other criminal acts of third parties; or (f) any other cause whatsoever, unless due to the negligence of Landlord. Landlord's liability under this Lease shall be limited to Landlord's estate and interest in the Shopping Center and Tenant shall look solely to the Shopping Center for the recovery of any judgment against Landlord. Landlord and its partners shall not be personally liable for any judgment.

15. ASSIGNMENT AND SUBLETTING

Tenant shall not assign this Lease or sublet all or any part of the Premises.

16. DAMAGE BY CASUALTY

(a) Subject to Section 16(b), (c) and (d), in the event the Premises are damaged by fire or other casualty, Landlord shall repair such damage. This Lease shall remain in full force and effect.

(b) If the Shopping Center is more than fifty percent destroyed and Landlord decides to and proceeds to demolish it and not replace it with another shopping center on the site then the Landlord may elect to terminate the Lease by written notice to Tenant given ninety (90) days following such fire or other casualty.

(c) In case of any damage mentioned in this Section 16, Tenant may cancel this Lease by written notice to Landlord if Landlord has not completed the making of the required repairs within six (6) months from the date of damage, which period shall be extended by the number of days lost in the event of labor strikes, act of God, or any other similar causes beyond the control of Landlord; provided, however, that such notice be given to Landlord within thirty (30) days of the expiration of said six (6) month period and prior to substantial completion of the required repairs.

(d) In case the Shopping Center or the Premises shall be substantially damaged during the last year of the Lease term, then either Landlord or Tenant may cancel the Lease upon written notice to the other party given within forty-five (45) days after such damage.

(e) Landlord shall not be required to make any repairs or replacements of any leasehold improvements, fixtures, or other personal property of Tenant.

17. EMINENT DOMAIN AND CONDEMNATION

(a) Total Condemnation. If the whole of the Premises shall be taken by condemnation or eminent domain, then the term hereof shall cease as of the vesting of title or as of the day possession shall be so taken, whichever is earlier.

(b) Partial Condemnation. If only a portion of the Premises is taken by condemnation or eminent domain, Landlord shall be entitled to terminate this Lease, effective on the day of vesting of title or the day possession is taken, whichever is earlier, upon giving written notice to Tenant within ninety (90) days from the taking. If Landlord does not elect to so terminate this Lease, Landlord shall restore the Premises to the extent practicable, and Tenant's Pro Rata Share shall be abated to the extent there is any diminution in the usable area of the Premises.

(c) Damages. In the event of any taking, Landlord shall be entitled to any and all awards and/or settlements which may be given, and Tenant shall have claim against Landlord for the value of any unexpired term of this Lease. Tenant shall have the right to claim from the condemning authority a separate award for damage to Tenant's business.

18. ENTRY BY LANDLORD

Landlord reserves the right to enter the Premises to inspect the same, to submit the Premises to prospective purchasers, lenders or tenants, to post notices of non-responsibility, to post notices of Tenant's failure to comply with this Lease, or to repair the Premises, without abatement of Rent, and may for that purpose erect scaffolding and other necessary structures where reasonably required; provided that the entrance to the Premises shall not be unreasonably blocked and the business of Tenant shall not be interfered with unreasonably. Tenant hereby waives any claim for damages to Tenant's business, any loss of occupancy or quiet enjoyment of the Premises, and any other loss occasioned thereby. Landlord shall have the right to use any and all means which Landlord may deem proper to open said doors in an emergency, without any liability to Tenant except for failure to exercise due care for Tenant's property. Any entry to the Premises by Landlord shall not be construed to be a forcible or unlawful entry into the Premises, or an eviction of Tenant from the Premises.

