

FACILITY USE AGREEMENT

PARTIES: This Facility Use Agreement ("Agreement") is made and entered into and effective as of _____, 2024 ("Effective Date"), by and between the City of Pueblo, a Colorado municipal corporation, ("City") located at 1 City Hall Place, Pueblo, Colorado, and the Pueblo City-County Library District, a nonprofit entity, ("Library") located at 100 E. Abriendo Ave., Pueblo, Colorado. City and Library may each be referred to herein individually as a "Party" or collectively as the "Parties."

PURPOSE: The purpose of this agreement is to enable Library to provide community programs during the renovations of the Lucero branch is ongoing. Library will provide all staff, security, transportation, programming, certifications, training, administration, and all other services needed or desired to provide the use of the space, in general "Programing". City's sole responsibility shall be in offering space at its El Centro del Quinto Sol ("El Centro") facilities for the Library's use. Library will coordinate with City as to the timing of the use of space in El Centro. Library understands that City intends to renovate the space in El Centro and Parties will coordinate the use if Library is still using the space at the time of that renovation.

AUTHORITY: This Agreement is entered into by and between the Parties in exercise of the authority set forth in the provisions herein.

TERM: The term of this Agreement shall begin on July 1, 2024 and terminate on September 1, 2025.

NONDISCRIMINATION:

As applicable, both Library and City agree not to discriminate in the selection, acceptance, or treatment of any participant or representative of either party pursuant to this Agreement because of race, color, national origin, religion, sex, sexual orientation, handicap, age, veterans status, medical, ancestry, marital status, or citizenship, within the limits imposed by law or other requirements.

OBLIGATIONS OF THE PARTIES:

- A. City grants permission for Library to enter and use the El Centro facilities located at 609 N. Erie Avenue, Pueblo, Colorado 81001 to provide use for programing, which includes the provision of library resources for check out, services and programs.
- B. Library use of the facilities will be limited to Upstairs East Room and shared programming space in the multipurpose room and only during open public hours at El Central. Library understands that open hours change depending

on the season and Library will coordinate Programing and needs with El Centro Coordinator and Library staff.

- C. City will provide general maintenance of the site, clean restrooms, floors, and provide paper goods for restrooms. Library will be responsible for all preparation and cleaning associated with the Programing. Library's cleaning of the areas shall meet the standard practices maintained at the El Centro facilities and all Health Department regulations, including: the sweeping and mopping of floors, wiping down and disinfecting communal areas, emptying of trash and waste, and the washing, drying, and proper storage of all utensils.
- D. Library shall be responsible for any damage to the property or equipment caused by its employees, volunteers, agents, participants, or any customers served. Programing participants shall execute a waiver, in a form approved by the City, assuming all liability and risk associated with participating in the Programing.
- E. Library will be the sole Party financially responsible for the Programing.

INSURANCE:

During the term of this Agreement, Library shall provide City a current certificate of insurance policy evidencing its comprehensive and general liability insurance coverage. This insurance shall be written in amount not less than \$1,000,000.00 for each occurrence and \$2,000,000 aggregate. Library shall also provide City with a written endorsement naming City as additional insured. Coverage shall provide notice to the additional insured of any change in or limitation of coverage or cancellation of the policy no less than thirty (30) days prior to the effective date of the change, limitation, or cancellation. A copy of the Certificate of Liability Insurance must be on file with the City at the time this Agreement is approved by both Parties.

INDEMNIFICATION AND LIABILITY:

- A. Library agrees to defend, hold harmless, and indemnify the City and its officers, employees, and agents (the "Indemnified Parties"), from any and all claims and liability, including reasonable attorney's fees and costs, for injuries, death, or damages to any person or property, arising from or in any way connected with the activities contemplated under this Agreement, or any default or breach of any term of this Agreement by Library. The Indemnified Parties shall have the right to retain their own counsel, in which case those reasonable attorney and expert fees and costs shall be covered by Library's indemnification obligations.
- B. Intentionally omitted.
- C. Intentionally omitted.

- D. City and Library agree to notify the other party of any claims, administrative actions, or civil actions determined to be within the scope of this Agreement within ten (10) calendar days of such determination. Nothing in this Agreement shall establish a standard of care for or create any legal right for any person not a party to this Agreement.
- E. The Parties to this Agreement agree that each is responsible only for the actions of their respective officers, agents, employees, and participants.
- F. The Parties to this Agreement hereby assert that no liability is assumed by either Party for damages or injuries which arise from participants independently traveling to or from service sites.

TERMINATION AND SUSPENSION:

This Agreement may be terminated without cause by either Party at any time upon thirty (30) days prior written notice to the other Party. When required by law, this Agreement may be immediately suspended by either Party upon notice to the other Party; any such suspension shall not extend the term of this Agreement.

