

**PROJECT FUNDING GRANT AGREEMENT**

**DENVER CENTRAL LIBRARY**

**THIS PROJECT FUNDING GRANT AGREEMENT (“Agreement”)** is entered into, effective as of the date set forth on the City’s signature page below (**“Effective Date”**), by and between the **CITY AND COUNTY OF DENVER**, a Colorado municipal corporation (**“Denver”** or the **“City”**) and the **DENVER PUBLIC LIBRARY FRIENDS FOUNDATION**, a Section 501(c)(3) Colorado nonprofit corporation (**“Foundation”** or **“Partner”**), with an address of 10 West 14<sup>th</sup> Avenue Parkway, Denver, Colorado 80204, each a **“Party”** and collectively the **“Parties.”**

**RECITALS**

**WHEREAS**, the Denver Public Library, with its Central Library located at 10 West 14<sup>th</sup> Avenue, Denver, Colorado 80204 (the **“Library Site”**) is a City-owned facility that is operated and maintained by the City’s Library Commission (the **“Commission”**); and

**WHEREAS**, the Foundation supports the Denver Public Library by building awareness of, and raising money to enhance, the Library’s programs, facilities, and services; and

**WHEREAS**, the relationship, obligations, and funding arrangements between the Denver Public Library and Foundation is governed by the Third Amendment to Agreement dated September 18, 2019, between the City on behalf of the Denver Public Library, and the Foundation (City Contract Control Number BOOKS-201950159 (the **“Third Amendment”**)); and

**WHEREAS**, on November 7, 2017, the qualified and registered voters of the City approved City-referred question No. 2E (the **“Election”**), approving the issuance of general obligation bonds by the City in the aggregate principal amount of \$69,343,000 for the purpose of financing the costs of repairs and improvements to the City’s library system, including the Library Site, as authorized by City Ordinance No. 816, Series of 2017 (collectively, the **“City Library Project”**); and

**WHEREAS**, as authorized by the Election, the City has previously issued its Series 2018A Bonds in the original aggregate principal amount of \$200,547,246 (the **“2018A Bonds”**), its Series 2019A Bonds in the original aggregate principal amount of \$97,941,213 (the **“2019A Bonds”**), and its Series 2019C Bonds in the original aggregate principal amount of \$117,265,000 (the

“**2019C Bonds;**” each individually a “**Bond**” and collectively, the 2018A Bonds, the 2019A Bonds, and the 2019C Bonds shall be referred to herein as the “**Bonds**”), with a portion of the proceeds of the Bonds being used to finance the City Library Project; and

**WHEREAS**, a portion of the City Library Project includes the design, renovation, repair and replacement of certain facilities and amenities located within the Library Site, as further described in the City’s “DPL Central Library Renovation” project documents (the “**Library Project**”); and

**WHEREAS**, the design and construction plans described in the Library Project are expressly incorporated herein as though they were attached as a separate exhibit; and

**WHEREAS**, the City will fund approximately \$38,000,000 of the Library Project through the use of proceeds from Bonds (as further described in the Library Project, the “**Library Project Base**”); and

**WHEREAS**, the City has identified alternate and add-on components in the Library Project that could be constructed as a supplement to the Library Project Base should the Foundation obtain additional funding and provide such funding to the City in conformance with the milestone and funding requirements identified herein and the requirements of the Library Project (as further described herein and in the Library Project, individually, a “**Library Project Alternate**” and collectively the “**Library Project Alternates**”); and

**WHEREAS**, discrete and separately-identifiable Library Project Alternates may be constructed as a part of the Library Project should separate funding for such Library Project Alternate be obtained by the Foundation and strictly provided to the City for encumbering by the City consistent with the milestone and funding requirements identified herein and the requirements of the Library Project; and

**WHEREAS**, the City has included the design of the Library Project Alternates as a contingent part of the Library Project and as a supplement to the Library Project Base in case the Foundation provides sufficient funding for the construction and installation of such Library Project Alternates to the City in accordance with the terms and conditions contained in this Agreement; and

