AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM

Agenda Item: Lease Agreement; Library Project

Action Requested: Board of County Commissioners' Signature

Parties to the Agreement:

Term Begins: **Term Ends:** **Grant Contract #:**

Summary:

Lease Agreement for the Gunnison County Library Project

Fiscal Impact:

Submitted by: Liz Mense **Submitter's Email Address:** EMense@gunnisoncounty.org

Finance Review: (●) Required ( ) Not Required

Comments:

I reviewed the draft and have no concerns. I asked our representative, Meredith Burcham, at CTSI to review insurance related language and respond with required changes, if any. She responded she had looked at insurance limits in the contract and found them consistent with CTSI recommendations. No concerns. ln

Reviewed by: GUNCOUNTY1\lNienhueser Discharge Date: 7/1/2020

County Attorney Review: (●) Required ( ) Not Required

Comments:

Draft Paragraph 14 a. seems to identify Gunnison County as the "Landlord." "Landlord" should be changed to "Lessor." db

Reveiwed by: GUNCOUNTY1\dBaumgarten Discharge Date: 7/2/2020 Certificate of Insurance Required Yes (●) No ( )

County Manager Review:

Comments:

Reveiwed by: GUNCOUNTY1\emense Discharge Date: 7/2/2020

(●) Consent Agenda ( ) Regular Agenda ( ) Worksession Time Allotted: 0

Agenda Date: 7/7/2020

Revised April 2015

LEASE AGREEMENT

THIS LEASE AGREEMENT is made and entered into on this ___ day of _____, 2020, by and between the BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF GUNNISON, COLORADO, a political subdivision of the State of Colorado, whose address is 200 E. Virginia, Gunnison, Colorado 81230 (hereinafter "Lessor") and the GUNNISON COUNTY LIBRARY DISTRICT, whose address is 307 N. Wisconsin, Gunnison, Colorado 81230 (hereinafter "Lessee"),

WHEREAS, pursuant to the Intergovernmental Agreement Between the Board of County Commissioners of the County of Gunnison, Colorado and the Gunnison County Library District Concerning The Provisions of Library Services dated October 15, 2019 (hereinafter the "IGA"), Lessor and Lessee have agreed to enter into a Lease Agreement for the real property owned by Lessor described as a 5.32 Acre Tract in the North West Quarter of the North East Quarter of Section 35 in the City of Gunnison, and as more specifically identified in the legal description set forth in Appendix "A" attached hereto and incorporated herein together with any and all structures and improvements situate thereon (hereinafter the "Gunnison Library"); and

WHEREAS, Lessor desires to lease the Gunnison Library to Lessee and Lessee desires to lease the Gunnison Library from Lessor; and

NOW, THEREFORE, for and in consideration of the mutual covenants, terms and conditions herein contained, Lessor and Lessee do hereby agree as follows:

1. GRANT OF LEASE.

Lessor hereby leases to the Lessee the Gunnison Library, as identified herein above, with the right to use the same only as specifically set forth in this Lease Agreement.

2. TERM OF LEASE.

The term of this Lease Agreement shall commence upon the date of execution of this Lease Agreement and shall continue for twenty years (20) years, unless otherwise terminated under the terms of this Lease Agreement, the IGA, or by mutual agreement of the Lessor and Lessee.

3. LEASE IS NONEXCLUSIVE.

Lessor expressly reserves the right to enter the Gunnison Library for any and all purposes that will not substantially interfere with Lessee's use.

4. CONSIDERATION.

Pursuant to the IGA, there shall be no rent due and owing from Lessee for this Lease. Rather, consideration of the rights granted in this Lease Agreement shall be provided by Lessee's operation and maintenance of public library services and Lessee's adherence to the obligations and responsibilities as identified in Resolution No: 2007-57, the IGA and Colorado Library Law pursuant to C.R.S. § 24-90-101, *et. seq*.

The Lessee will be financially obligated by the terms set forth in section 12 of this Lease below.

5. UITILITIES.

Lessee shall be responsible for any and all utility costs associated with the use of the Gunnison Library, including but not limited to, heating, water, sewer, electric, telephone and garbage disposal.

6. FINANCIAL RECORDS.

It will be the responsibility of the Lessor and Lessee to maintain its own respective records of all financial transactions in connection with the covenants, terms and conditions of respective responsibilities set forth in this Lease Agreement.

