

LEASE

THIS LEASE, made and entered into this _____ day of _____, 2021~~17~~, by and between **WEST FARGO PUBLIC SCHOOL DISTRICT NO. 6, CASS COUNTY, NORTH DAKOTA**, of 207 West Main Avenue, West Fargo, North Dakota 58078, hereinafter called the “Landlord,” and **CITY OF WEST FARGO ON BEHALF OF THE WEST FARGO PUBLIC LIBRARY**, of West Fargo, North Dakota 58078, hereinafter called the “Tenant,”

WITNESSETH:

That for and in consideration of the mutual covenants, agreements, and conditions hereinafter contained, the parties hereto do respectively covenant and agree as follows:

1. **LEASE PROPERTY.** The Landlord, for and in consideration of the rents, covenants, and agreements hereinafter specified to be paid, kept, and performed by the Tenant, hereby leases that portion of the premises described on Exhibit A attached hereto and by reference made a part hereof, having the address of 109 3rd Street East, West Fargo, North Dakota 58078. Said premises are hereinafter called the “Leased Property.”

2. **TERM OF LEASE.** The term of this lease shall be five (5) years, commencing on September 1, 20~~21~~~~17~~, and terminating on August 31, 20~~27~~~~2~~, both dates inclusive, unless sooner terminated as herein provided. The Landlord certifies that the Leased Property, excluding fixtures and appurtenances installed by the Tenant, conforms to all applicable laws, ordinances, regulations, and requirements of governmental authorities.

3. **OPTION TO RENEW.** The Tenant shall have an option to extend this lease for an additional period of one (1) year or such longer term as agreed to by both parties. The option to renew must be exercised in writing by the Tenant not later than six (6) months prior to the expiration of the term. Each renewal is subject to a renegotiation of Rent that is mutually agreed upon by both parties. Such Rent adjustment shall be established no later than three (3) months prior to the expiration of the term.

4. **RENT.** The Tenant shall pay to the Landlord annual rent of \$~~143,880.00~~120,390.00 in lawful money of the United States, in equal monthly installments of \$~~11,990.00~~10,032.50 in advance, on the first day of each month throughout the term of this lease (the “Rent”). The annual rent will increase by three (3) percent annually.

The Rent shall cover the Tenant’s proportionate share of property taxes and assessments and the Tenant’s proportionate share of operating costs, including, but not limited to, common area maintenance and cleaning (e.g., shared entrances, stairwells, and lobby), electricity, water, sewer, heating and air-conditioning, ~~cleaning, custodial,~~ snow removal, parking lot maintenance and repair, ~~plus any direct maintenance, custodial and cleaning expenses incurred by the Landlord for the Leased Property~~ (hereinafter called “Taxes and Operating Costs”).

The Rent shall be payable at the office of the Landlord or at such other place as the Landlord may designate in writing.

5. **USE OF PREMISES.** The Tenant may use and occupy the Leased Property for operating a public library or for any other lawful purpose. The Tenant shall not use or knowingly permit any part of the Leased Property to be used for any unlawful purpose.

6. **QUIET ENJOYMENT.** The Tenant, upon the payment of the Rent herein, reserves and upon the performance of all the terms of this lease, shall at all times during the lease term, and during any extension or renewal term, peaceably and quietly enjoy the Leased Property without any disturbance from the Landlord or from any other person claiming through the Landlord.

7. **CLEANING OF LEASED PROPERTY.**

(a) During the term of this lease the Tenant ~~shall keep the Leased Property in a neat, clean and sanitary condition free from waste and other debris. The Tenant shall also be responsible for dusting, cleaning tabletops and counters and cleaning upholstered furniture and any other Tenant fixtures or furnishings.~~ shall be responsible for all cleaning and custodial services for the Lease Property and shall keep the Lease Property in a neat, clean and sanitary condition free from waste and other debris. So long as the Tenant is not in default hereunder, during the term of this Lease, Landlord shall provide to Tenant bathroom paper products and soap and continue to provide the cleaning supplies and replacement of light bulbs currently being provided to Tenant by Landlord.

