

2022 REPORT 1/27 – 2/10

*Ramp project – contractor completed the installation of ramp railing with one additional small section to the upper ramp as it approaches the parking lot just to make sure it is compliant with ADA - W&W will pay for the added rail. A final inspection is required and a walk through prior to the final billing. The library is planning the 1st of March to re-open. However, the museum has informed us of a long time water leak – seems to come in from the gutters down the front wall of the structure – W&W is assisting with a punchlist of items to potentially address for improvement.

*Town Hall project – interior painting has begun and will match all existing colors; the underground upgraded power is in, updated electrical is in, technology updates are scheduled. There will be new lighting inside/out and finishing work. The restroom is underway. *Technology upgrades are waiting on delivery of parts/equipment (new speakers and cameras) and is estimated for March. We would like to offer time for the historical society to install signs and prints and allow staff to test technology; so roughly plan a return to Town Hall mid-to end of March. *Staff is also planning for additional grant opportunity with State Historical Society for new ADA entrance and kitchen upgrades for May submittal. *Is there a trustee interested to coordinate with the Historical Society for a grand “re-opening” in late spring – early summer?

*Master Plan update – individual interviews have been completed for Planning Commission and Board members. If you did not have an opportunity, let me know a good time to coordinate with Community Matters. A community profile was created and posted to the website - a Master Plan page is under Planning Commission to post information. The survey link will remain open until an adequate number of responses is met – link is at the “alert” banner on the website. Please share the article/link on your personal social media. Mapping exercises are taking place with staff and advisors. *CMI would like to request that Trustees and PC members assist in conducting mapping exercises - for example, Darin offered to gather 30-40 kids and conduct the mapping. Questions can be directed to CMI.

*Parking kiosk update – we chose to go with a private merchant payment program – CardConnect, a cloud-based account to integrate with the T2 kiosk – with a target date of first week of March to get kiosk up/running for a trial time. A service fee will be added to the parking fee transaction (every \$5 + \$0.30).

*Land use permits issued in 2021 totaled 94 with 14 of those for single family dwellings. A regular report will be provided to inform you of the land use activity (copy inside packet with contact us listing - +1 SF in Jan).

*Water taps to date – ending 2021, we have 1035 taps issued (110 remaining of estimated 1,145 taps).

*Appointments – new and re-appointments are on the agenda as well as one additional PPRBD appointment – elected official interest? Parks Commission continues to seek applicants to fill open positions.

*Fletcher property update – property is moving equipment – down to 2 drilling rigs and working to move.

*GMS work update:

- Calculations for the High St drainage study are completed and they are assembling the report for improvement and cost and would like to schedule a workshop prior to the March 24th meeting with the Board, 4:30p start?
- The water accounting study to identify where the town is now, infrastructure recommendations including costs in recommended phases will be assembled by GMS to present early summer, possibly a June meeting.

LEASE AGREEMENT

THIS LEASE AGREEMENT, hereinafter called the "Agreement", is made and entered into as of the _____ day of _____, 2022, by and, between the **TOWN OF PALMER LAKE, COLORADO**, hereinafter "Town," a Colorado statutory municipality and **PIKES PEAK LIBRARY DISTRICT**, a Colorado statutory library district, hereinafter "Tenant."

WITNESSETH:

WHEREAS, the Town is the owner of certain real property and improvement thereon located at 66 Lower Glenway, Palmer Lake, commonly known as Town Municipal Building ("Building"); and

WHEREAS, the Town desires to lease a portion of the building to Tenant to permit Tenant to operate Library services. For this purpose, "library services" shall mean and include all activities conducted by Tenant from time to time at its other library locations and any other activities reasonably determined by Tenant to be consistent with its goals of providing library services at the Building.

NOW THEREFORE, in consideration of the mutual obligations and other consideration set forth herein, the parties agree as follows:

ARTICLE 1 BUSINESS SPACE

- 1.1 **Identification of Business Space.** For the purposes of this Agreement, the term "Business Space" shall mean the area of the upper level of the building and parking incorporated herein by reference.
- 1.2 **Definition of Business.** For the purposes of this Agreement, the term "Library" shall mean the offering of library services and related services primarily to patrons of the building and, incidentally, to the public.

