

**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 in the manner set forth in the Carnegie Library Lease-Branches (Exhibit G), the Reynolds Library Lease Branches (Exhibit H), the New North Boulder Branch Lease (Exhibit I) and the Main Branch Lease (Exhibit J).

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**

Katharine Teter
Katharine Teter (Dec 21, 2023 13:17 MST)
President

Dec 21, 2023
Date

ATTEST:

Approved as to Form:

Sylvia Wirba
Sylvia Wirba (Dec 21, 2023 15:01 MST)
Secretary

Spencer J. Lister
Library District Attorney

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

NPR
Nuria Rivera-Vandermyde, City Manager

ATTEST:

Eliska M. Jorgensen
City Clerk

APPROVED AS TO FORM:

Teresa Taylor Tate
City Attorney's Office

Exhibit A Service Area

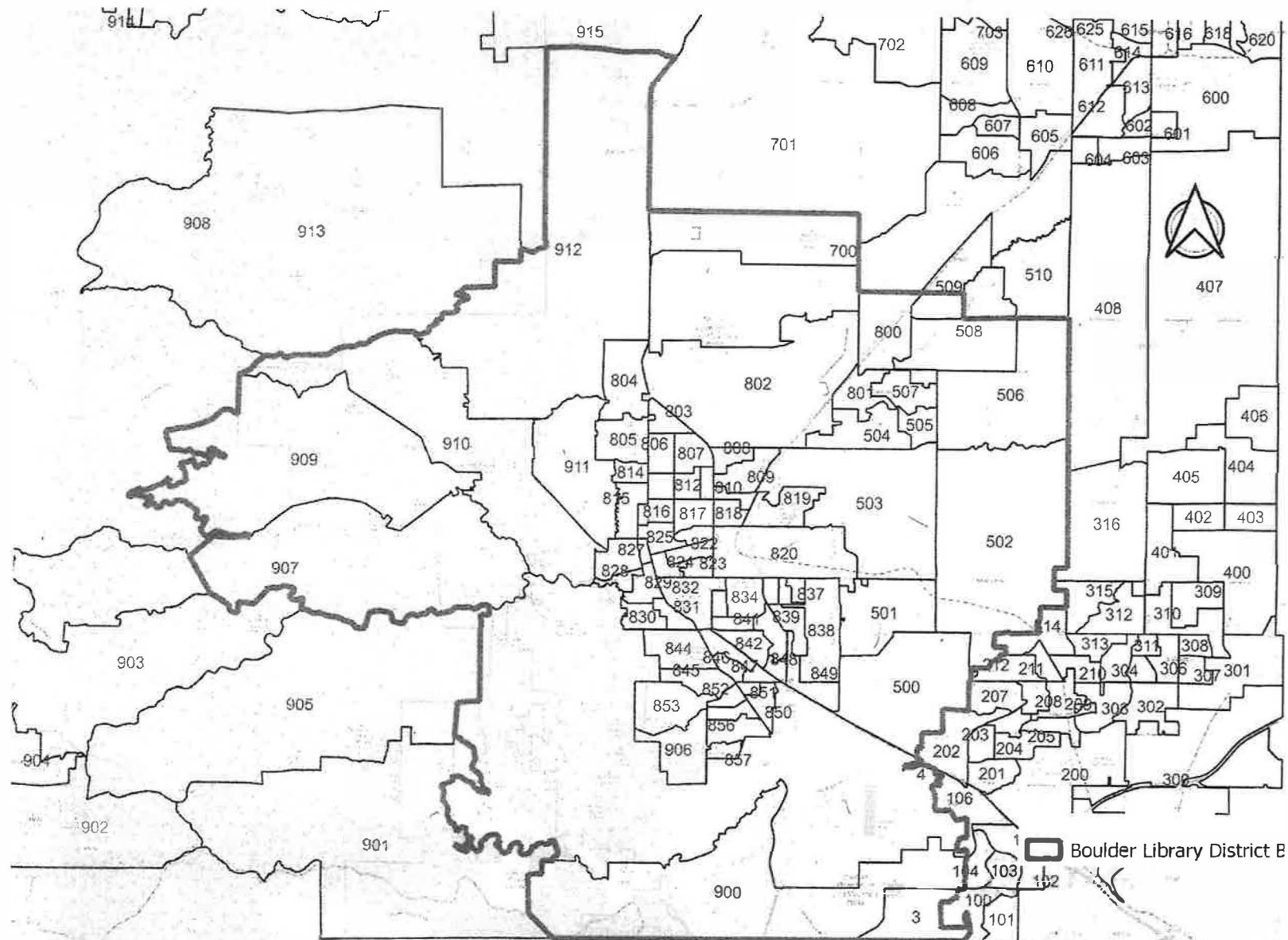


Exhibit B
Board of Trustees

<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

Exhibit C
Interim IGA

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.

Exhibit C Interim 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 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.