**WHEREAS**, the City intends to proceed with completing the Library Project Base regardless of whether the City receives funding for Library Project Alternates from the Foundation; and

**WHEREAS**, the City wishes to include the Library Project Alternates as a part of the Library Project, but at this time there is not specific financial means to do so; and

**WHEREAS**, the Foundation has voluntarily elected to fundraise for the costs associated with the City constructing some or all of the Library Project Alternates as a supplement to the Library Project Base, and the funds raised by the Foundation for this purpose, if any, shall be made available to the City in accordance with the Milestones (defined below in Section 5(b)) in the form of authorized fund transfers (individually, a “**Fund Transfer**” and collectively the “**Fund Transfers**”); and

**WHEREAS**, the Fund Transfers shall, when and if provided to the City by the Foundation, be used by the City to construct and otherwise implement the Library Project Alternates, in accordance with the terms and conditions of this Agreement and the Library Project; and

**WHEREAS**, the City agrees to accept the Fund Transfers, subject to the terms and conditions of this Agreement, into a capital projects’ fund known as the Central Library Renovation Fund, No. 38760 to receive any authorized Fund Transfers to implement the Library Project Alternates, in conformance with this Agreement and the Library Project (as established, the “**Capital Project Fund**”); and

**WHEREAS**, notwithstanding the Third Amendment, the City and the Foundation desire to enter into this Agreement to provide a new and dedicated mechanism for the Foundation to provide authorized Fund Transfers to the City to timely fund the construction of the Library Project Alternates, and to provide for the terms and conditions upon which the City will agree to spend such Foundation-generated funds for the Library Project.

### **AGREEMENT**

**NOW, THEREFORE**, the City and Foundation, for the Term specified below and in consideration of the recitals stated above and the terms and conditions stated in this Agreement, hereby enter into this Agreement regarding the fundraising necessary for the Project as follows:

1. **PURPOSE:**

(a) The Foundation has voluntarily elected to raise the funds necessary and to provide such funds to the City to initiate and/or complete the design and construction, renovation and/or reconstruction of the Library Project Alternates, all as further set forth herein. The scope of the Foundation’s responsibilities, obligations and rights under this Agreement shall be limited to

the fulfillment of certain conditions prior to actual construction, renovation and/or reconstruction of the Library Project Alternates.

(b) All rights granted herein to the Foundation are not, and shall not be construed as, a lease, easement, or other interest in any property owned or operated by the City.

2. **TERM:** The term of this Agreement shall commence as of the Effective Date and shall remain in effect until the earlier of: a) the final close-out of all Library Project contracts by the City; or b) seven (7) years from the Effective Date, unless terminated earlier pursuant to the terms of Section 25, below.

3. **CITY PROPERTY:** The Foundation hereby acknowledges and agrees that the Library Site and any and all improvements to the Library Site are at all times fully-owned by the City and operated and maintained by the Commission.

4. **COORDINATION AND LIAISON:**

(a) The City's Chief Financial Officer or Manager of Finance (along with any designees, the "Manager") is vested with the authority to act on behalf of the City in performing the City's obligations under this Agreement. The Manager may designate certain person(s) to act on the Manager's behalf as the authorized representative(s). The Manager may change its authorized representative(s) at any time by providing written notice to the Foundation of such change.

(b) The Foundation's Executive Director will act as the Foundation's authorized representative under this Agreement and, as such, is vested with the authority to act on behalf of the Foundation in performing Foundation's obligations under this Agreement. The Foundation may change its authorized representative at any time by providing written notice to the Manager of such change.

5. **FUNDRAISING AND BUDGET:** The Foundation voluntarily elects to raise funds to pay for the design and construction costs associated with the Library Project Alternates as described in this Section 5 of the Agreement.

(a) **Library Project Alternates.** The Library Project Alternates are described in **Exhibit A**, attached hereto and incorporated herein by reference.