19. DEFAULT BY TENANT

(a) Event of Default Defined. The following events (herein referred to as an "Event of default") shall constitute a default by Tenant hereunder:

(i) Tenant shall default in the due and punctual payment of its Pro Rata Share of Common Area Maintenance Expenses, Taxes and Insurance payable hereunder, and such default shall continue for ten (10) days after receipt of written notice from Landlord; or

(ii) Tenant shall neglect or fail to perform or observe any of the covenants herein contained on Tenant's part to be performed or observed and Tenant shall fail to remedy the same within thirty (30) days after Landlord shall have given to Tenant written notice specifying such neglect or failure (or within such additional period, if any, as may be reasonably required to cure such default if it is of such nature that it cannot be cured within said thirty (30) day period); or

(iii) This Lease or the Premises or any part thereof shall be taken upon execution or by other process of law directed against Tenant, or shall be taken upon or subject to any attachment at the instance of any creditor of or claimant against Tenant, and said attachment shall not be discharged or disposed of within fifteen (15) days after the levy thereof; or

(iv) Tenant vacates or abandons the Premises or permits the same to remain vacant or unoccupied for a period of ten (10) continuous business days, then, in any such event, after written notice has been received by Tenant from Landlord, Tenant will have ten (10) days to remedy such default, otherwise Lessor shall have the right at its election, or at any time thereafter, and while such event of default shall continue, to pursue its remedies as set forth in Subsection 19(b).

(b) Remedies. In the event of any such default or breach by Tenant, Landlord may at any time thereafter, in its sole discretion, without limiting Landlord in the exercise of a right or remedy which Landlord may have by reason of such default or breach, terminate this Lease and re-enter and take possession of the Premises or any part thereof and repossess the same as Landlord's former estate without prejudice to any remedies for arrears of Tenant's Pro Rata Share or preceding breach of covenants or conditions.

20. NON-SUBORDINATION

This Lease shall remain in full force and effect regardless of the status of any mortgage or deed of trust now or hereafter placed on the Shopping Center and of any renewal, modification, consolidation, replacement or extension of such mortgage or deed of trust. At the request of Tenant, Landlord shall obtain a non-disturbance agreement from its lender.

21. SIGNS AND ADVERTISING

(a) Signs. Tenant shall not install or display any sign, picture, advertisements, notice, lettering or direction on any part of the Shopping Center outside of the Premises or otherwise visible to the public without the written consent of Landlord. Landlord shall prescribe a uniform identification sign for Tenant to be placed outside of the Premises by Tenant no later than the date Tenant opens for business. Tenant may install or display the maximum amount of signage allowed by the Boulder Revised Code, 1981,

(b) Displays. Tenant may not display or sell merchandise outside of the Premises. Tenant shall not install any exterior lighting, amplifiers or similar devices which may be heard or seen outside the Premises, such as flashing lights, searchlights, loud-speakers, phonographs or radio broadcasts.

(g) No remedy or election hereunder shall be deemed exclusive but shall, whenever possible, be cumulative with all other remedies at law or in equity.

(h) This Lease shall be governed by the laws of the State of Colorado.

(i) In the event of any action or proceeding brought by either party against the other under this Lease, the prevailing party shall be entitled to recover court costs and attorneys' fees.

(j) In the event of any sale or transfer of the Shopping Center by Landlord, Landlord shall be relieved of all liability hereunder. The purchaser or transferee shall be deemed to have assumed and agreed to carry out any and all of the covenants and obligations of the Landlord under this Lease.

(k) This Lease contains all of the agreements of the parties hereto with respect to any matter covered or mentioned in this Lease, and no prior agreement or understanding pertaining to any such matters shall be effective for any purpose. No provision of this Lease may be amended or added to except by an agreement in writing signed by the parties hereto or their respective successors in interest.

(1) Any provision of this Lease which shall prove to be invalid, void, or illegal shall in no way effect, impair, or invalidate any other provision hereof and such other provision shall remain in full force and effect.

(m) Landlord reserves the absolute right to effect such other tenancies in the Shopping Center as Landlord, in the exercise of its sole business judgment, which it determines to best promote the interest of the Shopping Center. Tenant does not rely on the fact, nor does Landlord represent, that any specific tenant or number of tenants shall, during the term of this Lease, occupy any space in the Shopping Center.