Exhibit C Interim IGA

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

Exhibit C Interim 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 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

Exhibit C
Interim 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 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

Exhibit C
Interim 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 6 of 7

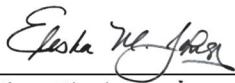
**City of Boulder,
a Colorado home rule city**



Nuria Rivera-Vandermyde, City Manager

Date: 6/16/2023

ATTEST:



City Clerk

APPROVED AS TO FORM:



City Attorney's Office

Exhibit C
Interim 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 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: _____
Clerk to the Board

Exhibit D Reimbursement Amount

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.
Anticipated Draw From Fund Balance	\$ 926,891	The approved 2023 Budget anticipated a draw from fund balance to cover expenses in 2023.

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.
Other Sources	\$ 170,063	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.
Draw from Fund Balance	\$ 1,241,334	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.
Gap Funding from General Fund	\$ 350,000	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.
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

Reimbursement Amount

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.

Exhibit E

BPL Employees Position List

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

EXHIBIT F
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. Rights of First Refusal/Offer. The City will not sell or convey the Real Estate, the Premises, or any part thereof, without first giving the District 120 days written notice of its intent to offer the property for sale during which time the District will have the exclusive right to make a purchase offer; and, upon subsequent receipt of a bona fide good faith offer to purchase from a third-party, the District shall have a 45 day exclusive right of first refusal to enter into a purchase and sale agreement on the same terms as the third-party offer.

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

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

20. 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.
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

EXHIBIT G
to IGA

Exhibit A
Legal Description

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

Network Equipment Room
COB Assets
-Fiber termination panel
-COB singlemode fiber cable to Pine St

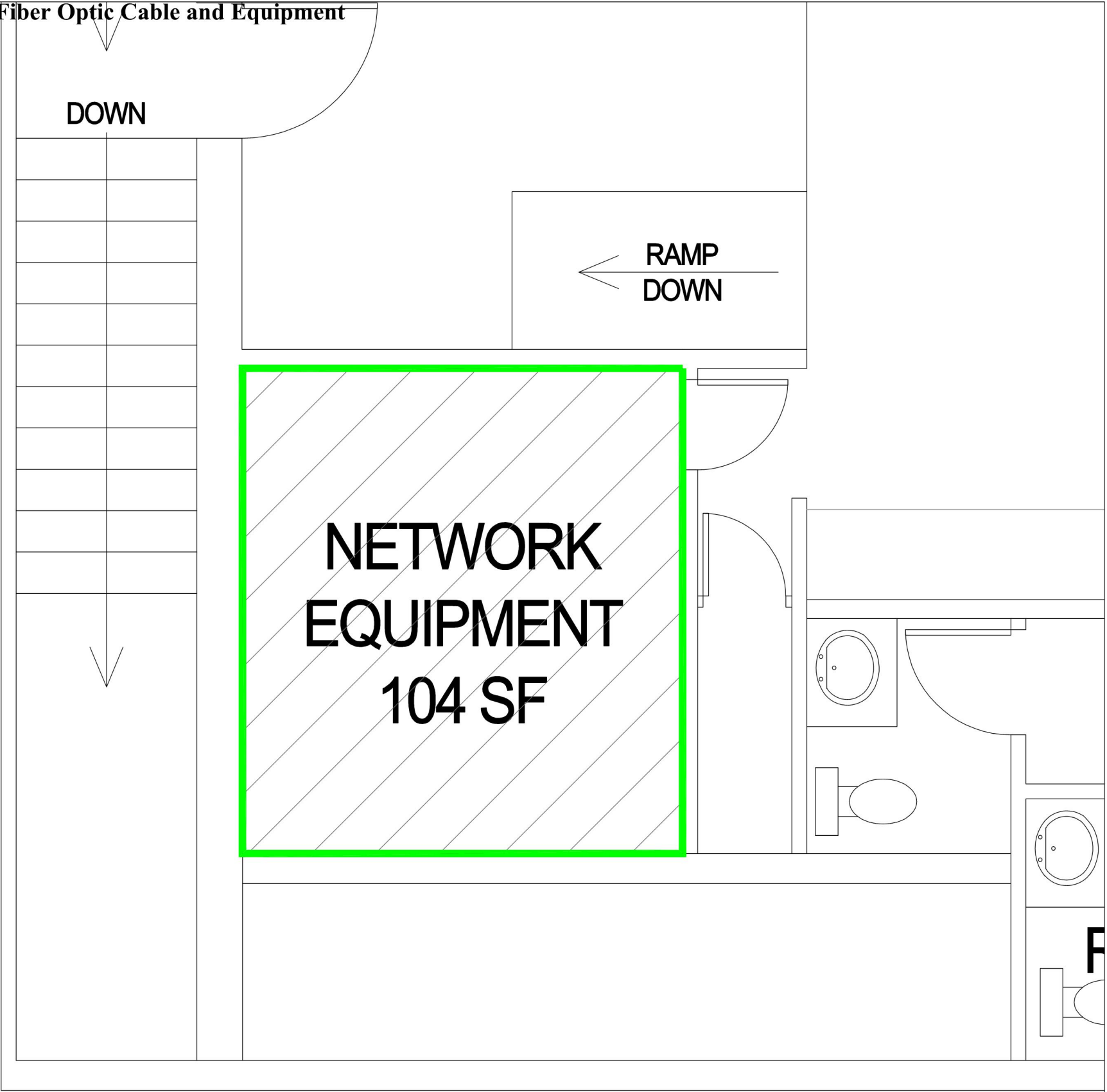


Exhibit C
Requirements for Contractors Performing Any Improvements to the
Premises

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

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. Rights of First Refusal/Offer. The City will not sell or convey the Real Estate, the Premises, or any part thereof, without first giving the District 120 days written notice of its intent to offer the property for sale during which time the District will have the exclusive right to make a purchase offer; and, upon subsequent receipt of a bona fide good faith offer to purchase from a third-party, the District shall have a 45 day exclusive right of first refusal to enter into a purchase and sale agreement on the same terms as the third-party offer.