(b) **Fundraising.** To advance development and delivery of the Library Project Alternates and, in order for the City to begin any construction work on any specific Library Project Alternate, the Foundation shall provide to the City funding raised, if any, to meet the following

fundraising milestones set forth below (individually a “**Milestone**” and collectively the “**Milestones**”), which define the total amount of necessary funding for the Library Project Alternates associated with such Milestone and the deadline date by which the Foundation provides the necessary funding to incorporate the associated Library Project Alternates into the Library Project for full construction in alignment with the Library Project construction schedule, as such Milestones are further described in **Exhibit A**.

Each Milestone includes, at a minimum: 1) the Library Project Alternate(s) associated with the Milestone; 2) the total fundraising amount(s) that is/are needed for the associated Library Project Alternate(s); and 3) a deadline date by which the total fundraising amounts needed for the associated Library Project Alternate(s) must be provided by the Foundation to the City to first encumber and then incorporate the applicable Library Project Alternate(s) associated with such Milestone into the Library Project to stay in compliance with the City’s then-current Library Project construction and delivery schedule.

It is anticipated that the Milestones described in this Section 5(b) are preliminary and may be subject to change. Under all circumstances, the Parties agree and acknowledge that the Milestones described herein may be subject to further change as design and construction phasing and the budgeted costs for the Library Project are further refined and updated by the City. The City shall refine and update the Milestone dates and costs, as may be necessary, and the City shall provide such updated Milestone dates and costs, to the extent necessary, to the Foundation as soon as practicable and otherwise on a periodic basis no later than the end of each first fiscal quarter (March 30), second fiscal quarter (June 30), third fiscal quarter (September 30) and fourth fiscal quarter (December 31) of each year that this Agreement remains in effect. All changes to the Milestones shall be done in good faith by the City. The Foundation shall hold the City, its directors, officers, agents, and employees harmless from any and all damages or claims that may result from any changes to Milestones required by the City. All changes to the Milestones, and the timing or amount of the Foundation’s accompanying fundraising requirements resulting therefrom, shall be automatically incorporated into this Agreement upon the written consent of the Manager. The Library Project shall automatically incorporate any changes to the Milestones, as each may be revised or updated by the City, upon the Foundation timely providing sufficient Fund Transfers to the City in conformance with such revised or updated Milestones. The Manager is authorized on behalf of the City to provide and approve updated Milestones in accordance with the terms and

conditions of this Agreement without amendment thereof.

(c) Milestones. A Library Project Alternate shall only commence if and when Fund Transfers have been received by the City in accordance with the Milestone requirements described herein in amounts sufficient to fully-fund such Library Project Alternate. The City may determine, in its sole discretion, to allocate Fund Transfers, or portions of Fund Transfers, between and among discrete Library Project Alternates described within one or more Milestones, and may further determine to delay or entirely forego constructing any particular Library Project Alternate(s) even if sufficient Fund Transfers have been received by the applicable Milestone for any reason whatsoever. Further, the City shall have the sole discretion and authority to determine which Library Project Alternates, if any, shall be constructed as a part of the Library Project as sufficient Fund Transfers are provided to the City by the Foundation; notwithstanding the foregoing, it is the intent of the City, to the greatest extent possible, to construct a Library Project Alternate if the Foundation provides sufficient funding to the City for that particular Library Project Alternate in strict conformance with the Milestone deadline detailed herein. The Parties agree and acknowledge that if the Foundation's fundraising for a particular Milestone is not sufficient to fully pay for that particular Milestone's Library Project Alternate(s) or if funding for such particular Milestone's Library Project Alternate(s) is not strictly received in accordance with the Milestone requirements thereof, then the City is under no obligation to construct that particular Milestone's Library Project Alternate(s). Under such circumstances, all Fund Transfers delivered to, and encumbered by, the City shall accrue toward funding the next available Milestone's Library Project Alternate(s). If there are any Fund Transfer amounts remaining after the completion of the Library Project that were not otherwise used for any Library Project Alternate(s), then the City shall promptly return such unused Fund Transfers to the Foundation and then the City shall subsequently close the Capital Project Fund; notwithstanding the foregoing, the Foundation may, in its sole discretion, re-dedicate or re-donate any portion or all of unused Fund Transfer amounts back to the City to be utilized as directed by the Commission for any legal Library-related purpose pursuant to the Commission's policies, rules and regulations. The City shall use its reasonable best efforts to complete Library Project Alternates as a part of the Library Project provided that sufficient funding for such Library Project Alternates is given to the City by the Foundation via appropriate Fund Transfer by the appropriate and applicable Milestone requirements; however, the City provides no guarantee that any or all of Library Project Alternates

will be incorporated into the final Library Project if the Milestones described in Section 5(b), above, are not satisfied.

