

AMENDED AND RESTATED LIBRARY LEASE
(Edgewater Branch)

THIS AMENDED AND RESTATED LIBRARY LEASE (this "Lease") is made this _____ day of _____, 2015, by and between the CITY OF EDGEWATER, COLORADO, a Colorado home rule municipal corporation, with an address of 2401 Sheridan Boulevard, Edgewater, Colorado, 80214 (the "City" or "Landlord") and the JEFFERSON COUNTY PUBLIC LIBRARY, a body corporate and politic, with an address of 10200 W. 20th Avenue, Lakewood, Colorado 80215 (the "Library" or "Tenant").

RECITALS

- A. The parties have an existing lease agreement, dated January 1, 1969, for the operation of a regional branch of the Jefferson County Public Library system within the City of Edgewater. ("Existing Lease").
- B. The City desires to have a regional branch of the Library within the City, and the County desires the use of suitable facilities for a regional branch library within the City.
- C. The parties desire to amend and restate the Existing Lease, extinguishing all rights and obligations under the Existing Lease and providing all future rights and obligations under this Lease.

AGREEMENT

NOW, THEREFORE, in consideration of the premises, the mutual covenants contained in this Lease, and each and every act to be performed by the parties under this Lease, Landlord and Tenant agree as follows:

- 1. Existing Lease Amended and Restated. Prior to the execution of this Lease, the rights and obligations of the parties with respect to the Premises, as defined herein, are those in the Existing Lease. After the execution of this Lease, the Existing Lease shall be deemed amended and restated so as to contain all the terms of this Lease and this Lease shall thereafter govern all rights and obligations of the parties with respect to the Premises.
- 2. Premises. Landlord by this Lease leases to Tenant, and Tenant leases from Landlord the real property and improvements currently in use as the Edgewater Library, located in the City of Edgewater at 5845 W. 25th Avenue and consisting of approximately 1,600 square feet on the first floor of that certain building known as the "Old City Hall," including a materials collection room, a staff office, a restroom and a utility closet (hereinafter the "Premises").
- 3. Use and Occupancy. Tenant covenants and agrees (i) to occupy the Premises only for the purposes of operating a public library and all activities incident to that use, including but not limited to use as a community or educational gathering space and a repository of assorted informational materials and public resources, including computer, audio/visual, and office equipment, in accordance with this Lease and all applicable laws, ordinances, orders, rules, regulations and other governmental requirements relating to the use, condition or occupancy of the Premises and for no other purpose; and (ii) to use the Premises in a careful, safe manner.
- 4. Existing Fixtures, Furniture and Other Property. The Library shall retain ownership of all fixtures, furniture, library materials and equipment, and other personal property existing in the Premises at the time of execution of this Lease.

5. Term, Possession and Termination. The initial term of this Lease shall commence as of the date of execution of the Lease, and shall continue, unless earlier terminated in accordance with this Lease, until December 31, 2015 (the "Initial Lease Term"). This Lease shall be renewed, automatically, on January 1 of each year for any number of successive one-year terms (individually an "Extension Term"), unless either party gives to the other party, at least one-hundred eighty (180) days prior to the annual expiration date hereof, written notice of its intent to terminate this Lease. Tenant's taking possession of the Premises shall be conclusive evidence against Tenant that the Premises as of the date of taking possession were in good order and repair. Tenant may terminate this Lease upon ninety (90) days' written notice to the Landlord. Upon and after January 1, 2016, Landlord may terminate this Lease upon one-hundred eighty (180) days' written notice to Tenant if, at the time of such notice, Landlord has received a bona fide written offer from a third party to purchase either or both of the City's 2508 Gray Street property or the 5845 W. 25th Avenue property.

6. Rent. There shall be no rent due.

7. Expenses of Operating the Premises.

A. Utilities.

(i) Landlord. Landlord shall provide the necessary mains, conduits and facilities in order that water and wastewater, electricity, and natural gas service may be furnished to the Premises. Landlord shall pay for the costs of water and wastewater service for the Premises

(ii) Tenant. Except as to water and wastewater service charges, which the City shall pay, Tenant shall pay, prior to delinquency, all charges for utilities and similar items used on the Premises, including but not limited to electricity, natural gas, trash removal, telephone and internet charges. Tenant shall arrange to have all such utility and similar accounts for the Premises in its name, and any deposit required to bring any utility service or similar item to the Premises shall be paid by Tenant.