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

20. 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.
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

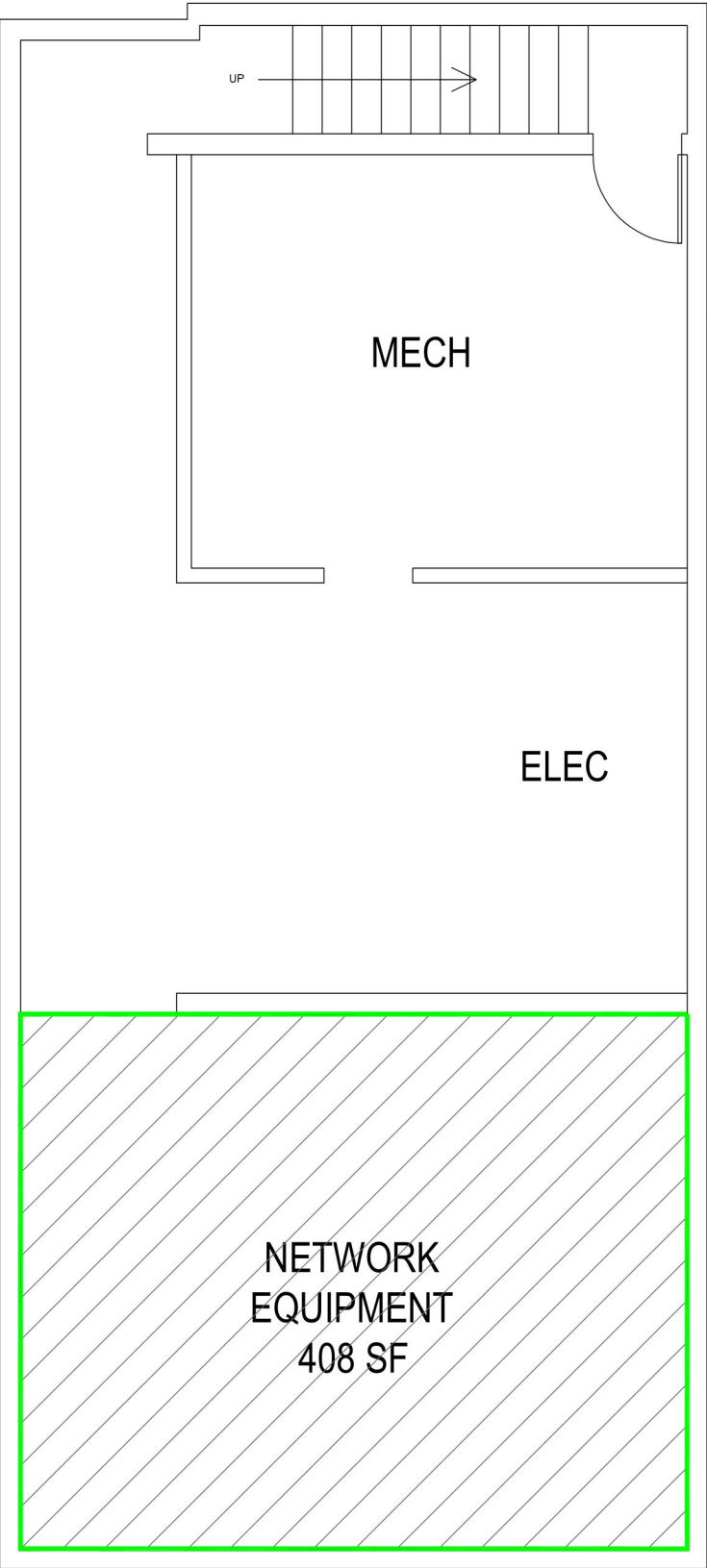
APPROVED AS TO FORM:

City Attorney's Office

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)

to IGA **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 habitational 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
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 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

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

to IGA **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.