7. USE OF THE GUNNISON LIBRARY.

Lessee shall use the Gunnison Library for the operation and maintenance of public library services pursuant to Resolution No: 2007-57, the IGA, Colorado Library Law, C.R.S. § 24-90-101, *et. seq*. and any other applicable law, rules and regulations of Gunnison County, the State of Colorado and the United States of America.

Lessee shall have full authority and use of the Gunnison Library ONLY for the sole use as a public library and/or any ancillary uses incidental thereto or for other public uses that are complementary to and do not interfere with the use as a public library. Lessee shall not in any fashion allow activities that would abnormally be a risk to public health and safety or increase the risk of fire, explosion or other physical damage or destruction to the Gunnison Library.

8. FURTHER ORDERS, RULES AND REGULATIONS.

Lessor and Lessee agree that, during the term of this Lease Agreement, in addition to or notwithstanding any terms of this Lease Agreement, Lessor may adopt and enforce such orders, rules or regulations which are reasonably necessary, in Lessor's discretion, for the administration, protection or maintenance of the Gunnison Library.

9. OPERATIONS.

Lessee agrees to conduct its use of the Gunnison Library for the accommodation of the public to furnish good, prompt and courteous service. Lessee agrees to provide use of the Gunnison Library on a fair, equal and non-discriminatory basis to all members of the public. Lessee, its agents, and employees, will not discriminate against any person or class of person by reason of race, age, religion, gender, creed, sexual preference or national origin in providing any use of the Property.

Lessee agrees to secure any and all necessary licenses, permits and other approval required by Gunnison County, the State of Colorado, or the United States of America as may be required in connection with Lessee's use of the Gunnison Library.

10. MAINTENANCE, REPAIRS AND IMPROVEMENTS.

Any maintenance agreement, standing separately from this Lease Agreement, between the Lessee and Lessor shall be revisited annually at the budget meeting required by the IGA. It is generally understood that maintenance will be available to the Lessee under the parameters of the Lessors' internal cost allocation methodology and that the Lessee will need to provide no less than one year of notice to the Lessor should the Lessee plan to reduce the amount of maintenance support purchased from the Lessor. Specific maintenance responsibilities will be contingent upon the Lessor's internal capacity and availability in any given year. All maintenance not provided by the Lessor shall be the sole responsibility of the Lessee. Snow removal shall be the responsibility of the Lessee and will not be provided by the Lessor. Lessor agrees to provide administrative support, at the request of the Lessee, in identifying and contracting for maintenance services that are necessary for the successful operation of the library.

Lessee and Lessor intend to engage in the construction of a new public library facility on the leased property. The construction, development, furnishing, and other requirements of occupancy of the facility between the parties hereto shall be governed by the IGA. Lessor may enter into other agreements related to the same with an architect, construction company, and any other subcontractors or other consultants that may be required in the discretion of the Lessor.

All equipment and/or fixtures placed after execution of this Lease Agreement by the Lessee at its expense in, on or about the Gunnison Library, including all fixtures temporarily affixed to, but which may be removed without damage thereto, shall remain the property of the Lessee, and Lessee shall have the right at any time during the term hereof or at termination, to remove all such equipment or fixtures.

11. TAXES.

Lessor shall keep the Gunnison Library free and clear of all levies, liens, and encumbrances and shall pay all license fees, registration fees, assessments, charges, and taxes (municipal, county, state and federal) which may now or hereafter be imposed with the exception of those described in section 12 of this Lease below.

12. FINANCING.

(a) The development of the Gunnison Library is to include a new public library and complementary elements including parking, landscaping, and outdoor spaces on the property. Both the Lessee and the Lessor are financially contributing to the property's development, as more particularly described in the IGA and Section 12 (b) below.

(b) In addition to the funding contemplated under the IGA, the Lessee is obligated to fund $500,000.00 of the Gunnison Library construction project.

(c) The Lessee shall pay the Lessor $500,000 over a period of 20 years with interest thereon at 2.39%. The first payment of principal and interest due from Lessee to Lessor shall be due to the Lessor on March 31, 2021 in the amount of $23,607.00. Subsequent payments of principal and interest shall be made quarterly by the Lessee to the Lessor in the amount of $7,869.00 commencing on June 30, 2021.

(d) Other than the Lessee's payment obligations as stated in the IGA and Subsections 12(a) & (b) above, all financing required for the construction of the Gunnison Library shall be paid for by Lessor.