(b) ~~So long as the Tenant is not in default hereunder, during the term of this lease, the Landlord shall provide:~~

~~(i) The following primary cleaning services for the Leased Property daily, excepting weekends and holidays:~~

~~(A) vacuuming,~~

~~(B) emptying garbage and recycling containers, and~~

~~(C) cleaning bathrooms and stocking them with paper products;~~

~~(ii) and the following cleaning services as needed:~~

~~(A) carpet cleaning and spot removal,~~

~~(B) window pane and window ledge cleaning,~~

~~(C) replacement of light bulbs, and~~

~~(D) cleaning of hard floors.~~

~~(e) Cleaning products will be provided by the Landlord and will be available for the Tenant's use.~~

8. REPAIR AND MAINTENANCE.

(a) The Tenant shall, during the term of this lease and any renewal or extension thereof, at its sole expense, keep the interior of the Leased Property in as good order and repair as it is at the date of the commencement of this lease, reasonable wear and tear and damage by accidental fire or other casualty excepted. The Tenant shall not knowingly commit or willingly permit to be committed any act or thing contrary to the rules and regulations prescribed from time to time by any federal, state, or municipal authority.

(b) The Landlord, during the term of this lease, and any renewal or extension thereof, shall keep the structural supports and exterior walls of the building, including windows, doors, and passageways from the lobby, street, and parking area leading to the Leased Property, and the adjacent parking lot, sidewalks and entrance lobby, in good order and repair. The Landlord shall use due diligence in making such repairs and make them as soon as reasonably possible after receiving notice of the necessity for repair.

(c) The Landlord shall exercise in good faith effort in notifying the Tenant with at least one week's advance notice when repair or maintenance activity will obstruct the Tenant's use of the Leased Property and adjacent parking lot, sidewalks, and entrance lobby. Tenant understands that in some instances advanced notification by Landlord may not be possible.

(d) The Landlord shall be responsible for removing snow, ice, rubbish, and other obstructions on the sidewalk and parking area.

(e) The Landlord shall maintain and repair all plumbing and toilet fixtures, and equipment installed for the general supply of hot and cold water, heat, air conditioning, and electricity. When the plumbing and toilet fixtures, and equipment installed for the general supply of hot and cold water, heat, air conditioning, and electricity must be replaced, the Landlord shall pay for such replacement.

9. COMPLIANCE WITH LAWS. The Tenant shall, throughout the terms of this lease, at its sole expense, promptly comply with all laws and regulations of all federal, state, and municipal governments and appropriate departments, commissions, board and officers thereof, and the orders and regulations of the National Board of Fire Underwriters or any other body known now or hereafter exercising similar functions, which may be applicable to the Leased Property and the fixtures and equipment therein.

10. OPTION TO TERMINATE LEASE. The Tenant shall have the option to terminate this ~~lease on September 1, 2020~~ lease at any time by providing to Landlord, one (1) year in advance of the early termination date, the following; or on any date thereafter by providing to the Landlord, six (6) months in advance of the early termination date, the following:

(a) Written notice of the Tenant's termination of the lease as of the date set forth in the written notice, which date must be at least one (1) year after the Landlord

~~receives the Tenant's written notice. Written notice of the Tenant's termination of the lease as of the date set forth in the written notice, which date must be at least six (6) months after the Landlord receives the Tenant's written notice.~~

~~(b) The early termination date must be dated the final day of a calendar month.~~

~~(c) The Tenant will be responsible for paying any rent through the early termination date, regardless of whether or not the Tenant is still operating out of the premises. (b) A lease cancellation payment in the amount of \$570.00 per month for each month by which the lease is shortened. This payment shall be delivered to the Landlord together with the Tenant's written notice of the termination of this lease.~~

~~(c) Should the Tenant fail to deliver the lease cancellation payment together with the written notice of the termination of this lease, the written notice of the termination of this lease shall be null and void.~~