(d) Reporting. By the end of each first fiscal quarter (March 30), second fiscal quarter (June 30), third fiscal quarter (September 30) and fourth fiscal quarter (December 31) of each year that this Agreement remains in effect, the Foundation shall provide the City with a written update on the status of its fundraising efforts for the Library Project Alternates. The Foundation shall provide in such reports, at a minimum, the status of its fundraising efforts, including firm commitments, a cash flow of firm commitments, copies of bank statements, copies of relevant accounting or financial reports, and other mutually agreed-upon documentation. The Parties agree and acknowledge that as the Foundation's fundraising efforts continue, design and/or construction pricing for the Library Project may change, and the City shall make all reasonable analyses and considerations necessary to accommodate changes in pricing to meet the intent of this Agreement and the Library Project. The City shall provide upon request by the Foundation any reasonably pertinent updated information regarding: 1) the status of construction of any applicable Library Project Alternates; and 2) any Fund Transfers being used to pay or reimburse contractors constructing Library Project Alternates, including retainage and any other amounts withheld from progress payments.

(e) Capital Project Fund. The Foundation shall provide the funds that it raises, if any, for the Library Project Alternates to the City according to the deadlines and amounts established by the Milestones, which the City shall then deposit into the Capital Project Fund. The Capital Project Fund shall be used by the City solely for the purposes of funding the Library Project Alternates as each Milestone is successfully achieved, and the City shall provide an accounting to the Foundation upon written request of the use of all funds sourced from the Capital Project Fund. All payments by the City utilizing money sourced from the Capital Project Fund to pay for any or all of the Library Project Alternatives shall be made in accordance with all applicable laws. Any amounts remaining in the Capital Project Fund after the completion of the Library Project shall be promptly returned by the City to the Foundation and then the City shall subsequently close the Capital Project Fund; notwithstanding the foregoing, the Foundation may, in its sole discretion, re-dedicate or re-donate any portion or all of unused Fund Transfer amounts back to the City to be utilized as directed by the Commission for any legal Library-related purpose pursuant to the Commission's policies, rules and regulations. In the event that this Agreement is terminated for

any reason prior to the close-out of the Library Project, all of the unused Fund Transfers raised by the Foundation pursuant to this Agreement and being held by the City in the Capital Project Fund shall, except to the extent such unused Fund Transfers are committed and encumbered to pay one or more vendors or contracts related to the Library Project, be promptly returned by the City to the Foundation, and the City shall subsequently close the Capital Project Fund; notwithstanding the foregoing, the Foundation may, in its sole discretion, re-dedicate or re-donate any portion or all of such unused Fund Transfer amounts back to the City to be utilized as directed by the Commission for any legal Library-related purpose pursuant to the Commission's policies, rules and regulations.

(f) Fundraising. Except as may be limited by this Agreement, the Foundation shall have sole discretion to conduct the fundraising efforts described herein for the Library Project Alternates, which shall not be inconsistent with City laws, and Commission policies, rules and regulations. The proposed private use of any Library facilities resulting from the Foundation's fundraising efforts (including, without limitation, the provision of "naming rights" upon Library spaces) shall be considered by the Commission in conformance with Bond-related financing restrictions and with Library policies, procedures, rules and regulations, and nothing contained herein shall be construed as requiring or obligating the City to approve such proposed private use activities.