ARTICLE 2 TENANT'S DUTIES WITH RESPECT TO THE BUSINESS SPACE

- 2.1 **In General.** Subject to other limitations expressed in this Agreement, the Town grants to Tenant the right, duty, and obligation to exclusive lease and use of the Business Space in conjunction with library service operations, and for no other purpose in such spaces.
- 2.2 **Designation of Smoking Areas.** The Business Space shall remain a non-smoking area. The Town shall designate employee smoking areas in compliance with applicable Town policies.

- 2.3 Restriction on Items or Services Offered For Sale. Tenant may offer such goods, items, or services as it reasonably determines to be consistent with the business of library services, provided that all such sales shall be in compliance with applicable laws as described in 2.4 below.
- 2.4 Compliance with Applicable Laws and Directives. The Tenant agrees to comply fully with all applicable state and federal laws and regulations, local laws and regulations, and TOWN OF PALMER LAKE municipal ordinances, as well as all reasonable rules and regulations adopted by the Town or any of its Boards, Divisions or Departments having jurisdiction over the BUILDING with at least 90 days advance written notice to Tenant (collectively referred to herein as "Applicable Laws").

ARTICLE 3 RIGHTS OF INGRESS AND EGRESS

- 3.1 In General. The Tenant shall have the right of ingress and egress to and from the Business Space for Tenant's employees, agents and invitees to the extent reasonably necessary in connection with the conduct of Tenant's business under this Agreement. Areas designated as restricted areas by the Town will be excluded. A key and/or appropriate code to the building will be provided from Tenant to Town for emergency access only. Tenant assumes all responsibility and liability associated with personnel use of keys.
- 3.2 Closures. The Town may, at any time, temporarily or permanently, close or consent to or request the closing of any roadway or any other way at, in, or near the Building, presently or hereafter used as such, so long as reasonable and safe means of ingress and egress remain available to Tenant.

ARTICLE 4 UNDERTAKINGS OF TENANT

- 4.1 Service. Tenant agrees:
- 4.1.1 The Tenant shall furnish and pay for all equipment, except as otherwise provided by the Town pursuant to Article 8, all goods, labor, transportation, supervision, and services necessary to conduct library services in accordance with this Agreement.
- 4.2 Days and Hours of Operation. As posted with the Pikes Peak Library District.
- 4.3 Special Events Option. As approved by the Town of Palmer Lake for outside areas.
- 4.4 Tenant Personnel. Tenant shall control the conduct and demeanor of its agents, independent contractors, and employees. Upon objection from the Town concerning the conduct or

demeanor of any such person, the Tenant shall immediately take all lawful steps to remove the cause of the objection.

- 4.5 Physical Interference. Tenant shall not do, nor permit to be done, anything which may interfere with the effectiveness or accessibility of the drainage system, sewage system, fire protection system, sprinkler system, alarm system, and fire hydrants and hoses, if any, installed or located in the Business Space or elsewhere in the Building.
- 4.6 Taxes. Tenant agrees to pay all local, state and federal social security, unemployment insurance, workers' compensation insurance, sales, use, personal property and other taxes, assessments and payments-in-lieu which, during the term of this Agreement or any extension hereof, may become a lien or which may be levied or charged by the federal government, State, County, the Town or other tax-levying body upon or with respect to the Business Space, upon any taxable interest acquired by the Tenant in this Agreement, or any taxable possessory right which Tenant may have in or to the Business Space or facilities or the improvements thereon, by reason of Tenant's occupancy or use thereof, or otherwise, as well as all taxes on taxable property, real or personal, owned by Tenant or taxes on Tenant's operations or activities in or about the Business Space of elsewhere at the Building.
- 4.7 Licenses. Tenant agrees to obtain and pay for all licenses necessary in connection with its operation.
- 4.8 Recordkeeping and Inspection of Books. Tenant shall keep such books and records of the Library, including all revenue and expenses thereof, as it reasonably determines necessary in accordance with good accounting practices.