11. SURRENDER OF PREMISES.

(a) The Tenant shall, on the expiration or the sooner termination of the lease term, surrender to the Landlord the Leased Property, including all replacements, changes, additions, and improvements constructed or placed by the Tenant thereon, with all equipment in or appurtenant thereto, except all moveable trade fixtures (not including equipment) installed by the Tenant, broom-clean, free of subtenancies, and in good condition and repair, reasonable wear and tear excepted, and damage by fire, act of God or other casualty. Any trade fixtures or personal property belonging to the Tenant or to any subtenant, if not removed at such termination and if the Landlord shall so elect, shall be deemed abandoned and become the property of the Landlord without any payment or offset therefor. If the Landlord shall not so elect, the Landlord may remove such fixtures or property from the Leased Property and store them at the Tenant's risk and expense. The Tenant shall repair and restore, and save the Landlord harmless from, all damage to the Leased Property caused by such removal, whether by the Tenant or by the Landlord.

(b) No act or thing done by the Landlord or its agent during the term of this lease shall be deemed an acceptance of the surrender of the Leased Property and no agreement to accept such surrender shall be valid unless in writing signed by the Landlord. No employee or agent of the Landlord shall have any power to accept the keys of the Leased Property prior to the termination of this lease and the delivery of the keys to an employee or agent of the Landlord shall not operate as a termination of this lease or a surrender of the Leased Property.

12. RIGHT TO ALTER AND IMPROVE. No alteration, addition, or improvement to the Leased Property shall be made by the Tenant without the written consent of the Landlord. Any alteration, addition, or improvement made by the Tenant after such consent shall have been given, and any fixtures installed as part thereof, shall at the Landlord's option become the property of the Landlord upon the expiration or other sooner termination of this lease; provided, however, that the

Landlord shall have the right to require the Tenant to remove such fixtures at the Tenant's cost upon such termination of this lease.

13. UTILITIES. The Landlord shall pay all charges for gas, electricity, light, heat, and power. The Tenant shall pay all charges for telephone or other communications service used, rendered, or supplied upon or in connection with the Leased Property, and shall indemnify the Landlord against any liability or damages on such account.

14. LANDLORD'S RIGHTS - TENANT'S DEFAULT.

(a) The Landlord may give the Tenant five (5) days' notice of intention to terminate this lease in any of the following circumstances:

(i) If the Tenant shall be in default in the performance of any covenant of this lease (other than the covenants for the payment of Rent) and if such default is not cured within fifteen (15) days after written notice thereof given by the Landlord; or, if such default shall be of such nature that it cannot be cured completely within such 15-day period, if the Tenant shall not have promptly commenced within such 15-day period or shall not thereafter proceed with reasonable diligence and in good faith to remedy such default.

(ii) If the Tenant shall be adjudicated a bankrupt, make a general assignment for the benefit of the creditors, or take the benefit of any insolvency act, or if a permanent receiver or trustee in bankruptcy shall be appointed for the Tenant's property and such appointment is not vacated within ninety (90) days. For these purposes, the "Tenant" shall mean the Tenant then in possession of the Leased Property.

(iii) If the Leased Property becomes vacant or deserted for a period of thirty (30) days.

(iv) If this lease shall be assigned or the Leased Property sublet other than in accordance with the terms of this lease and such default is not cured within fifteen (15) days after notice.

(v) If the Tenant shall be in default in the payment of the Rent and such default is not cured within ten (10) business days after mailing of written notice thereof by the Landlord.

(b) If the Landlord shall give the five (5) days' notice of termination provided in subparagraph (a), then at the expiration of such period, this lease shall terminate as completely as if that were the date herein definitely fixed for the expiration of the term of this lease, and the Tenant shall then surrender the Leased Property to the Landlord. If this lease shall so terminate, it shall be lawful for the Landlord, at its option, without formal demand or notice of any kind, to reenter the Leased Property by an unlawful detainer action

or by any other means and to remove the Tenant therefrom without being liable for any damages therefor. Upon the termination of this lease, as herein provided, the Landlord shall have the right, at its election, to terminate any sublease then in effect, without consent of the sublessee concerned.