(g) Library Project Requirements. The Foundation acknowledges that notwithstanding the use of the Capital Project Fund to fund the various Library Project Alternates, the Library Project is subject to the City Charter, the lawful use of Bond funds, ordinances regarding selection procedures, and City ordinances regarding, among others, 1) the payment of prevailing wages (§§ 20-76 through 20-79, Denver Revised Municipal Code ("D.R.M.C.")), 2) the use of 1% of the Library Project budget to incorporate public art in the Library Project (§§ 20-85 through 20-89, D.R.M.C.), and 3) for small business enterprise and minority- and women-owned business enterprise participation (§§ 28-31 through 28-91, D.R.M.C.), as such ordinances may be amended or re-codified from time to time.

6. **PUBLIC CONTRACTS FOR SERVICES:**

(a) This Agreement is subject to Division 5 of Article IV of Chapter 20 of the Denver Revised Municipal Code, and any amendments (the "Certification Ordinance").

(b) The Foundation agrees and represents that:



(i) At the time of its execution of this Agreement, it does not knowingly employ or contract with an illegal alien who will perform work under this Agreement.

(ii) It will participate in the E-Verify Program, as defined in § 8-17.5-101(3.7), C.R.S., to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement.

(iii) The Foundation also agrees and represents that:

(A) It shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.

(B) It shall not enter into a contract with a subconsultant or subcontractor that fails to certify to the Foundation that it shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.

(C) It has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement, through participation in either the E-Verify Program.

(D) It is prohibited from using either the E-Verify Program procedures to undertake pre-employment screening of job applicants while performing its obligations under the Agreement, and it is required to comply with any and all federal requirements related to use of the E-Verify Program including, by way of example, all program requirements related to employee notification and preservation of employee rights.

(E) If it obtains actual knowledge that a subconsultant or subcontractor performing work under the Agreement knowingly employs or contracts with an illegal alien, it will notify such subconsultant or subcontractor and the City within three (3) days. The Foundation shall also terminate such subconsultant or

subcontractor if within three (3) days after such notice the subconsultant or subcontractor does not stop employing or contracting with the illegal alien, unless during such three-day period the subconsultant or subcontractor provides information to establish that the subconsultant or subcontractor has not knowingly employed or contracted with an illegal alien.

(F) It will comply with any reasonable request made in the course of an investigation by the Colorado Department of Labor and Employment under authority of § 8-17.5-102(5), C.R.S., or the City Auditor, under authority of D.R.M.C. 20-90.3.

The Foundation is liable for any violations as provided in the Certification Ordinance. If the Foundation violates any provision of this paragraph or the Certification Ordinance, the City may terminate this Agreement for a breach of the Agreement. If the Agreement is so terminated, the Foundation shall be liable for actual and consequential damages to the City. Any such termination of a contract due to a violation of this paragraph or the Certification Ordinance may also, at the discretion of the City, constitute grounds for disqualifying the Foundation from submitting bids or proposals for future contracts with the City.

7. **APPROPRIATION**: It is understood and agreed that any payment obligation of the City hereunder, if any, whether direct or contingent, shall extend only to funds appropriated by the Denver City Council for the purpose of this Agreement, encumbered for the purpose of the Agreement and paid into the Treasury of the City. The Foundation acknowledges that: 1) the City does not by this Agreement, irrevocably pledge present cash reserves for payments in future fiscal years, and 2) this Agreement is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City.

8. **NON-DISCRIMINATION**: In connection with the performance of work under this Agreement, the Foundation agrees not to refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, gender identity or gender expression, age, military status, sexual orientation, marital status, or physical or mental disability; and the Foundation further agrees to insert the foregoing provision in all approved contracts and

subcontracts hereunder.

9. **FURTHER ASSURANCES**: From time to time, upon the request of the City, the Foundation agrees to make, execute and deliver or cause to be made, executed and delivered to the any and all further instruments, certificates and documents consistent with the provisions of this Agreement as may, in the reasonable opinion of the City, be necessary or desirable in order to effectuate, complete or perfect the City's rights under this Agreement, provided the City is currently in full compliance with the provisions of this Agreement.