ARTICLE 5 TERM

- 5.1 Period. The parties agree that the term of this Agreement shall commence on March 1, 2022 and shall renew automatically for nine consecutive one-year renewal terms commencing on the same date in subsequent years, unless earlier terminated as described below.
- 5.2 Termination. This Agreement may be terminated as of the end of any one year initial or renewal term by either party, with or without cause, in the sole discretion of such terminating party by such terminating party serving written notice to the other party of the terminating party's intention to terminate the Agreement. Such written notice shall be provided no less than ninety (90) days prior to the expiration of the then current one-year term. If this Agreement is terminated, each party's accrued liability to the other party arising under this Agreement prior to such termination shall survive the termination, and the Town may re-enter, take possession of the Business Space and remove any persons or property by legal action or by self-help with the use of reasonable force and without liability for damages.

- 5.3 Holding Over. In the event that the Tenant, or its successor in interest, if any, shall remain beyond the term set forth herein, although no right to remain is given by this Article, it is the intention of the parties and it is hereby agreed that a right of use from month-to-month shall then arise subject to all provisions and conditions of this Agreement in connection with such right, except that the Town shall have the sole right to determine reasonable fees for any holdover period. The lease may be terminated by either party during the hold over period upon 30 days written notice.

ARTICLE 6 RENT

- 6.1 Business Space Rental Fee. For the privilege of conducting library service operations hereunder, and the exclusive use of the Business Space identified, the Tenant shall pay to the Town a fee in an amount equal to \$1,000 per month. Rent is due on the first day of each month unless otherwise agreed to with Town Administration.

Payments not received by the Town by the 5th day of each month constitute a breach of the Agreement and may, in the discretion of the Town constitute a basis for terminating the Agreement. A late fee of \$25 will be added to each payment on all payments not received by the 5th day of each month.

- 6.2 Method of Payment. Payment for all fees under Article 6 shall be by check or money order payable to the order of "The TOWN OF PALMER LAKE."

ARTICLE 7 UTILITIES, MAINTENANCE AND JANITORIAL DUTIES

- 7.1 Utilities. The Town shall pay all charges for water, storm water, sewer, gas, trash collection, telephone, and electric services to the Business Space. The Tenant will then reimburse the Town for the portion of such charges reasonably allocated to the Business Space but not to exceed three-quarters (3/4) of monthly services as invoiced by the Town. Payment for utilities is due on the first day of each month following the month of service or five business days after the invoice is delivered to Tenant, if later. Payments not received by the Town by such due date constitute a breach of the Agreement and may, in the discretion of the Town constitute a basis for terminating the Agreement. A late fee of \$25 will be added to each payment not received by such due date.
- 7.2 Maintenance and Repair Responsibility. The Tenant shall maintain and repair the Business Space relating to the interior of the leased space, including but not limited to light bulbs, minor plumbing and electrical, door knobs/locks, interior walls, carpet, flooring, telecommunications, all tenant property such as library material, furnishing, computer equipment and shelving. Tenant shall be responsible for maintenance and repair of leased space window cooling units.

7.2.1 The Tenant shall neither hold nor attempt to hold the Town liable for any injury or damage, either approximate or remote, occasioned through or caused by defective electrical wiring or the breaking or stoppage of plumbing or sewage upon the Business Space, whether said breakage or stoppage results from freezing or otherwise, except to the extent such injury or damage is attributable to the negligence or willful misconduct of Town or its agents.

7.3 Cleaning and Janitorial. The Tenant shall keep the Business Space, its fixtures, and all areas used in clean and in good sanitary condition as required by Applicable Laws.

7.3.1. The Tenant is responsible for the ongoing cleanliness of the Business Space to provide a clean and orderly appearance for the public, including but not limited to, cleaning all library space floors, windows, restrooms and removing trash accumulations to designated trash containers.

7.3.2. The Tenant is responsible to provide and pay for all cleaning supplies used in connection with its obligation to maintain the cleanliness of the Business Space.