B. Maintenance and Repairs.

(i) Landlord. Landlord shall keep the foundations, exterior walls, roof, electrical, heating, cooling and water systems of the Premises in good repair, except that Landlord shall not be required to make any repairs which become necessary or desirable by reason of any negligent or willful act or omission of Tenant, its agents, servants, employees, invitees or licensees.

(ii) Tenant. Tenant shall keep the interior of the Premises, including, but not limited to, windows, doors (both interior and exterior), plate glass, interior walls, floors, ceilings, and lighting fixtures, in good repair at its own expense and cost, excluding ordinary wear and tear. Tenant shall not be required to make any repairs which become necessary or desirable by reason of any negligent or willful act or omission of Landlord, its agents, servants, employees, invitees, licensees or other tenants.

(iii) Other. Any necessary maintenance and repairs not contemplated by this paragraph and identified by Landlord or Tenant shall be brought to the attention of the other party for discussion of a mutually-agreed upon course of action.

C. Taxes.

(i) Personal Property, Etc. Tenant shall be responsible for and pay before delinquency any and all (if any) taxes and assessments levied or otherwise charged by any governmental entity on the personal property of Tenant, on Tenant's privilege of doing business, on Tenant's sales or otherwise resulting from Tenant's conduct of operations on or at the Premises.

(ii) Real Property. Landlord shall be responsible for and pay before delinquency any and all (if any) general and special real estate taxes, special assessments, assessments for improvements, special district or improvement district assessments, and all other taxes, charges, rates, levies and assessments of whatever nature levied, assessed or collected by any governmental or quasi-governmental authority (whether now existing or hereafter created) upon or with respect to the Premises and Landlord's ownership or operation thereof, and all taxes or charges imposed in lieu of (or in lieu of any increases in) any such tax, provided however, that Tenant shall pay for any special assessments imposed on the Premises and payable without regard to the tax exempt character of the Premises, if Tenant is found not to be eligible for tax exemption. It is understood by the parties that each party entity is individually tax exempt.

D. Reimbursement. If either party deems it necessary to pay any expenses described in this Section 5 as to be paid by the other party, the obligated party shall reimburse the party making payment promptly upon demand, and the obligation to pay such amount shall survive the expiration or earlier termination of this Lease.

8. Alterations and Modifications.

A. Tenant covenants and agrees not to undertake any construction or renovation in and to the Premises ("Modifications") without the prior written consent of Landlord in each instance. Changes or additions to interior carpeting, painting, window coverings, furniture, equipment, and wall hangings shall not be considered construction or renovation. Unless otherwise agreed, all Modifications approved by Landlord shall be at Tenant's expense. Tenant acknowledges that Landlord's consent will be conditioned upon, at Landlord's option, among other things, Landlord's approval of plans, specifications, contractors, insurance and hours of construction. Tenant's compliance with City of Edgewater ordinances and regulations relative to the issuance of building permits shall not satisfy the requirement that written approval from Landlord be obtained before installation or construction of Modifications is begun, and the City of Edgewater hereby reserves to itself the contractual right, as Landlord, to review and evaluate Tenant's plans for all Modifications and that this reserved contractual right is in addition to, independent of, and distinct from the City of Edgewater's authority as a home rule city to review plans prior to issuance of a building permit. Landlord's consent to Tenant's Modifications shall not be unreasonably withheld, but any approval or denial shall be based on Landlord's best judgment as a landlord, not on the standards by which building permits are issued or denied.

B. All Modifications installed by Tenant shall become and remain the property of Landlord, unless otherwise agreed in writing. All trade fixtures and equipment installed by Tenant and removable without structural injury to the building may be removed by Tenant before or at (but not after) the expiration of this Lease and shall remain the property of the Tenant, provided that Tenant shall repair, and shall remain responsible for repairing, any damage done to the Premises in removing such trade fixtures or equipment.

9. Liability and Insurance.

A. Each party shall be solely responsible for any and all claims, liability and court awards, including costs, expenses, and attorney fees, incurred as a result of its actions or omissions or any action or omission of its officers, employees, and agents in connection with this Lease.