10. **AMENDMENT**: Except as otherwise expressly provided in this Agreement, this Agreement may be amended, modified, or changed, in whole or in part, only by written agreement executed by the Parties in the same manner as this Agreement.

11. **ASSIGNMENT AND DELEGATION**: The Foundation shall not voluntarily or involuntarily assign or delegate any of its rights or obligations, or subcontract performance obligations, under this Agreement without obtaining the Manager's prior written consent. Any assignment, delegation, or subcontracting without such consent will be ineffective and void and will be cause for termination of this Agreement by the City. The Manager has sole and absolute discretion whether to consent to any assignment, delegation, or subcontracting, or to terminate the Agreement because of unauthorized assignment, delegation, or subcontracting. In the event of any subcontracting or unauthorized assignment or delegation: (i) the Foundation shall remain responsible to the City; and (ii) no contractual relationship shall be created between the City and any sub-consultant, subcontractor, assign or delegate.

12. **NO THIRD-PARTY BENEFICIARY**: Enforcement of the terms of the Agreement and all rights of action relating to enforcement are strictly reserved to the Parties. Nothing contained in the Agreement gives or allows any claim or right of action to any third person or entity. Any person or entity other than the City or the Foundation receiving services or benefits pursuant to the Agreement is an incidental beneficiary only.

13. **SEVERABILITY**: Except for the provisions of the Agreement requiring appropriation of City funds, if a court of competent jurisdiction finds any provision of the Agreement or any portion of it to be invalid, illegal, or unenforceable, the validity of the remaining portions or provisions will not be affected, if the intent of the Parties can be fulfilled.

14. **NOTICES**: All notices required by the terms of the Agreement must be hand delivered, sent by overnight courier service, mailed by certified mail, return receipt requested, or

mailed via United States mail, postage prepaid, if to the City at:

Department of Finance  
201 West Colfax Ave., Dept. 1010  
Denver, Colorado 80202

With a copy of any such notice to:

Denver City Attorney's Office            1437 Bannock St., Room 353  
Denver, Colorado 80202

City Librarian  
C/O Director of Community Relations  
Denver Public Library  
10 W. 14th Avenue Parkway  
Denver, Colorado 80204-2731

and if to the Foundation to:

Denver Public Library Friends Foundation  
C/O Executive Director  
10 W. 14<sup>th</sup> Avenue Parkway  
Denver, Colorado 80204

Notices hand delivered or sent by overnight courier are effective upon delivery. Notices sent by certified mail are effective upon receipt. Notices sent by mail are effective upon deposit with the U.S. Postal Service. The Parties may designate substitute addresses where or persons to whom notices are to be mailed or delivered. However, these substitutions will not become effective until actual receipt of written notification.

15.    **GOVERNING LAW; VENUE:**    This Agreement will be construed and enforced in accordance with applicable federal law, the laws of the State of Colorado, and the Charter, Revised Municipal Code, ordinances, regulations and Executive Orders of the City and County of Denver, which are expressly incorporated into the Agreement. Unless otherwise specified, any reference to statutes, laws, regulations, charter or code provisions, ordinances, executive orders, or related memoranda, includes amendments or supplements to same. Venue for any legal action relating to the Agreement will be in the District Court of the State of Colorado, Second Judicial District (Denver District Court).

16.    **NON-WAIVER:** No Party shall be excused from complying with any provision of this Agreement by the failure of the other Party to insist upon or to seek compliance. No

assent, expressed or implied, to any failure by a party to comply with a provision of this Agreement shall be deemed or taken to be a waiver of any other failure to comply by said Party.

17. **LEGAL AUTHORITY:** The Foundation represents and warrants that it possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to enter into this Agreement. Each person signing and executing this Agreement on behalf of the Foundation represents and warrants that he or she has been fully authorized by the Foundation to execute the Agreement on behalf of the Foundation and to validly and legally bind the Foundation to all the terms, performances and provisions of this Agreement.