7.3.3. The Tenant is responsible for the snow removal on the ramp, entrance and walkways.

ARTICLE 8 ACCEPTANCE OF PREMISES AND TRADE FIXTURES

8.1 Business Space, The Town's Equipment and Fixtures. In addition to the Business Space, the Town shall be responsible for all maintenance and repairs related to the structural integrity and exterior of the Building. This includes but is not limited to repair and maintenance of the roof, gutters, sidewalk/ramp, exterior walls and windows. Town is responsible for replacement or repair of any major systems that fail – heating, plumbing, electrical – or are determined non-compliant with applicable building codes. Town is responsible for the heating system. Town is responsible for all repairs – interior and exterior – required in compliance with State and Federal laws.

8.1.1 Town agrees to improve the interior/exterior needs to the Building as funds are assigned by the Town Board for improvement to the structural integrity of the Building.

8.2 Acceptance. On the date of commencement of the Tenant's occupancy of the Business Space, Tenant shall acknowledge that it accepts the Business Space as well as any Town fixtures "AS IS."

8.3 Installation of Equipment and Trade Fixtures. No equipment, trade fixtures, signs or other personal property used by Tenant in its business, whether or not attached to the Building or any improvements thereon, shall be installed without the prior written approval of the Town.

- 8.4 Removal of Equipment and Trade Fixtures. Tenant shall have the right at any time during the term of this Agreement or upon termination and within thirty (30) days thereafter, to remove all personal property such as trade fixtures, equipment and other personal property, but subject to any valid lien the Town may have thereon for unpaid portions of the Business Space Rental Fee pursuant to Section 6.1 or any other amounts due from Tenant to the Town pursuant to the provisions of this Agreement. No fixtures or other property shall be removed if such removal will result in damage to the property of the Town or the Building. Any property not so removed by Tenant within 30 days after termination as provided in this Section shall become a part of the realty on which it is located and title thereto shall vest in the Town.
- 8.5 Title to Improvements. No improvements shall be made to the Business Space without the prior written approval of the Town. Upon installation or erection of improvements, such improvements shall become a part of the realty upon which they are erected and title thereto shall vest in the Town, unless the parties agree otherwise in writing. Upon vesting, the improvements become part of the Business Space and are subject to the terms applicable to the Business Space within this Agreement.
- 8.6 Conformance with Applicable Laws. All improvements and all trade fixtures, equipment or other personal property installed by Tenant shall be subject to and conform in all respects to Applicable Laws.

ARTICLE 9 DAMAGE BY TENANT

The Tenant shall be liable for and shall repair, replace or cause to be repaired or replaced within five (5) days after occurrence, any damage to the Building, including the Business Space, or to the Town's property, equipment and fixtures caused by Tenant, Tenant's agents, employees, independent contractors working at Tenant's direction, or anyone else acting under Tenant's direction and control, ordinary wear and tear excepted. All repairs or replacements shall be made promptly and when necessary and shall be in a quality and of a class at least equal to the original. To the extent the damage is damage for which Tenant is liable is to the Business Space, Tenant shall continue to be liable for the Business Space rental fee and all other charges provided for in this Agreement, even if the Business Space has been rendered untenable or unusable by such damage.

Tenant shall not be required to make a security deposit with the Town but may elect in its discretion to do so in an amount not greater than \$1000.00. At the end of the lease, any security deposit will be returned to the Tenant after deductions for unpaid rent, utilities, and damage to the Business Space for which Tenant is responsible, other than ordinary wear and tear. The Tenant shall not use any deposit at any time for payment of rent, but instead, should Tenant fail to pay amounts due upon termination or breach of the Agreement, the Town may at its option use the security deposit to satisfy any portion of the amounts owed. However, the use of the security deposit shall not limit the ability of the Town to recover any damages in excess of the security deposit amount.