B. At all times during the Lease Term, Tenant shall carry, at Tenant's sole expense, with insurance companies and on forms satisfactory to Landlord, "all risk" insurance (including sprinkler leakage, if applicable) covering all leasehold improvements, equipment, fixtures, appliances, furniture, furnishings and personal property from time to time installed or placed in, on or upon the Premises by or for Tenant, in an amount not less than the full replacement cost of all insured items without deduction for depreciation. Landlord shall be named as an additional insured on said policy. Any casualty or fire policy proceeds shall be used for the repair or replacement of the property damaged or destroyed. Tenant shall maintain such coverage throughout the Initial Lease Term and any Extension Term. Certificates of insurance evidencing all insurance required by this Lease or, at Landlord's request, certified copies of the policies, shall be delivered to Landlord at least 30 days prior to the expiration of each such policy. Such insurance shall provide that Landlord and any other additional insured, although named as insured, shall nevertheless be entitled to recover under such policy for any loss occasioned to it, its agents or its employees, notwithstanding any act or omission of Tenant. All such policies shall provide that they may not be terminated or amended except after thirty (30) days' written notice thereof to Landlord and all other additional insureds. All such insurance shall be written as primary policy, not contributing with and not in excess of coverage that Landlord may carry.

10. Default. Each of the following events shall be an event of default (an "Event of Default") under this Lease:

A. Tenant shall desert, abandon or vacate the Premises, or shall fail to use it as a public library as defined in Paragraph 3 for ninety (90) consecutive days;

11. Landlord's Remedies. Upon the occurrence of any Event of Default, Landlord shall have the following rights and remedies, in addition to all other remedies at law or equity, and none of the following, whether or not exercised by Landlord, shall preclude the exercise of any other right or remedy whether herein set forth or existing at law or equity:

A. Landlord shall have the right to terminate this Lease by giving Tenant written notice at any time. No act by or on behalf of Landlord, such as entry of the Premises by Landlord to perform maintenance and repairs and efforts to relet the Premises, other than giving Tenant written notice of termination, shall terminate this Lease. If Landlord gives such notice, this Lease and the Initial Lease Term or any Extension Term as well as the right, title and interest of Tenant under this Lease shall wholly cease and expire in the same manner and with the same force and effect (except as to Tenant's liability) on the date specified in such notice as if such date were the expiration date of the Initial Lease Term or Extension Term without the necessity of reentry or any other act on Landlord's part. Upon any termination of this Lease, Tenant shall quit and surrender to Landlord the Premises as set forth in Section 17. If this Lease is terminated, Tenant shall be and remain liable to Landlord for damages as hereinafter provided and Landlord shall be entitled to recover forthwith from Tenant as damages an amount equal to the total of all sums accrued and unpaid at the time of termination of the Lease.

B. Landlord may, without demand or notice, reenter and take possession of the Premises or any part thereof, and repossess the same as part of Landlord's former estate and expel Tenant and those claiming through or under Tenant, and remove the effects of any and all such persons (forcibly, if necessary) without being deemed guilty of any manner of trespass and without prejudice to any remedies for preceding breach of covenants.

C. Landlord shall have the right to recover from Tenant damages provided for in this section by suit or suits brought from time to time without Landlord being required to wait until the expiration of the Initial Lease Term or any Extension Term, or if this Lease is terminated, the date on which such expiration would

have occurred. If Tenant shall default in making any payment required to be made by Tenant (other than payments of rent) or shall default in performing any other obligations of Tenant under this Lease, Landlord may, but shall not be obligated to, make such payment or, on behalf of Tenant, expend such sum as may be necessary to perform such obligation. All sums so expended by Landlord with interest thereon shall be repaid by Tenant to Landlord on demand. No such payment or expenditure or other action by Landlord shall be deemed a waiver of Tenant's default nor shall it affect any other remedy of Landlord by reason of such default. As used in this Lease, the terms "reenter," "reentry," "take possession," "repossess" and "repossession" are not restricted to their technical legal meaning.

12. Quiet Enjoyment. Landlord shall warrant and defend Tenant in the quiet enjoyment and possession of the Premises during the Lease Term so long as Tenant complies with the provisions of this Lease and the Agreement.

13. Force Majeure; Failure to Perform. Anything in this Lease to the contrary notwithstanding, neither Landlord nor Tenant shall be in default with respect to the performance of any of the terms, covenants or conditions of this Lease if such default shall be due to any strike; lockout; civil commotion; riot; invasion; rebellion; sabotage; governmental regulations or controls, except those imposed by the City of Edgewater; inability to obtain any material, service or financing; an act of God; or any other cause beyond the control of Landlord or Tenant, respectively; provided that such cause is not due to the willful or grossly negligent act or omission of Landlord, Tenant or their respective agents or employees. Further, neither Landlord nor Tenant shall be deemed to be in default in the performance of any of their respective obligations unless and until Landlord or Tenant has failed to perform an obligation within 30 days after written notice from the other party specifying the failure to perform; but if the nature of the obligation is such that more than 30 days are reasonably necessary for its performance, then the notified party shall not be deemed to be in default if it shall commence such performance within such 30-day period and thereafter diligently prosecutes the same to completion.

