

**INTERGOVERNMENTAL AGREEMENT
TO LEASE
PUBLIC SAFETY BUILDING PROPERTY**

THIS INTERGOVERNMENTAL AGREEMENT TO LEASE PUBLIC SAFETY BUILDING PROPERTY, by and between the CITY OF GREELEY, a Colorado Home Rule Municipality (Greeley) and the HIGH PLAINS LIBRARY DISTRICT, a political subdivision of the State of Colorado (the District), is entered into this ____ day of _____, 2013.

RECITALS

WHEREAS, the District is currently leasing space from Greeley in the Public Safety Building for the Lincoln Park Branch Library in accordance with an intergovernmental agreement; and

WHEREAS, the term of said lease ends on December 31, 2013; and

WHEREAS, the parties desire to replace and supersede the existing lease with this new Intergovernmental Agreement to Lease Public Safety Building Property; and

WHEREAS, it is in the best interests of the citizens of Greeley and the electors of the District to enter into this Agreement; and

WHEREAS, the parties wish to reduce their agreement to writing;

NOW THEREFORE, in consideration of the terms, conditions, covenants and agreements contained herein, the adequacy of which is acknowledged by and between the parties, the parties hereto bargain and agree as follows:

AGREEMENT

1. Recitals. The foregoing recitals are incorporated herein by reference.
2. Leased Property. Greeley hereby leases to the District, in accordance with the terms and conditions of this Agreement, the following described real estate:

That portion of the Public Safety Building, located at 919 Seventh Avenue, Greeley, Colorado, 80631, currently housing the District's Lincoln Park Branch Library, together with all associated appurtenances and fixtures.

3. Term. The term of the lease shall commence on the 1st day of January, 2014, and shall continue until the 31st day of December, 2014. Subject to the termination provisions of

paragraph 19 below, Greeley hereby grants the District two (2) successive automatic one year renewals of the lease on the same terms and conditions as are contained herein.

4. Rent. The District shall pay Greeley an annual rent of Ten Dollars (\$10.00), payable on the 2nd day of each year of the lease or any subsequent renewals.

5. Use of Premises Limited. The District agrees that the leased property shall be used and occupied exclusively for use as a public library for library services and attendant support facilities unless Greeley has provided prior written approval.

6. Utilities. The parties agree that the electricity, gas, water, sewer and trash removal shall be paid by the parties according to the following schedule:

a. For the percentage of the total square footage of the Public Safety Building comprising the square footage of the property leased by the District, the District shall pay 100%.

b. For the percentage of the total square footage of the Public Safety Building comprising the square footage of the property not leased by the District, Greeley shall pay 100%.

7. Maintenance of Leased Property. During the term of the lease and any subsequent renewal, Greeley shall maintain the exterior of the leased property in good condition and repair, including the roof, and the parking lot, and including snow removal. The District shall be solely responsible for the maintenance and repair of the Library sign. The District shall maintain the interior of the property, its fixtures and appurtenances, in good condition and repair at its own expense during the term of the lease and any subsequent renewal. The District shall provide all required custodial services for the leased property at its sole expense. In addition, the District shall maintain, at its own cost and expense, the heating, ventilation, and air conditioning (HVAC) units, including extensions, appurtenances, flues and piping that serve the leased property. Greeley shall be responsible for the roof, electric, and plumbing systems for its portion of the building, and the District shall be responsible for District=s portion of the building. Where repairs or replacements are needed for shared systems, costs shall be shared by Greeley and District on a square footage pro rata basis.

8. Replacement, Reconstruction, and Major Repair of HVAC System. In the event that Greeley determines that systems require maintenance, replacement, reconstruction, or major repair (a major repair being defined as a repair costing twenty percent (20%) or more of the replacement cost) and if the projected life expectancy, as determined by the parties at the time of the replacement, reconstruction, or major repair, exceeds the termination date of the lease, then Greeley shall pay the District, upon vacation of the premises by the District, a pro rata amount based upon the remaining life expectancy of the repair or replacement at the time of the termination. For example, if the projected life expectancy of a replacement were fifteen (15)

years and the lease terminated three (3) years after the replacement occurred, Greeley would pay the District 80% of the cost of the replacement.

9. Alterations and Improvements. Expressly subject to Greeley=s approval of design and construction plans, the District may, at its expense, make what alterations and improvements to the interior and exterior of the leased property that it deems necessary or expedient for the uses permitted in this Agreement. The District shall not, without Greeley=s written consent, tear down or materially demolish any improvement on the leased property or make any material change or alteration thereto if the improvement, when completed, would materially diminish the value of the leased property or interfere with Greeley=s use of the Public Safety Building. All approvals and/or consents required by this paragraph are within Greeley=s sole discretion; however all approvals and/or consents shall not be unreasonably withheld and shall be given or withheld within sixty (60) days of the request for approval.