**ARTICLE 10
TOTAL OR PARTIAL DESTRUCTION**

- 10.1 Business Space or Other Major Component Rendered Untenantable. In case, during the term of this Agreement, the Business Space, Building, or any principal part of any one of them shall be destroyed or shall be so damaged by fire, flood, or other casualty so as to be rendered untenable or unusable as determined by the Town:
- 10.1.1 Then, in such event, at the option of the Town or the Tenant, the term hereby created shall cease, and this Agreement shall become null and void from the date of such determination, and Tenant shall immediately surrender the Business Space and interest therein to the Town; provided, however, that the Town or Tenant shall exercise such option to so terminate this Agreement by notice, in writing, delivered to the other party within thirty (30) days after the Town's determination of non-usability.
- 10.1.2 In the event neither party elects not to exercise its option in 10.1.1 and terminate this Agreement, this Agreement shall continue in full force and effect; and the Town shall repair the Business Space, or Building, excluding improvements or equipment, signs, trade fixtures, or other personal property installed by Tenant, with all reasonable speed, placing the same in as good condition as it was at the time of the damage or destruction.
- 10.2 Business Space Only Untenantable. In the event of destruction rendering only the Business Space untenable or non-usable through no fault of the Town or the Town's agents or employees, the Town shall endeavor, but not be obligated, to make substitute premises available for Tenant's use.
- 10.3 Components Tenantable. If the Building or Business Space shall be only injured by fire, flood, or the elements to such extent so as not to render the same untenable and unfit for use and occupancy, the Town shall repair the same with all reasonable speed.
- 10.4 Removal of Rubbish. In any event, upon the occurrence of damage or destruction, Tenant shall remove all rubbish, debris, merchandise, furniture, furnishings, equipment and other items of its personal property within five (5) days after receipt of written request by the Town.
- 10.5 Exception for Damage Caused by Tenant. In the event of damage caused by Tenant, as more specifically addressed in Article 9 of this Agreement, the provisions of Article 9 shall govern in any conflict between Article 9 and Article 10.
- 10.6 No Claim by Tenant. No compensation or claim shall be made by or allowed to Tenant by reason of any inconvenience or annoyance arising from the necessity of repairing portion of the Building or other Town property, except to the extent such repair is attributable to the negligence or willful misconduct of Town or its agents.

**ARTICLE 11
INDEMNIFICATION AND INSURANCE**

- 11.1 The Town's Liability. The Town shall not in any way be liable for any cost, liability, damage or injury, including cost of suit and reasonable expenses of legal services, claimed or recovered by any person whomsoever or whatsoever as a result of any operations, works, acts or omissions performed within the Building and/or Business Space by Tenant, its agents, employees or contractors.
- 11.2 Indemnification by Tenant. To the extent permitted by applicable law, each party covenants that it will indemnify and hold the other party harmless from all claims, demands, judgments, costs and expenses, including attorneys' fees, claimed or recovered (whether justly, unjustly, falsely, fraudulently or frivolously) by any person by reason of injury to or death of any individual person or persons, or by reason of damage to, destruction or loss of use of any property, directly or indirectly arising out of, resulting from, or occurring in connection with any operations, works, acts, or omissions or negligence of the indemnifying party or its agents. As used herein, the terms "Tenant" and "the Town" includes the respective directors, officers, agents, employees and contractors of Tenant and the Town.
- 11.3 Insurance. Without limiting any of the Tenant's obligations hereunder, the Tenant shall provide and maintain comprehensive liability insurance coverage naming the Town as an additional insured under this Agreement with a minimum aggregate limit of \$1,000,000.00. Tenant shall supply the Town with a certificate of insurance.
- Without limiting any of the Town's obligations hereunder, the Town shall maintain comprehensive liability insurance and provide Tenant a copy of coverage.
- 11.4 Precautions Against Injury. Each party shall take all necessary precautions in performing the operations hereunder to prevent injury to persons and property.
- 11.5 Failure to Insure. Failure of a party to take out and/or maintain, or the taking out and/or maintenance of any required insurance, shall not relieve such party from any liability under this Agreement, nor shall the insurance requirements be construed to conflict with the obligations on each party concerning indemnification.
- 11.6 No Waiver of Immunity. Nothing herein shall be construed as a waiver by either party of any of the immunities, privileges and defenses available to it under the Colorado Governmental Immunity Act, as may be amended from time to time, or arising under common law.