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. Rights of First Refusal/Offer. The City will not sell or convey the Real Estate, the Premises, or any part thereof, without first giving the District 120 days written notice of its intent to offer the property for sale during which time the District will have the exclusive right to make a purchase offer; and, upon subsequent receipt of a bona fide good faith offer to purchase from a third-party, the District shall have a 45 day exclusive right of first refusal to enter into a purchase and sale agreement on the same terms as the third-party offer.
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 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
Attn: City Attorney
P. O. Box 791
Boulder, CO 80306
(303) 441-3020
and: CAOAdmin@bouldercolorado.gov

20. 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.
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

Exhibit A
Legal Description

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

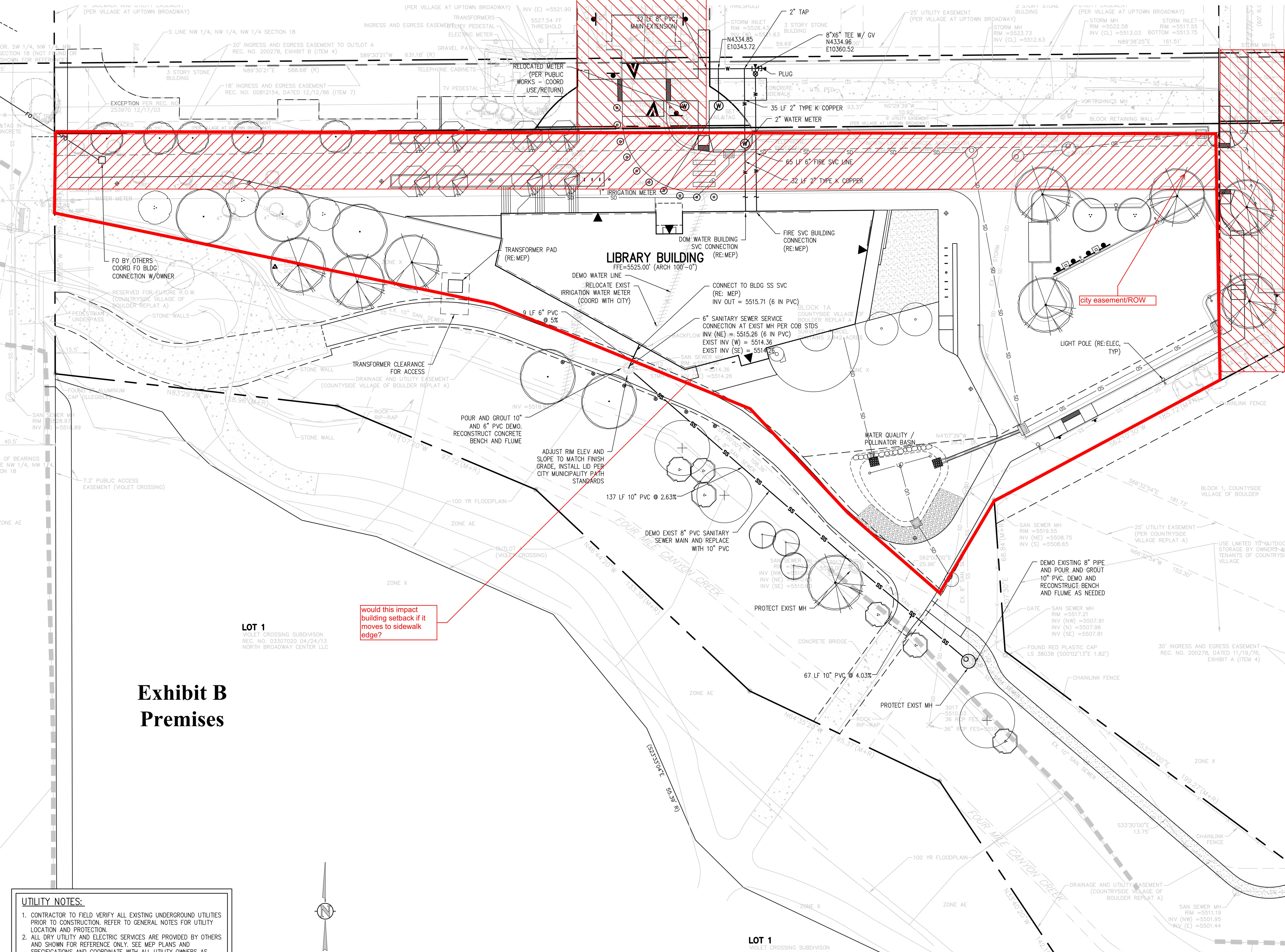
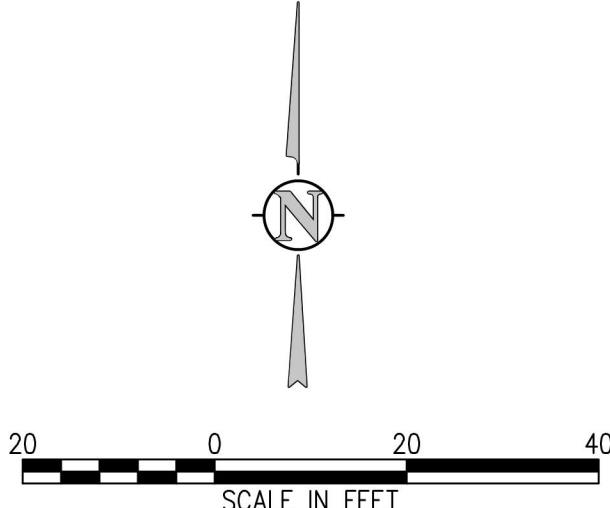


Exhibit B
Premises

- UTILITY NOTES:**
- CONTRACTOR TO FIELD VERIFY ALL EXISTING UNDERGROUND UTILITIES PRIOR TO CONSTRUCTION. REFER TO GENERAL NOTES FOR UTILITY LOCATION AND PROTECTION.
 - 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.
 - CONTRACTOR TO MARK ALL UTILITY STUBS WITH MARKERS.