18. **NO CONSTRUCTION AGAINST DRAFTING PARTY:** The Parties and their respective counsel have had the opportunity to review the Agreement, and the Agreement will not be construed against any Party merely because any provisions of the Agreement were prepared by a particular Party.

19. **CONFIDENTIAL INFORMATION:** The Foundation acknowledges and accepts that, in performance of all work under the terms of this Agreement, the Foundation may have access to Proprietary Data or confidential information that may be owned or controlled by the City, and that the disclosure of such Proprietary Data or information may be damaging to the City or third parties. The Foundation agrees that all Proprietary Data, confidential information or any other data or information provided or otherwise disclosed by the City to the Foundation shall be held in confidence and used only in the performance of its obligations under this Agreement. The Foundation shall exercise reasonable care to protect such Proprietary Data and information as a reasonably prudent person or business would to protect its own proprietary or confidential data. "Proprietary Data" shall mean any materials or information which may be designated or marked "Proprietary" or "Confidential," or which would not be documents subject to disclosure pursuant to the Colorado Open Records Act or City ordinance, and provided or made available to the Foundation by the City. Such Proprietary Data may be in hardcopy, printed, digital or electronic format.

The City acknowledges and accepts that, in performance of all work under the terms of this Agreement, the City may have access to Proprietary Data or confidential information that may be owned or controlled by the Foundation, and that the disclosure of such Proprietary

Data or information may be damaging to the Foundation or third parties. The City agrees that all Proprietary Data, confidential information or any other data or information provided or otherwise disclosed by the Foundation to the City shall be held in confidence and used only in the performance of its obligations under this Agreement. The City shall exercise reasonable care to protect such Proprietary Data and information as a reasonably prudent person or business would to protect its own proprietary or confidential data. Notwithstanding the foregoing, the Foundation acknowledges that the City is subject to the requirements of the Colorado Open Records Act (C.R.S. §§ 24-72-201, *et seq.*, also known as “CORA”), and, to the extent that any Foundation-owned or -controlled Proprietary Data is determined to be a “public record” by a City official duly authorized to respond to requests made under CORA, the City may be required or compelled to disclose it.

20. **TAXES, CHARGES AND PENALTIES**: The City is not liable for the payment of taxes, late charges or penalties of any nature, except for any additional amounts that the City may be required to pay under City ordinance. The Foundation shall promptly pay when due, all taxes, bills, debts and obligations it incurs performing the Agreement and shall not allow any lien, mortgage, judgment or execution to be filed against City property.

21. **EXAMINATION OF RECORDS/AUDIT**: Any authorized agent of the City, including the City Auditor or his or her representative, has the right to access, and the right to examine, copy and retain copies, at City’s election in paper or electronic form, any pertinent books, documents, papers and records related to the Foundation’s performance pursuant to this Agreement, provision of any goods or services to the City, and any other transactions related to this Agreement. The Foundation shall cooperate with City representatives and City representatives shall be granted access to the foregoing documents and information during reasonable business hours and until the latter of three (3) years after the final payment under the Agreement or expiration of the applicable statute of limitations. When conducting an audit of this Agreement, the City Auditor shall be subject to government auditing standards issued by the United States Government Accountability Office by the Comptroller General of the United States, including with respect to disclosure of information acquired during the course of an audit. No examination of records and audits pursuant to this paragraph shall require the Foundation to make disclosures in violation of state or federal privacy laws. The Foundation shall at all times comply with Section 20-276, D.R.M.C.

22. **COMPLETE INTEGRATION:** This Agreement is the complete integration of all understandings between the Parties as to the subject matter of the Agreement. No prior, contemporaneous or subsequent addition, deletion, or other modification has any force or effect, unless embodied in the Agreement in writing. No oral representation by any officer or employee of the City at variance with the terms of the Agreement or any written amendment to the Agreement will have any force or effect or bind the City.

23. **LIMITATION ON APPLICATION OF AGREEMENT.** The provisions of this Agreement are intended to govern the Foundation's fundraising related to the proposed Library Project and shall not be construed to prohibit, limit, or waive other agreements between the Parties currently existing or entered in the future unrelated to the Library Project.

