

INTERGOVERNMENTAL AGREEMENT

This Agreement ("Agreement") is made this ____ day of _____, 2012 by and between the City of Pueblo, a Municipal Corporation, a Colorado home rule city ("City") and the Pueblo City-County Library District, organized pursuant to the provisions of C.R.S. § 24-90-101, *et seq.* ("Library").

RECITALS

WHEREAS, Library has represented to City that it intends to design, construct, and operate a Library facility ("Project") located between 7th and 8th Streets and Monument Avenue to serve an area known as the Eastside neighborhood within the City of Pueblo.

WHEREAS, City is willing to contribute funds in the amount of \$109,490 to aide in the Library's cost of land acquisition, design, and construction of the Project through its procurement and contracting procedures, independent of any City contracting.

NOW, THEREFORE, in consideration of the foregoing and mutual covenants contained herein, City and Library agree as follows:

TERMS AND CONDITIONS

SECTION 1. LIBRARY REPRESENTATIONS. Library warrants and represents that:

1.1 Library is duly organized and validly exists in good standing pursuant to the provisions of C.R.S. § 24-90-101, *et seq.*, has all necessary power and authority to enter and perform the covenants and agreements on its part to be performed under this Agreement, and by proper action has duly authorized the execution and performance of this Agreement.

SECTION 2. GENERAL.

2.1 Library will cause the design and construction of the Project to be completed in accordance with plans and specifications approved through the permitting processes of the Department of Planning and Community Development and Pueblo Regional Building Department and appropriate Federal, State, and local regulatory agencies.

SECTION 3. CONTRACTS FOR LAND ACQUISITION, DESIGN AND CONSTRUCTION; PAYMENTS.

3.1 City will not enter into contracts for land acquisition, design and construction of the Project and City will not become obligated to make payments under any such contracts ("Contract Payments"). Library shall be the only party obligated under any land acquisition, design, or construction contracts for the Project.

3.2 Subject to Library's performance of its obligations under this Agreement, the City will contribute One Hundred Nine Thousand Four Hundred Ninety Dollars (\$109,490) toward the land acquisition, design, and construction of the Project. These funds shall be held by the City in a special capital project account solely for this purpose. As Library incurs costs for the Project, Library shall submit requests for City funds according to the following schedule: Request No. 1 - upon acquisition of the land necessary for the project, 50% of the City contribution (\$54,745) and Request No. 2 – upon the completion of the construction of the project, the remaining 50% of the City contribution. Requests for payment to the City shall be made by Library's Executive Director documenting acquisition of the land and completion of construction. City shall disburse the requested funds directly to Library, which shall then become Library funds. The disbursement shall take place not later than thirty days after the request for payment is made.

3.3 Library shall pay and disburse Library funds for contract payments solely to such persons or entities as needed to complete the Project.

SECTION 4. MISCELLANEOUS.

4.1 Relationship. Nothing in this Agreement is intended to, or shall be deemed to constitute, a partnership or joint venture between the Parties, or to create any agency or partner relationship between the Parties. Neither Party shall hold itself out as a partner, joint venture, agent, or representative of the other under this Agreement.

4.2 Additional Documents or Action. The Parties agree to execute any additional documents or take any additional action that may be necessary to carry out this Agreement.

4.3 Assignment. This agreement shall not be assigned by Library without the prior written consent of the City, which consent may be granted, denied, or conditioned in City's sole and absolute discretion.

4.4 Force Majeure. Any delays in or failure of performance by any party of its obligations under this Agreement shall be excused if such delays or failure are a result of acts of God, fires, floods, storms, lightning strikes, labor strikes, labor disputes, accidents, regulations or orders of civil or military authorities, shortages of labor or materials, or other causes, similar or dissimilar, which are beyond the control of such party.

4.5 Binding Effect. This Agreement shall inure to the benefit of, and be binding upon, the Parties, their respective legal representatives, successors, and assigns; provided, however, that nothing in this paragraph shall be construed to permit the assignment of this Agreement except as otherwise expressly authorized herein.

4.6 Section Captions. The captions of the Sections in this Agreement are set forth only for the convenience and reference of the Parties and are not intended in any way to define, limit or describe the scope or intent of this Agreement.

4.7 Integration, Severability, Amendment, and Counterparts. This Agreement represents the entire agreement between the Parties and supersedes all prior discussions and written agreements or understandings. This Agreement may be amended only by an instrument in writing signed by the Parties. If any provision of this Agreement is held invalid or unenforceable, no other provision shall be affected by such holding, and all of the remaining provisions of this Agreement shall continue in full force and effect. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and all of which together constitute one and the same agreement.

4.8 No Third Party Beneficiaries; No Waive of Immunities. Nothing in this Agreement is intended, nor should it be construed, to create any rights, claims, or benefits or assume any liability for or on behalf of any third party, or to waive any immunities or limitations conferred under federal or state law, including but not limited to the Colorado Governmental Immunity Act, C.R.S. § 24-10-101 *et seq.*

4.9 Waiver of Breach. A waiver by any party to this Agreement of the breach of any term or provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by either party.

4.10 Governing Law and Venue. This Agreement shall be governed by the laws of the State of Colorado. Venue for any action arising under this Agreement or for the enforcement of this Agreement shall be in a state court with jurisdiction located in Pueblo County, Colorado.

4.11 Authority of Signers. Each person signing this Agreement on behalf of a party represents and warrants that he or she has the requisite power and authority to enter into, execute, and deliver this Agreement on behalf of such party and that this Agreement is a valid and legally binding obligation of such party enforceable against it in accordance with its terms.

4.12 This Agreement is expressly made subject to and contingent upon sufficient appropriations being made for obligations under the Agreement which will or may be performed in City Fiscal years after 2012.

Executed this _____ day of _____, 2012.

CITY OF PUEBLO,
A MUNICIPAL CORPORATION

By: _____
President of the City Council

ATTEST: _____
City Clerk

Approved as to form:

City Attorney

PUEBLO CITY-COUNTY LIBRARY DISTRICT

By: _____
Board President