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

LANDLORD:

FOOTHILLS CENTER LIMITED PARTNERSHIP
A Colorado Limited Partnership

By: James R. Loftus, Managing General Partner

TENANT:

CITY OF BOULDER, COLORADO

By: James W. Piper, City Manager

ATTEST:

~~Director of Finance and Record,~~
~~Ex-Officio City Clerk~~



STATE OF COLORADO)
COUNTY OF BOULDER) ss.

The foregoing instrument was acknowledged before me this 26th day of September, 19 88, by James R. Loftus, as Managing General Partner of Foothills Center Limited Partnership, a Colorado limited partnership.

Witness my hand and official seal.

2009 Extension

My commission expires: April 12, 1992

(SEAL)

Robert L. Pennington
Notary Public

STATE OF)
COUNTY OF) ss.

The foregoing instrument was acknowledged before me this 21st day of September, 1988, by James W. Piper as City Manager of the City of Boulder, a Colorado municipal corporation.

Witness my hand and official seal.

My commission expires: June 6, 1991

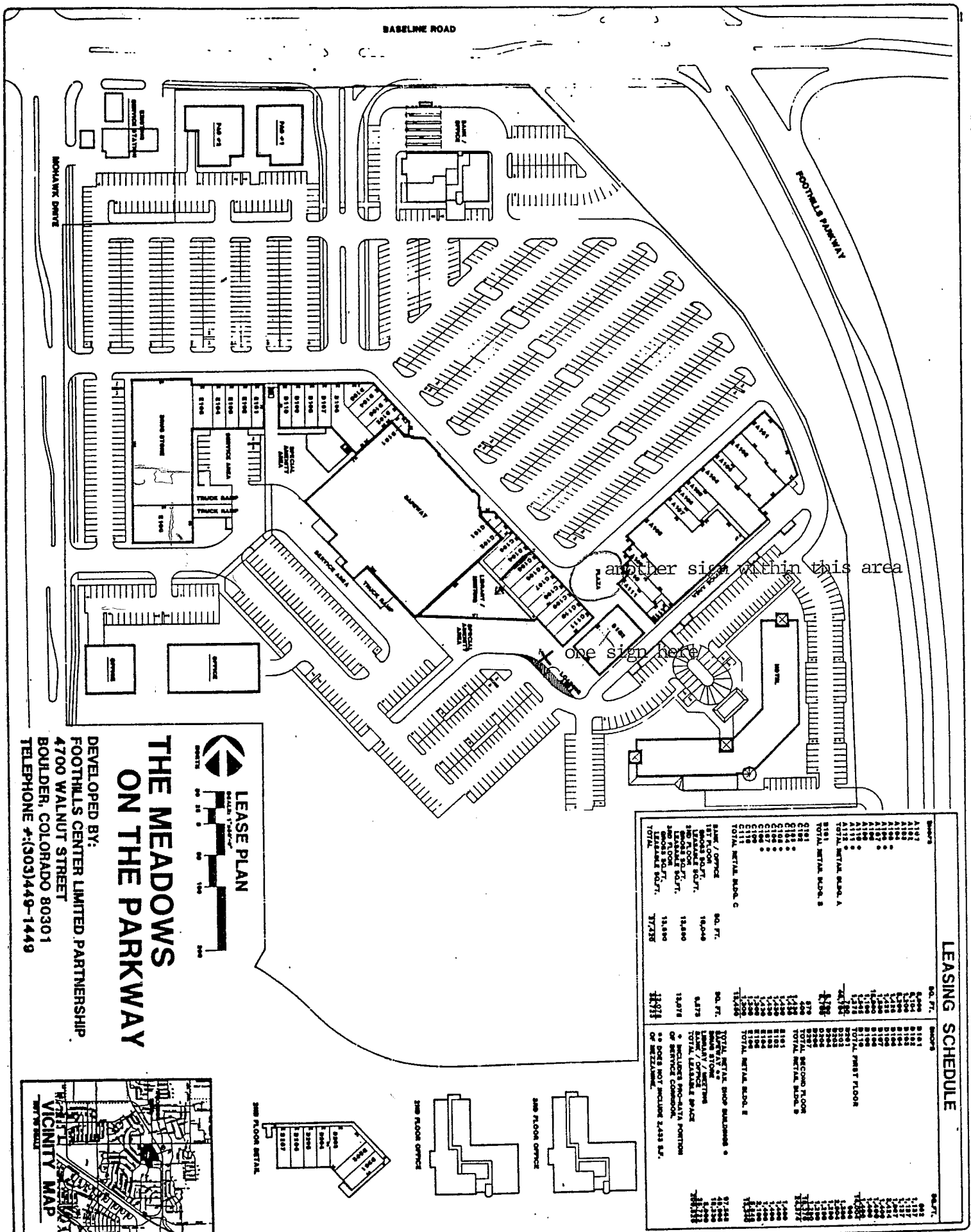
(SEAL)