NORTH BOULDER BRANCH LIBRARY

PROJECT
North Boulder Branch Library
4500 13th Street
Boulder, CO 80304

© 2019 WORK Architecture Company

OWNER
City of Boulder
1777 Broadway
Boulder, CO 80306

ARCHITECT
WORK Architecture Company, PLLC
156 Ludlow Street, 3rd Floor
New York, NY 10002
Tel: 212-228-1553 Fax: 212-228-1674
Email: office@work.ac

STRUCTURAL ENGINEERS
Studio NYL
2865 Baseline Road, Suite 314
Boulder, CO 80303
Tel: 303-558-3145 Fax: 303-444-8536
Email: linetams@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: SPROCOPION@JVAJVA.COM

LIGHTING CONSULTANT
Tillotson Design Associates
40 North Street, Room 703
New York, NY 10013
Tel: 212-675-7760

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



SEAL:

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:

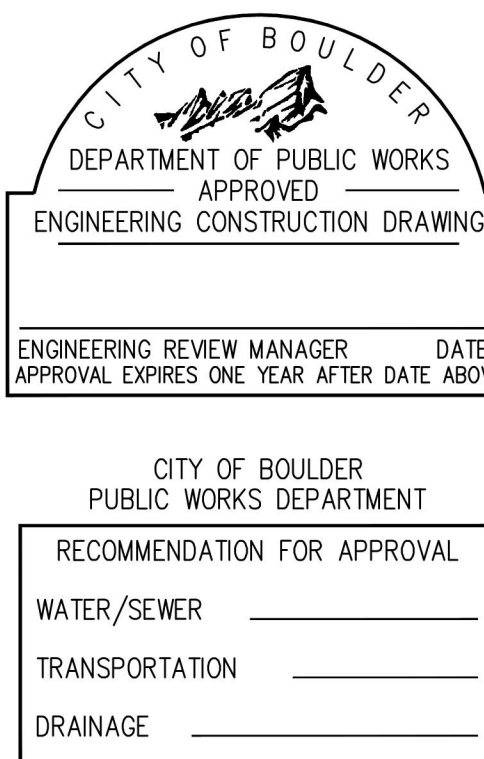
UTILITY PLAN

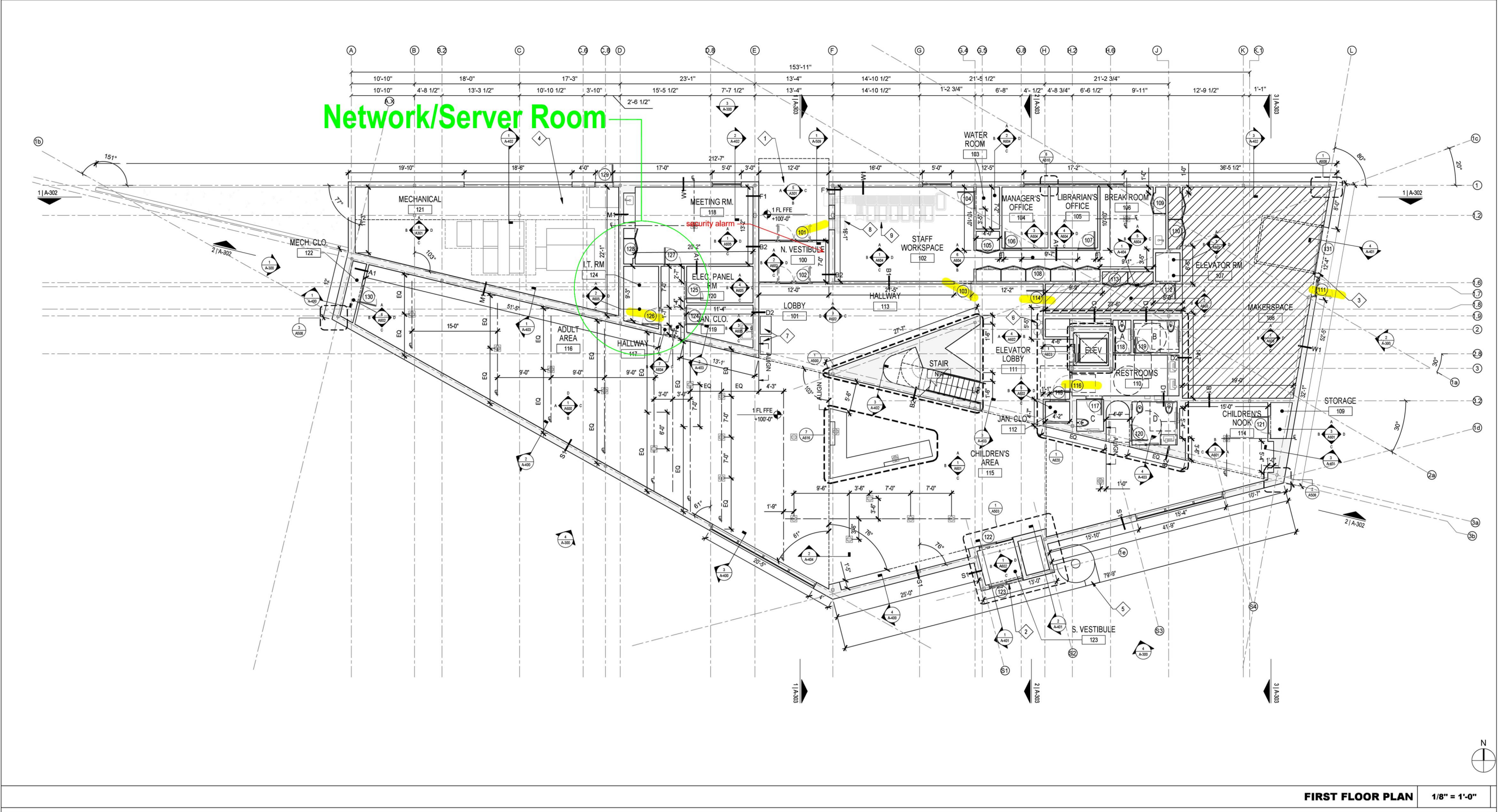
DRAWN BY: MGR/JUP CHECKED BY: SBP

SCALE: AS NOTED DATE: 02/18/2021

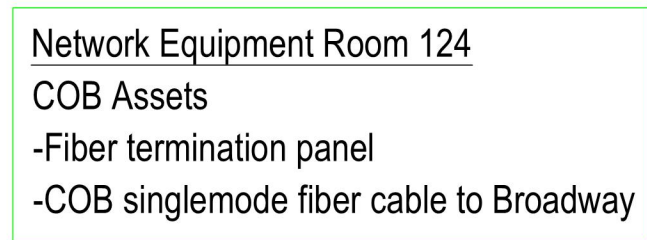
DRAWING NUMBER:

C2.0





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

Exhibit D
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

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.

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: 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. Rights of First Refusal/Offer. The City will not sell or convey the Real Estate, the Premises, or any part thereof, without first giving the District 120 days written notice of its intent to offer the property for sale during which time the District will have the exclusive right to make a purchase offer; and, upon subsequent receipt of a bona fide good faith offer to purchase from a third-party, the District shall have a 45 day exclusive right of first refusal to enter into a purchase and sale agreement on the same terms as the third-party offer.
13. 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.
14. 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.
15. 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.
16. 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.
17. 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.
18. 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.
19. 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.
20. 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

21. 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.
22. 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.
23. 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:

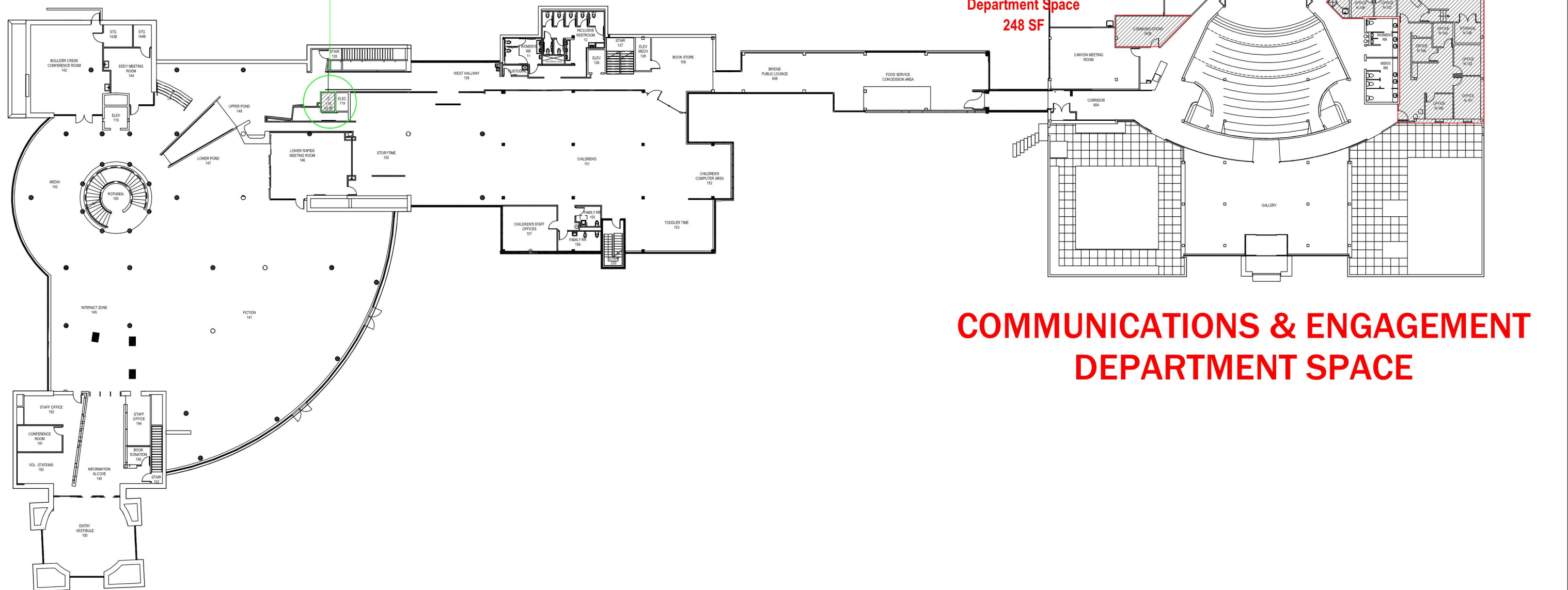
City Attorney's Office

EXHIBIT J
to IGA

EXHIBIT A
Legal Description

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

South side 1st floor Network Closet



COMMUNICATIONS & ENGAGEMENT DEPARTMENT SPACE

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

UPPER POND
148

STAIR
120

IT
118
43 SF

ELEC
119

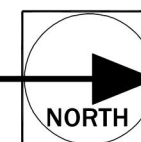
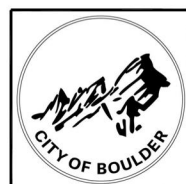
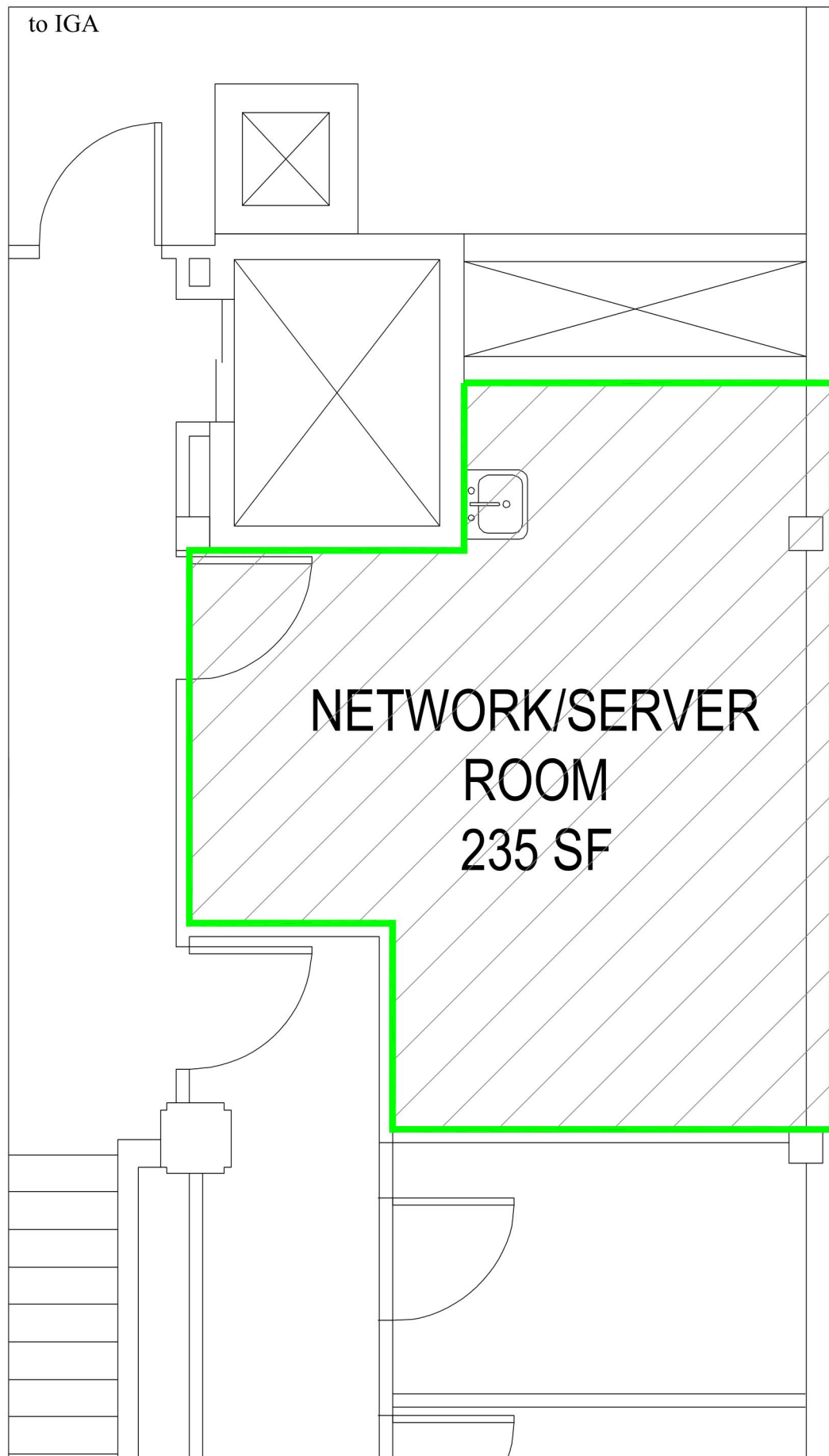


Exhibit B



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



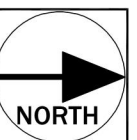
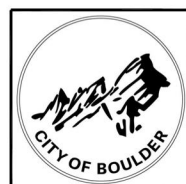
2nd floor Network/Server Room

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 not responsible for the maintenance of the developed area underneath the Main Library building, including, but not limited to, the multi-use path, the Boulder Creek flood control and stormwater management improvements, and the skate park.
- 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. Licensors'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 giving the District 120 days written notice of its intent to offer the property for sale during which time the District will have the exclusive right to make a purchase offer; and, upon subsequent receipt of a bona fide good faith offer to purchase from a third-party, the District shall have a 45 day exclusive right of first refusal to enter into a purchase and sale agreement on the same terms as the third-party offer.