(c) The Tenant shall remain liable for all its obligations under this lease, despite the Landlord's reentry, and the Landlord may re-rent or use the Leased Property as agent for the Tenant, if the Landlord so elects. The Tenant waives any legal requirement for notice of intention to reenter and any right of redemption.

(d) Nothing in this article shall be deemed to require the Landlord to give the Tenant any notice, other than such notice as may be required by statute, prior to the commencement of an unlawful detainer action for nonpayment of any Rent, it being intended that the five-day notice is only for the purpose of creating a conditional limitation hereunder pursuant to which this lease shall terminate.

(e) If the lease shall terminate as provided in this article, the Landlord shall have the right, at its election at any time, to recover from the Tenant the amount by which the Rent and charges equivalent to the Rent reserved herein for the balance of the term shall exceed the reasonable rental value of the Leased Property for the same period.

(f) Time is of the essence of this lease with respect to the performance by the Tenant of its obligations hereunder.

15. PERFORMANCE OF TENANT'S OBLIGATIONS. If the Tenant shall be in a default hereunder, the Landlord may cure such default on behalf of the Tenant, in which event the Tenant shall reimburse the Landlord for all sums paid to effect such cure, together with interest at the rate of 110% per annum of the "Prime Rate of Interest" charged by Wells Fargo Bank Minneapolis, N.A. (the rate of interest charged by said Bank to its most credit-worthy commercial corporate customers on unsecured commercial loans of ninety (90) days or less duration from time to time during the interval between such due date and the date of payment) and reasonable attorneys' fees. In order to collect such reimbursement, the Landlord shall have all the remedies available under this lease for a default in the payment of the Rent.

16. RIGHT OF ENTRY. The Landlord and its representative may enter the Leased Property, at any reasonable time, for the purpose of inspecting the Leased Property, performing any work which the Landlord elects to undertake made necessary by reason of the Tenant's default under the terms of this lease, exhibiting the Leased Property for sale, lease, or mortgage financing, or posting notices of non-responsibility under any mechanic's lien law. Except in an emergency, the Landlord, while exercising this right of entry, will not interfere with the operations or business activities of the Tenant.

17. FIRE OR OTHER CASUALTY LOSS. In case of damage by fire or other casualty to the building in which the Leased Property is located, if the damage is so extensive as to amount practically to the total destruction of the Leased Property or of such building, this lease shall cease,

and the Rent shall be apportioned to the time of the damage. In all other cases where the Leased Property is damaged by fire or other casualty without the fault of the Tenant, the Landlord shall repair the damage with reasonable dispatch, and if the damage has rendered the Leased Property untenantable, in whole or in part, there shall be an apportionment of the Rent until the damage has been repaired. In determining what constitutes reasonable dispatch, consideration shall be given in delays caused by strikes, adjustment of insurance, and other causes beyond the Landlord's control.

18. INSURANCE.

(a) The Landlord shall keep the building containing the Leased Property insured against loss or damage by fire with all risk policy endorsement in an amount sufficient to prevent the Landlord from becoming a co-insurer under the terms of the applicable policies but, in any event, in an amount not less than 80% of the full insurable value as determined from time to time. The term "full insurance value" shall mean actual replacement cost (exclusive of the cost of excavation, foundations, and footings below the basement floor) without deduction for physical depreciation. Such insurance shall be issued by financially responsible insurers duly authorized to do business in this state.

(b) During the term of this lease, the Tenant shall keep the Leased Property insured, at its sole cost and expense, against claims for personal injury or property damage under a policy of general public liability insurance, with limits of at least \$500,000 per occurrence with a general aggregate limit of \$1,000,000. Such policies shall name the Landlord and the Tenant as the insureds. Within ten (10) days after the date hereof, the Tenant shall deliver to the Landlord certificates of insurance certifying that such insurance is in full force and effect. On the anniversary date of such insurance policies thereafter, during the term of this lease, the Tenant shall deliver to the Landlord certificates of insurance certifying that such insurance is in full force and effect.