Judith C. Conyers
Notary Public

LI AD EOC

EXHIBIT A

Site Plan



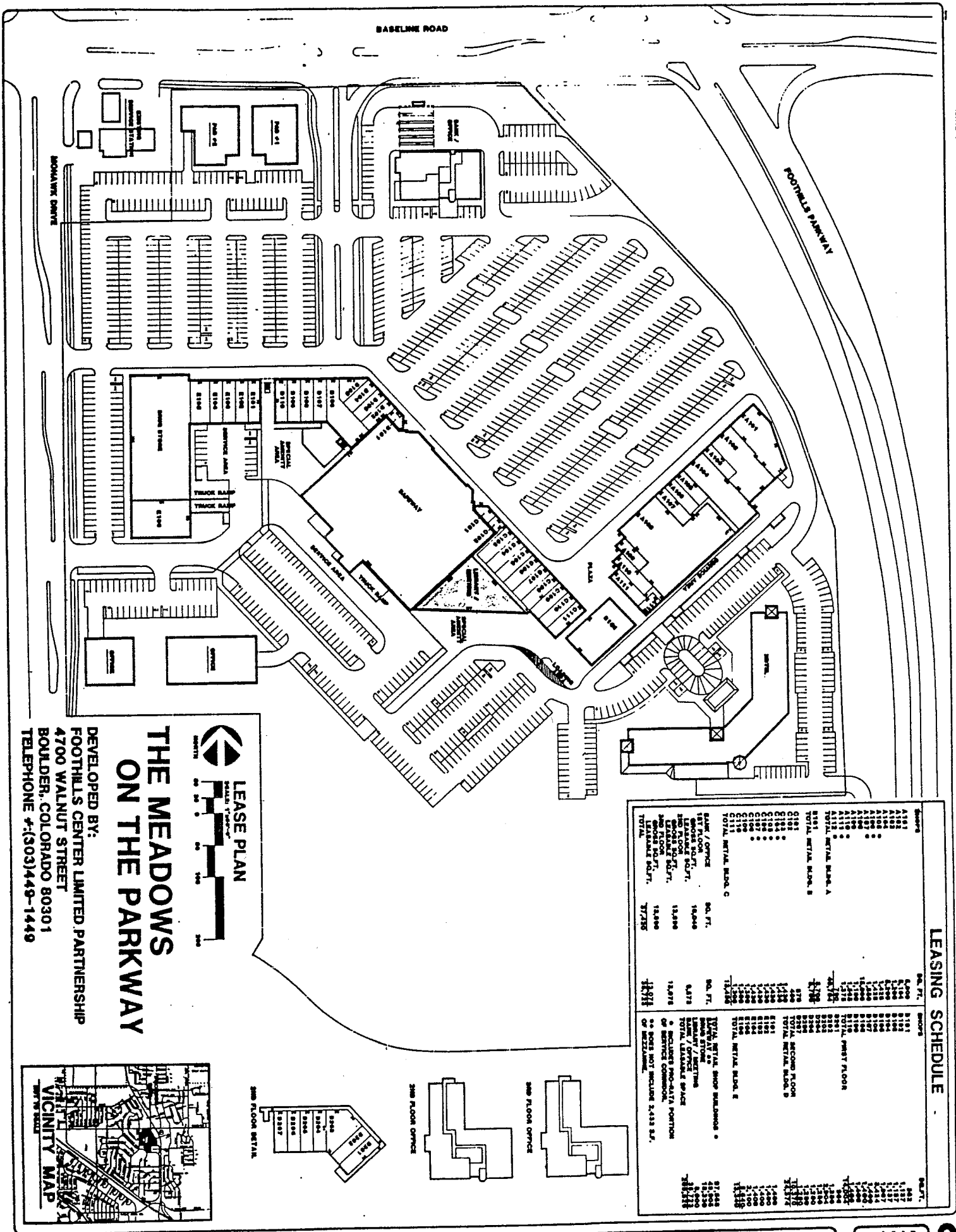
**Clothier-Weber
& Associates, Inc.**

**THE MEADOWS ON THE PARKWAY
FOOTHILLS CENTER LIMITED PARTNERSHIP**

INITIAL

EXHIBIT B

Plan of Premises



Construction - General Provisions

1. As soon as practicable, Landlord shall begin construction of the Shopping Center, unless prevented or delayed by conditions over which Landlord has no control. In the event prior to commencement of construction of the Shopping Center Landlord elects not to proceed with such construction, Landlord may terminate this Lease upon notice to Tenant.
2. Landlord will build out the shell Premises in accordance with the specifications attached hereto as Schedule 1 to this Exhibit E ("Landlord's Work").
3. Tenant shall complete construction of the Premises and tenant improvements located therein, in accordance with this Exhibit C and Schedule 2 to this Exhibit C ("Tenant's Work"). By December 21, 1988, Tenant shall submit to Landlord two sets of preliminary drawings prepared by Tenant's architect at Tenant's expense. Such drawings shall include interior partitions, trade fixture plans, lighting, electrical, plumbing, fire sprinkler, special HVAC equipment, signs, and floor and wall coverings. After approval by Landlord of such preliminary drawings, Tenant's architect shall have 15 days to prepare and submit to Landlord a set of final plans and specifications for Landlord's approval. If Landlord does not reasonably approve such final plans within 60 days from the date of Lease execution, then the Lease may be terminated by Landlord within such 60 day period.
4. Other than for Landlord's Work, the completion of the Premises shall be at Tenant's sole cost and expense.
5. Tenant shall not enter into possession of the Premises prior to Landlord's approval of Tenant's final plans and specifications.