13. DAMAGE TO OR DESTRUCTION OF PROPERTY.

During the term of this Lease Agreement, and notwithstanding anything herein to the contrary, in the event the Gunnison Library is damaged or destroyed, partially or wholly, by fire or otherwise, Lessor shall reconstruct the same with the insurance proceeds addressed by Section 14 below. In the event the insurance proceeds are in an amount that reconstruction of the Gunnison Library may not occur without additional funding from Lessor or Lessee, Lessor shall be under no obligation whatsoever to repair, replace or rebuild the same or to provide a substitute library.

14. INSURANCE

(a) At its sole expense, Lessee shall obtain and keep in force during the Term of the lease commercial general liability insurance with a minimum combined single limit of not less than One Million Dollars ($1,000,000.00) per occurrence and Two Million Dollars ($2,000,000)

general aggregate. The policy shall include coverage for bodily injury, broad form property damage, and personal injury (including coverage for contractual and employee acts). The policy shall name the Landlord as additional insured. The Lessee's commercial general liability policy shall be primary as respects the coverage afforded Lessor as additional insured.

(b) At its sole expense, Lessor shall obtain and keep in force during the Term of the lease, policy or policies of "all risk" extended coverage insurance protecting Lessee against loss of or damage to Lessee's business personal property located in or about the Premises. Coverage shall be written on full replacement cost value.

(c) At its sole expense, Lessee shall obtain and keep in force during the term of the lease workers' compensation insurance to cover obligations imposed by the Workers' Compensation Act of Colorado and employer's liability insurance in not less than the minimum amounts required by law.

(d) At all times during the Term, Lessor shall maintain a policy or policies of fire and "all risk" extended coverage insurance, on the Library Building that is the property of Lessor, including alterations by Lessee that have become the property of the Lessor. Coverage shall be written on full replacement cost basis in an amount equal to one hundred percent (100%) of the full replacement cost value. Such insurance shall be maintained at the expense of the Lessor and payments for losses thereunder shall be made solely to Lessor for purposes of repair or replacement of the Gunnison Library.

(e) All insurance required of Lessee in this Section and all renewals of it shall expressly provide that the policies shall not be canceled or altered without thirty (30) days' prior written notice to Lessor; and shall, to the extent obtainable without additional premium expense, provide that no insurable act or omission of Lessee which would otherwise result in forfeiture or reduction of the insurance shall affect or limit the obligation of the insurance company to pay the amount of any loss sustained. Lessee may satisfy its obligation under this Section by appropriate endorsements of its blanket insurance policies.

(f) All policies of liability insurance that either party is obligated to maintain according to this Lease (other than any policy of workmen's compensation insurance) shall name the other party as an additional insured thereunder. Certificates of said insurance and evidence of the payment of all premiums of such policies shall be made available and exchanged by the parties prior to Lessee's occupancy of the Gunnison Library and from time to time at least thirty (30) days' prior to the expiration of the term of each policy. No insurance required to be maintained by Lessee by this Section shall be subject to any deductible in excess of $20,000.00.

Lessee shall not allow the placement of any lien or other claim against the Gunnison Library by reason of any improvements placed upon the premise, and shall indemnify, hold harmless and defend

Lessor against any claim upon the premises, unless such claim is due to the actions, negligence or omissions of Lessor, in which case Lessor shall indemnify Lessee for any such claims .

Nothing in this Lease Agreement, including but not limited to, the insurance required hereunder, is or shall be deemed a waiver by the Lessor or Lessee of any defense or claim of sovereign immunity, or a waiver of any other provision of law relating to the liability of governmental units or the limits thereof.

15. INDEMNIFICATION.

During the term of this Lease Agreement, Lessee shall indemnify, hold harmless and defend Lessor, its commissioners, its officers, agents and employees, against any claim for injury or damage caused by any act or omission of the Lessee or any of Lessee's employees, guests or invitees arising from the use of the Gunnison Library, but only to the extent as such indemnification and defense is allowed and paid for by the Lessee's insurer. During the term of this Lease Agreement, Lessor shall indemnify, hold harmless and defend Lessee, its board members, officers, agents and employees against any claim for injury or damage caused by any act, negligence or omission of Lessor, or any other person or entity operating under Lessor, arising from the use of the Gunnison Library, but only to the extent as such indemnification and defense is allowed and paid for by the Lessor's insurer.

16. WARRANTIES.

Lessor makes no warranties, either express or implied, as to any matter whatsoever, including but not limited to, the condition of the Gunnison Library.

17. DEFAULT

Lessee or Lessor shall be considered to be in default of this Lease Agreement upon failing to keep, perform and observe each and every covenant, term or condition set forth in this Lease Agreement which failure continues for a period of more than 30 days after written notice from the non-defaulting party to the defaulting party of such breach or default.