14. Signs. Tenant shall not place or paint any permanent signs or other similar materials (collectively "Signage") at, on, or above the Premises, or on windows or doors of the Premises except in conformance with the provisions of Section 6 of this Lease, nor shall Tenant paint any exterior surface of the Premises without Landlord's prior approval, and Landlord shall have the right to temporarily remove any Signage in order to paint the Premises or to make any other repairs or alterations to the Premises. Landlord shall be responsible for maintaining any external sign designating the location of the Library.

15. Relationship of Parties. Landlord and Tenant agree that nothing in this Lease shall be deemed, held or construed as creating any relationship between them other than that of Landlord and Tenant.

16. Assignment and Subletting.

A. Tenant shall not assign, sublet, encumber or otherwise transfer its interest under this Lease without the written consent of the Landlord, which consent may be withheld in the Landlord's sole and absolute discretion.

B. Landlord shall not assign or transfer its interest under this Lease without giving Tenant one hundred and eighty (180) days notice.

17. Eminent Domain. If the entire Premises or so much thereof as shall render the balance untenable shall be taken by right of eminent domain or sold under threat of the exercise of such right, this Lease shall terminate as of the date the condemning authority takes physical possession. If only part of the Premises is so taken or sold and as a result thereof Landlord decides that substantial alteration or reconstruction of the Premises is desirable or Landlord decides to demolish or discontinue operating the Premises, Landlord may,

at its option, terminate this Lease by written notice to Tenant given within forty-five (45) days after such taking or sale. Nothing in this paragraph shall prevent Tenant from pursuing compensation for a taking of any portion of its leasehold interest.

18. Casualty.

A. If, during the Lease Term, the Premises shall be damaged by fire, explosion, windstorm or other casualty (a "Casualty"), Tenant shall give Landlord prompt notice in writing of the Casualty (the "Casualty Notice").

B. If it reasonably appears to Landlord that the damage caused by the Casualty can be repaired with reasonable diligence within one hundred eighty (180) calendar days from the date of Landlord's receipt of the Casualty Notice, Landlord shall proceed promptly to repair such damage, so as to restore the Premises to its condition prior to the Casualty. Notwithstanding anything to the contrary contained in this Section 16, if the Casualty is due to the negligent or willful act or omission of Tenant, its agents, servants, employees, invitees or licensees, this Lease shall remain in full force and effect, and there shall be no abatement of rent. But if it reasonably appears that such damage cannot be so repaired within the 180-day period and Landlord notifies Tenant in writing on or before thirty (30) calendar days after the date of Landlord's receipt of the Casualty Notice, or if the damage is not insured, this Lease shall terminate as of the date of the Casualty Notice, and all rent shall be prorated to that date.

C. Landlord's election to repair, or Landlord's commencement of any repairs, shall not constitute a waiver by Landlord of any of its rights to proceed against Tenant for damage resulting from the Casualty to the extent the Casualty is due to the negligent or willful act or omission of Tenant, its agents, servants, employees, and invitees or licensees.

19. Delivery of Premises and Holding Over.

A. Upon the expiration or termination of this Lease, Tenant shall deliver the Premises in good repair and condition, excepting only normal wear and tear since the last required repairs. If Tenant is not then in default hereunder, Tenant may remove from the Premises any trade fixtures and moveable equipment and furniture placed therein by Tenant subject to the terms of Section 6.B. Whether or not Tenant is in default hereunder, Tenant shall remove such alterations, additions, improvements, trade fixtures, equipment and furniture as Landlord shall require, and Tenant shall fully repair any damage occasioned by such removal. If Tenant fails to remove such items requested by Landlord, such items shall conclusively be deemed to have been abandoned, and Landlord shall have the right to sell or otherwise dispose of such items without obligation to account to Tenant therefor. Tenant shall be responsible for all costs connected with such sale or disposal of such items.

B. In the event of any unauthorized holding over, Tenant shall reimburse Landlord for claims for damages by any person to whom Landlord may have leased all or any part of the Premises effective after the termination of this Lease. Tenant's obligations to observe and perform the covenants in this Section 17 shall survive the expiration or the termination of this Lease.