6. If Tenant elects to commence Tenant's Work prior to the completion of Landlord's Work, Tenant shall not be deemed to have accepted the Premises, but in such event, Tenant shall hold Landlord harmless and indemnify Landlord for any loss or damage to Tenant's property and for injury to any persons, unless caused by Landlord's active negligence.
7. During the construction of Landlord's Work, Landlord shall maintain or cause its prime contractor to maintain public liability and workmen's compensation insurance adequate to protect Tenant as well as Landlord from any liability for death or injury to any person or damage to property caused by the construction of Landlord's Work. During the construction of Tenant's Work, Tenant shall maintain or cause its prime contractor to maintain public liability and workmen's compensation insurance adequate to protect Landlord as well as Tenant from any liability for death or injury to any person or damage to property caused by the construction of Tenant's Work.

SCHEDULE 1 TO EXHIBIT C

Description of Landlord's Work

Landlord agrees to complete said Premises in the following manner:

1. **STOREFRONT:** Standard storefront per plans with tinted insulated glass and single aluminum frame and 6'0" x 7'0" glass door with closer and lock to be specified by Landlord.
2. **FLOOR:** All areas to be concrete.
3. **HEATING, VENTILATING AND AIR CONDITIONING:** Roof top heating and air conditioning system to be installed on roof with vertical penetration into Tenant's space.
4. **ELECTRICAL:** Power will be provided by a 100 amp, 120V/208V 3-phase service. Electric panel to be located as designated by Landlord. Electrical rough-in will be completed.
5. **Studs** to support interior drywall and sewer and water connections, and stub-in plumbing will be provided.