**ARTICLE 12
NO INTEREST IN REAL PROPERTY**

Tenant agrees that this Agreement constitutes merely a lease of the Business Space for a limited purpose and does not create or convey to Tenant any other interest in real property.

**ARTICLE 13
NO ASSIGNMENT/SUBLET**

The Tenant shall not assign this Agreement and shall not sublet or otherwise allow any person to take possession of all or any portion of the Business Space. Any transfer by operation of law of Tenant's interest created hereby, other than by merger or consolidation, must be approved in advance, in writing, by the Town.

**ARTICLE 14
RIGHT OF THE TOWN TO ENTER, INSPECT, AND MAKE REPAIRS**

- 14.1 In General. The Town and its authorized officers, employees, agents, contractors and other representatives shall have the right (at such times as may be reasonable under the circumstances and with as little interruption to Tenant's operation as is reasonably practicable) to enter upon any part of the Business Space for the following purposes:
- 14.1.1 To inspect such premises at reasonable intervals during regular business hours (or at any time in case of emergency) to determine whether Tenant has complied with and is complying with the terms and conditions of this Agreement with respect to such premises and/or Building;
 - 14.1.2 To perform or cause to be performed maintenance and make repairs and replacements; and
 - 14.1.3 To make structural additions and alterations.
- 14.2 Obstruction by Tenant. In the event that any personal property of Tenant shall obstruct the access of the Town, its officers, employees, agents or contractors, or a utility company furnishing utility service to any of the existing utility, mechanical, electrical and other systems, and thus shall interfere with the inspection, maintenance or repair of any such system, Tenant shall move such property, as directed by the Town or said utility company, in order that access may be had to the system or part thereof for inspection, maintenance or repair. If Tenant shall fail to so move such property after direction from the Town or said utility company to do so, the Town or the utility company may move it without liability for damage sustained in moving.
- 14.3 No Eviction or Abatement. Exercise of any or all of the foregoing rights in this Article, by the Town, or others under right of the Town, shall not be, nor be construed to be, an eviction of

Tenant, nor be made the grounds for any abatement of the business rent nor any claim or demand for damages against the Town, consequential or otherwise.

ARTICLE 15 DEFAULT, RIGHTS OF TERMINATION

- 15.1 Default by Tenant. Time of payment and performance is of the essence in this Agreement. Tenant shall be in default under this Agreement upon the occurrence of any one or more of the following non-exclusive list of events:
- 15.1.1 Tenant's failure to pay any fee or other charge when due to the Town and within five (5) working days after notice from the Town of such non-payment.
 - 15.1.2 Tenant's failure to maintain the insurance required above.
 - 15.1.3 Tenant's assignment of any right hereunder or attempt to sublet the Business Space, or any other part of the Building, in violation of Article 13.
 - 15.1.4 Tenant's failure to perform, keep or observe any of the terms, covenants, or conditions of this Agreement and to cure or remedy such failure within five (5) working days after notice from the Town of such failure, provided that if such cure or remedy is not reasonably capable of completion within such five (5) working days, such cure or remedy must be commenced within such period and diligently pursued to completion thereafter.
 - 15.1.5 The filing by Tenant of a voluntary petition in bankruptcy, the filing of an involuntary petition in bankruptcy against Tenant, which petition is not dismissed within 30 days, the taking of possession of all or substantially all of Tenant's assets pursuant to proceedings brought under the provisions of any federal reorganization act or the appointment of a receiver of all or substantially all of Tenant's assets and the failure of Tenant to secure the return of such assets and/or the dismissal of such proceeding within (90) days after the filing.
 - 15.1.6 The abandonment for a period of fourteen (14) days by Tenant of the conduct of its business operations during the terms of this Agreement.
 - 15.1.7 The assignment by Tenant of its assets for the benefit of creditors.
- 15.2 Default by Town. Time of payment and performance is of the essence in this Agreement. Town shall be in default under this Agreement upon the occurrence of any one or more of the following non-exclusive list of events:

15.2.1 Town's failure to maintain the insurance required above.

15.2.2 Town's failure to perform, keep or observe any of the terms, covenants, or conditions of this Agreement and to cure or remedy such failure within five (5) working days after notice from the Tenant of such failure, provided that if such cure or remedy is not reasonably capable of completion within such five (5) working days, such cure or remedy must be commenced within such period and diligently pursued to completion thereafter.