Unless otherwise agreed by the parties, any alteration or improvement placed on the leased property by the District, as well as fixtures and articles of personal property attached to the leased property, shall, at the termination of the lease, be surrendered to and become the property of Greeley, including exterior signs, except that movable furniture, movable personal property, and movable trade fixtures put in at the District=s expense may be removed by the District at or before the termination of the lease and shall not be deemed to be the property or nor surrendered to Greeley.

10. Insurance.

a. The District shall obtain fire and casualty insurance on all personal property contained on the leased property in an amount of not less than full replacement cost.

b. Greeley shall insure the improvements on the leased property, including the building in which the leased property is located and the roof thereof, against fire and perils in an amount of not less than full replacement cost.

11. Waiver of Subrogation. Notwithstanding any other provision of this Agreement, neither party shall be liable to the other for any expense or damage resulting from a peril which can be insured against under the Colorado standard form of fire insurance policy with standard property coverage endorsement added. Each of the parties shall, at its own expense, carry its own insurance against such risks, and each party shall look only to its own insurance for indemnity against any such damage, and neither party shall have any interest in the insurance of the other or proceeds thereof.

12. Liability.

a. The District shall not be liable for any personal injury to Greeley or any person arising from the District=s use of the leased property except for those injuries

caused by the acts or omissions of the employees, agents, servants and officers of the District. Greeley promises and agrees that it will defend, indemnify and save harmless the District from all demands, claims, costs, causes of action or judgments and from all expenses that may be incurred in investigating or resisting the same, arising from or related to any injuries described herein and which were not as a result of the acts or omissions of the employees, agents, servants and officers of the District. Greeley expressly reserves the right to select legal representation to provide said defense and indemnification on behalf of the District.

b. Greeley shall not be liable for any personal injury to the District or any person arising from Greeley's use of the leased property except for those injuries caused by the acts or omissions of the employees, agents, servants and officers of Greeley. The District promises and agrees that it will defend, indemnify and save harmless Greeley from all demands, claims, costs, causes of action or judgments and from all expenses that may be incurred in investigating or resisting the same arising from or related to any injuries described herein and which were not as a result of the acts or omission of the employees, agents, servants and officers of Greeley. The District expressly reserves the right to select legal representation to provide said defense and indemnification on behalf of Greeley.

13. Signs. Except for existing signage, the District shall not erect, paint or maintain any signs whatsoever on the exterior of the leased property without first securing the written consent of Greeley, which consent shall not be unreasonably withheld. All signs shall comply with all applicable municipal ordinances. Installation, repair and maintenance of any City approved Library sign shall be the sole financial responsibility of the District.

14. Assignment; Sublease. The District shall not assign the lease or sublease any part of the leased property without the express written consent of Greeley.

15. Right of Inspection. Greeley reserves and retains for its officers, employees and authorized representatives, the full and unrestricted right to enter the leased property for purposes of inspection, protecting the premises, maintenance and the taking of any and all actions which Greeley may deem necessary for the proper conduct and operation of Greeley City government and in the exercise of Greeley's police power. Except in an emergency, Greeley shall exercise its right only during normal working hours of the District in such a manner as not to interfere with the District's operation or at times mutually acceptable to the parties.

16. Parking. Greeley agrees to continue to permit employees and patrons of the District to use the same number of parking places in the lots immediately adjacent to the leased property as are currently available for such purposes under the lease existing prior to the execution of this Agreement. Neither party shall unreasonably withhold permission to modify this section as parking needs dictate.

17. **Damage to Property.** If the leased property is damaged by fire or otherwise to the extent as to be unfit for occupancy by the District, Greeley shall repair the property or provide a mutually acceptable replacement facility within one hundred eighty (180) days of such event. The District has the option to terminate the lease if unable to occupy the premises for thirty days or more.