(c) The Tenant shall be responsible for insuring all of its personal property, furniture, fixtures and equipment located in the Leased Property in such amounts and upon such terms as it determines.

19. DENIAL OF SUBROGATION RIGHTS. The Landlord and the Tenant and all parties claiming under them hereby mutually release and discharge each other from all claims and liabilities arising from or caused by any hazard covered by insurance on the Leased Property, or covered by insurance in connection with property on or activities conducted on the Leased Property regardless of the cause of the damage or loss.

20. TERMINATION OF LEASE UPON CONDEMNATION. If the Leased Property, or any part thereof, is taken by eminent domain, this lease shall expire on the date when the Leased Property shall be so taken, and the Rent shall be apportioned as of that date. No part of any award shall belong to the Tenant, except any portion of the award attributable to any trade fixtures or equipment of the Tenant taken by the public authority.

21. EASEMENTS. The Landlord shall have the right to grant easements in areas of the Leased Property for the installation of utilities, provided that the use of such easement areas for such purposes does not interfere substantially with the operation of the Tenant's business. The Tenant shall not be entitled to any compensation or abatement of the Rent if the use of such easement does not interfere substantially with the operations of the Tenant's business.

22. RIGHTS TO ASSIGN AND SUBLEASE. The Tenant may sublet all or portions of the Leased Property for the remainder of the term with the approval of the Landlord, which approval the Landlord shall not unreasonably withhold, provided that the business or occupation of the subtenant is not extra hazardous, disreputable, or illegal, and provided further that the Tenant shall remain primarily liable for the payments of the Rent herein reserved and for the performance of all the other terms of this lease required to be performed by the Tenant.

23. NOTICE. Any notice under this lease must be in writing and must be sent by registered or certified mail to the last address of the party to whom the notice is to be given, as designated by such party in writing. The Landlord hereby designates its address as 207 West Main Avenue, West Fargo, North Dakota 58078. The Tenant hereby designated its address as 109 3rd St E, West Fargo, North Dakota 58078.

24. CONSTRUCTION.

(a) This lease shall be governed by, construed and enforced in accordance with the laws of the State of North Dakota.

(b) The covenants, terms, conditions, provisions, and undertaking in this lease or in any renewals thereof shall extend to and be binding upon the heirs, executors, administrators, successors, and assigns of the respective parties hereto, as if they were in every case named and expressed, and shall be construed as covenants running with the land; and wherever reference is made to either of the parties hereto, it shall be held to include and apply also to the heirs, executors, administrators, successors, and assigns of such party, as if in each and every case so expressed.

(c) The parties agree to execute and deliver any instruments in writing necessary to carry out any agreement, term, condition, or assurance in this lease whenever occasion shall arise and request for such instruments shall be made.

(d) The specified remedies to which the Landlord may resort under the terms of this lease are cumulative and are not intended to be exclusive of any other remedies or means of redress to which the Landlord may be lawfully entitled in case of any breach or threatened breach by the Tenant of any provision or provisions of this lease.

(e) This lease contains the entire agreement between the parties and cannot be changed or terminated orally.

(f) This lease may not be changed orally, but only by an agreement in writing and signed by the party against whom enforcement of any waiver, change, modification, or discharge is sought.

(g) If any provision of this lease shall be declared invalid or unenforceable, the remainder of this lease shall continue in full force and effect.

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IN WITNESS WHEREOF, the parties hereto have affixed their hands and seals as of the day and year first above written.

LANDLORD:

**WEST FARGO PUBLIC SCHOOL
DISTRICT NO. 6**

Its: President

ATTEST:

Its: Business Manager

TENANT:

**CITY OF WEST FARGO
ON BEHALF OF THE
WEST FARGO PUBLIC LIBRARY**

Its: President

ATTEST:

Its: City Auditor

EXHIBIT A

LEASED PROPERTY