15.3 Remedies on Default.

15.3.1 In the event of a default, the non-defaulting party may terminate this Agreement by notice in writing to the defaulting party. In the alternative, the non-defaulting party may elect to keep the Agreement in force and work with the defaulting party to cure the default. If this Agreement is terminated, each party's liability to the other for damages and fees, including but not limited to the Business rental fee, shall survive the termination, and the Town may re-enter, take possession of the Business Space, and remove any persons or property by legal action or by self-help with the use of reasonable force and without liability for damages.

15.3.2 Following re-entry or abandonment, the Town may make arrangements for use of the Business Space by others, and in that connection may make any suitable alterations or refurbish the Business Space, but the Town shall not be required to make such arrangement for any use or purpose.

15.4 Rights and Remedies Reserved.

It is understood and agreed that any rights and remedies reserved pursuant to this Article are in addition to any other rights or remedies the party may have pursuant to this Agreement or to applicable law to seek judicial enforcement, damages or any other lawful remedy.

**ARTICLE 16
MISCELLANEOUS PROVISIONS**

16.1 **Cumulative Rights.** All remedies provided in this Agreement shall be deemed cumulative and additional and not in lieu of, or exclusive of, each other or of any other remedy available to the Town, or Tenant, at law or in equity, and the exercise of any remedy, or the existence herein of other remedies or indemnities shall not prevent the exercise of any other remedy.

16.2 **Non-Waiver.** The failure by either party to exercise any right or rights accruing to it by virtue of the breach of any covenant, condition, or agreement herein by the other party shall not operate as a waiver of the exercise of such right or rights in the event of any subsequent breach

by such other party, nor shall such other party be relieved thereby from its obligations under the terms hereof.

- 16.3 Non-liability of Individuals. No director, officer, agent, or employee of either party hereto shall be charged personally or held contractually liable by or to the other party under any term or provision of this Agreement or of any supplement, modification or amendment to this Agreement because of any breach thereof, or because of its or their execution or attempted execution of the same.
- 16.4 Limitation on Use. Tenant shall not use, or permit the use of the Business Space, or any part thereof, for any purpose or use other than those authorized by this Agreement. Neither shall Tenant permit nor suffer any disorderly noise or nuisance whatsoever about the Business Space, Building, or other Town property.
- 16.5 Governing Law. This Agreement shall be performable and enforceable in the TOWN OF PALMER LAKE, Colorado, and shall be construed in accordance with the laws of the State of Colorado.
- 16.6 Benefits. This Agreement is made for the sole and exclusive benefit of the Town and the Tenant and is not made for the benefit of any third party.
- 16.7 Construction. In the event of any ambiguity in any of the terms of this Agreement, it shall not be construed for or against any party hereto on the basis that such party did or did not author the same.
- 16.8 Successors and Assigns. All covenants, stipulations and agreements in this Agreement shall extend to and bind each party hereto, its legal representatives, successors, and assigns. This provision does not render the Agreement assignable, as assignment is governed by Article 13.
- 16.9 Headings. The titles of the several articles of this Agreement are inserted herein for convenience only and are not intended and shall not be construed to affect in any manner the terms and provisions hereof, or the interpretation or construction thereof.
- 16.10 Attorney Fees. In the event any legal action or proceeding is brought to collect sums due or to become due hereunder or any portion thereof or to enforce compliance with this Agreement for failure to observe any of the covenants of this Agreement, the losing party agrees to pay to the prevailing party such sums as the Court may judge reasonable attorneys' fees and costs to be allowed in such action or proceeding and in any appeal therefrom.
- 16.11 Entire Agreement. This Agreement, which is the entire agreement between the parties hereto, supersedes all prior agreements, understandings, warranties or promises between the parties hereto, whether written, spoken or implied from the conduct of the parties hereto.