24. **STATUS OF THE FOUNDATION.** The Parties agree that the status of the Foundation shall be that of an independent organization and it is not intended, nor shall it be construed, that the Foundation, nor any employee or agent thereof, is an employee, officer, or agent of the City under Chapter 18 of the D.R.M.C. for purposes of unemployment compensation, workers' compensation, or for any purpose whatsoever.

25. **TERMINATION.** Either Party may terminate this Agreement if:  
a. The other Party commits a material breach of the Agreement and fails to cure said breach to the non-breaching Party's reasonable satisfaction after receiving thirty (30) days' notice in writing; or,  
b. The terminating Party gives thirty (30) days' prior written notice to the other Party.

26. **INUREMENT.** The rights and obligations of the Parties to the Agreement inure to the benefit of and shall be binding upon the Parties and their respective successors and assigns, provided assignments are consented to in accordance with the terms of the Agreement.

27. **CITY EXECUTION OF AGREEMENT.** The Agreement will not be effective or binding on the City until it has been fully executed by all required signatories of the City and County of Denver, and if required by Charter, approved by the City Council.

28. **ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS.** The Foundation consents to the use of electronic signatures by the City. The Agreement may be signed electronically by the City in the manner specified by the City. The Parties agree not to deny the legal effect or enforceability of the Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Agreement in the form of an electronic record, or a paper copy of an electronic document,

or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

**REMAINDER OF PAGE INTENTIONALLY LEFT BLANK**

**[SIGNATURE PAGES FOLLOW]**



**Contract Control Number:** BOOKS-202055128-00  
**Contractor Name:** DENVER PUBLIC LIBRARY

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of:

**SEAL**

**CITY AND COUNTY OF DENVER:**

**ATTEST:**

By:

\_\_\_\_\_

\_\_\_\_\_

**APPROVED AS TO FORM:**

**REGISTERED AND COUNTERSIGNED:**

Attorney for the City and County of Denver

By:

By:

\_\_\_\_\_

\_\_\_\_\_

By:

\_\_\_\_\_

**Contract Control Number:**  
**Contractor Name:**

BOOKS-202055128-00  
DENVER PUBLIC LIBRARY

By: \_\_\_\_\_  
  
563B5DF65C51474...

Name: Jeff Riley  
(please print)

Title: Executive Director  
(please print)

ATTEST: [if required]

By: \_\_\_\_\_

Name: \_\_\_\_\_  
(please print)

Title: \_\_\_\_\_  
(please print)



**EXHIBIT A  
FRIENDS FOUNDATION FUNDING MILESTONES**

**CITY AND COUNTY OF DENVER  
May 20, 2020**

**MILESTONE NO. 1 – APRIL 30, 2021                      \$3,100,000**

**Scope funded:**

Acoma Plaza	\$1,100,000
13 <sup>th</sup> Ave. Pavers/Columns	\$300,000
4 Meeting Rooms	\$600,000
Teen’s Library	\$1,100,000

**MILESTONE NO. 2 – DECEMBER 31, 2021                      \$8,700,000**

**Scope funded:**

Modernize Escalators	\$670,000
Schlessman I (Lounge, Holds, Main Desk, AMH Workroom)	\$1,230,000
Schlessman II (Security Offices, Stair Egress, Vestibules)	\$1,230,000
Schlessman III (Stairs-level 1 to 2, Bridges-level 2, Widen Hall-level 1)	\$1,230,000
½ Base MEP + Low Voltage + Security + Communications	\$1,230,000
Level 2 to Level 3 Stairs, Level 3 Bridges	\$1,770,000
Commons – Level 1	\$1,340,000

**MILESTONE NO. 3 – APRIL 30, 2022                      \$1,800,000**

**Scope funded:**

Broadway Plaza	\$500,000
Broadway Entry – Portico	\$1,300,000

**MILESTONE NO. 4 – DECEMBER 31, 2022                      \$1,000,000**

**Scope funded:**

Children’s Playground	\$1,000,000
-----------------------	-------------