No waiver of default by either party of any of the terms or conditions herein to be performed, kept and observed by the other party shall be construed as, or operate as, a waiver of any subsequent default of any of the terms or conditions herein contained to be performed, kept and observed by the other party.

18. TERMINATION.

This Lease Agreement may be terminated if:

A. Lessee is dissolved pursuant to the Colorado law;

B. Lessor determines that the Gunnison Library is not being used for the purposes as set forth in this Lease Agreement; or

C. Lessor satisfies is financing obligations pursuant to the IGA, which then requires the Lessor to convey the Gunnison Library property and improvements back to the Lessee.

Subject to applicable Colorado law, if this Lease Agreement is terminated, it is agreed that Lessor may retake possession of the Gunnison Library upon thirty (30) days written notice to the Lessee and that Lessee shall surrender and return the Gunnison Library to Lessor in good condition, normal wear and tear excepted.

19. NOTICES

Service of all notices under this Lease Agreement shall be sufficient if sent via certified registered mail return receipt requested to the following addresses:

Lessor: Board of County Commissioners
of the County of Gunnison, Colorado
c/o County Manager's Office
200 East Virginia Avenue
Gunnison, CO 8123O

Lessee: Gunnison County Library District
Board of Trustees
307 N. Wisconsin
Gunnison, CO 81230

20. PROHIBITION UPON ASSIGNMENT.

Without the prior written consent of Lessor, Lessee shall not (a) assign, transfer, pledge, or hypothecate this Lease Agreement, or any part thereof, or any interest therein, or (b) convey, sublet or lend the Gunnison Library or any part thereof.

21. NON-WAIVER.

The failure of either party to insist in any one or more instances upon compliance with any of the covenants, terms or conditions agreed upon and herein contained, or the failure of either party to

exercise any option, privilege or right agreed upon and herein contained shall not be construed as constituting a waiver of such right, option or the right to demand compliance with such covenant, term or conditions.

22. SEVERABILITY

In the event any term, condition or provision contained in this Lease Agreement is held by a court of competent jurisdiction to be invalid, the invalidity of such term, condition or provision shall in no way affect any other covenant, condition or provision herein contained. Provided, however, that if the invalidity of such term, condition or provision causes material prejudice to either party hereto with respect to its respective rights and obligations contained in the remaining valid portions of this Lease Agreement, then at the option of such party, this Lease Agreement may be declared to be terminated.

23. GOVERNING LAW, JURISDICTION AND VENUE

This Lease Agreement is entered into in the County of Gunnison, State of Colorado; and it is agreed that the proper jurisdiction and venue for any legal action regarding the interpretation and/or enforcement of this Lease Agreement, or any document related hereto, shall be the County or District Court of the County of Gunnison, State of Colorado and shall be deemed to have been made in and be construed in accordance with the laws of the State of Colorado and be binding upon the parties hereto, their successors and assigns.

24. ENTIRE AGREEMENT

Lessor and Lessee agree that the provisions contained herein constitute the entire agreement between the parties and that all representations made by any officer, agent or employee of the respective parties, unless included herein, are null and void and of no effect. No alterations, amendments, changes or modifications to this Lease Agreement, unless expressly reserved herein, shall be valid unless executed by an instrument in writing by Lessor and Lessee with the same formality as this Lease Agreement.

25. PARAGRAPH TITLES. The titles to the paragraphs and sections of this Lease are solely for the convenience of the parties and shall not be used to explain, modify, simplify, or aid in the interpretation of the provisions herein.

26. LEGAL REPRESENTATION. Both parties represent and warrant that they have carefully reviewed this Lease, they have had competent legal representation in connection with the decision to enter into this Lease, and the contents hereof are known and understood by them.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals on the day and year first set forth above.

LESSOR:

BOARD OF COUNTY COMMISSIONERS
OF THE COUNTY OF GUNNISON, COLORADO

By: _____ ATTEST:

_____
Deputy County Clerk

LESSEE:

GUNNISON COUNTY LIBRARY DISTRICT

By:_____
Cindy McKee
President of the Board of Trustees

STATE OF COLORADO)
)ss.
County of Gunnison)

Acknowledged, subscribed and sworn to before me this ____ day of _____, 2020, by Cindy McKee, President of the Board of Trustees of Gunnison County Library District.

Witness my hand and seal.
My commission expires:_____.

_____
Notary Public
Address:

APPENDIX "A"

Property Deed and Legal Description