- 16.12 **Severability.** In the event any covenant, condition or provision of this Agreement is held to be invalid by final judgment of any court of competent jurisdiction, the invalidity of such covenant, condition or provision shall not in any way affect any of the other covenants, conditions or provisions of this Agreement, provided that the invalidity of any such covenant, condition or provision does not materially prejudice either the Town or Tenant in its respective rights and obligations under the valid covenants, conditions or provisions of this Agreement.
- 16.13 **Surrender of Possession.** Upon the expiration of this Agreement or its earlier termination as herein provided, Tenant shall remove all of its property from the Business Space and the Building and all other Town property and surrender entire possession of its rights to the Town and its improvements in accordance with Section 9 above, unless this Agreement is renewed or replaced.
- 16.14 **The Town Representative.** The Town designates the Town Administrator/Clerk, or designee, as its representative who shall make, within the scope of his authority, all necessary and proper decisions with reference to this Agreement. All requests for contract interpretations, amendments, and other clarifications or instructions shall be directed to the Town. The representative may be changed by written notification to the Tenant.
- 16.15 **Notices.** Notices permitted or required to be given under this Agreement shall be in writing and shall be deemed given upon personal delivery or on the third business day after deposit in the United States mail, certified, return receipt requested, postage fully prepaid, addressed as follows or to such other address as the parties may designate from time to time by notice given in accordance with this Section:

To Tenant: Pikes Peak Library District
ATTN:
Address
Email

To Town: TOWN OF PALMER LAKE
Attention: Dawn A. Collins
PO Box 208, Palmer Lake, CO 80133
E: dawn@palmer-lake.org

Copy To: Matthew Z. Krob, Town Attorney
8400 E. Prentice Avenue
Penthouse
Greenwood Village, CO 80111

- 16.16 **Paragraph Headings.** Paragraph headings contained herein are for convenience and reference and are not intended to define or limit the scope of any provisions of this Agreement.

- 16.17 Force Majeure. Neither the Town nor the Tenant shall be deemed in violation of this Agreement if prevented from performing any of its obligations hereunder by reason of strikes, boycotts, labor disputes, embargoes, shortage of energy or materials, acts of God or nature, act of public enemy, acts of superior governmental authority, weather conditions, rights, rebellion, sabotage or any other circumstances that are not within its control.
- 16.18 No Limitation on General Powers. Nothing in this Agreement shall be construed as in any way limiting the general powers of the Town to fully exercise their governmental functions or their obligations under any bond covenants or Applicable Laws.
- 16.19 No Relationship. Nothing contained herein shall be deemed or construed by the parties hereto nor by any third party as creating the relationship of employer and employee, principal and agent or a partnership or a joint venture between the parties hereto. The Town shall not be responsible for any debts or obligations whatsoever of Tenant.
- 16.20 Non-appropriation. The parties acknowledge and agree that this lease does not constitute a multi-year financial obligation of either party under the Taxpayers Bill of Rights (TABOR) of the Colorado Constitution. Therefore, the obligations of each party under this lease is subject to annual appropriation for payment by the party's governing board. In the event of a non-appropriation for payment by either party, this lease shall terminate without further obligation (financial or otherwise) of the parties on 30 days written notice to the other party, other than for payments on services previously rendered through the termination of the lease.
- 16.21 Survival. To the extent necessary to carry out all of the terms and provisions hereof, the aid terms, obligations, and rights set forth herein required shall survive and shall not be affected by the expiration or termination of this agreement.

TOWN OF PALMER LAKE

William Bass, Mayor

Attest:

Dawn A. Collins, Town Clerk

TENANT: Pikes Peak Library District

Owner/Representative

Print: _____