FORCE MAJEURE:

Neither Party shall be liable or responsible to the other party for any delay, loss, damage, failure or inability to perform under this Agreement due to an Event of Force Majeure, provided that the party claiming failure or inability to perform provides written notice to the other party within thirty (30) days of the date on which such party gains actual knowledge of such Event of Force Majeure. In the event of damage or destruction to a material portion of the El Centro facility by reason of fire, storm or other casualty loss that renders the facility (or a material portion thereof) untenable, City shall use reasonable efforts to remedy such situation. If notwithstanding such efforts, such damage or destruction is expected to render the facility (or a material portion thereof) untenable for a period estimated by an engineer or architect selected by City, of at least ninety (90) days from the date of such fire, storm or other casualty loss, either party may terminate this Agreement without any liability, upon written notice to the other.

FINANCIAL OBLIGATIONS:

- A. The parties to this Agreement hereby assert that no financial liability is assumed by either party for services provided outside the scope of this Agreement.
- B. City hereby agrees to provide the detailed areas of El Centro and to be financially responsible for utilities and daily maintenance, except as otherwise provided herein.

- C. Library hereby agrees to provide the Program services with no financial liability to City, including but not limited to, payment of staff, meals, and travel expenses.

NOTICES:

Any notice required to be given by the terms of this Agreement shall be deemed to have been given when the same is personally delivered or sent by first class mail, postage prepaid, addressed to the respective parties as follows:

If to City: Director of Parks and Recreation
Pueblo Parks and Recreation
800 Goodnight Avenue
Pueblo, CO 81005

With a copy to:

City Attorney
One City Hall Place, Third Floor
Pueblo, CO 81003

If to Library: Pueblo City- County Library District
100 E. Abriendo Ave.,
Pueblo, CO 81004

With a copy to:

Bart Miller
Collins Cole Flynn Winn, and Ulmer, PLLC
165 S. Union Blvd., Suite 785
Lakewood, CO 80228
Email: bmiller@cogovlaw.com

ENTIRE AGREEMENT:

This Agreement represents the entire and integrated agreement between City and Library, and supersedes all prior negotiations, representations, or agreements, either written or oral, with respect to the subject matter of this Agreement. The Agreement may not be modified, changed, supplemented or terminated, nor may any obligations under this Agreement be waived or amended, except by written instrument signed by the duly authorized representatives of City and Library.

SEVERABILITY: Should any term or provision of this Agreement be determined to be illegal or in conflict with any law of the State of Colorado, the validity of the remaining portions or provisions shall not be affected thereby, and each term or provision of this Agreement shall be valid and enforced as written to the full extent permitted by law.

REPRESENTATION OF AUTHORITY:

The undersigned hereby represent and warrant that they are authorized by the respective parties to execute this Agreement.

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.

SUBJECT TO LAW:

- A. This Agreement is expressly made subject to the limitations of the Colorado Constitution. Nothing herein shall constitute, nor be deemed to constitute, the creation of a debt or multi-year fiscal obligation or an obligation of future appropriations by the City Council of Pueblo, contrary to Article X, §20 of the Colorado Constitution or any other constitutional, statutory or charter debt limitation. Notwithstanding any other provision of this Agreement, with respect to any financial obligation of City which may arise under this Agreement in any fiscal year, in the event the budget or other means of appropriations for any such year fails to provide funds in sufficient amounts to discharge such obligation, such failure shall not constitute a default by or breach of this Agreement, including any sub-agreement, attachment, schedule or exhibit thereto, by the City.
- B. Nothing in this Agreement is intended, nor should it be construed, to create or extend any rights, claims or benefits or assume any liability for or on behalf of any third party, or to waive any immunities or limitations otherwise conferred upon the City of Pueblo, a municipal corporation under or by virtue of federal or state law, including but not limited to the Colorado Governmental Immunity Act, C.R.S. §24-10-101, et seq.
- C. 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.
- D. Library agrees to conform to all City policies, ordinances, and state and federal laws, including, but not limited to, restrictions on room and building capacities.
- E. This Agreement and all other documents contemplated hereunder may be executed using electronic signatures with delivery via facsimile transmission, by scanning and transmission of electronic files in Portable Document Format (PDF) or other readily available file format, or by copy transmitted via email, or by other electronic means and in one or more

counterparts, each of which shall be: (i) an original, and all of which taken together shall constitute one and the same agreement, (ii) a valid and binding agreement and fully admissible under state and federal law, and (iii) enforceable in accordance with its terms.

- F. 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.

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.

IN WITNESS WHEREOF, City and Library have executed this Agreement as of the Effective Date.

City of Pueblo, A Municipal Corporation

Pueblo City-County Library District

Heather Graham, Mayor

Trisha Macias

Vice-Chair, Board of Trustees

Attest:

Attest:

City Clerk

Secretary to the Board of Trustees

Approved as to Form:

City Attorney