18. Default; Termination.

a. If the District fails, refuses or neglects to perform any of the terms and conditions of this Agreement, Greeley shall give the District written notice of such default. If the District does not cure said default within sixty (60) days after notice is given (or if the default is of such a nature that it cannot be completely cured within such time, if the District does not commence the curing within sixty (60) days and thereafter proceed with reasonable diligence in good faith to cure the default), Greeley may terminate this lease by giving (10) days written notice to the District. The lease shall then terminate on the date specified in the notice, and Greeley shall be entitled to repossess the premises without any legal action. If the District refuses to vacate the premises, Greeley may use such remedy as it deems fit, under the circumstances, to immediately repossess the same with or without due process of law.

b. If Greeley fails to pay utilities as required in paragraph 6 or fails to maintain the leased property in accordance with the provisions of paragraph 7 above, the District may, upon thirty (30) days written notice to Greeley, pay the utilities or put the leased property in the same condition as existed at the date of the execution of this Agreement, and Greeley agrees to reimburse the District for the reasonable costs of doing so. The thirty (30) day notice need not be complied with in the event of conditions constituting an immediate threat to the health and safety of the public and users of the leased premises.

c. In the event that Greeley sells and/or transfers the Public Safety Building to a third party or entity, this agreement shall terminate one hundred eighty (180) days after Greeley gives notice to the District of said transfer or sale of the property by Greeley. District agrees that upon receipt of said notice of transfer or sale, that it shall vacate the premises within one hundred eighty (180) days of the date of said notice. In the event of such notice, Greeley agrees to reimburse the District a pro-rata share of the monies paid by the District to improve the leased property (ATenant Improvement@), excluding all movable furniture, movable personal property and trade fixtures, which items may be removed by the District at or before termination of the lease. The pro-rata share shall be calculated by taking the cost of the tenant improvement, documented with business records provided to the City at the time of improvement, divided by the useful life of the improvement as agreed by the parties at the time of the improvements. Greeley shall reimburse the District for the value of the remaining life of the tenant improvement already incurring to the District. In the event the District chooses not to continue this agreement, no reimbursement of the City shall be required.

d. Either party at any time may terminate the lease, without cause, by giving one hundred eighty (180) days' notice of termination.

e. In the event that the District fails to vacate the premises within one hundred eighty (180) days after notice termination, Greeley may avail itself of any and all remedies allowed under Colorado law.

19. No Third Party Beneficiaries; No Waiver of Governmental Immunity. This Agreement shall not be deemed to have created any duty of care or liability with respect to any person or entity not a party hereto, nor shall it constitute a waiver of any privileges or immunities the parties or their officers or employees may possess pursuant to law.

20. Covenant of Quiet Enjoyment. Greeley represents that it has the full right and power to enter into this Agreement and hereby covenants that the District shall have quiet possession of the leased property throughout the term of this Agreement so long as the District complies with its obligations hereunder.

21. Notices. All notices required to be given hereunder shall be in writing and sent by certified mail, return receipt requested, at the following addresses:

a. To Greeley:

City Council of Greeley, Colorado
1000 Tenth Street
Greeley, CO 80631

b. Greeley City Manager
1000 Tenth Street
Greeley, CO 80631

c. To the District:
High Plains Library District Board of Trustees
2650 W 29th St
Greeley, CO 80631

d. High Plains Library Executive Director
High Plains Library District
Administration and Support Services
2650 W 29th Street
Greeley, CO 80631

Either party may designate in writing, from time to time, subsequent or supplementary persons or addresses in connection with said notices. Service of notice may also be accomplished in a manner consistent with the Colorado Rules of Civil Procedure provisions concerning personal notice. The effective date of any notice shall be the date such notice is received.

22. Miscellaneous.

a. *Time of Essence.* Time is of the essence in all provisions of this Agreement.

b. *Governing Law.* This Agreement shall be construed in accordance with and governed by the laws of the state of Colorado.

c. *Binding Effect.* The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

d. *Modification.* This Agreement may be amended only by a writing signed by both parties.

e. *Entire Agreement.* This Agreement supersedes all agreements previously made between the parties relating to its subject matter. There are no other understandings or agreements between the parties.

f. *Severability.* If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, such decision shall not affect the remaining provisions.

g. *Counterparts.* This Agreement may be executed in two counterparts, each of which shall be deemed a fully enforceable original and both of which together shall constitute one and the same instrument.

h. *Periodic Consultations.* Greeley City Manager, or designee, and High Plains Library District Director, or designee, on or about March 30 and September 30 of each year during the term of this lease and any subsequent renewals, shall consult with each other regarding the future plans for the use of the Public Safety Building by Greeley and District.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date and year first written above.

ATTEST:

THE CITY OF GREELEY, COLORADO

City Clerk

By: _____
Mayor

APPROVED AS TO SUBSTANCE

By: _____
City Manager

APPROVED AS TO LEGAL FORM

By: _____
City Attorney

AVAILABILITY OF FUNDS

By: _____
Director of Finance

ATTEST:
BOARD OF

Secretary

HIGH PLAINS LIBRARY DISTRICT
TRUSTEES

By: _____
Chairman

By: _____
Executive Director

By: _____
Attorney for Library District

DRAFT