20. No Implied Waiver. No provisions of this Lease shall be deemed to have been waived by Landlord unless such waiver is in writing signed by Landlord. The failure of Landlord to seek redress for violation of, or to insist upon the strict performance of, any covenant or condition of this Lease shall not prevent a subsequent act, which would have originally constituted a violation, from having all the force and effect of an original violation.

21. Access to the Premises. Landlord, its agents and employees shall have the right to enter the

Premises at all times to examine it, to post notices as Landlord deems necessary or desirable for the protection of Landlord or the Premises, and to make such repairs, alterations, improvements and additions to the Premises as Landlord may be required to perform under this Lease or as Landlord may deem necessary or desirable, and may for such purposes bring and keep upon the Premises all necessary materials, supplies and equipment, without the same constituting an eviction of Tenant in whole or in part or entitling Tenant to any abatement of rent or damage, by reason of loss or interruption of business, or otherwise nor shall the same affect Tenant's obligations under this Lease in any manner whatsoever. Landlord shall take all reasonable steps to coordinate such access with Tenant and notify Tenant of any planned entry to the Premises or if prior notice is not possible, as soon thereafter as possible. If Tenant shall not be present to open the Premises for any such entry, Landlord may gain entry by use of a master key or card, and in an emergency by any means (including breaking any doors or windows), without rendering Landlord, its agents or employees liable therefor. In exercising its rights under this Section 19, Landlord shall attempt to minimize interference with Tenant's use and enjoyment of the Premises.

22. Notices. "Key Notices" under this Lease are notices regarding any Lease renewals, default, termination, or changes in the notice address. Key Notices shall be given in writing and shall be deemed received if given by (A) certified mail, return receipt requested, postage prepaid, three (3) business days after being deposited in the United States mail, or (B) overnight carrier service or personal delivery, when received. All other daily communications or notices between the parties that are not Key Notices may be done via electronic transmission. Notice shall be given to the parties at the following addresses:

If to the City:

City of Edgewater
Attn: City Manager
2401 Sheridan Boulevard
Edgewater, CO 80214

If to the Library:

Golden, CO 80401
Tel: (303) 271-5000
Email:

with a copy to:

Jefferson County Attorney
100 Jefferson County Parkway, #5500
Golden, Colorado 80419
Tel: (303) 271-8900
E-mail: CAOContracts@jeffco.us

All Key Notices to the Library shall include a reference to the Lease and the date.

23. Miscellaneous.

A. Benefits. This Lease shall bind and inure to the benefits of the heirs, legal representatives, successors and permitted assigns of the respective parties hereto.

B. Amendments. No amendment, alteration, modification of or addition to this Lease shall be valid or binding unless expressed in writing and signed by the party or parties to be bound thereby.

C. No Representations by Landlord; Entire Agreement. Landlord and Landlord's employees and

agents have made no representations, warranties, agreements or promises with respect to the Premises except such as are expressed herein. The entire contract of the parties is contained herein, and there are no promises, agreements, representations, warranties, conditions or understandings, either oral or written, between them, other than as are set forth herein.

D. Jury Trial Waiver. Landlord and Tenant hereby mutually waive trial by jury in any action, proceeding or counterclaim brought by either of them against the other on any matters whatsoever arising out of or in any way connected with this Lease, the relationship of Landlord and Tenant, Tenant's use or occupancy of the Premises, or any claim of injury or damage.

E. Construction. The language in all parts of this Lease shall be in all cases construed according to its fair meaning, and not strictly for or against Landlord or Tenant. The caption of each Section is added as a matter of convenience only and shall be considered of no effect in the construction of any of the provisions of this Lease.

F. Governing Law. This Lease shall be governed by and interpreted in accordance with the laws of the State of Colorado. Venue for any and all legal actions arising hereunder shall lie in the District or County Court in and for the County of Jefferson, State of Colorado.

G. Counterparts. This Lease may be executed in two or more counterparts, using manual or facsimile signature, each of which shall be deemed an original and all of which together shall constitute one and the same document.

H. Proper Execution. Each party represents that all procedures necessary to authorize such party's execution of this Lease have been performed and that the person signing for such party has been authorized to do so.

[Signatures on following page.]

IN WITNESS WHEREOF, the parties have executed this Lease the day and year first written above.

LANDLORD:

CITY OF EDGEWATER
a Colorado municipal corporation

By: _____
Mayor Bonnie McNulty

TENANT:

JEFFERSON COUNTY PUBLIC LIBRARY
a body corporate and politic

By: _____
Title: _____

ATTEST:

By: _____
Beth Hedberg, MMC, City Clerk

ATTEST:

By: _____
Title: _____