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 Licensors and the Licensee, and is solely for the benefit of the Licensors 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 Licensors 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 A
to Civic Area License and Management
Licensed Area

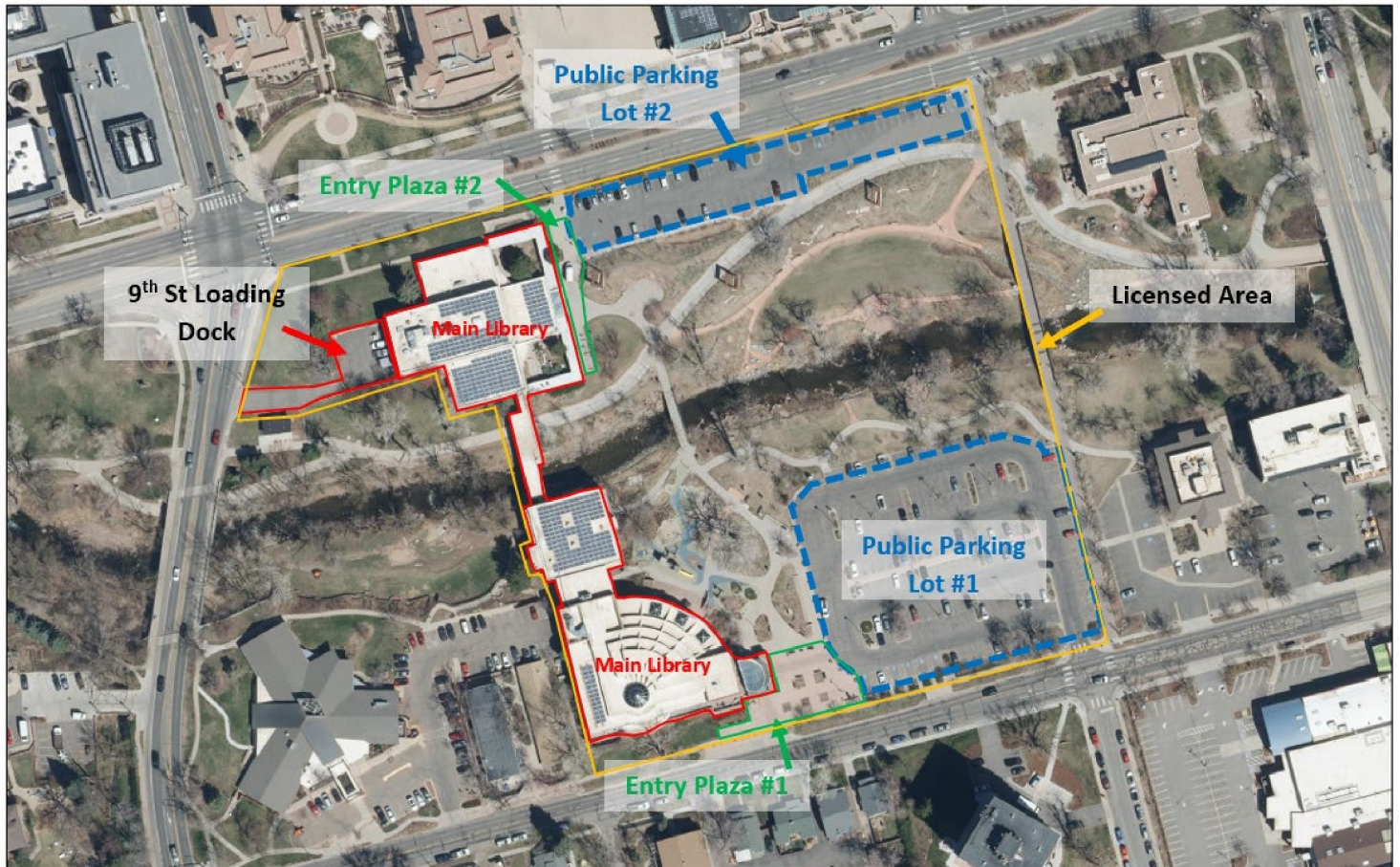


Exhibit D

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
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
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
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
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.

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 not responsible for the maintenance of the developed area underneath the Main Library building, including, but not limited to, the multi-use path, the Boulder Creek flood control and stormwater management improvements, and the skate park.
- 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 giving the District 120 days written notice of its intent to offer the property for sale during which time the District will have the exclusive right to make a purchase offer; and, upon subsequent receipt of a bona fide good faith offer to purchase from a third-party, the District shall have a 45 day exclusive right of first refusal to enter into a purchase and sale agreement on the same terms as the third-party offer.

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 A
to Civic Area License and Management
Licensed Area