Bath rough-ins, rear exit door and electrical panel location will be provided by Landlord at Tenant's request if Landlord receives Tenant's written request by December 21, 1988.

Description of Tenant's Work

1. **Electrical fixtures and equipment:** All electrical work for the Premises not specifically stated under Landlord's Work to be performed by Tenant.
2. **Gas Connections:** Meters and all gas connections, if any, within the Premises.
3. **Telephones:** All conduits for telephone wires in the Premises. Tenant shall make all arrangements for telephone service. Equipment and installation are the responsibility of Tenant.
4. **Walls:** All interior partitions and curtain walls within the Premises.
5. **Coves and Ceilings:** All special coves and ceilings.
6. **Furniture and Fixtures:** All store fixtures, cases, wood paneling, cornices, etc.
7. **Show Window Background Floors, Etc.:** All show windows, floors, show window backgrounds, show window lighting fixtures, and show window doors.
8. **Floor coverings:** All floor coverings and floor materials other than concrete.
9. **Ornamental stairs:** All ornamental or other stairs not required by governing building codes.
10. **Alarm Systems, Etc.:** All alarm systems or other protective devices.
11. **Special Plumbing:** All extra plumbing, either rough-in or fixtures, required for Tenant's special needs.
12. **Special or Additional HVAC Equipment:** HVAC not provided by Landlord and all additional or special HVAC equipment, including show window ventilation to service and maintain the premises in acceptable condition.
13. **Storm and Screens:** All storm and screen doors or storm enclosures.
14. **Special Equipment:** All special equipment such as conveyers, elevators, dumb waiters, etc., including installation and connection.
15. A water heater shall be provided by Landlord. Said water heater shall be designed by Landlord's architect for a normal bathroom containing one lavatory.
16. **Interior painting.**
17. **Tenant's signs, both interior and exterior, including power from Tenant's panel.** All signs shall be designed, constructed and located in accordance with the project Sign Criteria, Exhibit F.
18. **Concrete Floors:** Any special reinforcing, raised areas or depressions.
19. Any changes needed, or required to the fire sprinkler protection system due to Tenant's requirements and those of any government agency.
20. All work of any kind not specifically provided by description of Landlords Work.

Sign Criteria

The design and location of all signs for the exterior of the demised premises shall be subject to approval by Landlord. Tenant must submit detailed sign drawings to the Landlord, and no sign shall be installed until Landlord's written approval has been obtained by the Tenant. Drawings submitted must be in duplicate and contain all vital information pertaining to dimensions, location on the building, material, color and type of illumination. Color samples of all signs shall be submitted to the Landlord for approval. The following limitations will apply:

1. All signs will be composed of individual channel type, one color letters and/or numbers and will be limited to the Tenant's trade name. The Landlord reserves the right to make exceptions to this rule for national, regional or local chains that already have an established sign criteria.
2. All individual letters, numbers or logo will be interior illuminated in one of two ways:
 - A. Dimensional letters will be constructed out of an opaque material. Letters will be stud mounted away from surface with interior illumination creating a halo effect when illuminated. This method is referred to as Reverse Pan-Channel.
 - B. Dimensional letters will be constructed with a transparent face with interior illumination.
3. The site, color and location of all signs shall be limited by the signage guidelines and meet all U.L. and City of Boulder specifications.
4. The following is not permitted and is expressly prohibited:
 - A. Signs with exposed neon or fluorescent tubing or exposed lamps.
 - B. Signs with flashing, blinking, moving, flickering, animated or audible effect or type.
 - C. Printed signs on fronts of show windows.
 - D. Paper signs, stickers, banners or flags.
 - E. Exposed sign illumination or illuminated sign cabinets or modules.
 - F. Painted signs on the exterior surface of any building.
 - G. Rooftop signs.
 - H. Exterior illumination of signs from the front of the building.

The furnishing and installation of a sign and costs incurred shall be the responsibility of the Tenant. Sign construction is to be completed in compliance with the instructions contained within this exhibit. All permits for signs and their installation shall be obtained and paid for by the Tenant or his agent.

